



UNITED NATIONS
Office on Drugs and Crime



Introduction

Criminal justice assessment toolkit

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

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Criminal Justice Assessment Toolkit



UNITED NATIONS
New York, 2006

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations, the Secretariat and Institutions of the Organization for Security and Cooperation in Europe, and the Belgian 2006 OSCE Chairmanship concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

This publication has not been formally edited.

ACKNOWLEDGEMENTS

The Criminal Justice Assessment Toolkit project would not have been possible without the generous financial support of the governments of Belgium, Canada, Sweden, and Austria, with special thanks in particular to the 2006 Belgian Chairmanship of the Organization for Security and Co-operation in Europe (OSCE) in supporting the first edition of the Toolkit and to the government of Canada for its support of the creation of the interactive software version of the Toolkit.

The Criminal Justice Assessment Toolkit was conceptualized by UNODC with valuable input from the United Nations Department of Peacekeeping Operations (DPKO) and was written by John Abbott, Tomris Atabay, Steven Brown, Yvon Dandurand, Stella Mukasa, Suzanne Schneider, Ann Skelton, Julia Sloth-Nielsen, and Adam Stapleton, consultants on criminal justice issues. Suzanne Schneider edited the Toolkit and managed the process under tight deadlines under the supervision of Mark Shaw of UNODC. Valuable assistance was provided by Piero Bonadeo, Maria Rechova, and Anna von Sponeck, UNODC.

The support of the United Nations Development Programme (UNDP), in particular, Nina Berg and Siphosami Malunga, and DPKO, in particular, Isabel Hight, Stephane Jean, and Robert Pulver, have been invaluable throughout the project. Special thanks are due as well to the International Association of Prosecutors for its collaboration on the tool, **Access to Justice: The Prosecution Service**.

The development of this Toolkit also would not have been possible without the participation of the experts mentioned below. Their dedication to this project was evidenced in their generous contributions and their thoughtful commentary and feedback. To them, the UNODC offers its appreciation and gratitude.

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Irka Kuleshnyk, UNODC	Brian Taylor, UNODC
Alexei Kuvshinnikov, OSCE	Daniel Van Ness, Prison Fellowship International
Timothy LeMay, UNODC	Bert Versmessen, Belgian 2006 OSCE Chairmanship Unit
Loide Lungameni, UNODC	Thierry Vircoulon, Office of the Prime Minister, France
Siphosami Malunga, UNDP	Andrew Wells, UNODC
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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

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**¹ 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>. 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.

¹ <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, with the subject heading: **TOOLKIT FEEDBACK**.

Thank you in advance for any feedback you may provide.



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1. INTRODUCTION

Policing is the most obvious and apparent aspect of the criminal justice system and a well-regarded police service is a prerequisite for the positive perception of justice.

The way in which policing is delivered will depend on a host of variables including the prevailing political and cultural doctrines as well as the social infrastructure and local tradition. Approaches to policing vary between those based on a high level of control, sometimes characterised by confrontation, through to those emphasising the merits of “policing by consent”. The former is usually highly centralised, predominantly reactive, and militaristic in its style. The latter may still be centralised, but will interpret policing as being responsive to local communities in the identification and resolution of policing issues.

In many countries, police agencies will be established under a government ministry and, as a result, it is possible that the highest officers and managers will be political appointees and/or hold ministerial rank. It is also quite possible that they will have had no previous experience of policing.

There will be, in any case, one chief officer presiding over a hierarchy consisting of strong lines of authority with clearly defined roles and responsibility at each level. This will often take the form of a central headquarters with a web of subordinate, locally based branch offices, sometimes called “districts” or “divisions”, emanating from it. The point of delivery for almost all police services, will be the local police station and the organisational culture, attitudes and behaviour of local officers will have a disproportionate effect on the success, or otherwise, of the whole criminal justice system.

In most places, there will not be a single entity with responsibility for enforcing every aspect of the law. There may be several national agencies, organisations or institutions with regional or local agencies offering either complementary or similar coverage. And, even where one national police force exists, there are likely to be additional law enforcement organisations either with specific functions, such as customs, gendarmerie, or border police, or with highly specialised skills, for instance, for dealing with anti-money laundering, national security or forensic science services. In some countries customs officers or border guard may have no powers under the criminal law at all and must hand suspects over to the police as soon as they are apprehended. There may also be a mixture of public and private policing services, where private companies franchise certain functions from the state or from private group interests.

Where a country has a federal structure, one will find a further layer of (federal) law enforcement superimposed on the local (state) policing arrangements and authorised to address crime issues of national concern or those with inter-state implications. However, the terms of reference and mandate for the different jurisdictions and areas of competence involved may not always be as clear as they might be and there is potential for a clash between local and federal approaches.

Policing mechanisms based upon national custom or culture or on alternative social hierarchies may also be present and may be more prevalent where there is a lack of faith in the fairness and efficiency of the official system.

It is possible that, in some places, the military will be involved in at least some aspects of law enforcement, particularly in post-conflict situations where the type and style of policing is governed by what is possible within that particular context. By their very nature, post-conflict societies are seeking to re-establish order and the rule of law and are in varying states of transition. At an early stage, policing activity is likely to depend on military intervention and be more confrontational. In such situations, resorting to the application of force is likely to be an early option and involvement of all sections of the community in policing strategy will be more difficult to achieve.

On the other hand, community policing has emerged in recent years as an effective and productive strategy for policing at the local level. It engages and employs the community and community structures in a partnership approach to identifying, responding to and solving those problems of crime and disorder that affect the local neighbourhood. It requires an adaptation of policing

structures to be more consultative and inclusive than might otherwise be the case. As a strategy, community policing is not a universal panacea, but it does help to eliminate misunderstandings, suspicion and conflict between police officers and the communities in which they operate. It emphasises cooperation over confrontation.

The **United Nation's Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order** urge that "...community participation in all phases of crime prevention and criminal justice should be promoted and strengthened". Similarly, the **United Nations Code of Conduct for Law Enforcement Officials** states "...every law enforcement agency should be representative of, and responsive and accountable to, the community as a whole".

These statements emphasise the extent to which a community influence on policing activity is considered desirable. In those places where the community has been fully engaged in and consulted on the delivery of policing services, a great many additional benefits have accrued: public confidence in the authorities and the rule of law has increased, whilst greater trust in law enforcement has led to more public cooperation and participation. Similarly, local policing has become more effective through an improved understanding and knowledge of the community, its crime problems and the people who cause them.

In addition to developing an understanding of the strengths and weaknesses of a state's approach to the provision of police services and policing, the assessor should be able to identify opportunities for reform and development. Technical assistance in the area of policing and police service delivery in the context of a broader strategic framework may include work that will enhance the following:

- Drafting or amendment, implementation and monitoring of legislation;
- In a post-conflict State, vetting of police officials who may have been implicated in a prior oppressive regime;
- In a post-conflict State, fundamentally restructuring the entire police force;
- Monitoring, supervision and oversight mechanisms for police conduct and performance;
- Development of manuals of guidance and operating procedures, particularly in terms of community policing strategies;
- Development of management processes in terms of measuring and managing performance;
- Enhancement of training in core police skills, as well as in respect and diversity issues;
- Guidance on fair and objective selection and recruitment;
- Construction of adequate accommodation and premises, especially where facilities are insufficient to safeguard the welfare and dignity of detained persons;
- Enhancement of the telecommunications infrastructure, including despatch protocols and semi-automated processes.

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 public safety and police services delivery as well as the overall capacity of the criminal justice system of the country being assessed.

The availability of statistics related to policing will vary greatly. Statistics will also be variable in their reliability and integrity. Where possible, statistics provided by a government agency should be validated against statistics from other sources (such as non-governmental organisations or international bodies).

- A. Are crime statistics gathered? If yes, do they distinguish between property crime, crimes of violence and drugs crime? What are the detection, disposal or clear-up rates for these offences? What are the underlying trends? Are there statistics on assaults against police? What do they say?
- B. Are statistics compiled on complaints made against police? If yes, do they distinguish the type of complaint? What percentage is substantiated and what penalties are imposed? Are allegations of police corruption recorded? What is the nature of these allegations and how many are substantiated?
- C. Are statistics compiled on the gender, ethnicity and religion of officers in law enforcement? What do they show? What is the gender ratio at different seniority levels or ranks in the service? What is the ethnicity profile at different seniority levels or ranks in the service? If there are both sworn and un-sworn staff, in what proportions are they present and at which levels? What is the level of staff turnover?
- D. Are performance standards set for the police? Are there statistics on police performance against these standards? If yes, what do they say?
- E. Are there statistics gathered on public confidence and trust in the police? Are public approval ratings published? If yes, what do they suggest?

3. LEGAL AND REGULATORY FRAMEWORK

3.1 LEGAL FRAMEWORK

Police functions, powers and procedures are usually defined and limited by statute. Relevant legislation may include a Police Act, a Code of Criminal Procedure and/or a Criminal Code. A Police Act encompasses organizational elements as well as the relevant powers of a police force, particularly in the public order realm. The police powers relating to criminal investigation are likely to be found in the domestic criminal procedure code. Models for these codes have now been produced (launched jointly on 26 April 2006 by the UNODC, the Irish Centre for Human Rights (ICHR) the Office of the UN High Commissioner for Human Rights (OHCHR) and the US Institute of Peace (USIP)). Although they are still in draft form and subject to change, they still provide a sound basis for further research and assessment, as well as providing a valuable resource for those engaged in law reform in the sphere of policing law. In addition, the Republic of Slovenia's Police Act (2005) provides an example of recently adopted police legislation that encourages local involvement in policing in a civil law jurisdiction: (www.policija.si/en/legislation/pdf/PoliceAct2006.pdf, see Article 21).

The assessor may also find, particularly in post-conflict States, that the legislative platform governing police activity is not clearly defined or has fallen into disuse or has been suspended and replaced by "emergency" legislation. Even so, documentation should still exist that gives legitimacy to policing activity. This may simply be in the form of departmental guidelines or something more formal.

3.2 POLICE MANDATE

The Council of Europe has created a European Code of Police Ethics. This Code identifies the following as the “main purposes of the police in a democratic society governed by the rule of law”:

- To maintain public tranquillity and law and order in society
- To protect and respect the individual’s fundamental rights and freedoms
- To prevent and combat crime
- To detect crime
- To provide assistant and service functions to the public

(Article 1, **European Code of Police Ethics, Council of Europe Appendix to Recommendation Rec (2001) 10**)

Under Article 3 of the **Model Police Act (MPA), (DRAFT, 26 January 2006)**, a law enforcement authority has a duty to:

- (i) protect life, property and other internationally recognized human rights;
- (ii) prevent, detect, and investigate criminal offences, misdemeanours and other contraventions under the applicable law;
- (iii) carry out court orders;
- (iv) direct and supervise traffic on public roads;
- (v) seize items as required in accordance with the Applicable Law;
- (vi) monitor large public gatherings;
- (vii) assist in civil emergencies;
- (viii) protect designated individuals, premises, facilities, and areas;
- (ix) cooperate with and provide assistance to other legal authorities;
- (x) maintain integrity and confidentiality of required information and personal data collected in the performance of its duties
- (xi) carry out any other duties prescribed by the Applicable Law

Such of these stipulated duties may or may not exist or be endorsed by the government depending on the political and social context of the country being assessed

- A. Is there legislation defining the core responsibilities of policing? How are they defined? Does the legislation assign and distinguish between the roles of different agencies in delivering policing? Is the concept of human rights found in national legislation? What does it say? Are police required to protect and respect those rights?
- B. In post-conflict situations, what special rules are in place to govern the use and jurisdiction of peacekeeping troops? Are there emergency ordinances in place that suspend the civilian rule of law? What responsibility do peacekeeping troops have for policing? What guidance exists on the interaction between peacekeepers and national authorities?

Indiscriminate and careless use of powers delegated to police officers is a major factor in alienating the public. In most cases, the law will establish some kind of abstract threshold that needs to be attained before police action can be legitimately undertaken. For instance, an officer may need “reasonable grounds” or “probable cause” to suspect a crime before he or she may act. Consequently, an officer must be prepared to justify his or her actions against that standard at any subsequent enquiry.

- C. Are there laws, rules or regulations governing the powers and conduct of law enforcement officers? What do they say? When were they last updated? Does the law define the grounds and threshold for the application of coercive powers, i.e. is there a concept of “reasonable grounds”, “reasonable belief” or “probable cause”? Is the application of police powers limited to the use of minimum reasonable force, or similar, i.e. officers should only apply that minimum level of force that is necessary to achieve their lawful purpose?
- D. Does the law establish mechanisms for the monitoring and oversight of police conduct and performance? What are they? Have they been implemented? Is there a specific

reference to corruption in terms of policing? Does it provide a statutory right to make complaints against the police and provide a mechanism for making them? Is there independent oversight of the complaints system? Further consideration of this issue can be found in **POLICING: THE INTEGRITY AND ACCOUNTABILITY OF THE POLICE**.

- E. Does the legislation recognise that there may be differences in the role of the police in urban and rural areas? For example, does it accommodate local tradition or customs that may influence the delivery of policing? How?
- F. Do interest groups exist that lobby for changes to legislation related to policing? Does the legislative process provide such groups with an opportunity to make representations and to comment on proposed new laws or policies in this area? Are there any proposals for new legislation in relation to the delivery of policing, either nationally or locally?

4. NATIONAL POLICING FRAMEWORK

Police organisations are disciplined services and have strict hierarchies of authority, accountability and responsibility. Individual performance will be measured against standard operating procedures (“standing orders”), policy documents and/or manuals of guidance that detail the way in which officers must exercise their powers and conduct themselves.

Expectations of police performance are often translated into a series of practical objectives and/or priorities. Police leaders are usually held accountable for their delivery of policing by a central national authority (frequently the Ministry of the Interior), by a local authority (such as a local council, a police oversight body, the Mayor or other person responsible for the area), or by a mixture of the two. In post-conflict societies, these arrangements can be linked to the military and become the responsibility of a local military commander.

In the last thirty years, some countries have moved towards allowing local police commanders, albeit within strict guidelines, to take on greater responsibility in the deployment of police resources. This is based on the premise that policing by consent requires a certain flexibility of response and that the local police commander is best informed about the requirements of his or her area. Where this is the case, the local commander becomes accountable, not only to the central (headquarters) police hierarchy, but also to the local community.

4.1 NATIONAL STRATEGY

These questions seek to identify the overall scope and direction of policing. The answers will help to identify not only which aspects of policing are thought important in the country being assessed, but also the type of police service the authorities are trying to develop.

- A. Is there a written national policing plan (or policing strategy)? What does it say about how policing is to be delivered, nationally and locally? How often is it updated? Does it identify core functions and assign responsibility for delivering them? What guidance is given about delivering policing in local communities (i.e. station level service delivery)?
- B. Are there government priorities in terms of policing? What are they? Have targets or performance measures been set in relation to these priorities? What are they? How are the agencies performing in relation to these targets?

Where policing performance is managed against set objectives, the assessor will have a ready source of material by which to measure police service delivery. However, the assessor should be aware that not all countries will have adopted such a methodology and, where they have, the results may be incomplete or unreliable.

- C. Are there national objectives for the police? Who sets them and how? How often are they revised? What, if any, arrangements exist for wider consultation? What do they

suggest about policing priorities and style? Do these objectives allow, encourage or preclude community policing and local community involvement in policing?

