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...effective criminal justice systems can only be developed based on the rule of law and ... the rule of law itself requires the protection of effective criminal justice measures.

Resolution 2005/21, UN Economic and Social Council

## GENERAL INTRODUCTION

The **Criminal Justice Assessment Toolkit** is a standardized and cross-referenced set of tools designed to enable United Nations agencies, government officials engaged in criminal justice reform, as well as other organizations and individuals to conduct comprehensive assessments of criminal justice systems; to identify areas of technical assistance; to assist agencies in the design of interventions that integrate United Nations standards and norms on crime prevention and criminal justice; and to assist in training on these issues. The **Criminal Justice Assessment Toolkit** is a practical guide intended for use by those charged with the assessment of criminal justice systems and the implementation of criminal justice reform.

Designed to be a dynamic set of documents that continue to meet assessment needs as they evolve, the **Criminal Justice Assessment Toolkit** will be adapted and enhanced, with the electronic version being updated on an ongoing basis. The Tools have been grouped within criminal justice system sectors, with the first four sectors as follows: **Policing; Access to Justice; Custodial and Non-Custodial Measures; and Cross-Cutting Issues**. The Tools are organized thematically, both to ensure ease of use and to assist the assessor in understanding the key issues confronting the system being assessed. As future needs are identified, additional Tools will be added.

The Tools have been designed to allow the assessor to assess the spectrum of criminal justice systems, from those with the most rudimentary of institutions and processes to those that are quite complex. Each Tool provides a practical and detailed guide to the key issues to be examined, the relevant United Nations Conventions, Standards and Norms, as well as customary international law. The level of detail in the Tools is deliberate, allowing assessors to gain an understanding of the depth and complexity that a thorough assessment of the criminal justice system should involve. The Tools are not checklists. An artificially simplified approach to conducting assessments would be a disservice to the assessor relying upon the Toolkit as well as the agencies, nations, and ultimately, the people at risk, who will depend on the quality of the assessments guided by the Toolkit. The Tools are designed for use in countries that have common law or civil law or hybrid criminal justice systems and assessors should find them particularly useful for countries undergoing transition or reconstruction.

It should be noted in particular that the assessment of criminal justice systems in post-conflict settings may present additional challenges, especially where high levels of breakdown characterize the key institutions of the system, including the courts, the police, and the prisons. For the assessor, the task may be to determine what remains and what must be built anew, both to meet immediate needs and to build a criminal justice system that integrates international standards and norms and develops public trust. Further complicating matters are the underlying bases for the conflict, which may include abuse of power, human rights violations, and endemic

corruption and which may continue to destabilise the country. For the assessor, gaining an understanding of the various perspectives of the contextual history of the roots of the conflict will be essential. The extent to which the criminal justice system develops and demonstrates the capacity to confront and provide a means of accountability and reconciliation for past abuses will be critical in the establishing a lasting and just peace. Assessors may wish to refer as well to the **United Nations Office of the High Commissioner for Human Rights (OHCHR) Rule of Law Tools for Post Conflict States**<sup>1</sup> for further guidance on the specific issues associated with assessing in a post conflict environment.

The **Criminal Justice Assessment Toolkit** has been designed to assist both experts, who may want to use the Toolkit as an *aide mémoire* for their specific area of expertise, and assessors who may be conducting assessments in areas related to, but distinct from, their expertise in criminal justice. The Toolkit is not designed to act as a substitute for expertise, experience, and judgment. Rather, the Tools are intended to help inform and frame the assessor's thinking and line of inquiry; the detailed sets of questions should function to provoke thought about and to provide insight into an aspect of the criminal justice system.

While the terms of reference for an assessment mission may call for an assessment of a specific aspect of the criminal justice system, such as policing or the judiciary or the prison system, a complete assessment, however, will always include an assessment of the country's legal framework so that decision-makers may understand the legal context in which a system operates, as well as the opportunities, challenges and limitations that the current legal framework may present. Critical in this regard is an adequate understanding of different legal traditions, as well as basic legal concepts.

