



UNITED NATIONS  
*Office on Drugs and Crime*



**ACCESS TO JUSTICE**  
**The Courts**

Criminal justice  
assessment  
toolkit

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UNITED NATIONS OFFICE ON DRUGS AND CRIME  
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# **ACCESS TO JUSTICE**

## **The Courts**

**Criminal Justice Assessment Toolkit**



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# 1. INTRODUCTION TO THE ISSUE

This tool guides the assessment of the management and operation of courts, with a focus on access to justice by members of the public. In conducting assessments of the judicial system's role in the criminal justice system, the assessor should use this tool in conjunction with **Access to Justice: The Independence, Impartiality, and Integrity of the Judiciary**.

A functioning court system is an integral part of a functioning criminal justice system. The management of the courts must be efficient and effective so that the criminal caseload can be adjudicated fairly, appropriately, and promptly. In many systems, judicial officers are involved in the day-to-day administration of courts, yet it is recognized that too heavy an administrative burden on judicial officers may result in a loss of efficiency. In some systems, court managers have been delegated decision-making authority on operational matters in the courts. A delicate balance must be struck between alleviating judicial officers of unnecessary administrative duties on the one hand, and avoiding the risk of interfering with the independence of the judiciary on the other.

Because courts are also repositories of information whose integrity must be maintained, registry officials (sometimes called court clerks), in addition to court managers, may also be involved in court management, particularly in relation to information management functions. Record keeping, the transcribing of cases, the publication of law reports, as well as the preservation of evidence all depend on good information management systems and provide the basis for management of the caseload.

Case flow management is also linked closely with court management – the way in which the court manages the progress of a case from first appearance to its resolution, including the use of differentiated case management strategies, can work to reduce the delay too often associated with criminal justice processes. Effective case flow management promotes the appropriate and expeditious resolution of criminal cases by applying scarce resources where they are needed most, as early as possible in the process.

The reform of case management is also important because it enhances transparent processes, especially when coordinated with effective information management. Further, the development of court technology has in recent years led to much innovation in the areas of case and information management. The best case management systems, whether they are fully automated or manual, recognize that efficiency and transparency are a means to a court system that functions according to international standards and norms, protecting the rights of the accused as well as victims and witnesses.

Moreover, the manner in which the court system is structured and run affects the extent to which members of the public obtain access to the justice system. When a court is structured so that all criminal cases, no matter how minor or serious, must be handled by a lower level court with an otherwise excessively large caseload and few resources or services, for example, the negative effect on the quality of justice may be so great that citizens do not even bother to report crimes. Proper structuring of the jurisdiction of courts, that is the legal authority to hear cases, and providing adequate resources to handle the resulting caseload fairly, promptly, and effectively is only part of a well-run court system, however.

Much can be done to make courts more user-friendly to the public and to improve public access to justice. A court that welcomes members of the public—whether a litigant, a witness, victim or defendant—treats each with dignity, and provides accurate information in a helpful, timely, and

open manner so that the information can be both understood and used builds trust as to the level of justice citizens may encounter inside the courtrooms. In a growing number of court systems, bilingual or multilingual court staff and interpreters provide critical interpretation assistance for those whose first language is not the official court language, with many required forms and instructional guides being published in multiple languages.

In many countries, there are assistance projects and processes located or publicized in the courts which are aimed at helping vulnerable persons. This is an area in which projects that entail government working together with non-governmental organisations (NGOs) can and often do flourish. For example, human rights NGOs or local bar associations may provide legal advice or assistance to domestic violence victims seeking protection from abusers or assist low-income or poor litigants in family law matters such as custody, adoption, or dissolution of marriage. Courts that provide responsive services like victim/witness assistance and protection in criminal cases further increase confidence in the rule of law.

Finally, court management processes and court personnel must consistently demonstrate integrity and fairness. The presence of bias, favour, or corruption in a court system denies justice and undermines the rule of law. This extends to all court personnel and to practices ranging from the scheduling of cases—who and upon what criteria may expedite a case—to the manner in which cases are assigned to judicial officers, to the actual adjudication of the cases. Criminal court systems seeking to deliver justice in accordance with the rule of law reflect both integrity of process and demand integrity of the personnel who administer that process.

In addition to developing an understanding of the strengths and weaknesses of a given system, the assessor should be able to identify opportunities for reform and development. Technical assistance in the area of court management in the context of a broader strategic framework may include work that will enhance the following:

- Support processes that ensure the smooth running of court operations through efficient and effective court management and operational support to court personnel.
- Improve organisational design and change management processes, including case flow management.
- Improve allocation of resources for court users through sound budgeting and financial management.
- Enhance capacity to develop and manage planning, research and information management.
- Enhance both human and technical resource capacity for the use of information technology with court services.
- Support for the development of research and library services.
- Ensure good communication and co-operation between all the parties involved in courts.
- Enhance service delivery for certain vulnerable court users.
- Provide improved access to justice.



## 2. OVERVIEW

### 2.1 STATISTICAL DATA

Please refer to **Cross-Cutting Issues: Criminal Justice Information** for guidance on gathering the key criminal justice statistical data that will help provide an overview of the caseload, workload and capacity of the criminal justice system of the country being assessed. Listed below are additional indicators that are specific to this Tool. Some countries may not have this information available. It is advisable to request it in advance, as it may take time to obtain it. Occasionally, officials may be reluctant to share the information that exists. If possible, the assessor should record what kind of information is available and to whom, even if the numbers themselves are not made available to the mission.

In evaluating statistical information, it will be important to obtain an understanding of what is meant by a criminal case or filing and whether such filings reflect individual charges for a single criminal act or the aggregate of charges filed against an individual or a group charged for one or more criminal acts. Similarly, it is important to understand what is meant by the various descriptors of case events, resolutions or outcomes, as this may vary even among the various institutions and agencies that produce statistical reports within a single criminal justice system.

Written sources of statistical information may include, if they exist:

- Court Annual reports
- Ministry of Justice reports
- Ministry of Interior/National Police Crime reports/Penal System reports
- Nongovernmental organisation reports on the criminal justice system

The contacts likely to be able to provide the relevant information are:

- Ministry of Justice
- Senior Court personnel
- Registrars or Court Managers
- Non-governmental organisations working on criminal justice matters
- Donor organisations working on the criminal justice sector

In some cases, it may be that the court system does not keep statistical records at all. If a court system does not have the capacity to collect data on caseload and workload or does not perform case flow analysis, technical assistance interventions to develop these capacities may be appropriate.

Where such information is available, it will be helpful in helping identify what blockages exist in the system and where opportunities for technical intervention might be. For example, if cases are on the court roll for long periods of time, technical assistance may be targeted at ways of reducing the length of the pre-trial period.

- A. Are the following statistics available on an annual or other periodic basis?
- Overall court caseload
  - Number of criminal cases brought to court
  - Number of criminal cases withdrawn (dismissed)
  - Number of criminal cases diverted to programmes and at what stage
  - Number of acquittals
  - Number of convictions
  - Number of appeals of criminal cases
  - Sentences, including a breakdown of types of sentences used
  - How many defendants are sentenced to imprisonment during the course of a year?
  - Can these statistics be further broken down (disaggregated) by the following features:
    - Gender
    - Race or ethnicity
    - Crime category
    - Geographical area.
  - Can these statistics be broken down (disaggregated) by judge? If not, can a rough average number per judge be calculated?
  - 
  - Is there information about time intervals? For example, how long is the average time:
    - Between arrest and charge or release?

- Between setting down of case and final resolution?
- From formal charge to verdict?
- From verdict to sentencing?
- From sentencing to completion of an appeal.
- Time spent in detention on remand (prior to trial or adjudication) on average?

It will also be useful to know whether the majority of the prison population is awaiting trial or sentenced and whether the court may be aware that its backlog, if one exists, may be contributing to prison overcrowding.