- D. Is there a community policing strategy? What does it say? Are local priorities and performance measures set? Do these differ from any national priorities?
- E. What information does the local police commander have about the demands on policing within his or her area (e.g. databases, paper records or other information sources indicating the number of calls for assistance from the public, crime levels etc)?
- F. Are there formally defined mechanisms in place by which the public, or their representatives, are consulted on local policing issues? How often does this happen and under what circumstances? Who is involved? What are the outcomes of such consultations?

A consideration of the type and quantity of complaints made to the police can be helpful in understanding the unsavoury side of police performance, but any information provided needs to be carefully filtered. The fact that some kind of complaints system (sometimes called “professional standards” or “internal affairs”) exists is already a strong indication that the police agency recognises it is accountable to the public. However, the impact of such a system will depend on whether it is fairly and objectively managed. Even if it is, a poor record of serious complaints does not necessarily indicate poor policing. It may indicate that the community expects high standards and is ready, willing and able to demand them. Equally, the absence of substantiated complaints could mean that the general public are afraid to assert their rights or are disenfranchised. Further information is available in **POLICING: THE INTEGRITY AND ACCOUNTABILITY OF THE POLICE**.

- G. Is there a complaints system enabling members of the public to complain about the delivery of police services or the behaviour of officers? How does it operate? Is it independent? Is it locally based? Is it user-friendly? How is it advertised? Are the results of investigations into complaints published?
- H. Has research on policing activity been undertaken? What issues have been identified in respect of police accountability and oversight, station level service delivery and community policing?

4.2 NATIONAL INFRASTRUCTURE

Local police service delivery is heavily dependent on the rest of the national infrastructure. Leadership that recognises the importance of local policing will be more disposed to focus the necessary funding and resources at this level. Most local police work is neither spectacular nor headline grabbing, but it is the foundation of justice and the rule of law.

The following sections seek to provide the national context in which local policing occurs.

- A. How is policing structured nationally? What are the different agencies involved? What does each agency do? Are they part of a government ministry? Which ministries are involved? What does the organisational chart of policing look like? Who has responsibility for local “response” policing?
- B. How are policing agencies funded? Do commanders have responsibility for managing their own budgets? Are budgets and expenditure subject to any national or local audit process? Are budgets linked to performance?

Local police stations cannot be expected to offer the complete range of police services. Circumstances and events requiring police action are far too unpredictable and varied. Where the need arises, staff with specialist skills, additional resources and equipment should be available for deployment as a central resource on request.

- C. Where the need arises, can the local police call for support from central reserves including in respect of:
- Large public events?
 - Mass disorder and protest?
 - Major critical incidents or disasters (such as train or plane crashes, bombings or natural disasters)?
 - Major crime (such as homicide or drug trafficking)?
 - Hostage taking and kidnapping?
 - Counter-terrorism?
 - Financial investigation and anti-money laundering?
 - Special armed intervention and entry?
 - Crimes with international implications?
 - Use of both technical and human surveillance?
 - Special forensic science examination?
- D. Who has the authority to request such resources? On what grounds? Are these resources considered sufficient? How often are they requested, but the request is denied? Why?

4.3 STAFFING ISSUES

A police service may consist of a mixture of “sworn” and “un-sworn” staff. “Sworn” staff are those staff who have taken an oath of office or made some other declaration to uphold the law. They will be the “police officers” who are permitted to exercise the power of arrest, search, etc. “Un-sworn” staff, on the other hand, do not have law enforcement powers and will normally perform administrative or support functions. Some countries may exhibit a high percentage of non-sworn or civilian support (for instance, in analysis, scientific or secretarial functions) whilst others may employ sworn officers in these roles. There may even be a hybrid auxiliary policing capacity in which uniformed volunteers or militia support general policing activity. Such factors need to be considered when comparing police density ratios, staff profiles and budgets.

Where some kind of auxiliary police forces exist, assessors should be alert to extent to which such forces are supporting, supplanting or subverting the legitimate police function. They may be providing a valid service in allowing police resources to be focused on more important issues, but they may also be the enforcement arm of an alternative powerbase to which the police are subordinated.

- A. Does the police service have a full complement of staff? If not, what reason is given for this? Do staff complete a probationary period before being confirmed as officers? What proportion of police officers are in supervisory or management ranks? What is the ratio of officers with less than 2 years service to those with more than 2 years service? How long, on average, do officers stay in the police service?
- B. What is the salary structure for police officers and other staff? What is the average salary, including overtime for each level? How does this compare with the national average wage? Do police officers and other staff receive their pay? Do they receive it on time?
- C. What roles do non-sworn staff perform? Does the police organisation have a policy on equality and non-discrimination?
- D. Is there a significant difference between salaries paid to non-sworn staff and sworn officers? Are different people paid different salaries for doing the same job? How are salary increases awarded? Does the system appear to be based on merit?
- E. What is the expected working hours commitment for police officers and on-sworn staff?
- F. Are there any unofficial or private groups or organisations involved in delivering a policing role? What do they do? How are they perceived by official policing agencies? To whom are they accountable? To whom do they owe their allegiance? Is there any

suggestion that members of the public prefer to ask such groups for help rather than the official police?

4.3.1 Recruitment

Job descriptions for police staff will not always reflect the same expectations in terms of quality of recruit. Indeed, particularly those who have a high level of education will not always see a police career as desirable or attractive. On the other hand, all sections of the community should be able to meet the formal entry standards.

Police agencies may have a dual or multiple-level entry system (reflecting a military-style “officers and men” structure) or may have a single point of entry (in which all recruits start in the lowest rank). Both systems have advantages and disadvantages.

There have been cases where, in order to be appointed or promoted within the police service, a candidate has had to pay bribes or to pledge a percentage of his or her subsequent salary. There are other cases where appointment or promotion is based on patronage or nepotism. A failure to appoint someone on the basis of merit undermines the efficiency and quality of the police as well as creating legitimate grounds for grievance.

- A. What are the recruitment procedures for joining the police? What is the level of qualification needed to apply to the police? Are applications open to all sections of the community? Are vacancies widely and publicly advertised? How many new recruits are accepted annually? How are people selected? Is recruitment based on objective assessment and interview? Does the selection procedure appear fair and objective?
- B. What procedures are in place to encourage and support applicants from underrepresented groups? Are ex-members of the armed forces automatically offered employment as police officers? How representative of the community are the police? Do they speak the same language(s)? Do they live in the locality? Do their children go to local schools? What is the female/male ratio of police officers? Are there physical constraints (height/weight/sight) to recruitment? Are such requirements attainable by all minority and ethnic groups?
- C. Is there single level entry at the lowest rank, or can officers join at higher ranks and seniority? What qualifications or experience allow someone to join at a higher level?

4.3.2 Training

As in all organisations, service delivery is only as good as the quality and training of the personnel that deliver it. Policing agencies are no exception to this rule. However, training is also an expensive undertaking.

Police recruits, particularly those joining at higher levels, may start their service with a prolonged period of training in some kind of police college or academy lasting several years, or may receive only basic induction and instruction lasting weeks before embarking on street patrols.

- A. What foundation training is given to police recruits? Does the training focus on practical policing skills and ethical behaviour (including Human Rights and corruption)? Are they trained in inter-personal skills? Are they trained in cultural awareness and diversity? When was the training programme last updated? Is there training on community policing? What does it include?
- B. Are individual officers able to describe any training they have received on integrity, accountability, and ethics? Do they know whom to consult if they have questions? Do they know how their internal affairs/complaints process works, if they have one?
- C. How do peacekeepers address these issues in their training?

- D. How often do officers receive refresher training? How are training needs assessed? How is it delivered? Via classroom, self study, computer-based? Is there a minimum training requirement? Is training provided:
- on control and restraint techniques?
 - use of weapons?
 - new laws, regulations and procedures?
- E. What other training opportunities are available (e.g. secondments or attachments to central units or to other agencies)?

4.3.3 Career development

- A. How is promotion awarded? Is there an independent and objective assessment? How does the promotion system operate? Does it appear free from bias and favouritism? Is it based on merit? Are minority groups represented at higher levels of management?
- B. Who is responsible for personal development? What developmental opportunities are offered? Are there extra-curricular courses offered? Is there support in terms of financial assistance or free time allowance for officers taking relevant courses? Are staff allowed to take a sabbatical or leave of absence in order to acquire relevant experience or qualifications?
- C. What is the process for selection to work in a specialist unit, such as crime investigation, anti-organised crime or surveillance unit?

Some police managers believe that officers who spend too long in a particular post or role cease to apply themselves fully to the task or become vulnerable to corruption. To counter this tendency, some policing agencies apply a policy of rotation or “tenure” whereby officers are routinely reassigned after a given period. This policy has implications for continuity, organisational memory and trust (particularly in the community policing context where officers invest great effort in building personal relationships), but advocates of “tenure” believe the detrimental effects are outweighed by the benefits.

- D. Are officers routinely rotated among duty stations or functions? On what basis?

5. LOCAL POLICING DELIVERY

Any evaluation would be greatly enhanced by visiting at least two police stations each serving contrasting catchment areas, for instance urban and rural districts, or areas with different socio-economic characteristics.

Any station or local outlet for police service delivery should have the following capacities and facilities:

- Front office (or “Front Desk”) which is open for public assistance and enquiries;
- Despatch system for allocating officers to calls and coordinating other incidents;
- Patrol and response units to respond calls for assistance;
- A capacity to deal with minor incidents of public disorder;
- Crime investigation;
- A custody or detention area;
- Secure storage facilities for property and evidence;
- A unit dealing with community matters;
- A unit processing information and intelligence;
- Local training facilities;
- Ability to call for assistance from central units providing specialist or backstopping support when faced with unusual and extraordinary circumstances.

Most districts will be divided into manageable patrol areas, often called “beats”. Each police station will be responsible for a number of beats and police patrols will be allocated to attend to them accordingly. The size and population of a beat will depend on the geography of the area, but, then again, so will the number and availability of police

5.1 LOCAL MANAGEMENT STRUCTURES

- A. What services does the local police station delivery? How does it manage these functions? Who is in charge of the police station, that is, who is the local police commander? How many people are under his or her command? How long has he or she been in post? What does this person think is the role of the police? What role does this person play in the allocation of resources to policing functions? What does he or she think would make his or her station more effective?
- B. Who controls the budget for the police station? Who supplies the funding? Is there a local finance officer or financial controller? Who audits the accounts? How often? Who signs off the audit?
- C. Is there sufficient administrative support (either in the form of sworn or un-sworn staff)? What is the proportion of administrative staff to those assigned to operational duties? Are the offices lockable? Is the office furniture adequate? Are there facilities for locking away sensitive documents?
- D. Is there any form of written annual policing plan for the police station outlining objectives and priorities for policing? Who prepared it? Who was consulted in its preparation? What does it say? Are there performance standards or targets (for example, response times)? How does it compare to last year’s plan? Were last year’s objectives fulfilled? Does it refer to community policing? What resources and measures does the plan contain to enable the delivery of these objectives and priorities?
- E. Is there a system of locally set objectives or priorities for the police? How are they identified? Who is involved in setting them? How often are they revised? What are the reporting mechanisms? Is there any reference to community involvement? Is community policing a priority? Is the community involved in developing or influencing policing objectives and activities. What examples exist?

- F. Is there a system for consulting local communities about policing arrangements? Who is consulted? What has such consultation achieved?
- G. At the local level, what and how are policing services delivered? Who delivers them? Are there significant sections of the community that appear to be alienated or in conflict with the police? If so, are the police making efforts to remedy this situation? Are there exceptional levels of public disorder and violent crime? Are there areas that the police authorities cannot or will not patrol? If yes, why?
- H. Are there guidelines, manuals, or standard operating procedures that define the key elements of station level service delivery and the manner and style in which they are to be delivered?
- I. How is the local police commander accountable to the local community? Are there regular and structured meetings with the community or with community representatives? Who are the community representatives? How do these meetings operate? Are there minutes or notes of the meetings? What issues are raised? What is the police response to issues raised?
- J. Is there any form of volunteer police or police cadet system, or other “self help” mechanism, such as Neighbourhood Watch, encouraging local community involvement in policing? How do they operate?

5.2 ACCOMMODATION

- A. What are the demographic features of the district covered by the police station (e.g. size, population, urban/rural etc)? What is the size of population of the district? Where is the station located in reference to the community? Can it be easily reached? Is the senior officer located there?
- B. How is access to private areas of the building controlled? Are the doors kept locked? Is access controlled by some kind of code or password? Are there secure storage facilities for exhibits and evidence? Is there a detention or custody area? If not, where are prisoners taken? Is the custody area secure?
- C. Does the building have secure parking? Is it protected by CCTV surveillance? If so, who monitors the cameras? Does it have electric lighting? Are there telephones? Fax machines? Two-way radio facilities? Are there computers? Are there typewriters? Are any computers connected to central headquarters? Is there access to the Internet? Is there a steady and reliable source of electricity? Is there a back-up generator? Does the generator work? Is there sufficient fuel for it?
- D. Is there a room in which patrol officers can be briefed? Is there a separate room in which confidential discussions can take place? Is there a room in which investigators can work? Do these rooms have adequate office furniture, including lockable cupboards and cabinets?
- E. Are there locker rooms in which officers change into and out of uniform at the end of their shifts? Are there toilet and shower facilities? Are there separate facilities for females?

5.3 FRONT DESK

Unless under arrest, a member of the public's first visit to a police station will be to the Front Office or Front Desk. People who attend the police station may be doing so for a variety of reasons, and the impression they receive will remain with them. A Front Office or Desk should be as user friendly as possible and, whilst not necessarily inviting, should not suggest a hostile reception.

- A. Is there an office open to the public? Who is in charge of the office? Who staffs it? What are the opening hours? When closed, are there ways for members of the public to contact the police? What services does the office provide?
- B. Can members of the public report a crime at the front desk? Can they make a complaint? Can they hand in or make enquiries about lost property?
- C. Are there facilities allowing confidential matters to be discussed without being overheard? Is there a waiting area provided? How long do visitors have to wait on average before being seen?
- D. Are there posters and/or leaflets on display that offer public information, such as how to make a complaint, how to get legal advice, telephone numbers for self-help or other advisory groups, etc.? How are members of the public who visit the police station treated? Are there customer satisfaction surveys available for completion?

5.4 DESPATCH

There needs to be some way of converting calls for assistance into police action. The despatch process controls overall response and dictates the pace. In some places, this will be semi-automated using computers and will be commonly known by the acronym CAD (Computer Aided Despatch). A CAD or Despatch officer will often apply a kind of triage by assessing or grading calls in order of priority. Police patrols need to be in close and constant contact with whoever manages this function.

- A. Is there an emergency telephone number that connects a member of the public directly to a police operator? What happens then? How many calls are received per year? What percentage of emergency calls are not in fact emergencies? Does the telephone system automatically trace the source and address of an emergency call for assistance? How are ordinary non-urgent calls received?
- B. Is there an office, room or centre specifically designated to receive calls for assistance and despatch officers in response? Is this centre staffed 24 hours per day, 7 days per week? How reliable is the telecommunications system?
- C. Who manages the receipt and allocation of calls for assistance? Is there a graded response assessment done, in which calls are assessed according to their urgency and the necessary speed of response? How are patrol officers advised of a call? What is the average response time in dealing with emergency calls?
- D. Is there a "Computer Aided Despatch" system in which calls and subsequent action are logged on a computerised record? If not, how is action in response to a call logged and updated?

5.5 PATROL AND RESPONSE

It is strongly recommended that any assessment mission include at least two occasions on which the assessor accompanies police officers on patrol. Doing so is invaluable in gaining insight into the reality of relationships between the police and the public. During such patrols, he or she should try to observe whether there are any differences in the way in which the officer(s) deal with members of the public or in how they express themselves particularly when referring to members of social, ethnic or religious communities different from their own.