The Toolkit includes annexes, which may be found on the electronic version of the Toolkit available at the following website address: [http://www.unodc.org/unodc/en/criminal\\_justice\\_assessment\\_toolkit.html](http://www.unodc.org/unodc/en/criminal_justice_assessment_toolkit.html). Annex 1 provides an overview of legal systems and legal concepts. Annex 2 covers basic concepts of criminal law and procedure including a comprehensive description of the essential protections and rights of defendants, victims, and witnesses in the criminal justice system, which will provide context and understanding across all of the Sectors of the Toolkit. These should not be regarded as detailed treatises, but as general guides for practitioners and assessors who are using the Tools.

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<sup>1</sup> <http://www.ohchr.org/english/about/publications/>

# ORGANIZATION OF THE CRIMINAL JUSTICE ASSESSMENT TOOLKIT

The **Criminal Justice Assessment Toolkit** is organized as follows:

- INTRODUCTION
- DECISION POINTS MAP

**SECTOR: POLICING**

**TOOLS:**

- PUBLIC SAFETY AND POLICE SERVICE DELIVERY
- THE INTEGRITY AND ACCOUNTABILITY OF THE POLICE
- CRIME INVESTIGATION
- POLICE INFORMATION AND INTELLIGENCE SYSTEMS

**SECTOR: ACCESS TO JUSTICE**

**TOOLS:**

- THE COURTS
- THE INDEPENDENCE, IMPARTIALITY AND INTEGRITY OF THE JUDICIARY
- THE PROSECUTION SERVICE
- LEGAL DEFENCE AND LEGAL AID

**SECTOR: CUSTODIAL AND NON-CUSTODIAL MEASURES**

**TOOLS:**

- THE PRISON SYSTEM
- DETENTION PRIOR TO ADJUDICATION
- ALTERNATIVES TO INCARCERATION
- SOCIAL REINTEGRATION

**SECTOR: CROSS-CUTTING ISSUES**

**TOOLS:**

- CRIMINAL JUSTICE INFORMATION
- JUVENILE JUSTICE TWO PARTS:
  - CHILDREN IN CONFLICT WITH THE LAW
  - CHILD VICTIMS AND WITNESSES
- VICTIMS AND WITNESSES
- INTERNATIONAL COOPERATION

**ANNEXES:**

- A. KEY DOCUMENTS
- 1. COMPARATIVE LEGAL SYSTEMS
- 2. CRIMINAL LAW AND PROCEDURE

## USING THE TOOLS

Within each of the Policing, Access to Justice, and Custodial and Non-Custodial Measures sectors are assessment tools that should allow a comprehensive assessment of that sector of the criminal justice system. The sectors of the criminal justice system do not function in isolation, however, so the tools are cross-referenced to the relevant portions in other sectors. In assessing a criminal justice system, which is highly interdependent and interactive, even when dysfunctional, a more holistic approach is the more realistic approach. Use of these tools will not make you an instant expert, but will provide you with sufficient insight and appreciation of the issues to allow you to ask the right questions, to understand the answers — and to recommend technical assistance in the system that may address a problem in the sector being assessed.

Again, the tools are not checklists, with questions to be ticked. Not every criminal justice system in every country approaches the same issues in the same way. Not all the suggested questions will be appropriate nor, indeed, desirable in every situation, nor are they exhaustive. They are there to prompt systematic enquiry and to guide you through the major assessment areas.

To help you, each Tool is structured in the same way. Each starts with a general discussion and introduction to the issue followed by a series of sections that examine specific thematic topics for assessment. These latter sections follow the same pattern in each of the Tools:

- Overview, designed to assist the assessor in developing the context and capacity of the system;
- Legal Framework;
- Thematic Issues;
- Partnerships and Coordination.

Where appropriate, you will find a shaded box or text containing commentary or a reference to other parts of the Toolkit needed for a more complete analysis, plus relevant UN conventions, standards and norms, as well other sources of international law. Many of these have been enhanced with live internal links: links to other parts of the Toolkit move you to another part of the Toolkit for additional information. The back button allows you to return to where your inquiry begin. Links to source documents open a window the quotes the source requiring connection to the Internet. The sections themselves consist of questions clustered to prompt, guide and help you direct your thinking. As stated above, these questions will not be appropriate for every assessment, are not exhaustive and, in particular, are not obligatory.