The answers to the subset below will depend on whether judges are generally assigned or assigned by subject matter either permanently or on a rotational basis

- What is the number of cases assigned to each judge in a given time frame (annually, per term)?
  - What is the number of criminal cases assigned to each judge in a given time frame (annually, per term)?
  - What is the number of cases decided/reaching a verdict by each judge in that same time frame (annually, per term)?
  - What is the number of criminal cases decided/reaching a verdict by each judge in a given time frame (annually, per term)?
- B. Is this statistical information publicly available? Portions of it? How is it made public? By request, via annual or other reports?
- C. If not, to whom is it made available? Is it known to criminal justice officials at least at a senior level?
- D. If statistical information is NOT available, why is it not? (Is this policy or lack of capacity or both?) What would it take to enable the judiciary to produce statistical information requested above?

### 3. LEGAL AND REGULATORY FRAMEWORK OF THE STRUCTURE AND ORGANIZATION OF THE COURTS

#### 3.1 LEGAL FRAMEWORK

The following documents are likely to be sources from which to gain an understanding of the legal and regulatory framework for management of the courts.

Please see **ANNEX 2, CRIMINAL LAW AND CRIMINAL PROCEDURE** for background on legal frameworks that support international standards and norms.

- The Constitution should contain provisions delineating the general structure of the judiciary, the courts, and the administration of justice. Other constitutional provisions concerning the rights of offenders, if implemented, -such as the right to be brought before court within a certain number of hours after arrest, the rights of male and female detainees to be detained separately, the separation of children in conflict with the law from adults will affect the organization and operation of the courts.
- Acts of the legislature and regulations to those Acts: The kinds of Acts likely to contain this information include laws on the administration of justice, criminal law codes and criminal procedure laws.
- Court Rules: There are often multiple sets of court rules with different sets of rules for each level of the court, including appeals. The Rules may be a source for determining on a policy level the manner in which the courts are intended to operate on a day-to-day basis. It is useful to get a sense of the rule-making process, i.e. who makes the rules, who has final authority to approve them, and whether the rule-making bodies obtain input from the legal community or the community at large. Some countries may also have a "Judge's Bench Book" that sets out the rules and procedures of courts.
- Government policy documents, "standing orders", circulars and the like often contain the detailed information that regulates the running of the courts on a day-to-day basis.

The essential counterpart to determining how the legal and regulatory framework intends for the courts to be run is to examine how the courts are actually run. In addition to examining the reports of the relevant government departments or ministries on the courts, law reports (reported cases), independent reports by NGOs, and academic research papers, it is important to conduct site visits to a number of representative court facilities, including visits to court facilities in rural and urban settings, in both relatively well-to-do and impoverished locales. Where specialized courts exist, site visits are useful to be able to compare and contrast practices with the general criminal courts.

#### 3.2 STRUCTURE OF THE CRIMINAL COURT SYSTEM

- A. Describe the levels of the court system and the various powers that each level of court has with regard to handling a general caseload and the criminal caseload. (For example: many criminal court jurisdictions are defined by the sentencing powers of particular levels of the court system). What issues, if any, may be associated with the manner in which criminal jurisdiction is structured in the courts?
- B. How many courts are authorized in total and at each level? Where in the country are they to be located? Is there legislative direction on where courts are to be located, i.e. on a regional basis, in the capital, on the basis of population or filings? How many courts actually operate (at each level)?
- C. How do appeal and review processes operate across the different levels?
- D. Are there specialised criminal courts provided for by statute or via administrative arrangement?

Specialized courts may include: drug treatment courts, anti-corruption courts, sexual offence courts, domestic violence courts, juvenile offender courts.)

Please see **CROSS-CUTTING ISSUES: JUVENILE JUSTICE** for guidance on assessing a juvenile offender court.

- E. How are such courts located - throughout the country, only in main cities, on a pilot basis on one court?
- F. Does the law make provision for a jury system in criminal cases? Does it exist in practice?
- G. Is there a system of assessors who sit with a judge? Are they lay assessors? If not, what qualifications do they have? In which cases do they sit?

### **3.3 OTHER COURTS / SYSTEMS THAT MAY HANDLE CRIMINAL MATTERS**

#### **3.3.1 Traditional / Customary Courts**

PLEASE SEE ANNEX 1, COMPARATIVE LEGAL SYSTEMS FOR FURTHER BACKGROUND.

- A. Is there a system of traditional or customary law courts? What is the basis of the establishment of the customary/traditional court, i.e. social, cultural, religious? What percentage of the population utilises such courts? Are there specific demographic and socioeconomic groups that typically rely upon these courts? For what reasons: proximity, low cost, tradition, religious faith, barriers to formal system, pressure from family or social setting?
- B. Are such courts recognised by the Constitution? Is there any legislation regarding traditional courts? Do they have limits on their criminal jurisdiction (types of cases they can hear) and the sentences that they can pass down?
- C. Is customary law recognised by the formal court system? Do they receive support and/or funding from government? From what other sources? How do these courts link with the formal justice system (e.g. referrals, appeals)? If they do not, note any issues that have arisen. Have there been efforts to harmonise the traditional justice system with the formal criminal justice system? Have they succeeded?
- D. Would strengthening these courts provide meaningful access to justice? What human rights or equal protection issues, if any, would need to be addressed?

#### **3.3.2 Military Courts / Special Tribunals**

- A. Are there military courts operating in the country? Under what circumstance do military courts try civilians for criminal offences?
- B. May such cases in military courts be appealed to the civilian judicial systems? If so, what level court is the entry point? Does this constitute a significant caseload for that court?
- C. Is there a court that has an exclusive jurisdiction over serious crimes such as crimes against humanity, genocide, war crimes and torture?
- D. Have special chambers of courts or panels (outside the general structure of courts) been created to deal with the aftermath of armed conflict? If so, have what are their specific powers and procedures? How do these differ from the standard criminal courts?

## 4. MANAGEMENT AUTHORITY AND FISCAL CONTROL

**Procedure 5** of the **United Nations Economic and Social Council's Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary** emphasises the need for "adequate resources for the functioning of the judicial system, including appointing a sufficient number of judges in relation to caseloads, providing the courts with necessary support staff and equipment, and offering judges appropriate personal security, remuneration and emoluments."

### 4.1 MANAGEMENT AUTHORITY

- A. Who is responsible for court management at both the national and local levels and for each level of court? How is this authority delegated? Is there an official government policy on courts or courts management? Who develops it? Whose input is sought? Does the Ministry of Justice play a role in the management of the court system? If so, what is that role and what is its relationship to the judiciary's authority over the courts?
- B. Has there recently been any restructuring of the court system or its management? Is any such restructuring planned? What are the reasons for such restructuring?
- C. Is there a strategic plan for the courts? Who prepares it? Whose input is sought? Does it include measures for improving access to justice? On the treatment of children in the criminal justice system? On services to victims? How many years into the future does the strategic plan project?
- D. Is there a court policy or plan on service delivery? If so, who is responsible for its implementation?

### 4.2 FISCAL CONTROL

A sufficient budget and budgetary control once the funds are allocated are crucial to an independent judiciary that is free from external influence. To develop and maintain public trust, the courts must be accountable and transparent in their use of public funds

- A. How is the court system funded? What is the budgetary process under the law? Do courts have a specified budget? Who is involved in planning the initial budget? Who prepares and submits the operating budget? Under the law, who manages the budget? Does the judiciary oversee its spending? Is the budget sufficient?
- B. Does the court actually receive the funds allocated in its budget? Are there delays, fiscal constraints or other obstacles to gaining access to these funds? Where are the funds held? Who authorizes their disbursement?
- C. Who oversees the receiving and paying out of money? Does the court receive fees, costs, and fines? Does the court receive and disburse payment of private maintenance for children? Are proper records kept? Is there an internal audit process? Who performs that function? Is there an independent audit process? By whom?
- D. Have there been any recent incidents of theft or fraud relating to such money? If so, how were they dealt with?