In post-conflict societies, the police may be confined to the police station and may only venture from it (perhaps with military support) when necessary to respond to a call for assistance or to investigate an incident or allegation. Even in regular societies police can develop a “siege mentality” – where the police regard the community they serve as a hostile enemy - and there will be societies in which sections of the community feel the police are hostile to them. In such circumstances, developing a community policing strategy faces many challenges.

- A. Is the geographical area under the control of the police station divided into patrol areas or “beats”? How are they patrolled, e.g. foot/vehicle, by single/multiple officers? How often?
- B. Does the local station offer response to calls for assistance 24 hours pre day, 7 days per week? If not, how are calls outside normal hours dealt with? How many officers are available to support each tour of duty? What shift pattern do they follow, if any? Does this shift pattern provide sufficient support during times of peak demand? Does each shift start with a meeting or parade of officers from that shift? If not, how does a shift start? Is it ever attended by senior officers? What happens at the parade? Are officers briefed on new orders, or on recent local developments in crime?
- C. Do police officers have the use of motor vehicles or other transport? Is there sufficient fuel available? Are they equipped with radios or other communications? Is basic public order equipment available, such as riot shields, batons, and helmets?
- D. Are officers equipped with telecommunications, such as two-way radios? Do they carry side arms? Are further firearms available if necessary?
- E. Are there any “no-go” areas, i.e. areas that the police will not or cannot patrol? Why? For example, is it too dangerous or have the police ceded the area for corrupt reasons?

5.6 INVESTIGATION

In some legal systems, particularly those with a civil law influence or tradition, the criminal investigation is led by a prosecutor or an investigating judge, who is empowered under law to direct the investigation of the police or, in some cases, a special judicial police force. The police must carry out any investigations ordered by the prosecutor or the investigating judge and report back to him or her. In other systems, particularly those with a common law influence or tradition the police play a more active and autonomous role in the investigation of criminal offences. Essentially, the police are responsible for the entirety of the criminal investigation. At the end of the investigation, the police gather the evidence and submit it to the competent prosecutorial body in the State, which then takes over the prosecution of the case. These approaches vary in their application, but the basic tenets remain the same: identifying the perpetrator and ensuring he or she is brought to justice.

For more in depth evaluation questions, please refer to **POLICING: CRIME INVESTIGATION**.

- A. How many investigators are allocated to this station? Are they sufficient to deal with the workload? Is there cover from investigating officers 24 hours per day, 7 days a week? If not, how do investigators respond outside normal working hours? Do investigators report to the local police commander? If not, what are the lines of responsibility?

- B. Who leads an investigation? A senior officer, prosecutor or judge? Is that person collocated or located nearby? On average, how many investigations does an officer work on at one time? What is the performance record of this office in terms of solving crime?
- C. Who allocates new work? On what basis? Do investigators ever have coordination meetings to discuss on-going cases? Who supervises case files?
- D. How do investigators log, label, and package evidence and exhibits? Do they have access to sealable bags? Do they have access to latex gloves? How do they prevent tampering and contamination of the evidence?
- E. Do investigators have access to unmarked vehicles? Is there sufficient fuel available? Are they equipped with radios or other communications?
- F. Are there any victim support services available or additional support for vulnerable victims, such as victims of sexual assault, elderly victims, and children? Do investigators update victims on progress in their case on a regular basis?
- G. What facilities exist for the forensic examination of a crime scene? Is there someone employed at the police station to deal with this? Does that person have transport? Does he or she have equipment for taking the necessary samples (in particular fingerprints and DNA)?

5.7 CUSTODY

Treatment of prisoners is a key concern in terms of ethical policing. Unfair or prejudicial treatment not only impacts upon human rights, but also results in unsafe convictions where suspects are pressurised into confessing whether or not they are actually guilty. This issue is considered in more detail in the **POLICING: THE INTEGRITY AND ACCOUNTABILITY OF THE POLICE.**

- A. Is there a custody or cellblock? Is it secure? Who manages it? Is the cell area monitored by videotape?
- B. Are prisoners advised of any rights on their arrival? Are there any notices displayed advising of these rights? If the prisoner speaks a different language or cannot read, or has other difficulties, what assistance is offered to him or her? Is prisoners' personal property listed and are they given a receipt for anything seized? On what grounds may such property be seized?
- C. Is a written log kept of all incidents related to a prisoner's detention? Are the prisoner's details and physical condition noted on arrival? In particular, is there a written record of all persons who visit the prisoner and of his or her movements? Is free and independent legal advice available for a prisoner?
- D. How are a prisoner's medical needs dealt with? Is there a doctor on call who attends the station? Is there special assistance available in respect of someone with mental illness?
- E. What kind of doors do the cells have? Are they solid with small wicket gates/ hatches/ peepholes? Or are they open bar-fronted cages? What toilet facilities exist? What washing and shower facilities exist? Are male and female prisoners kept separately? Do the cells have bunks or seating? Is this adequate for the number of prisoners per cell? Is there adequate lighting in the cell during the day and is this switched off during the night? Do the cells have adequate ventilation and heating? How are prisoners fed and how often?

- F. Are there separate interview rooms? How are they equipped? How are they arranged? Where is the suspect placed in relation to the interviewers? What lighting is there? Is there recording equipment? Can the interviews be observed from outside (e.g. through a peephole or two-way mirror)? Is there a panic button to summon emergency help? How many police officers are in the room during the interview of a suspect?

5.8 PROPERTY

Police, as part of their duties, often end up in possession of property belonging to others, such as evidence in a case or property found on the street and handed in. The custody of this property needs to be properly and responsibly managed to prevent tampering and theft. It is a responsibility in which many police services fail.

- A. Is there a secure place used for storing property, exhibits and evidence held in police custody? Is there an individual (or individuals) identified who has personal responsibility for items in the property room? Are valuable or sensitive items stored separately and under additional security? Is access to the store restricted? Do visitors to the property room have to sign in and out? Are items allocated a unique reference number? Are there regular inventories and stocktaking inspections of the store?

5.9 COMMUNITY POLICING

Where community policing arrangements are well developed, each patrol area or beat will be allocated to a particular officer. That officer, sometimes called a “community beat officer”, will be expected to make him or herself known to the local residents and to become a focal point for police/community relations. As well as dealing with local incidents, the community officer may be expected to identify solutions to community problems (sometimes referred to as “problem oriented policing”) and to support crime prevention activities.

- A. Are local officers familiar with the concept of “community policing”? What do they think it means? Do they think it is a worthwhile activity? What do they see as its main strengths and weaknesses?
- B. Is there an officer (or officers) assigned as a personal point of contact for a particular geographical patrol area (i.e. beat)? Where one exists, what does the job description for that officer say? Does that officer hold local community meetings at which local issues are discussed and information about police action is given? If yes, are such meetings open to all members and sections of the local resident population? Does the community officer have a local police office to which members of the local resident population have ready access? If so, to what extent do members of the public take advantage of this?
- C. Are officers specifically deployed to liaise with local schools? Are there officers trained and available to advise the local community on crime prevention issues? Are there officers trained and available to advise the local community, local municipal authorities and local developers on crime prevention by architectural design (CPAD)? This is an approach to building and designing an environment that seeks to make it “crime proof”, that is a place in which it is physically difficult to commit crime. Is there an officer designated to liaise with the local municipal authorities on partnership issues and initiatives?
- D. Is there a team of officers dedicated to tackling local crime and disorder issues rather than general response policing? Do such officers undertake proactive activity against new and emerging threats against local crime and disorder?

People living and working in a community are more likely to notice someone or something amiss. The “Neighbourhood Watch” seeks to make best use of this phenomenon by encouraging networks that watch for suspicious activity in their community and then report it to special police contacts. Where confidentiality permits, the police are also able to use these networks to disseminate information that is of public concern. A version of this is the “ring around” system, which is an automated messaging system that transmits information on emerging crimes threats and criminals to a panel of key community contacts. For instance, if a particular group of criminals is working in an area, a ring around message can be broadcast warning the community what to look for and to be careful. At no time are those involved in Neighbourhood Watch expected or authorised to take direct action against the criminals. Their role is simply to observe and report.

- E. Do community oriented self-help schemes exist, such as “Neighbourhood Watch”, “ring around”, and closed circuit television systems (CCTV)? What are they? What is their remit? What is the police role in them?
- F. How do the police relate to other locally based agencies such as hospitals, social and welfare services, municipal housing authorities, local councils and the media?
- G. How does the public get information about local policing? How do the public make contact with the police? What instructions or standing orders are there on releasing information about policing to individuals or to the media? Are media relations centralised? Is the local police commander permitted to brief the media?
- H. How are the police portrayed in the local media? How do the police relate to the local media? Is there a public information office? Do the police keep the public informed about public safety issues?

5.10 INFORMATION AND INTELLIGENCE

Further information on police information and intelligence is available in **POLICING: POLICE INFORMATION AND INTELLIGENCE SYSTEMS**.

- A. Is there a team of police staff dedicated to collecting, collating and analysing information and intelligence concerning local criminal activity? Do they include trained analysts? From where do they get their information and intelligence? Are all officers encouraged to submit information of potential interest? Is information collated on a card or paper file system or on computer?
- B. Is analysis undertaken to identify developments in crime and disorder (e.g. increases/decreases, “hotspots” of criminality or public disorder) to enable deployment decisions to be made?
- C. Do they produce regular briefings concerning the frequency, and incidence of local crime and identifying any trends? To whom are these briefings distributed? How?

6. PARTNERSHIPS AND COORDINATION

The ethos of community policing is about developing effective partnerships between the public and the police in order to secure a safer society. This section looks first at partnerships and collaboration on an institutional level with other public bodies or corporations before considering the involvement, input and participation of the international donor community.

6.1 PARTNERSHIPS

- A. What partnerships currently exist with other public service departments? Are there partnerships with other formal groupings in the public, private or non-government sector? How do these partnerships work in practice? Are there written protocols? Who does the local police commander consider to be the partners in delivering the core functions of policing? What is he or she doing to promote and develop these partnerships? Do the cooperation partners offer help in terms of supplementary funding, services, equipment or other support? Are partnerships successful? What are their strengths and weaknesses?
- B. Are there concerns that the police are getting too close to certain prominent figures, community or religious leaders? Is there any suggestion that such partnerships create an unequal service delivery, i.e. are there fears of favouritism?

6.2 DONOR COORDINATION

- A. Are there (or have there been) internationally funded initiatives aimed at developing aspects of station level service delivery, community policing and institution building? What are the objectives of these projects? Are they being achieved? Is there evidence of duplication? Is there any coordination of the implementation of these initiatives? Are mechanisms in place that will ensure sustainability of any sponsored activity? Which countries or organisations are involved ? Are any stakeholders and/or donors obvious by their absence?

ANNEX A. KEY DOCUMENTS

UNITED NATIONS

- Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice, 2006 (which contains source documents on crime prevention and criminal justice, and human rights texts);
- Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 7th UN Congress on the Prevention of Crime and the Treatment of Offenders
- Code of Conduct for Law Enforcement Officials, General Assembly, 1979
- Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, Economic and Social Council, 1989
- UN Country Reports

DRAFT

- Model Police Act
- Model Code of Criminal Procedure
- Model Criminal Code

PLEASE NOTE: *The Model Police Act (MPA), the Model Code of Criminal Procedure (MCCP), and the Model Criminal Code (MCC) are being cited as models of codes that fully integrate international standards and norms. At the time of publication, the MPA, the MCCP, and the MCC were still in DRAFT form and were being finalised. Assessors wishing to cite the MPA, the MCCP, and the MCC with accuracy should check the following websites to determine whether the finalised Codes have 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.

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

REGIONAL

- European Code of Police Ethics (Council of Europe)
[www.coe.int/t/e/legal_affairs/legal_co-operation/police_and_internal_security/documents/Rec\(2001\)10_ENG4831-7](http://www.coe.int/t/e/legal_affairs/legal_co-operation/police_and_internal_security/documents/Rec(2001)10_ENG4831-7)
- A website with links to Police Laws and Codes in a number of countries:
www.coe.int/t/e/legal_affairs/legal_co-operation/police_and_internal_security/documents/documents.asp

POST CONFLICT

- http://www.un.org/depts/dpko/training/tes_publications/list_publi.htm. (See also the other publications listed under “civilian police”)
- <http://www.uncjin.org/Documents/BlueBook/BlueBook/index.html>
- <http://www.un.org/depts/dpko> Best Practices Unit, DPKO, New York
- www.stimson.org/fopo/pdf/UNPOL_Readings_Aug_10_workshop.pdf (Background Reading on Post-Conflict Policing)

OTHER USEFUL SOURCES

- “Handbook of Policing” edited by Tim Newburn, (2003), Willan Publishing, especially chapters 2 and 13
- Police Act (1998) of the Republic of Slovenia
(www.policija.si/en/legislation/pdf/PoliceAct2006.pdf)
- Comparative legislation website: (www.wings.buffalo.edu/law/bclc/resource)
- UCL Jill Dando Institute of Crime Science (www.jdi.ucl.ac.uk)

NATIONAL

- Constitution, including bills of rights
- Police Law or Act; (including implementing regulations, clarifying regulations)
- Police Standard Operating Procedures, Departmental Orders or Force Standing Orders, Police and procedure manuals or other policy documents. (Some of these may be confidential but the assessor should attempt to get copies.)
- Policy and regulations promulgated by the policing agency, internal training manuals.
- Code of Criminal Procedure
- Criminal Code
- National Police Strategy
- Annual Police Reports
- Police Inspectorate or Oversight Body Reports
- Non-governmental Organisation Reports
- Donor Country Reports