Finally, Annex A lists key documents, as well as useful sources. As noted above, many of these can be found as live internal links within the text. Where available, website addresses for other documents have been provided. One source that has been cited is the set of Models Codes being developed by the Irish Centre for Human Rights and USIP in conjunction with the Office of the United Nations High Commissioner for Human Right (OHCHR) and UNODC. They are not yet final but are offered as examples of Codes that integrate international standards and norms. They should not be formally cited until the final codes have been issued.

Each section includes suggested sources and contacts, with free form field allowing the assessor o add notes, contacts information, helping keep track of sources and contacts used in the course of an assessment.

A special sector, **Cross-Cutting Issues**, includes tools written about the topics that exist across the sectors of the criminal justice system, including criminal justice information; victims and witnesses; children who may be in conflict with the law or are victims or witnesses; and international cooperation. Assessors may wish to refer to these Tools in addition to the Tools specific to the sector they may be assessing.

These tools are intended to assist in the assessment of an area of activity that may be unfamiliar territory. However, at all times, you are the assessor and it is for you to choose and employ the tools for the job.

## **GENERAL GUIDELINES FOR CONDUCTING ASSESSMENTS**

What follows are general guidelines for conducting assessments, a distillation of the experience of some sixty experts in criminal justice who participated in the process of formulating the tools. While not comprehensive, these guidelines are applicable to all assessments; assessors may wish to review this section in addition to the sector-specific and cross-cutting tools in preparation for an assessment mission.

### **CLARIFY**

Understand what the terms of reference are seeking and clarify any unclear requirements. What level of effort is expected? What resources are being dedicated for the assessment? How long is the assessment mission? What is the composition of the assessment team, if there is a team? Will the team include national or local experts? (The use of national or local experts can help build confidence and credibility from the outset with the country's leadership.) How will the assessment be coordinated among the team members? Who is responsible for what?

Will the assessment emphasise the basic capacity of the criminal justice system or one of its sectors or will it focus on special issues such as organized crime, corruption and trafficking? Do the terms of reference give a sense of how this should be balanced?

For whom is the assessment intended? What is the final use of the assessment? What information obtained in the course of the assessments may be restricted legally from being disseminated? It is important to understand any secrecy/confidentiality provisions and what exceptions may exist. Just as important is gaining an understanding of the political sensitivities that may be associated with issues covered in the assessment.

Understand the purpose of the assessment mission. An assessment mission is usually intended to be the beginning of developing a working relationship in order to build the capacity of a criminal justice system to function according to international standards and norms. Assessment missions are not inspections, nor should they be conducted as such. While it is important to note where a system does not comply with international standards and norms, including failing to afford fundamental human rights, an assessment mission is limited in scope and is not the equivalent of a human rights monitoring program, with its built-in protections, which include continuity of contact. Confusing this role can place the already vulnerable at greater risk.

### **PREPARE**

#### **DEVELOP BACKGROUND MATERIAL**

Preparatory research is critical to a successful assessment mission. Before arrival, it is essential to develop an understanding of the broader political, legal, economic, cultural and social reality of the region and country. Only when examined in this larger context can the criminal justice system and the challenges it may be facing be understood – and only then can technical assistance interventions be appropriately designed. It is important, therefore, to examine the historical and political legacy of the criminal justice system. What are its sources and influences, both ancient and modern? How quickly has the country undergone political changes, especially recently? A country undergoing rapid and abrupt changes in political, economic, and social systems may face different challenges than a stable, slowly evolving one. What is the country's ethno-cultural heritage? If it is multicultural, has it been a peaceful coexistence? What is the influence of traditional systems of justice? What is the unique interplay of all these influences in this country? A wise assessor does not make assumptions, however. Proximity to or a common legacy with another system does not necessarily mean it will be the same. Confirm your understanding on an ongoing basis, recognizing there will also be multiple perspectives.