## 5. COURT PERSONNEL

### 5.1 STAFFING

A court system relies on its support staff in order to function and to provide the basis for public access to justice. Court staffs deal daily with large amounts of highly sensitive information that must be accurately recorded and maintained. Errors and omissions can affect lives and livelihoods. Improper disclosure can affect the outcome of litigation and place witnesses at risk. Court systems that provide strong leadership and supervision, hire qualified applicants through a transparent selection process, view and compensate staff as professionals, develop and strengthen their skills and functions with continuing training, may in turn demand excellence and integrity from their staff. Where court staffing is not viewed as a priority or the function of staff as public servants is not communicated by leadership, inefficiency, poor service, and corruption are more likely to be issues challenging the justice system and its users. Guidance may be found in the **Principles of Conduct for Court Personnel**, Report of the Fourth Meeting of the Judicial Integrity Group, UNODC.

- A. Does the court system have an organizational chart that describes the lines of authority and staffing scheme? Does the court registrar, if one exists, have a separate staff? If there are multiple lines of authority, how are functions coordinated?
- B. Does the court hire (and fire) its own staff? At all levels? If not, which ministry/government body is the actual employer of court staff?
- C. If the court does hire its own staff:
  - What selection process does it use?
  - Are positions advertised? Posted? Where?
  - Are there minimum qualifications for positions?
  - Are all qualified applicants who are available interviewed? If not, why not?
  - Is there transparency in the hiring process, including the use of standard questions during the interview process, rating sheets, etc.?
  - Is there a policy on nepotism? Is there a policy that the most qualified candidate be hired? Are such policies enforced?
  - Is there a policy of equal opportunity/non-discrimination? Is it posted?
  - Does the court have an employee manual that explains policies, procedures and responsibilities?
  - How are employees evaluated? Promoted? Disciplined? Demoted? Terminated? Is there a written procedure for each?
- D. How are these issues handled where the court does not control court personnel?
- E. Does court staff have civil service status or other such protections? Does court staff belong to a union or other representative body? Is such membership mandatory or optional?
- F. What is the status of court staff? Is their remuneration consistent with their position? Is their salary reasonable when compared to the local cost and standards of living? Do they receive benefits other than salary as part of their compensation?
- G. What, if any, initial training do court employees receive? Is it mandated by law or rule? What topics are covered? Are training programs geared to specific functions, such as interpretation, court reporter, clerk, victim/witness assistance? How long is the training period? Who provides the training? Are employees assigned to a mentor/trainer for on-the-job-training?
- H. What ongoing training is available for court employees in the area of skills, policy, professionalism, changes in the law, procedure? Is there a training budget and, if so,

what percentage of the court budget does it comprise? Does court staff get opportunities to attend outside training seminars and courses? Who has attended and to what types of training?

I. Does staff have an ethics code? Is the ethics code posted prominently in the court in public view? Is ethics training mandated? Do employees receive ethics training? How often? Is there a functioning ethics board or other disciplinary body? Is the disciplinary process based upon written procedures? Are the procedures known? Is court staff required to file financial disclosure reports? What level staff is required to submit such reports? Are reports submitted? Are they audited? Has any enforcement action been taken regarding violations of the ethics code?

J. How does the public regard court staff? Are there any public perception surveys available?

See, for example, the **UNODC Assessment of Justice Sector Integrity and Capacity in Two Indonesian Provinces** (March, 2006); the **UNODC Assessment of Justice Sector Integrity and Capacity in Three Nigerian States** (January, 2006)

K. Does the court staff reflect the population? Is any group over- or under-represented? Is the court leadership making efforts to recruit candidates to make the staff more representative? Are bilingual or multilingual staff who speak ethnic minority languages recruited? If not, why not?

L. Is staffing sufficient to meet the court's mandates? If not, why not?

## 6. COURT SERVICES

These questions will best be answered during site visits to multiple court locations.

### 6.1 GENERAL SERVICES

- A. Is there a help desk or information counter? (Are such services available at all courts in the country?) Who staffs it? Does that staff speak the language(s) of court visitors or have the ability to obtain the assistance of interpreters? How are visitors/court users greeted? If there is no help desk or information counter, where do court visitors go to get information?
- B. How easily can a court user obtain a copy of a court order or judgment? How much does it cost? Can the costs be waived for indigents? How long does it usually take?
- C. Does the court make its procedures and processes readily available to court users? Does it provide instructions, guides, or forms? Are they clearly written and easy to follow? Are they available in ethnic minority languages? Are they current? Are these available in the court? On the Internet?
- D. Do the courts/government departments publicise the services that are on offer at the courts (for example: pamphlets, posters)? (Collecting samples for later translation/reference may be useful.) Are they available in ethnic minority languages? Are they current? Are there public information announcements via the media or on the Internet? Is there a directory?
- E. Do non-governmental organisations (NGOs) assist with court services? If so, who are they and what services do they provide? Do NGOs promote such services (for example: victim support)? How do they publicise their services?

While the involvement of non-governmental organisations in service delivery at courts is very positive, it is important to ascertain whether government sees these services as part of its responsibility. In some countries these services are provided by non-governmental organisations, but are paid for by the state. Technical assistance should seek to establish sustainable models that are viewed as a state responsibility, which may also strive to build on positive partnerships.

- F. Is any assistance provided to court users who cannot read or write in their own language? Who provides that assistance? Are referrals made?

### 6.2 INTERPRETATION SERVICES

Courts function in increasingly multicultural communities. Interpretation services help members of the public who do not speak the official language(s) of the court to access justice and participate in the justice system. Translation and interpretation services should be provided at every stage of the proceedings. (See further the **International Covenant on Civil and Political Rights (ICCPR) Art. 14(3)(f)**; **European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Art. 6**). Such interpreters must be competent and must receive basic training in the law, as well as on-going training on particular issues (for example: sexual offences, child-friendly interpretation), as well as cultural competence training.

- A. Does the court provide interpretation services for the accused, victims, and witnesses in criminal proceedings? At which stages? For which languages? Including sign language? How are interpreters qualified? Is there a certification process? What training do they receive? Are interpreters court employees? If not, how are they



hired/compensated? If the court does not pay for their services, who or what agencies does?

- B. Are there sufficient numbers of interpreters? Is there any particular language for which there seems to be a shortage of interpreters? Are missing interpreters a source of delays? Do courtrooms routinely wait for interpreters to become available to be able to proceed with a scheduled hearing? How often do hearings need to be rescheduled because no interpreter is available? Do the courts use uncertified interpreters? Do the courts not hear the testimony of some witnesses because no interpreter is available and the witnesses are unable to testify in the official language of the court?

### 6.3 SPECIAL SERVICES FOR VICTIMS AND WITNESSES

Access to justice for victims and witnesses is a crucial element of fair and effective criminal justice systems. These questions are aimed at developing an understanding of whether the courts are user-friendly. Particular attention should also be paid to vulnerable groups. Please see **CROSS-CUTTING ISSUES: Victims and Witnesses**, the **UN Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power** and the **UN Guidelines on Justice Matters involving Child Victims and Witnesses of Crime** for further background.

The **Model Code of Criminal Procedure, (DRAFT, 30 May 2006), Art. 75**, sets out procedures for a petition by victims or witnesses for protective measures. Protective measures may include anonymity or use of a pseudonym, non-disclosure of court records, efforts to conceal the features (including voice) of the victim or witness during testimony, closed sessions, and temporary removal of the accused from the courtroom.

- A. Are the needs of vulnerable persons specially addressed (for example: women, children, victims of sexual abuse or domestic violence) in policy or service provision?
- B. Is there staff whose primary function is to work with victims and witnesses. What services does such staff provide? What formal training/education are they required to have? Are there special support services/ training for court personnel dealing with vulnerable persons?
- C. Are victims and witnesses given information about the services that are available, what protections they may seek? How and by whom?
- D. Under the law, are crime victims entitled to seek restitution or compensation for losses within a criminal case? Does the court have the authority to order victim compensation out of a fund into which defendants may be ordered to pay? Does the state supplement the fund if the defendant has no means to pay compensation? In circumstances where no restitution or compensation may be ordered in a criminal case, do victims seek compensation civilly? Do they receive assistance or obtain representation through any court-related service?
- E. How are victims and witnesses kept informed about cases, including verdicts and sentences? Does the court have a notification system that gives notice to victims and witnesses about hearings that may have been scheduled or whose time or date may have changed?
- F. Are there special waiting areas where victims and witnesses can wait where they do not have to confront the accused?
- G. Can the witness or victim request a protective measure or an order for anonymity where there is serious risk to him or her or to close family members? For example, is it possible for witnesses who are in danger to testify through a process that protects their identity? How often do the courts use such protective measures (annually, ever)? What other measures have been taken to protect victims and witnesses in specific cases?