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	<ul style="list-style-type: none"> Ministry of Interior Reports Ministry of Justice Reports Ministerial Website National and local crime statistics NGO Reports UN Regional & Country Analyses 	<ul style="list-style-type: none"> Members of any national statistical or audit office 	
3.1	LEGAL FRAMEWORK	<ul style="list-style-type: none"> Constitution (Bill of Rights); Police & law enforcement statutes; Model Police Act; Model Code of Criminal Procedure; Model Criminal Code; (N.B. The Model Act and Codes are still in draft form and are subject to change) Codes of Conduct; Ministerial instructions; Other Police legislation for comparison (e.g. Republic of Slovenia's Police Act (www.policija.si/en/legislation/pdf/PoliceAct2006.pdf); Internet sites (e.g. http://wings.buffalo.edu/law/bclc/resource) . 	<ul style="list-style-type: none"> Government Minister responsible for Justice and/or Internal Affairs; Senior civil servant from a judicial/legislative drafting government department; Independent academic lawyer; Independent Human Rights/Civil Liberty/Anti Corruption groups; Police supervisory body; Police Chief; Senior police officers; State prosecutors 	
3.2	POLICE MANDATE	<p>See above</p> <p>Plus</p> <ul style="list-style-type: none"> Police training manuals Site Visits 	<ul style="list-style-type: none"> Government Minister responsible for Justice and/or Internal Affairs; Police supervisory body; Police Chief; Members of police oversight bodies; Senior police officers; Patrol officers; Member of local criminal Bar association; State prosecutor; Local community leaders Independent Human Rights/Civil Liberty/Anti Corruption groups 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.1	NATIONAL STRATEGY	<ul style="list-style-type: none"> • National policing strategy • National policing plans • Local policing plans • Academic and research papers • Ministerial websites • Police Agency websites 	<ul style="list-style-type: none"> ▪ Government Minister responsible for Justice and/or Internal Affairs; ▪ Independent Human Rights/Civil Liberty/Anti Corruption groups; ▪ Police supervisory body; ▪ Chief of Police; ▪ Chief of Police's Cabinet; ▪ Members of police oversight bodies – national and local; ▪ Senior police officers; 	
4.2	NATIONAL INFRASTRUCTURE	<ul style="list-style-type: none"> ▪ Documents from the responsible national Ministry (Justice or Interior); ▪ Internet for websites of the relevant Ministry, and of the Police; ▪ Annual Police reports; ▪ Local authority reports; ▪ Inspection reports by external organisation(s); ▪ Visit to central HQ ▪ Reports from any monitoring, oversight or supervisory body; ▪ Reports of complaints; ▪ Reports by any complaints investigation body. ▪ Service level agreements and protocols on when and why central reserves and resources may be requested. 	<ul style="list-style-type: none"> • Government Minister responsible for the policing • Senior civil servants; • State prosecutors • Police Inspectorate; • Chief of police at centre (headquarters); • NGO researchers; • Chief of police & senior managers; • Representative from any data protection or privacy commission; • Officer in charge of complaints; • Representative from Independent human rights/civil liberty/anti corruption groups; • Journalists • Local supervisors and managers; 	
4.3	STAFFING ISSUES	<ul style="list-style-type: none"> • Staff regulations • Staff manuals or instructions 	<ul style="list-style-type: none"> • Head of Human Resources • Representative of staff association or trade union 	
4.3.1	RECRUITMENT	<ul style="list-style-type: none"> • Police agency websites • Job advertisements • Job descriptions • Completed application forms • Selection criteria • Recruitment tests • Any police staff association or trade union 	<ul style="list-style-type: none"> • Head of Human Resources • Members of any selection panel • Sworn and un-sworn staff 	
4.3.2	TRAINING	<ul style="list-style-type: none"> • Training manuals and programs • Visit to police training school or academy • Visit to training officer • Officer Training Programmes & manuals; • Local training needs analysis (if present) 	<ul style="list-style-type: none"> • Head of foundation training • Trainers at police academy • Recruits in training • Local training manager; • Police staff 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.3.3	CAREER DEVELOPMENT	<ul style="list-style-type: none"> • Human Resource policies • Staff development plans • Staff skills profiles • Internal vacancy announcements • Application forms • Guidance on completing application forms 	<ul style="list-style-type: none"> • Head of Human Resources • Head of Training • Trainers • Sworn and un-sworn staff 	
5.1	LOCAL MANAGEMENT STRUCTURES	<ul style="list-style-type: none"> • Inspection reports; • Reports from any Police Complaints authority; • Annual Police Reports; • Local policing plan (for the police station or district); • Notes (or minutes) of public consultation meetings; • Notes (or minutes) of police management meetings; • Manuals of Guidance at the police station; • Public brochures and literature; • The 'press book' or information shared with the media; • Site Visits. 	<ul style="list-style-type: none"> • Local police commander; • Supervisory officers at police stations; • State Prosecutors; • Members of local criminal Bar association; • Representatives of the local Council or municipal authorities; • Local community representatives; • Representatives of consultative groups; • Representatives of victims groups • Representatives of the media 	
5.2	ACCOMMODATION	<ul style="list-style-type: none"> • Visits to police stations 	<ul style="list-style-type: none"> • Local police commander • Representative of staff association or trade union • Staff members 	
5.3	FRONT DESK	<ul style="list-style-type: none"> • Visit to Front office or Desk • Any logs or daily record 	<ul style="list-style-type: none"> • Person in charge of Front Desk • Front Desk staff • Members of the public using the Front Desk 	
5.4	DESPATCH	<ul style="list-style-type: none"> • Visit to a Despatch unit or office • Log or incidents reports • Computer log (if exists) • Local statistics on response performance (e.g. speed of attendance) • Customer satisfaction survey results 	<ul style="list-style-type: none"> • Person in charge of despatch • Local patrol officers 	
5.5	PATROL AND RESPONSE	<ul style="list-style-type: none"> • Accompany police patrols • Attend shift briefing • Crime reports • Any shift reports or logs • Inspection of vehicles available • Local media reports 	<ul style="list-style-type: none"> • Head of local operations • Patrol supervisors • Patrol officers, • Members of the public 	
5.6	INVESTIGATION	<ul style="list-style-type: none"> • Visit to Investigation department • Case files • Local crime statistics 	<ul style="list-style-type: none"> • Head of Crime Investigation • Local state prosecutor or investigating judge; • Local defence lawyer; • Crime investigators; • Forensic crime scene examiner 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
5.7	CUSTODY	<ul style="list-style-type: none"> • Visit to custody area • Custody records 	<ul style="list-style-type: none"> • Person in charge of cells; • Gaoler; • Prisoners; • Representative of local inspection committee (if any). 	
5.8	PROPERTY	<ul style="list-style-type: none"> • Visit to property store • Inspection of property logs • Policy for guidelines on storing property 	<ul style="list-style-type: none"> • Person in charge of the secure property room • Police staff who use the secure property room 	
5.9	COMMUNITY POLICING	<ul style="list-style-type: none"> • Manuals of guidance, policy documents and standard operating procedures on station level service delivery and community policing; • Community policing plan • Inspection reports 	<ul style="list-style-type: none"> • Head of community liaison • Community Beat Officers • Schools Liaison Officers • Crime Prevention Officers • Head teachers of schools • Local religious leaders • Local community leaders • Representatives of local community groups • Representatives of local media • Representatives of the local Council or municipal authorities (the Mayor, for example); • Local community representatives; (e.g. Chamber of Commerce) 	
5.10	INFORMATION & INTELLIGENCE	<ul style="list-style-type: none"> • Visit to Information or Intelligence Unit • Databases or paper reference files available to local officers, (e.g. criminal records, reported crime system, local information and intelligence system); • Examples of any briefings or reports issued; • Any intelligence assessments; • Inspection reports. 	<ul style="list-style-type: none"> • Head of Unit • Analyst • Patrol officer • Investigators • Representative of any local oversight or monitoring group 	
6.1	PARTNERSHIPS	<ul style="list-style-type: none"> • Written protocols or directions concerning interagency working; • Local policing plan; • Notes (or minutes) of meetings between the police and local consultative committees, or other members of the public; • International and Regional organisations; • Notes (or minutes) of meetings with other 'public' agencies such as health, welfare and fire service; • Consultative or informal meetings with the local community; • Public brochures and literature; 	<ul style="list-style-type: none"> • Local police commander; • Supervisory officers at police stations; • Patrol officers, including 'community' officers (where they exist); • Representatives of consultative groups; • Representatives of the local Council or municipal authorities (the Mayor, for example); • Local community representatives; (e.g. Chamber of Commerce) • Members of the public; • Local representatives of international & bilateral cooperation (in particular foreign law enforcement liaison officers). 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
6.2	DONOR COORDINATION	<ul style="list-style-type: none"> • Internet Websites • Programme and project documents; • Project terms of reference; • Public brochures and literature; • Memoranda of Understanding with international community, organisations or donor countries (e.g. UN, EU, ASEAN, Interpol etc) 	<ul style="list-style-type: none"> • Representatives of relevant international or regional organisations working in the country; • Embassies/Ministries for donor activity. • Programme and project managers for international initiatives 	



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POLICING

The Integrity and Accountability of the Police

Criminal justice
assessment
toolkit

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Vienna

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UNITED NATIONS
New York, 2006

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This publication has not been formally edited.

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1. INTRODUCTION TO THE ISSUE

The great majority of individuals involved in policing are committed to honourable and competent public service and consistently demonstrate high standards of personal and procedural integrity in performing their duties and still more would do so given the right institutional support and training, but in every policing agency there exists an element contaminated to some degree by failure to maintain those levels of honesty and professionalism which characterise policing in general.

The way that policing is delivered will depend on a host of variables including the prevailing political and cultural doctrines as well as the social infrastructure and local tradition. Approaches to policing vary between those based on a high level of control, sometimes characterised by confrontation, through to those emphasising the merits of 'policing by consent'. The former is usually highly centralised, predominantly reactive, and militaristic in its style. The latter may still be centralised but will interpret policing as being responsive to local communities in the identification and resolution of policing issues.

The complexity of policing and its relationship with the context in which it operates should never be underestimated. In some countries the police will be direct instruments of government policy and extensions of ministerial authority. In others they will be more independent. However, police everywhere are given extensive powers with which to enforce the law, even though the nature, quality and underlying doctrine of that law may vary enormously. In most countries, police powers are designed to protect the fundamental liberties and rights of society, but, of course, the delegation of those same powers simultaneously provides a potential for their severe abuse.

Police officers may be held accountable in a number of different ways. They may be accountable in management or business terms for their performance and productivity, perhaps against government or community-set targets and objectives, but, more importantly, they must be accountable for the way in which they exercise the powers entrusted to them. The degree and mechanisms with which police conduct is monitored, along with the ways in which a lack of integrity, dishonesty and corruption may manifest themselves, are the subject matter of this assessment tool.

In this tool, a number of terms are used that can have different meanings and application depending on their context. Here are the most common terms, together with a definition of their use for the purposes of this tool:

Accountability

This refers to situations in which someone is, "required or expected to justify actions or decisions" (www.askoxford.com), but it also refers where an office holder bears "responsibility to someone or for some activity". (www.websters-online-dictionary.org)

Oversight

Oversight, in the context of supervision of an activity may be defined as (inter alia) "management by overseeing the performance or operation of a person or group". (Webster's Revised Unabridged Dictionary, 1913)

Integrity

The **Compact Oxford English Dictionary** defines integrity as "the quality of being honest and morally upright". (www.askoxford.com)

Corruption

Corruption is a difficult concept to define accurately. Indeed, the **United Nations Convention on Corruption** finds it more appropriate to offer a list of examples of corrupt practices rather than seek a universally applicable definition.

The **Britannica Concise Encyclopaedia** offers this definition:

Improper and usually unlawful conduct intended to secure a benefit for oneself or another. Its forms include bribery, extortion, and the misuse of inside information. It exists where there is community indifference or a lack of enforcement policies. In societies with a culture of ritualized gift giving, the line between acceptable and unacceptable gifts is often hard to draw.

(www.concise.britannica.com/ebc/article-9361666/corruption)

Transparency International (TI) defines corruption as:

...the misuse of entrusted power for private gain. TI further differentiates between "according to rule" corruption and "against the rule" corruption. Facilitation payments, where a bribe is paid to receive preferential treatment for something that the bribe receiver is required to do by law, constitute the former. The latter, on the other hand, is a bribe paid to obtain services the bribe receiver is prohibited from providing.

(www.transparency.org)

Thus, corruption implicates not only the official, but also the person bribing the official to undertake his or her corrupt act.

In policing terms, corruption would commonly involve doing something one should not, or not doing what one should, for profit, gain or other advantage for oneself, or for another, or to the detriment of another.

Some of the most common examples of police corruption involve:

- failing to enforce the law (turning "a blind eye") in return for favour or gain;
- demanding fines or bribes for a non-existent traffic violation or other offence;
- stealing or misusing property lawfully held in police custody;
- "losing" or tampering with evidence to sabotage a conviction;
- selling confidential information; or,
- directly participating in criminal activity such as smuggling or trafficking.

Coercion

Coercion is, "the persuasion of an unwilling person to do something by using force or threats" (www.askoxford.com). It is not necessarily illegal. In policing terms, coercive powers include controlling or preventing someone's free movement, subjecting persons and property to search, removing and retaining personal property, and the lawful application of force that may result in injury or even death. Integrity issues arise, however, where the use of these powers has been excessive or they have been misapplied. i.e. the unlawful application of force.

Torture

Article 1 of the **United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** defines torture as:

...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Practices that impugn the integrity of the police range from obtaining or maintaining evidence without following proper procedure to direct violations of the rights of suspects - including the coercion of confessions (sometimes through torture), planting and fabricating evidence, or giving false testimony in court (perjury). This latter situation can often arise where an otherwise

conscientious officer loses faith or trust in the criminal justice system and acts through a misplaced sense of duty or zeal in seeking to secure a conviction against someone of whose guilt he or she is convinced. It is, nonetheless, still illegal.

The key to challenging these shortcomings lies in developing and maintaining robust mechanisms for accountability and oversight. Ensuring police integrity is fundamental to good governance and is essential in gaining public trust and achieving public safety. Moreover, because the police are often the most visible and most encountered part of government, the level of confidence and trust held by a nation in its police reflects the trust and confidence held in its government. Accountability has been called, “the mother of caution” and as such it has a prophylactic and deterrent effect. Standards are less likely to be compromised if they are being monitored. Thus, public confidence and trust in the police can be enhanced and maintained by clear accountability, effective oversight, and transparent integrity.

In setting international standards for policing, as early as 1979, the United Nations General Assembly adopted the **Code of Conduct for Law Enforcement Officials**. This Code expects and requires that law enforcement officials:

- shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts;
- shall respect and protect human dignity and maintain and uphold the human rights of all persons;
- use force only when strictly necessary and to the extent required for the performance of their duty;
- keep matters of a confidential nature confidential;
- not inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment;
- ensure the full protection and health of persons in their custody;
- not commit any act of corruption; and
- to the best of their capability, prevent and rigorously oppose any violations of the Code.

This **Code** is supported by the **Guidelines for Effective Implementation** that call for the Code to be introduced into national legislation and practice. The UN **Guidelines** also emphasise the importance of key drivers in the institutionalisation of police integrity including the selection, education and training of law enforcement officials, their salaries, working conditions, discipline and supervision, and the need for mechanisms for the receipt and processing of complaints by members of the public.

The **Code** and **Guidelines** are invaluable in benchmarking the oversight capacity and integrity of a police system. However, it should not be forgotten that, particularly in post-conflict situations, policing roles and functions may well be conducted in part or in whole by parallel military structures. Peacekeeping forces may be operating in a highly volatile and hostile environment where notions of control and public safety have to be adjusted accordingly. Military personnel will have normally been trained to exert maximum (often deadly) force rather than the minimum levels expected of police officials. They will operate under general terms of engagement rather than a code of conduct and martial law can have a different scope and dimension to a civilian criminal justice system. Traditionally, military personnel have far less latitude for the exercise of individual discretion when following orders. However, military personnel are also subject to a high degree of control, command supervision and oversight where, in the final analysis, the consequences of their actions may be scrutinised by a courts martial. The effectiveness of troops in any policing role will, as with the police, depend on their training and the quality of their leadership.

In addition to developing an understanding of the strengths and weaknesses of a state's approach to the ensuring the integrity and accountability of the police services, the assessor should be able to identify opportunities for reform and development. Technical assistance in the area of police integrity and accountability in the context of a broader strategic framework may include work that will enhance the following:

- Drafting (or amendment), implementation and monitoring of legislation (including relevant Codes of Conduct and a Police Integrity Strategy);
- Development of a Statement of Values, Vision and Mission;
- Monitoring, supervision and oversight mechanisms for police conduct and performance;
- Development of manuals of guidance and operating procedures;
- Development of management processes in terms of monitoring and testing integrity;
- Independent and community mechanisms for monitoring police conduct (including, where lacking, an Anti-Corruption Agency or Commission);
- Training standards and materials (especially in key areas such as ethics, diversity and respect for human rights);
- Guidance on fair and objective selection and recruitment;
- Enhancement of the treatment of police station visitors, victims and witnesses
- Equipment and processes for proper handling of evidence and exhibits;
- Robust financial management and audit mechanisms.

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 policing functions and performance as well as the overall capacity of the criminal justice system of the country being assessed.