Becoming conversant with the current contextual influences is just as essential. What is the general situation in country? What are the trends? How do ongoing economic, social and political changes impact upon the functions of the criminal justice system? What is the relationship of government to its people? To its poor? Is the government stable? What is the current economic situation — and its outlook? How is wealth distributed in the country, that is, what are the proportions of rich and poor? What sorts of reform initiatives are underway in government generally and in the area of justice in particular? What are the issues challenging the criminal justice system? What are the crime trends?

It would be helpful to gain at least a sense of what the capacity for delivering criminal justice might be. What are the basic resources available? Are basic services generally available? Does the country develop its human resources? Is there a population of educated and trained workers and criminal justice professionals?

What are the country's current political and development priorities? Has the leadership demonstrated the political will to confront the problems that may be challenging the government, the criminal justice system, and threatening or denying its people's fundamental right to justice? Has the government adopted laws and procedures that provide a model framework, yet not taken the steps to implement them? Does it have the political will to do so?

Research into contextual information and obtaining a measure of a country's capacity can often be conducted on the internet, using governmental country reports, scholarly papers, and reports by international and local non-governmental organizations, not to mention the media. Please see also **Cross-Cutting Issues: Criminal Justice Information** to develop the information needed about the criminal justice system.

In addition to assembling the contextual and capacity information above, in order to ensure a productive mission, it would be helpful to:

- Gain a basic understanding of the justice system, including policing, the structure of the court system, the role of the prosecutor and/or investigating judge, and the system of law.
- Identify, locate, and read any previous similar assessments.
- Request, in advance where possible, statistical and management reports. These may take time to obtain and may need to be translated.
- As noted above, read country and regional reports, both international and national. Most of these are readily available on the internet.
- Meet with individuals, institutions, professional and human rights organizations concerned with the issues you may encounter on the assessment mission, as well as donors including embassies providing bilateral assistance. These sources may provide valuable background information for conducting a thorough assessment as well as invaluable in-country contacts.
- Consider and determine which of the full range of research tools will be used in the assessment mission, including:
  - Document study;
  - Interviews;
  - Focus groups;
  - Use of questionnaires/surveys;
  - Site visits.
- Where possible and where local support is being provided, try to obtain appropriate clearances and appointments. While some site visits could be both

last minute and unannounced, it is both considerate and resource-savvy to schedule appointments with adequate advance notice.

- Every assessment is different and may present unique challenges. The more extensive the preparation prior to an assessment mission, the greater the capacity to manage these challenges.

## **DURING THE ASSESSMENT MISSION:**

- **LISTEN—AND RESPECT THE SPEAKER!** You are conducting an assessment to learn, not to lecture.
- Repeat your questions in different ways. There may be different answers.
- Remember that the Tools, with their detailed questions are designed for your thinking process. While they should guide you in the questions you may want to ask, reading a list of questions at an interview subject, rather than engaging in a conversation, may be counterproductive.
- Conduct interviews as privately as possible. (However, please see special considerations regarding conversations with prisoners during prison visits, **Custodial and Non-Custodial Measures: The Prison System**, as well as **Alternatives to Incarceration**, Section 1 in each tool.)
- **ASK TO BE SHOWN HOW THINGS WORK**, rather than to be told. Site visits reveal more than any briefing ever can, as do practical demonstrations.
- **ASK PEOPLE TO SHOW YOU WHAT THEY DO.**
- **WHAT ARE YOU NOT SEEING?** What's missing from the picture? Why?
- Visit multiple locations when conducting site visits. Where possible, pick the sites to be visited, choosing both urban and rural settings as well as settings of varying socio-economic levels. What may be available in the nation's capital may not be implemented anywhere else in the country, so an assessment conducted only by visiting sites in the capital may produce an inaccurate assessment.
- **CORROBORATE!** Wherever possible, corroborate information by consulting a wide range of sources. These sources should include:
  - Representatives from central and local government;
  - Local, national, and international NGOs;
  - United Nations (Development Programme, Department of Peacekeeping Operations, the Office of the High Commissioner for Human Rights), the European Union, Council of Europe, Organisation for Security and Cooperation in Europe, the African Union or the Organisation of American States; and other regional and international law enforcement organizations;
  - Members of the public, including victims; and prior offenders, where possible;
  - Lawyers, including legal aid/public defenders;
  - Judges;
  - Academic institutions;
  - Donor countries;
  - Staff, from line workers to upper management, in the system being assessed;
  - Journalists;
  - Assistance/aid agencies.