- H. Are there legal provisions for a witness protection system that the courts may access? Does such a system actually exist? If so, how long has it been operational? Is it generally available or is it geared towards specific categories of cases such as organised crime or anti-corruption cases? Does the system provide for re-location? How frequently is the system used? How many victims/witnesses have entered the program? How many are in the system at any given time?
- I. Are witnesses in criminal cases legally entitled compensation for lost wages or other expenses associated with their appearance in court? If so, do the courts provide this compensation? Who is responsible for administering and disbursing this fund? Is the fund regularly audited? Do these expenditures include expert witnesses? How are expert witnesses compensated and by whom?

## 6.4 PUBLIC HEARINGS

The **UN Draft Declaration on the Right to a Fair Trial and a Remedy** states “exceptions to a public hearing shall be narrowly construed”. As a general rule, court proceedings are to be open to the public and the media, at least the print media, providing both an oversight mechanism and greater access to the workings of the criminal justice system. However, there are important exceptions to this general rule. **Article 44** of the **Model Code of Criminal Procedure (DRAFT, 30 May 2006)**, sets out four exceptions that have been generally recognized and accepted by international and regional human rights courts:

- To protect public order or national security;
- Where the interests of a child so requires;
- Where the protection of the private lives of the parties to the proceedings or witnesses so requires, as in cases of sexual offences; or
- In special circumstances, and only to the extent necessary, where publicity would prejudice the interests of justice.

Even when a criminal proceeding has been closed to the public due to one of the narrow exceptions, the court’s judgment/case outcome must still be made public, though the identity of a child may continue to be kept confidential. Similarly, **Article 44** provides an exception for the requirement that all judgments must be read to public for those cases where “the interests of a child so require” a non-public reading.

- A. Are court proceedings, by law, generally open to the public and the media? Are there exceptions?
- B. Do the public and media attend court proceedings that are public by law? If not, why not?
- C. Do the media report freely on court cases? In addition to consulting with sources including NGOs that deal with criminal justice and civil society issues, reading the local paper may provide some indication of whether there are reports on court cases and how the information is presented.
- D. What is the public and legal community’s perception of the quality of media reporting? Do journalists covering the criminal justice system correctly report on the procedural and legal requirements of criminal matters? Do journalists receive training or an orientation on criminal justice issues or the criminal justice process? Who provides that training?
- E. Does the press generally honour requests to protect the identity of vulnerable victims and witnesses?
- F. How does the court deal with inquiries from the press? Courts in many jurisdictions must carefully comply with ethical restraints on commenting on cases, for example, but yet provide information about the scheduling and outcomes of cases.

## 7. INFORMATION MANAGEMENT

### 7.1 RECORDS

The court registry (sometimes known as the Court Clerk) will generally deal with non-judicial aspects of the administration of a court, including but not limited to, the receipt, filing and safekeeping of documents. As a general rule the registry will not disclose documents, information or personal data except when authorised to do so by law or court order.

The need for Integrity of staff responsible for the maintenance of court information cannot be overemphasised. Corrupt alteration of the court records. Including dispositions has undermined public faith in the court system in some countries. Regular auditing of records helps to ensure that such malfeasance will be detected, but proper training and supervision help prevent its occurrence.

- A. Is there a court registry? To whom does the registrar report? If not, is there a particular person or office responsible for the keeping of court records? What is the function of such an office?
- B. Under the law, what records kept by the court are open to the public and which must be kept confidential? Is there freedom of information legislation that allows for access by the public to court records and information? What is the court's policy and practice in allowing inspection of court records and case files? For information that is open to the public, does the court make it easily available?
- C. Is there training for staff on record keeping? Are there any practice directions issued on the keeping of court records? Are there practice directions on which records (or portions) may be inspected by the public and which must be kept confidential?
- D. For how long are different types of court records kept? Are there clear rules about the keeping and disposal of records? Has the policy recently been reviewed?
- E. Are audits performed to determine that the records are complete, accurate, and reflect the decisions of the court? How are errors or omissions corrected?
- F. Are records sometimes lost, or damaged (e.g. by damp or by insects) or stolen? What is done, if anything, to reconstruct such a record?
- G. To what extent is the court record, i.e. case information, docket entries indicating the receipt of filings, schedules, summaries of court proceedings, verdicts, etc. automated? Is there an automation plan with sufficient resources and capacity, including audit capacity?

Technical assistance interventions focusing on court automation have become common. Before embarking upon such a recommendation, basic questions about capacity and sustainability of such interventions must be addressed.

For example, to what extent can a computer system function if courts regularly operate with only intermittent electrical power? If a court system lacks a basic recordkeeping system, development of such a system and the capacity and resources to maintain it must be integral to any automation initiative. Further, an assessment of the information technology needs of a court system is a highly technical and specialised subject. A thorough assessment of the needs would require a good deal of knowledge about information technology and, preferably, its application in the courts. Excellent sources of questions to assist with assessment can be found in the following documents: **Court Records Assessment Manual** (Legal Vice Presidency, World Bank, Nov. 2002); and **Case Tracking and Management Guide** (Centre for Democracy and Governance, USAID, Sept. 2001).

### 7.1.1 Case Records / Files

Clear rules should exist regarding case registration, the numbering allocation, registering into court records, indexing and disposal. There should also be a system for “checking out” of files, and for file inspections. Some systems require certified pagination in order to ensure that documents are not unlawfully added to or removed from the file.

- A. How is a case initiated?
- B. What paperwork is generated? Is there an effective filing system for the court documents within the case file?
- C. Is each case given a unique number of identification? Is that identification number correlated with the identification numbers of associated records (of the police or detention authority, for example)?
- D. Is one case file generated for each defendant (accused) in a criminal case even where several co-defendants may be charged or tried together?
- E. Are files kept up-to-date?
- F. Are any of these functions automated? Is the automated system as current as the paper version?
- G. Does the court use standard forms (for example, charging, disposition, verdict sheets) and standard language for docketing filings and events? When were these forms developed? Have they been kept current? Are these readily available, or in short supply?
- H. What is done to track files as they move about the court? Are lawyers or members of the public allowed to remove the files from the file room? What is the procedure for finding files that have been misplaced or misfiled?

## 7.2 COURT REPORTING

The record of court hearings must be made available to any of the parties to the proceedings upon request, and it should contain the following:

- The time, place and date of the hearing
- The names of the accused, victims, witnesses and court officials (except where there is need to protect identity – such as in sexual offences, cases involving child offenders, where a witness has successfully applied for anonymity)
- A record of the proceedings (written, audio or video taped)
- The decision, and when there is a conviction, the sentence.

- A. Do the law or court rules provide for the recordation of court proceedings and the manner in which this is to be done? Are all court proceedings recorded? How? Are they recorded mechanically, i.e. audio-taped or videotaped? Is there a court reporter who transcribes what is said verbatim? Is there adequate equipment? Are delays caused by the need to record the proceedings?
- B. Where there is no verbatim recording, do court staff or the judge summarize the proceedings in writing? Are parties allowed to challenge or submit corrections to these summaries?
- C. Are notes taken by the judge during proceedings included in the file? If so, are they sealed? Who, and under what circumstances, would be allowed access to a judge’s notes?