The availability of statistics related to policing will vary greatly. Statistics will also be variable in their reliability and integrity. Where possible, statistics provided by a government agency should be validated against statistics from other sources, such as non-governmental organisations or international bodies.

- A. Are there statistics on the number and types of criminal offences committed? Do these relate just to reported crime or is there an estimate of crime level in general? What proportion of these crimes do police claim to have solved (i.e. what is the 'clear-up' rate)? What proportion result in conviction? Are there statistics on convictions that were overturned on appeal? What proportion of these is due to failures in police procedure or allegations of police dishonesty?
- B. Are statistics held on complaints made against police? If yes, do they distinguish the type of complaint? What percentage is normally substantiated and what kind of penalties are imposed? How many complaints allege physical abuse or torture by police officers? Are allegations of police corruption recorded? What is the nature of these allegations and how many are substantiated? Is there a history of the police being sued for damages in the civil court? What for? What were the outcomes?
- C. Are there statistics gathered on public confidence and trust in the police? Are public approval ratings published? If yes, what do they suggest? What does Transparency International report about the country concerned? What does Amnesty International report about the country concerned? Are any official figures provided complementary to these reports?
- D. Are there statistics on the ethnicity of persons arrested? Are there statistics on the ethnicity of persons stopped and searched? Are there statistics on how many searched persons are arrested for an offence?

2.2 RISK FACTORS DRIVING INTEGRITY FAILURES

Whilst dishonesty and corruption appear in all institutions and in all societies, there are certain common attributes and indicators that are often present where there are high rates of failure in police integrity. These include:

- negative societal expectations of police honesty in general;
- a culture of police impunity;
- an institutionalised tolerance (and even expectation) of income from bribery;
- the lack of clear procedures and/or the lack of their supervision;
- organisational inertia in promulgating or enforcing the rules;
- inadequate remuneration

Each of these attributes are facilitated by opportunity and encouraged by the lack of consequences. A sound strategy against police dishonesty and corruption would, therefore, reduce opportunity and increase the likelihood of consequences for such behaviour.

Otherwise honest people can be tempted by or driven to dishonesty by deeply adverse personal circumstances, by unfavourable treatment in the workplace, by frustrated ambition, or because they believe a desired result can only be achieved by breaking the rules. Others can be motivated by a strong desire to 'get ahead', to 'get even' and revenge themselves or to succeed in spite of the niceties of morality and the law.

Once someone has been implicated in dishonest behaviour, however, others may use that one incident to leverage him or her into further and deeper corrupt practice. This is a typical method employed by members of organised crime groups to gain influence in policing circles.

3. LEGAL AND REGULATORY FRAMEWORK

As discussed above, any lack of police integrity is facilitated by opportunity and the lack of consequences. Strong legislation and other regulation can have a positive countervailing effect in this regard.

The relevant laws need to :

- establish clear boundaries on what is and is not acceptable;
- define precisely the extent of police powers (including the way in which they should be applied);
- detail codes of conduct in all areas of police action;
- create a presumption and commitment to enforcement of contraventions of these codes;
- require institutional structures for the propagation, dissemination and enforcement of professional standards;
- make clear the consequences for failure to meet those standards.

The extent to which the national body of law subscribes to precepts of human rights and corruption generally will also be important. The **United Nations' Code of Conduct for Law Enforcement Officials** (1979) and the **supplementary 'Guidelines'** (1989) provide a valuable benchmark for these issues. Further guidance can also be found in Interpol's Code of Conduct for Law Enforcement Officers, Code of Ethics for Law Enforcement Officers and the Protocol on Global Standards to Combat Corruption in Police Forces/Services, (www.interpol.org) and in the **Council of Europe's European Code of Police Ethics**, ([www.coe.int/t/e/legal_affairs/legal_co-operation/police_and_internal_security/documents/Rec\(2001\)10_ENG4831-7](http://www.coe.int/t/e/legal_affairs/legal_co-operation/police_and_internal_security/documents/Rec(2001)10_ENG4831-7)).

3.1 GENERAL

- A. Are there laws protecting the rights of individuals and their liberty? Are they able in practical terms to enforce those rights, e.g. is there affordable access to the court system? Do laws exist that criminalise the free expression of political opinion? Do laws exist that criminalise free assembly?
- B. Are there laws prohibiting discrimination, especially on the grounds of gender, nationality, or ethnicity? Is there a commissioner or ombudsman to whom members of the public may refer grievances in terms of discrimination?
- C. Is there a commissioner or ombudsman to whom members of the public may refer grievances concerning inappropriate use of personal data or of intrusive surveillance or contravention of a right to privacy?
- D. Are police organisations permitted to receive direct funding or sponsorship from private industry or individuals? If yes, are there controls safeguarding the independence of the police? How strict are they? Is the exercise of their operational priorities affected or altered in any way by this sponsorship? Is such a relationship subject to independent audit and monitoring? If yes, by whom?

3.2 POLICE POWERS

Indiscriminate and careless use of powers delegated to police officers is a major factor in alienating the public. In most cases the law will establish some kind of abstract threshold that needs to be attained before police action is legal. For instance, an officer may need "reasonable grounds" or "probable cause" to suspect a crime before he or she may act. Consequently an officer has to be prepared to justify his or her actions against that standard at any time.

- A. Is there a law or set of regulations that describes the nature and extent of police powers, such as a Police Law or Code of Criminal Procedure? Does the law define the grounds and threshold for the application of coercive powers, i.e. is there a concept of "reasonable grounds", "reasonable belief" or "probable cause"? Is the application of police powers limited to the use of minimum reasonable force, or similar, i.e. officers should only apply that minimum level of force that is necessary to achieve their lawful purpose? Do police have to identify themselves before using coercive powers?

Are officers required to inform the subject of the reason why the powers have been used, e.g., the reason for arrest or search, etc.? What grounds are needed in order to effect an arrest? Must an arrested person be told his or her rights at the time of arrest?

- B. In post-conflict situations, do the rules of engagement of peace-keepers include details on law enforcement roles and responsibilities of peacekeeping troops? Is there a formal agreement, such as a Memorandum of Understanding of Status of Force on the division of responsibility between peacekeepers and police agencies? Is there a strategy for the phased transfer of policing duties to a local police force?
- C. Is there a curfew in place? Who polices that curfew? What are the consequences for breaching that curfew?
- D. Are police under the supervision of prosecutors or any judicial authority? Are there police powers that can only be exercised under their control? What grounds or level of evidence do police have to show in order to obtain an arrest warrant? What grounds do police have to show in order to obtain a search warrant? How often are applications for warrants refused? On what grounds?

3.3 POLICE CODE OF CONDUCT

- A. Is there a code of conduct for the performance of police activity? In particular, do codes exist on:
 - Obtaining, use and dissemination of information or intelligence?
 - Interception of mail and telecommunications?
 - Using intrusive techniques and technical surveillance?
 - Use of police equipment and property?
 - Treatment and detention of prisoners?
 - The interviewing of suspects?
- B. Are these codes binding in terms of organisational discipline? Do they include references to acceptable and unacceptable behaviour and the use of force?
- C. Are there regulation or codes in place relating to disciplinary procedures? Are they regularly reviewed and updated? Are they publicly available? Are various stages of the disciplinary process defined together with time limits for the resolution and disposal of disciplinary matters? Do the regulations allow transparency in terms of results of the case? Do they allow public oversight of the procedures to ensure fairness? Is a staff member charged with a disciplinary offence entitled to representation or counsel?
- D. Where the work force of a police agency includes non-sworn (“civilian”) staff, do they have similar arrangements in place?
- E. If there is a staff association or trade union for police staff, does it support the code of conduct? Has it adopted an alternative code of conduct?
- F. Have the police adopted a formal Statement of Values, Vision or Mission Statement? What does it say? Do individual police staff have to affirm or formally accept these in some way, such as by signing a declaration or swearing an oath? Is integrity included as one of the core values?

In many cultures, the giving of gifts is a sign of friendship, respect and gratitude. However, where gifts are received by public servants in their official capacity, there is a clear risk that the gift-giver will expect or require partial and favourable treatment. Alternatively, once the custom has been established, it is also possible for a public official to hint at or even solicit the giving of a gift in return for a service or activity that the official is already paid by the state to provide. As a result many police agencies prohibit the receiving of gifts unless they are of nominal value and their receipt has been authorised by a senior manager. This obviates the risk and the allegation that services and preferable treatment are being 'bought'.

- E. Are police staff permitted to accept personal gifts, benefits or rewards? If yes, on what basis is this allowed? Who authorises the receipt of gifts? Is there a register for gifts received? What happens to gifts the receipt of which is not authorised? Are the families of police staff permitted to accept gifts, benefits or rewards related to the work of that staff member? If not, how is this prevented?
- F. Is there a statutory right to make complaints against the police? Does the law or other regulation prescribe a mechanism for making complaints? Does the law or other regulation provide for independent oversight and monitoring of the complaints system? Is there an appeals procedure?
- G. Are officers expected and entitled to report colleagues for failures to maintain integrity and professional standards? Are officers who make such a report protected from victimisation or harassment by the law and with practical support?

3.4 MONITORING AND SUPERVISION

There are many ways in which supervisory mechanisms for complaints may be structured. They may be managed by a branch of the central command structure or by a regional department. They may be entirely separate from the command hierarchy, or they may report directly to it. There may also be independent NGOs or interest groups that monitor police activity and measure it against international standards of behaviour. Often there will be a different set of procedures for minor procedural or administrative misconduct on the one hand and serious malfeasance or criminal behaviour on the other. The former may remain at an internal local level whilst the latter will be dealt with by formal tribunals and prosecution.

In essence, the main attribute for successful oversight needs to be one of independence so that the process is isolated from political influence and free from undue pressure. To enable this to happen, the staff and, in particular, investigators in the field of anti-corruption need to be secure in their jobs and safe from outside influence.

- A. What does the legislation say about supervision and accountability of the police? Is it an internal or external function or both?
- B. Is there a written national policing plan or policing strategy? What does it say about the accountability, oversight and integrity of the police?
- C. Is there a national strategy or plan to combat anti-corruption? What is in it? When was it written? Is there a comprehensive, integrity or anti-corruption action plan for the police? What is in it? Who is responsible for it? What evidence is there of it being implemented, both nationally and locally?
- D. Are police leaders familiar with the Interpol 'Global Standards to Combat Corruption in Police Forces'? To what extent have the standards been implemented?

In those countries where there is a close integration of private and public policing services, the accountability picture will be significantly different. Employees of private companies will not normally have the same degree of formal regulation, but will be controlled according to contractual terms or, in the case of more serious abuses, the general criminal law. Enforcement of standards and performance will be based on the company's need to satisfy its clients and service the terms of the contract. Sanctions will normally be financial with the forfeit of the contract as the ultimate sanction. Internal discipline of company staff will be based on staff regulations, but governed by employment law.

An additional concern in private policing is the standard of training. Training is a costly undertaking and, where profit is the main motive and business is poor, it is an easy overhead to cut.

4. MAINTAINING INSTITUTIONAL INTEGRITY

4.1 GENERAL

In **Section 2.2** above, it was stated that a sound strategy against police dishonesty and corruption reduces opportunity and increases the likelihood of consequences for such behaviour. The level of control and independent supervision in place can indicate the degree of opportunity and the chances of corruption being detected.

4.1.1 Monitoring Management and Administration

- A. Who inspects the police? How often? Are their reports publicly available? Do they make recommendations? Who acts upon the recommendations? Have any recommendations been made relating to police corruption, or complaints? What are they? What action has been taken to implement those recommendations?
- B. Is there parliamentary oversight? What form does it take? What have the results been in the past? What recommendations have been made for the future?
- C. Who is accountable for administering the police budget? Who authorises major and minor expenditures? How is this accounted for? Do senior officers have sole control over cash deposits or over bank accounts? How is this audited and how regularly?

4.1.2.1 Procurement

- A. What system exists for buying equipment? What are the rules concerning obtaining authority for such expenditure? Are there tender thresholds or does preferred supplier status apply? How are suppliers approved? Are suppliers regularly reviewed to ensure they are providing a quality service and value for money? How? Is expenditure monitored and audited by an independent office?
- B. Who ensures that the value of goods received matches the monies paid? How? Have there been any cases of alleged embezzlement or fraud? What was the outcome?

4.2 HUMAN RESOURCES

As discussed above, one of the risk factors for misconduct can be resentment amongst staff for a perceived unfairness in their employment status. The following questions consider in more detail the fairness of the staff structure.

- A. Does the police organisation have a policy on equality?

- B. Is there a system for the independent resolution of police staff grievances? Are there penalties and consequences for misconduct or mismanagement? Are staff who lodge grievances protected from victimisation?

4.2.1 Recruitment

There have been cases where, in order to be appointed to or promoted within the police service, a candidate has had to pay bribes or to pledge a percentage of his or her subsequent salary. There are other cases where appointment or promotion is based on patronage or nepotism. A failure to appoint someone on the basis of merit undermines the efficiency and quality of the police as well as creating legitimate grounds for grievance.

Further questions concerning staff and recruitment issues can be found in **Section 4.2.2, POLICING: PUBLIC SAFETY AND POLICE SERVICE DELIVERY**.

- A. What are the selection procedures for employment with the police? Who undertakes the selection? Are vacancies with the police widely advertised and open to all? Is recruitment based on objective assessment and interview? What are the educational or other standards required for becoming a police officer? What physical requirements are prescribed? Are such standards attainable by all minority and ethnic groups?
- B. Is there single level entry at the lowest rank, or can officers join at higher ranks and seniority? What qualifications or experience allow someone to join at a higher level?
- C. What procedures are in place to encourage and support applicants from underrepresented groups?
- D. Are ex-members of the armed forces automatically offered employment as police officers? Are applicants 'vetted' before being employed, how and by whom? Is a background check done on applicants, including their criminal history?
- E. Is there any suggestion that candidates have been asked to pay any kind of premium or commission in order to be employed with the police? Is there any suggestion that police staff are employed because of personal or family connections rather than ability?
- F. What is the salary structure for police officers and other staff? What is the average salary, including overtime for each level? How does this compare with the national average wage? Do police staff receive their pay on time? Do they receive it at all? What is the number of contracted working hours? How well are non-sworn personnel paid in comparison with police officers? Is there a suggestion that some people get paid less money for doing the same job? How are salary increases awarded? Does the system appear to be based on merit? Are there signs of resentment amongst staff because of unfair or unequal treatment?
- G. Are police officers and support / un-sworn staff permitted to work in second jobs? On what conditions?

4.2.2 Career development

- A. How is promotion awarded? Is it based on an independent and objective assessment? Does it appear free from bias and favouritism? Does it appear based on merit? What do the staff think? Are minority groups represented at higher levels of management?
- B. What is the process for selection to work in a specialist unit, such as the crime investigation, anti-organised crime, or surveillance units? Are there objective criteria? Is there an independent and objective selection procedure? Does it appear free from bias? What do the staff think?

Some police managers believe that officers who spend too long in a particular post or role cease to apply themselves fully to the task or become vulnerable to corruption. To counter this tendency, some policing agencies apply a policy of rotation or 'tenure' whereby officers are routinely reassigned after a given period of time.

- C. Are officers routinely rotated among duty stations or functions? On what basis?

4.2.3 Training

- A. What training do new recruits receive on accountability, ethics, integrity, corruption, human rights, diversity and the core values of policing? How often is refresher training undertaken? Is it compulsory? Are officers required to pass any kind of accreditation? Are these topics given special emphasis in terms of supervisory, management or leadership training?
- B. Are experienced officers able to describe the training they have received on integrity, accountability, ethics and diversity issues?
- C. How do peacekeepers address these issues in their training?