Please see the suggested sources and contacts at the end of each of the thematic subsections.

Knowing when one has spoken to enough sources is always a matter of judgment, depending not only on the availability and willingness of sources to be forthcoming, but also on the amount of time allocated in the terms of reference for the mission. When reporting unsubstantiated information, assessors should indicate the extent to which they consider that unsubstantiated information credible and why.

## **AFTER THE ASSESSMENT MISSION:**

Confer with the individuals, institutions, and organizations you met with previously regarding observations that may need explanation or issues that remain unresolved or unclear. Follow-up is key. An assessor's credibility rests on whether and what he or she delivers.

While the terms of reference will sometimes dictate the format of a report, suggestions for what should be included in an assessment report follow. In general, conclusions reached must be **objective, reliable, verifiable, valid and comprehensive**. Where assessors are unable to draw conclusions because of conflicting information or where there are controversies, assessors should preserve the existence of such issues, instead of resolving them, as they may provide insight for future programming.

Assessors may wish to provide the background information that will give depth and context to the assessment and to give the assessment's intended audience an understanding of the country's specific issues and challenges in context.

Assessor should seek to identify the key issues that have emerged from various sources, including: government policy papers for reform; donor policy papers for reform; by system stakeholders, staff and users; and by civil society groups. Just as important are the obstacles that may impede reform efforts. Once identified, strategies for their removal or diminution should be part of the intervention planned. Obstacles (or opportunities) may include:

- Prevalence / perception of crime in the community (punitive attitude of government, the population, the media);
- Institutional attitudes to reform (resistance v. openness to accept reform; existence of opponents v. change agents in the upper hierarchy; lack or presence of partnerships with civil society groups);
- Overly hierarchical / centralized decision making among criminal justice actors;
- Proximity of elections, etc.

Identifying both the short-term and long-term priorities for development should bear a direct relationship to any existing development strategy, including seeking to reduce poverty and improve management reform and governance. Technical assistance interventions that focus only on a specific issue tend to overlook solutions that may be beyond the immediate focus and are often, as a result unsustainable. Priorities are usually determined via an exercise that ranks them in the following manner:

- Immediate action (i.e. High impact, low/no cost, involving administrative action and no law reform);
- Short term (some cost, visible impact, urgent, involving administrative action, consensus building);
- Medium term (involving further research, strategic planning, costing, public sensitization, building coalitions of interest);
- Long term (law and penal reform, major policy changes, long term planning and costing, inculcating a rights based approach)

Recommendations for areas of technical assistance interventions must take into account the terms of reference for the assessment, integrate United Nations standards and norms and other relevant international standards, be realistic and sustainable. They should also include a critical path for implementation; a timeline and deadlines; and estimated costs. Assessors are advised to avoid the temptation – and risk – of attempting to transfer the legal system or process from another country simply because it has worked well there.

## PLEASE

### LET US KNOW WHAT YOU THINK

The Criminal Justice Assessment Toolkit is a dynamic document that is being updated on an ongoing basis so that it will remain current and be as useful as possible to you and future users. As someone who has used the Toolkit, your feedback on what works, what doesn't, and what's needed will be a vital contribution to that process. Please send your comments, corrections, and suggestions to the **Criminal Justice Reform Unit** of the **UNODC** at the following e-mail address: [criminal.justice@unodc.org](mailto:criminal.justice@unodc.org), with the subject heading: **TOOLKIT FEEDBACK**.

Thank you in advance for any feedback you may provide.