- D. How long and under what conditions are recordings of proceedings stored? Are second copies kept In case of damage? Are tapes audible?
- E. If a matter goes on appeal or review, is there a system for transcripts to be prepared for the lawyers and for the judges? How long does this take? Who pays for this service? Are there provisions in the law or rules for assisting impoverished appellants? Does cost prevent the indigent from appealing?

### 7.2.1 Court Reporters

In systems using court reporters:

- A. Are court reporters part of the court staff? If not how are they obtained for court hearings?
- B. Who pays for their services? Who sets their compensation?
- C. How are court reporters trained?
- D. Is there a certification process for transcripts?
- E. How is the accuracy of a court reporter's work assessed?
- F. How are errors dealt with? Is there a correction process under the rules or by administrative procedure? Has this been abused?

### 7.3 LAW REPORTS

The publication of law reports in system where case law may serve as a precedent serves the court, the legal profession and the community with the most current developments in the law. Even in systems where cases do not serve as precedents, the publication of law reports provides insight into how the law is being interpreted and applied. By reporting on how cases are decided and disseminating that information freely, the courts educate the community (and itself) on how the law is applied and at the same time help enhance the predictability and consistency necessary for a system to function according to the rule of law.

- A. Are law reports compiled?
- B. Who is responsible for their compilation? If it is not a court function, how does the court ensure that cases are reported accurately?
- C. Who decides what cases will be reported?
- D. How often are law reports issued? Does it happen regularly?
- E. How are the law reports disseminated?
- F. Are law reports distributed to the courts? Are they available on the Internet? Are they available to the public? Are copies kept at the court so that members of the public can use for reference?

## 8. CASE FLOW MANAGEMENT

Case flow management and case tracking are key areas for technical assistance. There are a number of opportunities for intervention. Examples include: improved case allocation procedures, pre-trial release procedures, risk assessment and bail projects, streamlined remand procedures, shortening of pre-trial periods or the period between the initiation of a preliminary inquiry by an investigating judge and the production of his or her report, plea agreements, pre-trial diversion, streamlining of trial procedures, expedited trials, support for victims and witnesses, improvements in the conviction rate. Assessors seeking detailed guidance for assessing case track and case flow management will find **Case Tracking and Management Guide (Centre for Democracy and Governance, USAID, Sept 2001)** helpful.

- A. Under the law, are there time limits within which a criminal case must begin trial? Be resolved, i.e. reach a verdict or sentenced? Do the courts reach the criminal caseload within these timeframes? What proportion and types of criminal cases exceed the timeframe? Is there a large number of pending criminal cases? Is there a backlog of pending cases in general? Is the exact number known? How many criminal cases are pending appeal?
- B. Are the judges aware of how many cases assigned to them are pending?
- C. Do judges sit in general or special assignments? How often do they rotate these assignments? Do they carry their pending caseload with them or does the judge entering the assignment inherit the pending caseload?
- D. Is there a plan or protocol for the distribution of incoming cases? Is the distribution random or is there a transparent process and rationale by which cases are assigned? Are cases individually assigned in that all hearings must be held before one judge? Are cases of a level of complexity individually assigned?
- E. Is there a way of tracking cases other than by reading each individual court file? Is there a reliable way of knowing when a particular time period is reached? For example, is there a quick way of finding out how many cases have been on the roll for more than 6 months since they were first filed at the court, and in how many of those cases the accused remains in custody?
- F. Is there any legal procedure or rule that allows for expedited trials? Is there a written protocol for determining which cases qualify for expedited schedules? Which official, if any, decides whether the expedited trial procedure should be used?
- G. According to the various stakeholders, where in the court process do delays in the handling of criminal cases occur and what are the causes for those delays?
- H. To what extent and for what purposes do the court leadership and management analyse the caseload, case flow, its timeliness and expeditiousness?
- I. Are courts authorised under the rules to develop administrative procedures or conduct pre-trial hearings that will help the progress of criminal cases in the court system? Are the plans subject to approval by the court leadership? By other governmental ministries?
- J. Have there been any new measures introduced in the last five years to improve case flow management? Were they successful? Are these measures currently in effect? Have they been modified over time? Under what mechanisms? For example, attempts to reduce the number of people awaiting trial in custody, or to reduce the length of time that suspects are awaiting trial or awaiting a decision by an inspecting judge?

## 9. TRIAL SUPPORT

### 9.1 LOGISTICS

- A. How are court documents such as court orders, summonses, subpoenas or warrants of arrest generated? Who serves them? Under what circumstances, if any, does the law allow for service by mail? For service to be valid, must the recipient be personally served in all circumstances?
- B. Is there an office or agency responsible for the serving of documents? Is it part of the court or an independent law enforcement entity? Are there sufficient resources to serve these documents in a timely fashion? Is service a priority function for this unit? Are there delays of hearings or trial because witnesses or subpoenas for evidence were not served in time?

### 9.2 JURY POOLS

For systems that conduct jury trials:

- A. Under the law, who may serve as a juror in a criminal case? Who may not, i.e. non-citizen, convicted felon? How many jurors are required to sit on a jury in a criminal case? Does this include substitutes?
- B. Who within the court is responsible for convening a jury pool from which prospective jurors may be chosen? How does that staff determine how large a pool to convene? This determination may be based on the possible number of jury trials and the complexity or seriousness of the cases scheduled for trial.
- C. What are the sources of assembling a jury pool, i.e. voter registration lists, motor vehicle administration (driver's license) lists, other sources? How are the jury pools chosen from these lists? What efforts does the court system make to ensure that the jury pool draws from all parts of the community?
- D. How are jurors notified of their obligation to serve? Are they personally served? Does the court encounter problems with a substantial percentage of people disregarding their summonses? If so, has the court taken any action to enforce compliance with a jury summon?
- E. May jurors be excused from service by court personnel? Are there written protocols for who may be excused by court personnel and for how long, i.e. nursing mother, chronically or terminally ill?
- F. Does court policy/procedure allow jurors to request that their service be delayed? For how long?
- G. Does the court have the capacity to make accommodations to allow jurors with physical disabilities to serve?
- H. Does the court provide prospective jurors with an orientation about the court and jury service?
- I. Do the law or rules prescribe or does the court have an administrative policy been developed on how jury service obligations are to be met? Do jurors serve for a set time period, i.e. a week, two weeks, a month, longer? Do they serve on one case?

Some systems have adopted what is called one-day, one-case service, that is, a prospective juror is required to be available for any jury trials beginning that day. If the juror is not picked to sit on a jury on that day, then service is complete and the juror may not be subject to recall for

several years. However, if seated on a jury, the juror must serve until the case reaches a verdict.

- J. Are jurors compensated for lost wages or expenses during their service? Is there a protocol or maximum amount that may be compensated? How is this disbursed? Is this system audited regularly? By whom?
- K. What information, if any, does the court collect about a prospective juror, i.e. age, marriage status, educational status, profession? Is this information disclosed to the prosecution and defence for jury selection purposes? What protective measures may be imposed in cases where juror retaliation might be an issue?
- L. Is sequestration of juries possible under the law or rules? Does the court have a budget for this purpose? How often is sequestration used? Is there a protocol for determining when to sequester a jury? Is sequestration used to ensure jury attendance throughout a trial?

Sequestration is an extremely resource intensive mechanism that can affect jury dynamics and the deliberation process. Traditionally it has been used where there is a significant and substantiated concern about jury tampering or intimidation in serious cases that may have extended trials.

- M. Does the court seek feedback from jurors on their service? How does the court use this information in terms of service delivery?

### 9.3 LAY ASSESSORS

For systems with lay assessors in criminal cases:

- A. Under the law, who may serve as a lay assessor in a criminal case? Who may not, i.e. non-citizen, convicted felon?
- B. Who within the court is responsible for convening a list from which lay assessor may be chosen? What are the sources of the list, i.e. voter registration lists, motor vehicle administration (driver's license) lists, other sources such as executive appointment or party affiliation? Note: The latter sources would have implications on the independence of the judiciary and should be analysed in that context.
- C. What efforts does the court system make to ensure that the lay assessor list draws from all parts of the community?
- D. Are lay assessors representative of the community? Do women and ethnic/ religious minorities serve as lay assessors?
- E. How are lay assessors notified of their obligation to serve? Are they personally served? Does the court encounter problems with a substantial percentage of people disregarding their summonses? If so, has the court taken any action to enforce compliance with a jury summons?
- F. On what basis are lay assessors chosen to sit on a case?
- G. How and for what expenses are they compensated? Is there a protocol or maximum amount that may be compensated? How is this disbursed? Is this system audited regularly? By whom?
- H. How long do lay assessors serve?