5. MAINTAINING PERSONAL INTEGRITY

A study by the OECD on government found the most frequently stated core values to be:

- impartiality, neutrality, objectivity – political neutrality;
 - legality – respect for the rule of law;
 - integrity, honesty;
 - transparency, openness – proper disclosure of information;
 - efficiency;
 - responsibility, accountability – maintaining reputation; and
 - justice, fairness
- (Trust in Government – Ethics Measures in OECD countries; OECD 2000)

Where organisations subscribe to such values there will be, at least in terms of public image, a commitment to ethical policing. However, any assessment needs to clarify the extent to which such a commitment has been properly integrated into institutional culture and where it is merely superficial.

Where corruption is a problem, any direct questions are unlikely to be met with honest answers (and could well be met with hostility). However, by comparing good practice and what the law says, with actual practice, will allow an assessor to draw his or her own conclusions.

Any assessment would benefit from visits to at least two different police stations to enable comparison to be made between theory and practice. At least one of the visits should be arranged at the last minute or to be unannounced. Local orders and instructions should be examined as to their content and conformity to the systems and procedures identified in previous sections, discussions should be held with groups of staff, and visits made to cell/detention areas and secure property rooms.

5.1 LEADERSHIP

To a great extent, the integrity of the police will be influenced by the role played by police leaders, nationally and locally. Assessors may wish to consider whether the leaders and supervisors they meet play an active role in promoting integrity, whether they acquiesce to corruption, or whether they are themselves a corrupting influence.

The level of political affiliation between a police service and the government is worth consideration. Where the affiliation is strong, allegations may be levelled that police leadership is based on the governing party's doctrine. This can particularly be the case where police leaders (and prosecutors) are elected to their post.

- A. Is the chief of police a political appointee and/or does he or she hold ministerial rank? Are the posts of senior members of the policing structure reassigned when the government and the chief of police changes?
- B. Is the Chief of Police or Chief Prosecutor popularly elected? Do either of them depend on someone else for their position? Are there allegations that policy or decisions are taken in order to please the voters or other influential people rather than in the interests of justice?
- C. What do senior officers say about the need to develop standards of integrity in their command? Do they take a public stand against corruption? What have they done personally to promote integrity within their departments? Do they have a personal track record of robust action when faced with cases of corruption? Have they been trained on accountability, ethics, integrity, corruption, human rights, diversity and the core values of policing? Do they think such training is important?

5.2 MONITORING COMPLAINTS AND POLICE MISCONDUCT

The existence of a legislative structure for complaints is an important step, but that system must be more than a legislative expression of intent. Any system must be readily accessible to members of the public and user friendly. It must protect complainants against negative consequences and offer a responsible, professional and timely resolution. Without such qualities, the public will soon label the complaints system as a waste of time and will not support it.

- A. Is there a national anti-corruption commission? What is its remit in dealing with police corruption? How long has it been established? To whom does it report? What are its most recent findings? What recommendations has it made (if any) in respect of national policing?
- B. Are there any allegations that police officers or other staff take or solicit bribes?
- C. Being able to identify an officer is the first step in making that officer accountable for his or her actions.
- D. Where officers are uniformed, does the uniform display the unit to which they are attached and/or give other identifying features? Are plain-clothes officers required to give their police identification number to a member of the public on demand?

A random or 'dip' sample of files detailing complaints against the police will enable an assessor to appreciate the general nature of those complaints received and how they are subsequently investigated and resolved. If access to such files is refused, the reason for that refusal will also be informative.

- E. Is there an internal police complaints system that allows members of the public to complain about the delivery of police services or the behaviour of officers? How does it operate? Is it independent? Is it locally based? How do members of the public learn how to make a complaint? Is there literature or advertising in a police station that explains the right to complain and how to make a complaint? Is it possible to make a complaint anonymously? Can complaints be made without having to pay a fee?
- F. Are complaints received and recorded by someone in a position of responsibility in the police force? Is that person of sufficient seniority and influence within the police force to ensure appropriate action on the complaint? In what form are they recorded? Is the complaint dealt with through an independent process involving structured escalation to senior management where appropriate? Is the outcome of a complaint communicated to the complainant within a reasonable period of time? Are the results of complaints

generally available to the public? Is there any suggestion that persons who complain to the police are subsequently victimised, harassed or abused by police officers? Are there mechanisms in place to monitor and prevent this?

- G. Are there methods by which members of the public may submit information about police misconduct without identifying themselves, such as anonymous police hot lines? How does this work? Who controls and manages the calls? How many calls are received? How often do calls result in the prosecution of a member of police staff?
- H. Is there an independent authority with responsibility for investigating serious complaints against the police? What powers do they have? Are these powers sufficient? Are they adequately staffed, funded and equipped? Do they publish their findings? Is there a right of appeal against the findings of this authority? Is such an appeal feasible for an ordinary member of the public?
- I. Does the person in charge of such investigations have sufficient seniority to ensure they are investigated without undue influence? Is the department properly and independently funded and staffed?
- J. Does such a body, or any other unit, have a programme of 'integrity testing' whereby proactive operations are organised to detect and identify instances of misconduct or corrupt practice? What operations have taken place? What were the results?
- K. Is there a panel or commission consisting of persons unconnected with the police that is able to review and comment on the handling of complaints against police?
- L. Are there other bodies, organisations or interest groups that monitor police misconduct and corruption, e.g. Amnesty International or Transparency International? What do their reports say?
- M. How often are police officers prosecuted, either through the criminal justice system or through disciplinary procedures, and for what types of offence?

5.3 PHYSICAL ABUSE

When and where police apply their powers is usually a matter of individual discretion, except in the military context where soldiers are required to follow orders. Because officers are often required to make people do something, or refrain from doing something, police action may be met with resistance, conflict, or confrontation. Under these circumstances, members of the public may wish to complain. The validity of such complaints will depend on the context and will be judged against standards of police conduct enshrined in law or regulation.

- A. How many allegations of assault by the police are made annually? How are they investigated and by whom? What are the results of those investigations? To whom are the results reported?
- B. Are officers provided with a selection of weaponry and restraint equipment for use in different circumstances depending on the level or threat of violence confronted? Do officers receive training in the use of this equipment? Are officers required to reach minimum standards in use of that equipment? Are officers licensed to use such equipment? How often do the officers need to re-qualify? Does this training emphasise the use of minimum necessary force? How often does refresher training take place? Do officers carry unauthorised weaponry and equipment, including unauthorised ammunition? Are firearms issued to officers personally and individually? Are their side arms regularly inspected? Is the issue and use of ammunition subject to regular audit?

- C. How often do police officers fire their weapons in the course of duty? How often are persons shot and wounded by police officers? How many persons have been injured in other ways, e.g. through use of a baton or handcuffs? How many bystanders, rather than suspects, have been injured by police action? How often are police officers sued or prosecuted for negligent use of their weapons? Are there allegations in the media and from public or community groups that the police regularly resort to the use of unreasonable or excessive force?
- D. Are there allegations of police involvement in the disappearance and/or torture of individuals? Have police officers been convicted of torture?
- E. Are there suggestions that police are involved in extra-judicial killings?

5.4 PRISONER TREATMENT

There should be minimum standards in place for the treatment of persons held in police custody. Such minimum standards must, however, have been put into practice. Where minimum standards are not in place, mistreatment and abuse of prisoners will be much easier to hide.

Prisoners arriving at a police station with signs of injury should be immediately medically assessed and their injuries noted. Prisoners who later show signs of injury or illness should also be seen and treated promptly by a doctor.

Good practice in some jurisdictions involves a system of unannounced visits to cell/detention areas by oversight authorities, by selected members of the public and/or by supervisors.

For further information see **Section 3.2.2, CUSTODIAL AND NON-CUSTODIAL MEASURES, DETENTION PRIOR TO ADJUDICATION.**

- A. Do prisoners have rights? What are they? Are these rights openly displayed and drawn to their attention? Do officers know what they are? Is there a written record of all movements of the prisoner? Is there a written record kept of all incidents in a custody area? Is a log kept of all persons who visit the cell area? Is the custody area covered by CCTV or video recording? If yes, are the recordings stored safely? How long are videotapes kept? Are there allegations that prisoners' rights are not respected?
- B. Do prisoners in custody appear in good health? If not, have they been seen by a doctor? If not, why not? Are there any unexplained injuries? Are their injuries documented? Are independent medical staff used to record and catalogue physical injury? Who investigates allegations of assault on prisoners? Where the allegations are serious, are independent investigators appointed from outside the area?
- C. How is a "death in custody" defined? How many persons die in police custody each year? What percentage is this in comparison with all persons taken into custody over the same period? How are such incidents investigated? How many investigations into a death in custody result in a criminal prosecution?
- D. Has any property seized from a detainee been properly listed and has a copy of the list been provided to the detainee? Is the property securely stored? Are there allegations of the property being stolen?
- E. Are female officers available to deal with female prisoners where necessary? If not, what happens? Do male officers conduct body searches of female prisoners? Are male officers permitted to be alone in a cell with a female prisoner? Does this happen?

- F. Are there special provisions to protect vulnerable persons, i.e. people with physical or cognitive difficulties or juveniles? Is there evidence that such provisions are not respected by the police?
- G. Are prisoners advised of the offence(s) with which they have been charged? Is it in a language they understand?
- H. How long may prisoners be detained before appearing before a court? How long may prisoners be detained without charge? How long are they detained in practice? Are prisoners ever labelled as witnesses in police records to avoid judicial review of detention?
- I. How many prisoners escape from police custody? How do they escape from police custody? Are there any allegations or indications of official involvement in these escapes? How are escapes investigated?

Experience has shown that the conditions under which suspects make confessions or admissions can be related to their treatment in custody before the confession or admission has been made¹. This may be because of the threat or direct use of violence (i.e. torture), because of other indirect intimidation or menacing behaviour on the part of the interviewers or because the experience is otherwise physically and mentally distressing.

People in police interviews are normally anxious and find themselves in an unequal dynamic in favour of the interviewer(s). There is ample evidence to show that certain people are predisposed to answering police questions in any way that will help to shorten the interview and, as a result, they will wrongly confess to offences they did not commit. In some countries, the risk of a "false" confession is perceived as so great that confessions of guilt made solely to a police officer are not admissible in court.

- J. When prisoners are interviewed, are they entitled to legal advice? Is a simultaneous note made of what is said in interview? Is the interview taped or video recorded? If so, are the tapes sealed and stored securely? How many are convicted on the basis of confessions? How many have been alleged to have made confession to officers, but then to have retracted them in court?

5.5 EVIDENCE

There can be two motives driving the falsification or destruction of evidence. Firstly, an officer may wish to make the case against a suspect stronger than it already is. For instance, perhaps the officer has forgotten to do something or has failed to find sufficient evidence to prove an important element of the case, or may be hiding something that appears to show the suspect is not guilty. Secondly, an officer may have been paid by a suspect to ensure that the evidence is lost or tampered with in order to sabotage the prosecution case.

- A. Is an officer required to produce written notes of an incident whilst it is still fresh in his or her mind? Are these notes signed and dated? Are they read and supervised? Does the supervisor have to certify that they have been checked? Are these notes included in the case file and provided to the prosecutor?
- B. Are manuals and guidelines supplied to all police staff that detail the necessary procedures when dealing with evidence?
- C. Are a high level of prosecutions abandoned or do they collapse due to failures in procedure or on points of law? How many officers have been charged with perverting the course of justice? How many officers have been specifically charged with lying under oath?

- D. Are there situations in which prosecutors have lost such confidence in the integrity of certain officers that they refuse to proceed with any case in which those officers are involved?

5.6 PROPERTY

All property seized or handed into the police should be handled so that it is safe and identifiable. Evidence, in particular, should be clearly marked indicating the case to which it relates, the name of the officer responsible and the reason for which it is being retained. All items should be kept in a secure cabinet or room and should be filed and processed in such a way that any access to or use of it can be audited. These precautions are sometimes called the "chain of custody".

Good practice is to cross reference the property against the name of the officer responsible for seizing it.

- A. Do police officers receive training on proper search and seizure techniques under their laws? Are searches conducted according to that law? Is a search log completed when premises are searched? What information do they contain? Where they exist, are search logs properly filled in? Are search logs missing? Can all evidence seized during a search of premises be linked to a search log? Where search logs are not completed, how is evidence formally linked to the location in which it was found?
- B. Is there a formal system for storing exhibits, property and evidence held in police custody? Is there an individual (or individuals) identified who has personal responsibility for administering and maintaining that system? Does the system allow for speedy identification and retrieval of items stored? Are items allocated a unique reference number? Are they cross-referenced on lists identifying the officer responsible for their storage? Are there regular inventories and stocktaking inspections of the secure property room? Do items get 'lost' or stolen? Do exhibits or evidence go missing? What action is taken to relocate them? Is the property room secure? Are valuable or sensitive items stored separately and under additional security? Is access to the property room restricted? Do visitors to the property room have to sign in and out?
- C. How are contraband and evidence held by the police disposed of? Who, if anyone, audits these disposals? In terms of items scheduled for destruction, are there procedures in place to prevent their replacement, misappropriation and diversion? Are there allegations that items stored and scheduled for destruction, particularly firearms and drugs, have been stolen from police custody and resold? How often is this alleged to happen?
- D. Are there procedures in place for the labelling, packaging and bagging of exhibits? Are tamper-proof clear plastic bags used? Where exhibits are accessed, is the person who accessed them and the reason for their access recorded? Does the procedure provide for a clear and auditable chain of custody showing who had access to the exhibit throughout? Are officers trained on the principles and techniques of maintaining the integrity of evidence? Can officers (in particular patrol officers) explain why the integrity of evidence needs to be maintained? **See Section 5.3, POLICING: CRIME INVESTIGATION**
- E. Do the police receive 'lost and found' items, i.e. things found by members of the public? Do the police store and try to return property to its rightful owner? How does this system work? What are the arrangements for supervision of this system? How do people claim their lost property? What happens where the property remains unclaimed? Is there any evidence of abuse of this system, i.e. are items stolen?
- F. Is police equipment issued against personal signature? Is there an inventory of police equipment at each police office? Is there any indication that police property may be used for purposes other than that for which it was intended? For instance, are police vehicles taken for unauthorised private use? Are mileage logs kept? Is police

photographic, audio or video equipment used for private purposes? How often is there are inventories conducted? Does equipment such as computers, televisions, air conditioning units or similar go missing? Is it reported as a theft?

5.7 INFORMANTS

Working with informants is a critical area of activity for the police. On the one hand, the information they provide can be vital – and sometimes the only way – to prevent or solve a crime, but many informants are themselves criminals seeking to exploit the criminal justice system and to subvert police officers. It is, therefore, important to examine the systems employed for using, managing and supervising informants and any payments made to them. Are the staff recruiting and meeting with informants properly trained? Are detailed records kept? And is there evidence of a risk assessment being made before they are deployed? Examples of abuse would include informants using police action to remove criminal competition, police using violence to intimidate informants, police using informants to fabricate a case against a suspect and police sharing any reward or payment made to an informant. (Police have also been known to invent a “phantom” informant and to sell on information gleaned from the media.) For this reason, separating the handler from the payment process is desirable. In any case, close personal relationships between handlers and informants need to be discouraged.