## 10. FACILITIES / EQUIPMENT: ADEQUACY AND SECURITY

These questions will best be answered during site visits to multiple court locations.

### 10.1 THE COURT

- A. Is the court facility located where it can easily be reached via public transportation? Can directions be found on the Internet or in court publications or community guides?
- B. Is the court facility clearly marked? Do road/street signs point visitors to it? Are the entrances clearly marked?
- C. Is the entrance accessible to those with physical disabilities, i.e. are there ramps or working elevators, if the court facility is more than one level?
- D. What security measures are in place at the entrance(s)? Are visitors advised that weapons may not be brought into the court and that they may be subject to search, if this is the case? Do law enforcement personnel retain any weapons they may be carrying or do they place them in a secure locker at the entrance?
- E. Do security personnel screen visitors? What is their manner? Are metal detectors, X-ray machines or scanners in place? Are they working? Is the staff trained in their use? Are female security guards available to conduct searches of female visitors?
- F. Do security personnel provide direction (to an information counter or help desk, for example) or assistance?
- G. Are various departments clearly marked within the court? Are directories available? Are court schedules and room numbers posted?
- H. What is the general condition of the court facility? Is it well-maintained? Is it clean?
- I. How does court staff interact with visitors? Are there long lines/queues for service? Do the lines/queues move?
- J. Are the work areas for court personnel adequate? Are they adequately equipped with desks, chairs, phones, computers, office supplies? Are personnel sharing desks/workspace to the extent that it interferes with their functions? Is there space to meet with court users needing assistance?
- K. Are files kept in a central location when not in use? Is the file room organized? Is there enough storage space? Does the court archive old files? How quickly are files re-filed on their return to the file room? Are there stacks of files waiting to be re-filed? How long does it take to find a file?
- L. Are there waiting areas adjacent to courtrooms and other service areas? Are they sufficient? Are separate waiting rooms available for victims/witnesses? Do prospective jurors have a separate waiting area?
- M. Are there conference rooms located adjacent to the courtrooms where defence counsel may confer privately with their clients or interview witnesses?
- N. Are the facilities equipped to allow movement and access by people with physical handicaps? Are doorways, hallways, aisles, and bathrooms wide enough to accommodate wheelchairs, for example? Are there working elevators in the building?

- O. Are there security personnel posted or on patrol in the general public areas? How do they interact with the public?

### **10.1.1 Security Personnel**

- A. Who is responsible for providing court security? Is this a law enforcement entity? Does it answer to the court or is it independent?
- B. Who hires court security personnel? What kind of screening/vetting procedure is in place, if any? Who trains security personnel? What type of training must they receive?
- C. Who provides courtroom security? Are they law enforcement officers or civilian bailiffs?
- D. Are any security personnel armed?

## **10.2 THE COURTROOM**

- A. Are the rooms used as courtrooms designed for that purpose? What is their level of maintenance and cleanliness? Is there a desk (elevated)? For the judge, separate tables for prosecution and defence? Is the defendant able to sit near enough to counsel to be able to confer with counsel during the proceedings? Is there workspace for support staff like clerk, court reporters? Is the courtroom conducive to conducting hearings and trials? Are outside noises muffled so that they do not distract from the proceedings?
- B. Is there a place designated for courtroom security personnel?
- C. Is there sufficient seating space for the public? Is it separated from the proceedings by a barrier like a rail? Can spectators see the proceedings from their seats? Can the proceedings be heard? Is there space for wheelchairs to move about the courtroom?
- D. Is any audiovisual equipment used to record the proceeding working? Are computers in use? Do they work without crashing? What happens when a system goes down? Are there ongoing delays associated with computer system failures?
- E. If jury trials are conducted in this system, is there place set aside for juries in the courtroom? Are there jury deliberation rooms that have restricted access? If not, where do juries deliberate?

## **10.3 JUDGES' CHAMBERS**

- A. Do judges have adequate office space where they can work securely and privately with their staff when they are not in court? Do they have adequate equipment with which to conduct their work, i.e. furniture, computers, office supplies, telephones, reference material?
- B. Is public access to chambers restricted? What security measures are provided to chambers?

## 10.4 LIBRARY / WRITTEN REFERENCE MATERIAL

- A. Does the court have a library? Does it have more than one? Who is allowed to use the libraries? Judges? Court Staff? Lawyers? Members of the public? Does the court maintain the library? Is it maintained by the local bar association or other NGO? Are any users charged for access?
- B. Does the library maintain basic legal reference material like the Constitution and current copies of all national statutes? Local laws, if they exist? Rules and regulations? Law reports? Textbooks?
- C. Does the library or court have access to the Internet for electronic copies of the above reference material or for legal research databases? Is this available remotely in judges' chambers? Is this available to the public? Is there a cost to public users?

## 10.5 HOLDING CELLS / PRISONER TRANSPORT ISSUES

Please refer to **Custodial and Non-Custodial Measures: Detention Prior to Adjudication** for further guidance in assessing the court's holding cells. In addition, see in particular **UN Standard Minimum Rules for the Treatment of Prisoners, Standards 84, 85 and 88** on untried prisoners and the **UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**.

- A. Which department/law enforcement body is responsible for the transporting of detained offenders to the court from prison? What are the costs and time issues relating to this task? Are there other resource obstacles? Do delays sometimes hamper the work of the court? How does the court verify who has been brought to court and ensure that their case will be reached?
- B. Are women and men transported separately and are children transported separately from adults (except for mothers with babies)?

Please see **CROSS-CUTTING ISSUES: JUVENILE JUSTICE** for guidance on special requirements for children under the age of 18.
- C. At the court building, are there separate facilities for men, women, boys under 18, and girls under 18?

Please see **CROSS-CUTTING ISSUES: JUVENILE JUSTICE** for guidance on assessing detention facilities for children (under the age of 18).
- D. Are there adequate holding facilities at the cells for detainees? Are they clean, ventilated, and protected from the heat/cold? Can the cells be locked? Do they have toilets in the holding cells or do detainees have to be taken to the toilet?
- E. Are the detainees provided with food and access to clean drinking water during the day that they are at court? Who is responsible for ensuring that the detainees are provided for while at court? If the court is not responsible, do court personnel verify that detained defendants have received their meals?
- F. What is the role, if any, of security personnel in the transfer of detained defendants from a holding cell to the courtroom?
- G. Are restraints used (e.g. handcuffs, leg irons), either in transfer to a courtroom or in the holding cell? In what circumstances? Why is this considered necessary? (Is the design of the court or holding facilities part of the reason?)

- H. Are there conference rooms located in the holding cell area where counsel may confer with their detained clients without being overheard?

## **10.6 EVIDENCE ROOM / EVIDENCE INTEGRITY**

- A. What is the procedure relating to the security of evidence held by the court? Is there a secure room where physical evidence is stored? Does the evidence room protect the evidence from environmental damage? Is the evidence otherwise sealed or packaged?
- B. Is the evidence room kept locked? Who may enter the evidence room? Is a record kept of who enters and for what purpose? Is evidence logged in and out as it is brought to and retrieved from the evidence room? By whom? How is the evidence stored/filed? Can it be found when needed?
- C. Is the record or register properly maintained? Are the rules for access and retrieval followed? It would be helpful to ask to see the evidence room log or register to see whether it is kept current.
- D. What are the rules relating to the disposal of items after the case is resolved? Are the rules for the disposal of evidence, including contraband followed?
- E. Have there been any instances of theft or loss from the evidence room? How were they handled, administratively or criminally?

## **11. PARTNERSHIPS AND COORDINATION**

### **11.1 SYSTEM COORDINATION**

A well-managed court system recognizes the need to coordinate responses to criminal justice issues. Courts can and do implement initiatives and reforms in a collaborative fashion without risking independence. By seeking stakeholder input and commitment, courts provide responsible leadership in developing a responsive and effective court system that anticipates and meets challenges.

- A. At what level do the criminal justice agencies co-ordinate their activities – national, regional, local? What form does this take, i.e. ad hoc working groups, formal commissions? Do the co-ordinating bodies work well together? Have they been effective in resolving issues? Is there a history or at least an instance of stakeholder participation in the development of initiatives to address the issues facing the criminal justice system? Who are the key players who have worked collaboratively in the past and who are the key players who need to be brought on board in the future?
- B. Do user committees exist? Who sits on them? Are members of the minority communities included? Have they been effective in contributing to the development of criminal justice initiatives?
- C. Are there any partnerships with the legal community or the community at large (e.g. victim support, legal assistance, referral from or to traditional courts)?
- D. Do other civil society organizations monitor what is happening at courts? Do some provide services? (List them and the type of activity e.g. assistance to child offenders or to support for victims of sexual abuse, domestic violence)

### **11.2 DONOR COORDINATION**

Understanding what donor efforts are underway, what have previously been implemented (successfully and unsuccessfully) and what is planned is critical to developing recommendations for future technical assistance interventions.

- A. Identify the donor strategy papers for the justice sector and amount of money set aside in support.
- B. Is this subject (management of courts) discussed in individual donor country action plans/or strategy papers? Are donors responding to nationally set priorities?
- C. Where direct budget support is supplied, is part of it earmarked for the justice sector? If so, how much?
- D. Where a Medium Term Expenditure Framework is in place, indicate what is set aside for justice in general and courts in particular?
- E. Which donor/development partners are active in courts and criminal justice issues? Is the approach by donors targeted to the institution concerned (i.e. special court services, child offenders, legal assistance) and divided between donors, or sector wide (i.e. taking the issue of criminal justice reform as a whole)?
- F. What projects have donors supported in the past; what projects are now underway? What lessons can be derived from those projects? What further coordination is required?

## ANNEX A: KEY DOCUMENTS

### UNITED NATIONS

- Universal Declaration of Human Rights, 1948
- International Covenant on Civil and Political Rights 1966
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
- Basic Principles on the Independence of the Judiciary 1985
- Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary 1989
- Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power 1985
- Guidelines on Justice Matters involving Child Victims and Witnesses of Crime 2005
- Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters 2002
- Basic Principles on the Role of Lawyers, 1990
- Standard Minimum Rules for Non-Custodial Measures 1990
- Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment 1988
- Standard Minimum Rules for the Treatment of Prisoners 1955

### DRAFT

- Principles of Conduct for Court Personnel, Report of the Fourth Meeting of the Judicial Integrity Group, UNODC 2005
- Model Code of Criminal Procedure

***PLEASE NOTE:** The Model Code of Criminal Procedure (MCCP) is being cited as a model of a code that fully integrates international standards and norms. At the time of publication, the MCCP was still in DRAFT form and was being finalised. Assessors wishing to cite the MCCP with accuracy should check the following websites to determine whether the finalised Code has been issued and to obtain the finalised text, as referenced Articles or their numbers may have been added, deleted, moved, or changed:*

<http://www.usip.org/ruleoflaw/index.html>

or

[http://www.nuigalway.ie/human\\_rights/Projects/model\\_codes.html](http://www.nuigalway.ie/human_rights/Projects/model_codes.html).

*The electronic version of the Criminal Justice Assessment Toolkit will be updated upon the issuance of the finalized codes.*

### Regional

- African Charter on Human and Peoples' Rights 1981
- Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and People's Rights
- African Commission on Human and People's Rights Resolution on Fair Hearings
- African Charter on the Rights and Welfare of the Child 1990
- European Convention for the Protection of Human Rights and Fundamental Freedoms 1950
- American Convention on Human Rights 1978

### Post-Conflict

- ICC, Rome Statute, International Criminal Court, 1998
- ICTR, Statute of the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations in the Territory of Neighbouring States, 1994
- ICTY, Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991, 1993

## **National**

- Constitution
- Acts of Parliament and regulations to those Acts
- Court Rules
- Court Policy/Procedure Manuals, handbooks, circulars, annual reports
- Government policy documents, “standing orders”, circulars
- Government reports, strategy documents
- Accounting/Budget documents
- NGO reports
- Donor reports

## **Other useful sources**

- Measuring Progress toward Safety and Justice: A Global Guide to the Design of Indicators Across the Justice Sector (Vera Institute of Justice 2003)
- Court Records Assessment Manual (Legal Vice Presidency, World Bank 11.2002)
- Case Tracking and Management Guide (Centre for Democracy and Governance, USAID Sept 2001)
- Developing New Approaches to Legal Aid ([www.penalreform.org](http://www.penalreform.org))
- Lilongwe Declaration on Accessing Legal Aid in Africa ([www.penalreform.org](http://www.penalreform.org))

## ANNEX B: ASSESSOR'S GUIDE / CHECKLIST

The following are designed to assist the assessor in keeping track of what topics have been covered, with what sources and with whom.

	TOPIC	SOURCES	CONTACTS	COMPLETED
2.1	STATISTICAL DATA	Court Annual Reports Ministry of Justice reports Ministry of Interior reports National Police Crime reports Penal System reports NGO reports: criminal justice system	Ministry of Justice Senior Court personnel Court Administrator Registrar/Court Manager NGOs working on criminal justice matters Donor organisations working on the criminal justice sector	
3.1	LEGAL FRAMEWORK	The Constitution Acts of Parliament and regulations to those Acts, criminal procedure code, administration of justice statutes, criminal code Court Rules/ Judge's Bench Book Government policy documents, "standing orders", circulars Reports Law Reports (reported cases) Independent reports made by non-governmental organisations. Legal textbooks or academic research papers.	Legislative offices Ministry of Justice Chief Judge Senior Court personnel Court Administrator Registrar/Court Manager NGOs working on criminal justice matters Donor organisations working on the criminal justice sector	
3.2	STRUCTURE OF THE CRIMINAL JUSTICE SYSTEM	See above	See above	
3.3.1	TRADITIONAL/CUSTOMARY COURTS	Academic studies	Leaders of ethnic, tribal or religious communities, Anthropologists/Ethnographers	
3.3.2	MILITARY COURT/SPECIAL TRIBUNALS	Military Criminal & Procedural Code TRANSITIONAL CODES Adopted Post -Conflict	Military Court & Tribunal Senior Personnel Transitional Authority	
4.1	MANAGEMENT AUTHORITY	Constitution Acts of Parliament and regulations to those Acts Government policy documents, "standing orders", circulars	Legislative offices Ministry of Justice Chief Judge Senior Court personnel Court Administrator Registrars or Court Managers NGOs working on criminal justice matters Donor organisations working on the criminal justice sector	
4.2	FISCAL CONTROL	See above Plus: Budget documents/reports	See above Plus any Supreme Audit institutions	