- A. Are the identities of informants registered in some way? Is the registration confidential? What is the system for recruiting and managing informants? Is an informant handled exclusively by the officer who recruited him or her? Is there a manual of procedure? Is there a senior officer (sometimes called a “controller”) with responsibility for monitoring this system and ensuring it is properly followed? What training is provided to informant handlers and controllers? How is the use of informants supervised? Who authorises and makes payments to informants? Are payments made direct to the informant? Are informants protected from prosecution if they participate in a criminal offence? **SEE SECTION 5.7, POLICING: CRIME INVESTIGATION AND SECTION 5.1.3, POLICING: POLICE INFORMATION AND INTELLIGENCE SYSTEMS.**

5.8 CRIMINAL BEHAVIOUR

Personal gain is a primary motivation for all criminal behaviour. Because of the special trust and responsibilities placed in police officers, the opportunities for them to abuse that trust to obtain money or advantage are considerable. At the same time, because police officers have inside information, understanding and influence over the criminal justice system, they are also often in a position to shield themselves from detection.

- A. Is there any suggestion or evidence that police are receiving bribes in order to ignore criminal offences? Is there any suggestion that officers are receiving direct payments or benefits from members of the public in return for special attention or additional protection?
- B. Are police staff required to file financial disclosure statements? Is this a requirement at all ranks or does it apply only to the more senior ranks? Who verifies these statements, if anyone? Do officers appear to be living beyond their means? Are they driving large expensive private vehicles? Are there officers with lifestyles apparently incompatible with their remuneration? Are they ever investigated? With what outcome?
- C. Are officers periodically tested using a polygraph? Are they asked questions about dishonesty or corruption? Are there other forms of ‘integrity testing’ employed? If yes, what are they? What percentage of persons fails the tests? What percentage of those who fail are required to resign from the service?
- D. Are officers tested for substance abuse? If so, what percentage of the tests is positive? What percentage relates to cocaine or opiates or other ‘hard’ drugs? What happens to

officers who fail such tests? Does the police agency have a welfare support service for officers who are dependent on alcohol or other substances?

5.9 UNAUTHORISED DISCLOSURE OF INFORMATION

Police organisations collect, hold, or have access to a significant amount of information, some of it of a private nature about victims, witnesses, crimes, and suspects, and much of it confidential. That same information will have a market value for criminals, journalists or private investigators that can be realised by unscrupulous police staff with access to it.

To counter this risk, strong and effective information security measures need to be implemented. Good practice in many countries requires access to any information to be logged, timed and dated with the name of the officer and the reason for access. Regular spot checks can then be made on officers (and their supervisors) as to why they accessed that particular data and what they did with it.

Information about operations or investigations can also be sold. Where police activities or investigations are targeting a particular person or location, that information can be invaluable not only to any criminal involved, but also to journalists who may be looking for an interesting scoop.

Further difficulties arise where information has been incorrectly logged or inaccurately filed. A simple typing error can lead to people with similar names being detained unnecessarily, wrong addresses being raided or suspects escaping arrest because of inaccurate or incomplete records. These issues may well be due to a lack of diligence or laziness rather than malice, but the resulting impact can still be significant. Such risks can be reduced, though perhaps not eliminated, through proper training, clear procedural safeguards and supervision.

- A. What precautions are taken to protect confidential police information? Are paper files kept under lock and key? Is access limited to authorised personnel? Are there notice boards that display confidential information? Can they be seen from public areas or by ancillary staff (such as cleaners)? Are there facilities for the disposal of confidential information such as confidential waste sacks or shredding machines? What procedures are in place for the disposal of confidential waste? **SEE ALSO SECTION 4.4, POLICING: POLICE INFORMATION AND INTELLIGENCE SYSTEMS.**
- B. How is information on police databases protected? Are only authorised personnel allowed to access them? What training do they get? Are individual passwords provided? Are periodic spot checks made to see why officers searched information from a database? Are there guidelines on to whom information may be disseminated? Are there time limits for the storage of information? What happens to a crime file when time limits under any statute of limitations run out? Is someone responsible for weeding obsolete files?
- C. Are there allegations that police information can be bought? How many police staff have been prosecuted for this offence?

5.10 EXTORTION

A common abuse of integrity in some countries relates to the enforcement of road traffic regulations (or other minor infractions) where informal on-the-spot fines (or bribes) are negotiated with the alleged offender, rather than pursuing a formal prosecution or other legal process. In extreme circumstances this can be regarded by some as the normal way of doing business. Assessors may experience this first hand.

- A. Are on-the-spot fines or fixed penalty tickets issued by police officers to the public? Are officers expected to receive and handle cash payments for fines or tickets? What are the arrangements for supervision of this system? Is there any evidence of abuse of this system?
- B. Do officers receive free items from shopkeepers or free food and beverages from bars or restaurants? Is this permitted by police regulations?

- C. Are there allegations that police officers receive unofficial payments or gratuities from business people in the community? What reasons are given for this? What are the implied consequences if payments are not made?

5.11 SEXUAL MISCONDUCT

Sexual misconduct of law enforcement personnel with witnesses, suspects or informants has also been known to lead to corruption or other integrity failure. For example, an officer may ignore a sexual partner's criminal activity, alter evidence that implicates him or her, or even provide that partner with confidential information. Such misconduct also leaves the officer open to extortion.

- A. Are there any rules or provisions that prevent police staff having intimate relationships with witnesses, suspects or informants? Are they enforced?

6. PARTNERSHIPS AND COORDINATION

6.1 PARTNERSHIPS

Oversight and accountability of the police becomes credible and valid only by reference to the society it serves. Partnership with other agencies or organisations helps to ensure that the monitoring of police action has both depth and breadth. However, it is also conceivable that some partnerships may be based on the expectation of preferential treatment or more favourable levels of service.

Whilst there may be national arrangements for oversight and inspection of the activities of the police, those at a local level may be crucial to the practical delivery of police services.

- A. Do the police keep their performance on integrity under constant review? Do they engage and work with human rights groups or other interest groups in order to identify and remedy any shortcomings? How? Are the police asked to provide evaluations and assessments on the integrity of other public bodies or organisations? Are there joint initiatives against corruption? If yes, what do they seek to achieve?
- B. What role does the prosecutor have in the oversight and integrity of the police? How does this work?
- C. What relationship do the police have with local defence lawyers? What do these lawyers say about police integrity? Do they have specific examples of police misconduct? Can such examples be verified?
- D. To what extent is the local community involved in measuring integrity? Is there an oversight or community policing consultative group where police commanders meet with community representatives to discuss issues on integrity or corruption being discussed and addressed?
- E. What is the relationship between the police and the media? Do the police work with the media and other groups on campaigns against corruption?
- F. Are there concerns that the police are getting too close to certain political, community or religious leaders? Is there any suggestion that such partnerships create an unequal service delivery, i.e. are there fears of favouritism? **SEE POLICING: PUBLIC SAFETY AND POLICE SERVICE DELIVERY.**

6.2 DONOR COORDINATION

Being aware of the activities of donors in the areas of police oversight and integrity will prevent unnecessary duplication and allow coordination of initiatives.

- A. Are there (or have there been) internationally funded initiatives aimed at developing aspects of accountability, oversight and integrity of the police? What are the objectives of these projects? Are they being achieved? Is there evidence of duplication? Is there any coordination of the implementation of these initiatives? Are there mechanisms in place that will ensure sustainability of any sponsored activity? Which countries or organisations are involved? What mentoring mechanisms are there in place? Are any stakeholders and/or donors obvious by their absence?
- B. Do (or did) these initiatives offer training? If so, are they training trainers to deliver cascade training programmes or are they training individuals? Is a system of computer-based training being offered?
- C. Do (or did) these initiatives provide equipment? If so, was the need for this equipment identified through an independent evaluation or was it the result of a government list? Are other donors providing the same or similar equipment? Are there plans for how the equipment will be maintained and replaced? Are there examples of the same or similar equipment being provided and it then not being used or being misappropriated for something else?
- D. In terms of these initiatives were there any post-implementation reviews that have helped to identify good practice that could be replicated elsewhere? Are the results of such initiatives collated and coordinated to inform future planning?

ANNEX A. KEY DOCUMENTS

UNITED NATIONS

- Convention against Transnational Organised Crime (UNTOC), (2000) and its related protocols on Trafficking in Persons, Smuggling in Persons and the Illicit Manufacture of Firearms and Ammunition (outlining important investigatory measures when tackling serious and organised crime);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention against Corruption
- Single Convention on Narcotic Drugs
- Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- Convention on Psychotropic Drugs
- The Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice, 2006, which contains source documents on crime prevention and criminal justice, and Human Rights texts including:
 - Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1975.
 - Minimum Rules for Non-Custodial Measures (Tokyo Rules).
 - Basic Principles on the Role of Lawyers
 - Guidelines on the Role of Prosecutors
 - United Nations Standards Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).
 - Code of Conduct for Law Enforcement Officials
 - Rules for the Protection of Juveniles Deprived of Their Liberty.
 - Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
 - Guidelines for Child Victims and Witnesses
 - Declaration on the Elimination of Violence against Women
 - Declaration on the Protection of All Persons from Enforced Disappearance
 - Declaration on the Rights of the Child
 - Standard Minimum Rules for the Administration of Juvenile Justice
- Criminal Justice Standards for Peace-keeping Police Handbook (the 'blue book', particularly useful in post-conflict settings), 1994
- Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators
- Anti-Corruption Toolkit
- Compendium of International Legal Instruments on Corruption (2nd ed, 2005) – (particularly valuable for regional initiatives)
- UN Country Reports

DRAFT

- Model Police Act
- Model Code of Criminal Procedure
- Model Criminal Code

PLEASE NOTE: *The Model Police Act (MPA), the Model Code of Criminal Procedure (MCCP), and the Model Criminal Code (MCC) are being cited as models of codes that fully integrate international standards and norms. At the time of publication, the MPA, the MCCP, and the MCC were still in DRAFT form and were being finalised. Assessors wishing to cite the MPA, the MCCP, and the MCC with accuracy should check the following websites to determine whether the finalised Codes have 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.

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

REGIONAL

- European Code of Police Ethics (Council of Europe) [www.coe.int/t/e/legal_affairs/legal_cooperation/police_and_internal_security/documents/Rec\(2001\)10_ENG4831-7](http://www.coe.int/t/e/legal_affairs/legal_cooperation/police_and_internal_security/documents/Rec(2001)10_ENG4831-7)
- Transparency International (www.transparency.org)
- Trust in Government – Ethics Measures in OECD countries; OECD 2000
- The Interpol Global Standards to Combat Corruption in Police Forces/Services (undated);
- Transparency International Annual Surveys – the Corruption Perception Index;
- Human Rights Watch (www.hrw.org)
- Council of Europe (www.coe.int)

See also

- Council of Europe Criminal Law Convention on Corruption
- InterAmerican Convention on Corruption
- OECD Convention on Corruption of Public Officials

POST CONFLICT

- www.stimson.org/fopo/pdf/UNPOL_Readings_Aug_10_workshop.pdf (Background Reading on Post-Conflict Policing)

OTHER USEFUL SOURCES

- Policy and regulations promulgated by the policing agency, internal training manuals.
- Peter Villiers (1997) “Better Police Ethics”, Kogan Page
- Rob Adlam and Peter Villiers (2004) “Police a Just, Safe and Tolerant Society: An International Model of Policing” Waterside Press
- Neyroud, P and Beckley, A (2001) “Policing, Ethics and Human Rights” Willan Publishing

NATIONAL

- Constitution, including bills of rights;
- Police Law or Act;
- Code of Criminal Procedure
- Criminal Code
- National Police Strategy
- Annual Police Reports
- Police Inspectorate or Oversight Body Reports
- Non-Governmental Organisation Report
- Donor Country Reports

¹¹ Before the Police and Criminal Evidence Act (1984) introduced strict rules on the treatment and interviewing of suspects in England and Wales, convictions based on confessions and admissions exceeded 60% of all convictions. Afterwards it dropped to between 40% and 50% G Gudjonsson, G (1992) “The Psychology of Interrogations, Confessions and Testimony”, John Wiley & Sons,p81

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	<ul style="list-style-type: none"> Ministry of Interior Reports Ministry of Justice Reports Ministerial Website National and local crime statistics NGO Reports UN Regional & Country Analyses 	<ul style="list-style-type: none"> Any National Office for Statistics 	
2.2	RISK FACTORS	<ul style="list-style-type: none"> Employment terms and conditions of police staff Employment tribunals involving police cases Hearings on staff grievances www.transparency.org Amnesty International 	<ul style="list-style-type: none"> Chief of police Representative police staff association 	
3.1	LEGAL AND REGULATORY FRAMEWORK/ GENERAL	<ul style="list-style-type: none"> Constitution (Bill of Rights); Police & law enforcement statutes; Draft Model Police Act; Draft Model Code of Criminal Procedure; Draft Model Criminal Code; Ministerial instructions; Other Police legislation for comparison Ministry websites 	<ul style="list-style-type: none"> Government Minister responsible for Justice and/or Internal Affairs; Senior civil servant from a judicial/legislative drafting government department; Local Representative of Independent Human Rights/Civil Liberty/Anti Corruption groups; Chair of Police supervisory body; Chief of police Senior police officers & staff; State prosecutors Representative from Anti-Corruption office or Commission Local defence lawyers 	
3.2	POLICE POWERS	<ul style="list-style-type: none"> Codes of conduct Codes on criminal procedures Peacekeepers Terms of engagement Cases where police have been sued for use of excessive force www.interpol.org 	<ul style="list-style-type: none"> Police Chief and officers generally, Office commanding peacekeeping contingent 	
3.3	POLICE CODE OF CONDUCT	<ul style="list-style-type: none"> Codes of Conduct; Register of gifts 	<ul style="list-style-type: none"> Police Officers Prosecutors Independent monitoring committees 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
3.4	MONITORING AND SUPERVISION	<ul style="list-style-type: none"> National policing plan or strategy Anti-corruption strategy Anti-corruption commission Interpol's Global Standards to combat corruption in police forces UN Convention on Corruption 	<ul style="list-style-type: none"> Member of any anti-corruption commission 	
4.1	MAINTAINING INSTITUTIONAL INTEGRITY GENERAL	<ul style="list-style-type: none"> Ministries of Interior & Justice; Any strategy on police integrity and corruption Police policy manual Internal police inspection reports; Police annual performance reports. Inspection reports by external organisation(s); Any reports from Police Complaints body; 	<ul style="list-style-type: none"> Government Minister responsible for the police; Senior civil servants; Police Chief; Senior police staff; Local police commander Rank and file police staff; Independent human rights/civil liberty/anti-corruption groups; 	
4.1.1	MONITORING MANAGEMENT AND ADMINISTRATION	<ul style="list-style-type: none"> Reports or minutes from any parliamentary oversight committee Inspection reports by police inspectorate or oversight body; 	<ul style="list-style-type: none"> Members of any police inspectorate Members of parliament Representatives of Police board or oversight committee; 	
4.1.2	PROCUREMENT	<ul style="list-style-type: none"> Financial reports or statements Financial guidelines Tendering and procurement standards 	<ul style="list-style-type: none"> Police Chief Local police commanders Head of administration for procurement issues or financial controller; 	
4.2	HUMAN RESOURCES	<ul style="list-style-type: none"> Staff Regulations Minutes of staff association meetings 	<ul style="list-style-type: none"> Chief of Police Head of Human Resources Representative of police staff association; 	
4.2.1	RECRUITMENT	<ul style="list-style-type: none"> Job descriptions Selection procedure materials Any selection panel score-sheets 	<ul style="list-style-type: none"> Head of Human Resources Police staff generally 	
4.2.2	CAREER DEVELOPMENT	<ul style="list-style-type: none"> Policy documents Any Personal development plans 	<ul style="list-style-type: none"> Head of Human Resource 	
4.2.3	TRAINING	<ul style="list-style-type: none"> Training manuals & material Visit to police academy 	<ul style="list-style-type: none"> Head of Human Resources Head of police training department Head of police academy Trainers Police students & recruits 	
5.1	LEADERSHIP	<ul style="list-style-type: none"> Policies, messages or articles written by senior officers 	<ul style="list-style-type: none"> Chief of police Senior officers Supervisors 	