	TOPIC	SOURCES	CONTACTS	COMPLETED
5.1	STAFFING	<p>Acts of Parliament and regulations to those Acts            Government policy documents, "standing orders", circulars            Court Policy/Procedure Manuals, handbooks, circulars            Samples of Recruitment/ Human resources/interview questions            Training materials            Staff ethics code            Disciplinary board Policy/Procedures</p> <p>SITE VISITS</p>	<p>Chief Judge            Senior Court personnel            Court Administrator            Registrar/Court Manager Court Personnel director or equivalent            Court Union representative            Civil service representative            Mid-level and entry level court support staff            Court Visitors (random)            Bar Associations/Lawyers' groups            Legal assistance programs            NGOs            Public defence agency (Legal Aid)            Prosecutor's Office            Law Schools            Donor organisations</p>	
6.1	GENERAL SERVICES	<p>Acts of Parliament and regulations to those Acts            Court Rules            Court Policy/Procedure Manuals, handbooks, circular            Government policy documents, "standing orders", circulars</p> <p>SITE VISITS</p>	<p>Chief Judge            Senior Court personnel            Court Administrator            Registrar/Court Manager            Mid-level &amp; entry level court support staff            Court Visitors (random)            Bar Associations/Lawyers' groups            Legal assistance programs            NGOs            Public defence agency (Legal Aid)            Prosecutor's Office            Law Schools            Donor organisations</p>	
6.2	INTERPRETATION SERVICES	<p>Constitution            Acts of Parliament &amp; regulations to those Acts            Court Rules &amp; Court Policy            Procedure Manuals, handbooks,            Government policy documents, "standing orders", circulars            Accounting/Budget documents</p> <p>SITE VISITS</p>	<p>Chief Judge            Senior Court personnel            Court Administrator            Registrar/ Court Manager            Court Interpreters            Prosecutors            Defence Attorneys            NGOs            Donor organisations</p>	

	TOPIC	SOURCES	CONTACTS	COMPLETED
6.3	SPECIAL SERVICES FOR VICTIMS AND WITNESSES	Constitution Acts of Parliament and regulations to those Acts Court Rules Court Policy/Procedure Manuals, handbooks, circular Government policy documents, "standing orders", circulars Accounting/Budget documents  SITE VISITS	Chief Judge Senior Court personnel Court Administrator Registrar/Court Manager Victim/Witness Assistance Staff Victims/Witnesses Prosecutor's Office Victim advocacy groups NGOs organisations Donor organisations	
6.4	PUBLIC HEARINGS	Constitution Acts of Parliament and regulations to those Acts Court Rules Court Policy/Procedure Manuals, handbooks, circulars Press releases Media reports	Chief Judge Senior Court personnel Court Administrator Registrar/Court Manager Court Visitors (random) Bar Associations/Lawyer's groups Public defence agency (Legal Aid) Prosecutor's Office NGOs Donor organisations Members of the media	
7.1	RECORDS	Acts of Parliament and regulations to those Acts Court Rules Court Policy/Procedure Manuals, handbooks, circulars  SITE VISITS	SEE ABOVE  PLUS: Mid-level & entry level court support staff Technical Support staff Legal assistance programs Law Schools	
7.1.1.	CASES RECORDS/FILES	SEE ABOVE	SEE ABOVE	
7.2	COURT REPORTING	Constitution Acts of Parliament and regulations to those Acts Court Rules Court Policy/Procedure Manuals, handbooks, circular	Chief Judge Senior Court personnel Court Administrator Registrar/Court Manager Court reporters Technical Support staff	
		Government policy documents, "standing orders", circulars Accounting/Budget documents  SITE VISITS	Bar Associations/Lawyer's groups Legal assistance programs NGOs Public defence agency Prosecutor's Office Law Schools Donor organisations	
7.2.1	COURT REPORTERS	SEE ABOVE	SEE ABOVE	

	TOPIC	SOURCES	CONTACTS	COMPLETED
7.3	LAW REPORTS	Constitution Acts of Parliament & regulations to those Acts Court Rules Court Policy/Procedure Manuals, handbooks, circular Government policy documents, "standing orders", circulars Accounting/Budget documents  SITE VISITS	Chief Judge Senior Court personnel Court Administrator Registrar/Court Manager Court reporters Bar Associations/Lawyer's groups Legal assistance programs NGOs Public defence agency Prosecutor's Office Law Schools Donor organisations	
8.0	CASE FLOW MANAGEMENT	Acts of Parliament & regulations to those Acts Court Rules Court Policy/Procedure Manuals, handbooks, circulars Case Management Plans  SITE VISITS	SEE ABOVE  Plus: Case Assignment staff Technical Support staff Mid-level & entry level court support staff	
9.1	TRIAL LOGISTICS	Acts of Parliament & regulations to those Acts Court Rules Court Policy/Procedure Manuals, handbooks, circulars  SITE VISITS	SEE ABOVE  Plus: Agency that provides service of court orders, summonses, warrants	
9.2	JURY POOLS	Constitution Acts of Parliament & regulations to those Acts Court Rules Court Policy/Procedure Manuals, handbooks, circular Government policy documents, "standing orders", circulars Accounting/Budget documents  SITE VISITS	Chief Judge Senior Court personnel Court Administrator Registrar/Court Manager Jury Commissioner/Staff Bar Associations/Lawyer's groups Legal assistance programs Public defence agency Prosecutor's Office Law Schools NGOs Donor organisations Former jurors	

	TOPIC	SOURCES	CONTACTS	COMPLETED
9.3	LAY ASSESSORS	Constitution Acts of Parliament and regulations to those Acts Court Rules Court Policy/Procedure Manuals, handbooks, circular Government policy documents, "standing orders", circulars Accounting/Budget documents  SITE VISITS	Chief Judge Senior Court personnel Court Administrator Registrar/Court Manager Bar Associations/Lawyer's groups Legal assistance programs Public defence agency Prosecutor's Office Law Schools NGOs Donor organisations Lay assessor	
10	FACILITIES/EQUIPMENT: ADEQUACY AND SECURITY	Acts of Parliament and regulations to those Acts Court Rules Court Policy/Procedure Manuals, handbooks, circular Government policy documents, "standing orders", circulars Accounting/Budget documents  SITE VISITS	Chief Judge Senior Court personnel Court Administrator Registrar/Court Manager Mid-level & entry level court support staff Facilities personnel Security Personnel Head of court security Court Visitors (random) Bar Associations/Lawyer's groups Legal assistance programs NGOs Public defence agency (Legal Aid) Prosecutor's Office Law Schools Donor organisations	
10.1	THE COURT	SEE 10 ABOVE SITE VISITS	SEE 10 ABOVE	
10.1.1	SECURITY PERSONNEL	SEE 10 ABOVE SITE VISITS	SEE 10 ABOVE	
10.2	THE COURTROOM	SEE 10 ABOVE SITE VISITS	SEE 10 ABOVE	
10.3	JUDGES' CHAMBERS	SEE 10 ABOVE SITE VISITS	SEE 10 ABOVE	
10.4	LIBRARY/REFERENCE MATERIAL	SEE 10 ABOVE	SEE 10 ABOVE PLUS Court Librarian Technical Support	

	<b>TOPIC</b>	<b>SOURCES</b>	<b>CONTACTS</b>	<b>COMPLETED</b>
10.5	HOLDING CELLS/PRISONER TRANSPORT ISSUES	SEE 10 ABOVE	SEE ABOVE Plus: Director/Staff of Law Enforcement Agency/UNIT Responsible Court Holding Cells/Prisoner Transport	
10.6	EVIDENCE ROOM/ EVIDENCE INTEGRITY	SEE 10 ABOVE	SEE 10 ABOVE PLUS EVIDENCE ROOM STAFF	
11.1	SYSTEM COORDINATION	Acts of Parliament and regulations to those Acts Court Rules Court Policy/Procedure Manuals, handbooks, circular Government policy documents, "standing orders", circulars Reports/Minutes of coordinating meetings Reports/Minutes of community group meetings Reports on special joint initiatives Progress reports by donor organizations Independent studies conducted by universities/NGOs	Ministry of Justice Heads of other Criminal Justice entities: Prosecutor Director of Penal System Police Chief Chief judge Senior Court personnel Court Administrator Registrar/Court Manager Non-governmental organisations working on criminal justice matters Bar associations/Lawyers' associations Legal assistance programs Public defender agency, if any Law Schools Donor organisations	
11.2	DONOR COORDINATION		Donor organisations Ministry of Justice Heads of other Criminal Justice entities: Prosecutor Director of Penal System Police Chief Chief judge Senior Court personnel Court Administrator Registrar/Court Manager Non-governmental organisations working on criminal justice matters Bar associations/Lawyers' associations Legal assistance programs Public defender agency, if any Law Schools	





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