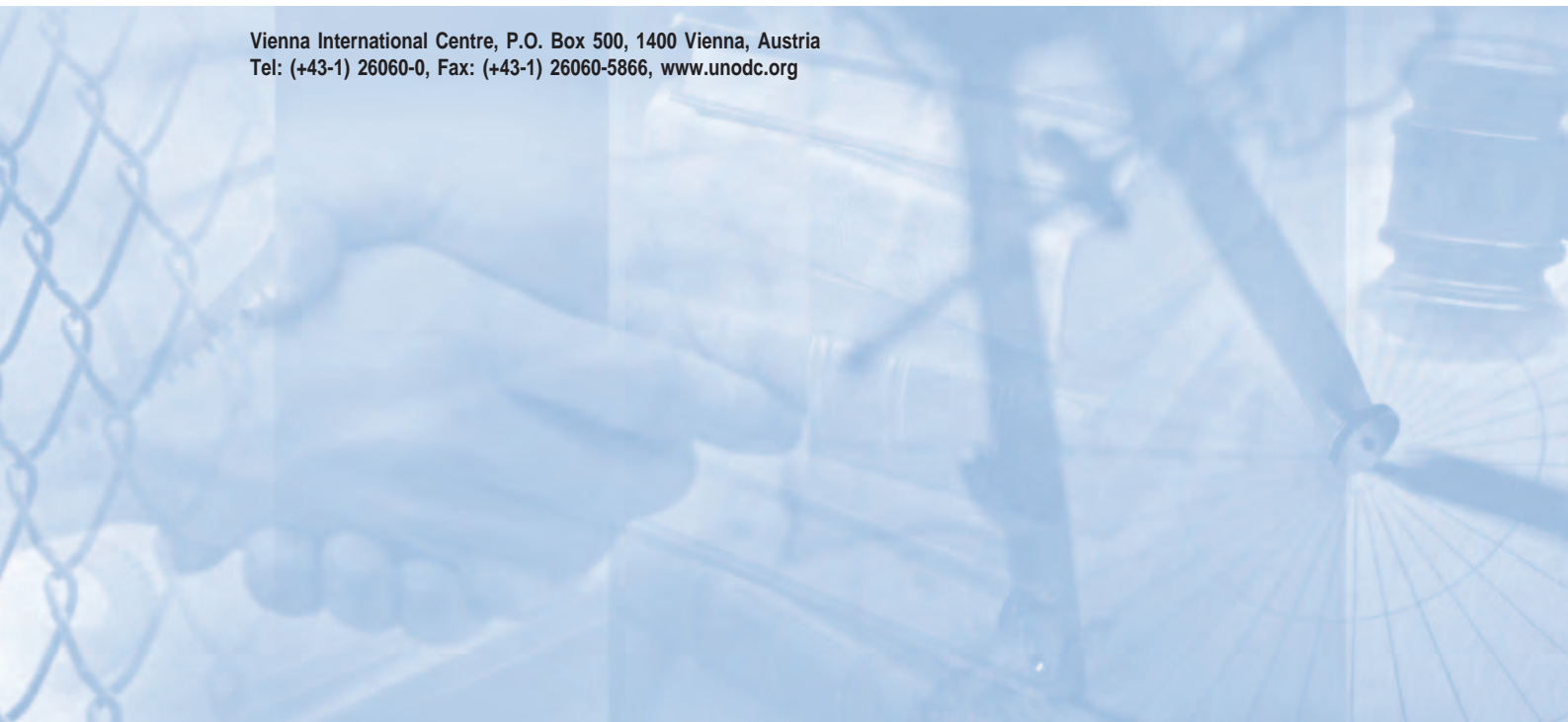
	TOPIC	SOURCES	CONTACTS	COMPLETED
5.2	MONITORING COMPLAINTS AND POLICE MISCONDUCT	<ul style="list-style-type: none"> Files of complaints made Inspection or evaluation reports on integrity 	<ul style="list-style-type: none"> Supervisor of independent anti-corruption agency; Head of police complaints and discipline/professional standards; Investigator for police complaints Defence lawyers Community leaders & monitoring groups Head of police complaints and discipline; Investigator for police complaints Defence lawyers Community leaders & monitoring groups 	
5.3	PHYSICAL ABUSE	<ul style="list-style-type: none"> Custody records Prisoners' medical reports Complaints files Claims against the police Media reports 	<ul style="list-style-type: none"> Local police commander Any medical doctor attending police stations Head of complaints Local officer who receives and record complaints Local monitoring group or community leaders Journalists 	
5.4	PRISONER TREATMENT	<ul style="list-style-type: none"> Visit to custody area Manuals of Guidance on prisoner detention; Custody records Reports of any independent cell visitor committee 	<ul style="list-style-type: none"> Supervisor/gaoler of the cell/detention area; Prisoners Local defence lawyers 	
5.5	EVIDENCE	<ul style="list-style-type: none"> Codes on criminal procedure Training manuals and guidelines on how to deal with evidence Records of 'failed' court cases Notes made by police about incidents or their notebooks 	<ul style="list-style-type: none"> Supervisor of police notebooks Prosecutors 	
5.6	PROPERTY	<ul style="list-style-type: none"> Visit to secure property room Policy and Procedures on handling property Search & Seizure logs Logs of entry and access to secure property room Procedures on contraband destruction Lost and found property records Stocks of evidence bags or similar Property lists and filing system 	<ul style="list-style-type: none"> Local staff in charge of secure property room; 	
5.7	INFORMANTS	<ul style="list-style-type: none"> Informant handling manual, policy or guidelines; Reports of information supplied; Informant payment procedures. 	<ul style="list-style-type: none"> Officer in charge of informant coordination; Investigators; Prosecutors; Person who audits informant payments 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
5.8	CRIMINAL BEHAVIOUR	<ul style="list-style-type: none"> • Cases where police have been prosecuted • Complaints files • Copies of financial disclosure statements • Polygraph records • Media reports 	<ul style="list-style-type: none"> • Police Chief • Local Police Commander • Prosecutor • Police complaints investigators • Representative of Police Staff Association • Polygraphs operators 	
5.9	UNAUTHORISED DISCLOSURE OF INFORMATION	<ul style="list-style-type: none"> • Information security guidelines • Logs of access to confidential data • Security on computer terminals 	<ul style="list-style-type: none"> • Police chief information officer • Information security officers • Police staff 	
5.10	EXTORTION	<ul style="list-style-type: none"> • Policy on receiving benefits from the community • Media reports 	<ul style="list-style-type: none"> • Local community business people 	
6.1	PARTNERSHIPS	<ul style="list-style-type: none"> • Written protocols or instructions concerning interagency working; • Local policing plan; • Notes (or minutes) of meetings between the police and local consultative committees, or other members of the public; • International and Regional organisations; • Notes (or minutes) of meetings with other 'public' agencies such as health, welfare and fire service • Consultative or informal meetings with the local community; • Public brochures and literature; • Local media/press reports • Site Visits • Anonymous police hotline information; • Media reports 	<ul style="list-style-type: none"> • Local police commander; • Supervisory officers at police stations; • Patrol officers, including 'community' officers (where they exist); • Representatives of consultative groups; • Representatives of the local Council or municipal authorities (the Mayor, for example); • Local community representatives; (e.g. Chamber of Commerce) • Members of the public; • Local representatives of other international initiatives (particularly foreign law enforcement liaison officers). • Local newspaper editor, journalists or media representative; 	
6.2	DONOR COORDINATION	<ul style="list-style-type: none"> • Internet Websites • Programme and project documents; • Project terms of reference; • Public brochures and literature; • Memoranda of Understanding with international community, organisations or donor countries (e.g. UN, EU, ASEAN, Interpol etc) 	<ul style="list-style-type: none"> • Representatives of relevant international or regional organisations working in the country; • Embassies/Ministries for donor activity. • Programme and project managers for international initiatives • Local UN representative • Local representatives of other international/regional organisations • Embassies (especially foreign law enforcement liaison officers). 	



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3

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UNITED NATIONS
New York, 2006

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This publication has not been formally edited.

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1. INTRODUCTION TO THE ISSUE

A fair and effective criminal justice system, an integral part of which is crime investigation builds public confidence and encourages respect for law and order. In essence, crime investigation is the process by which the perpetrator of a crime, or intended crime, is identified through the gathering of facts (or evidence) – although it may also involve an assessment of whether a crime has been committed in the first place. Investigation can be reactive, i.e. applied to crimes that have already taken place, or proactive, i.e. targeting a particular criminal or forestalling a criminal activity planned for the future.

There are two basic approaches to managing crime investigation. In some, typified by jurisdictions with a civil law tradition, the responsibility for an investigation is given to a prosecutor or judicial officer, such as a *juge d'instruction* or “investigating judge”. Where this is the case, investigators work under the instruction and management of the prosecutor and/or investigating judge and, indeed, there may even be a special law enforcement agency designated as “judicial police”. In the second approach, often found in jurisdictions with a common law tradition, investigations are conducted by the police more or less independently of prosecutors until the case, and the charged suspect, is handed over for prosecution in the courts. There are, however many variations within both basic systems. For example, in many common law jurisdictions, prosecutors work closely with police investigators for at least some types of crimes. No matter what the system, basic tenets remain the same: identifying who committed the criminal act and gathering sufficient evidence to ensure a conviction.

In many civil law models, there are often two phases described in the investigative process: the pre-investigation or intelligence phase and the investigation itself. Usually the police will be wholly responsible for the pre-investigation (which seeks to identify whether an offence has actually been committed and to gather basic information) after which a prosecutor will assume control. In the come countries, including those based on a common law model, there is no such phased approach; with the term “investigation” applying to the entire process beginning the moment in which a crime first comes to notice.

What constitutes an offence or crime can vary. Many countries categorise minor offences, such as speeding or using public transport without a ticket, as misdemeanours, with either a separate code or portion of the code devoted to these offences. Other countries consider these to be “administrative” in nature and they do not form part of the criminal code. Such offences are not then subject to criminal investigation, nor do they fall within the competence of a prosecutor, but are dealt with in lower level administrative tribunals. However, generally speaking, the definition of what constitutes a serious crime will be much the same, and recognisable, from country to country even though the specific detail may be different. For instance, the term “burglary” in one country may only refer to the entering of a building with an intent to steal. In others, the term may also include an intent to cause criminal damage or to commit rape, but the illegal act of entering of a premises with intent to commit a crime is common to all jurisdictions.

A further issue that should be considered is that limitations in time for which a person may be charged for a crime may apply; this sometimes called the “statute of limitations”. In some countries, even some very serious offences may not be prosecuted once the time limit set by law (i.e. the “limitation”) has expired. In other countries, however, especially for serious crimes, there may be no time limit set by law at all; a person may be charged years after the commission of a crime, where new evidence may come to light.

Whatever system of criminal investigation has developed or been adopted, there is a universal value that must be preserved in any criminal justice system: the premise that suspects are innocent until proven guilty. Investigators need to be certain that their suspicions are based on an objective evaluation of the facts and that they have not twisted the facts to suit their suspicions.

To conduct criminal investigations effectively, an investigator will need considerable powers. These include the power to:

- Detain a suspect;
- Seize property as evidence;
- Search for evidence, both in premises and on persons;
- Interview suspects (and, in doing so, question their honesty and character, which in some countries may otherwise be considered to be an act of defamation, a criminal offence);
- Require samples, such as fingerprints and DNA, and to take photographs;
- Run identification procedures;
- Interview witnesses, including victims;
- Ask members of the public questions;
- Keep and maintain personal and confidential information;
- Use technical and personal surveillance and use other intrusive means to observe persons;
- Work undercover (i.e. pretend to be someone else) or use informants;
- Protect and relocate witnesses;
- Undertake otherwise illegal activity, such as possess illegal substances, carry weapons, force entry to property, or monitor illegal internet traffic.

Increasingly an investigator also needs to be able to call on international assistance in order to track the activities of criminals across internationally borders. There are normally international organisations and bi-lateral agreements in existence that can offer support, but such facilities need to be accessible and viable for any investigator working at a local level.

In addition to developing an understanding of the strengths and weaknesses of a state's approach to the investigation of crime by police, the assessor should be able to identify opportunities for reform and development. Technical assistance in the area of police investigation in the context of a broader strategic framework may include work that will enhance the following:

- Drafting or amendment; implementation and monitoring of relevant legal framework, including Codes of Conduct and/or Criminal Procedure;
- Development of forensic science capacity;
- Enhancement of investigation skills and standards, especially in specialist areas, such as financial investigation, cyber-crime, interviewing techniques;
- Equipment and processes for proper and secure handling of evidence and exhibits;
- Enhancement of identification procedures, including use of photo-fit, photo identification, and identification parades;
- Rules, guidelines and training on use of covert surveillance and informants;
- Transmission of good practice in interviewing suspects; relevant guidelines and training materials.

2. OVERVIEW

2.1 STATISTICS

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 policing functions and performance as well as the overall capacity of the criminal justice system of the country being assessed.

The availability of statistics related to policing will vary greatly. Statistics will also be variable in their reliability and integrity.

In terms of crime statistics, this risk will be particularly high. Governments are naturally reluctant to expose themselves to criticism over law and order issues and may well seek to ameliorate the impact of crime figures by presenting them in a favourable light.

Normally police crime figures will be based on recorded crime, but the phenomenon of the underreporting of crime is well documented, although some governments attempt to sample and assess crime figures through independent research and can end up with different conclusions¹. Where a crime report is required, for instance, in order to claim on insurance, the tendency to report is higher than in neighbourhoods where crime is endemic and a victim “knows” that the police cannot “do” anything. Victims may also be reluctant to attract attention to a crime for a number of reasons. For instance, a financial institution may not wish to report a fraud because it could damage customer confidence, or the victim of a sexual assault may be frightened of the way in which he or she will be treated by the police or what friends and family will say if they find out.

Crime figures, therefore, often carry inherent inaccuracies. They are directly influenced by the readiness with which someone will report crime. They are also open to manipulation or misclassification (for instance, to what extent is damage to a house door to be categorised as criminal damage instead of an attempted burglary or housebreaking? How often is a mobile phone reported stolen, when in fact it was only lost?).

Often the person classifying the offence in a crime report is faced with a number of alternatives because the given facts can be interpreted in a number of different ways or because a series of distinct offences appear to be related to the same incident. Where a police commander is being challenged on his or her performance against the crime figures, the choice of a lesser offence for the crime report may end up being the more comfortable option.

The clear-up rate is the ratio between crime committed and crime considered solved or disposed of in some way. Clear up rates have traditionally been used as a measure of success for police services. Unfortunately, the statistics can be based on such a variety of criteria that making international comparisons is very difficult. In the first place, how is crime measured? Is it reported crime, an estimate of actual crime, or is it what investigators say it is? In the second place, when is a crime considered solved or cleared up? Does it happen when a suspect has been found guilty? Or when a suspect has been tried in court (a so-called “judicial disposal”)? Or when a convicted person has asked for a number of other offences to be taken into consideration when he or she is being sentenced? What happens if someone is found not guilty, but there are no clues implicating anyone else? In some countries, crimes have been counted as “cleared up” when an investigator decides there are no further leads to follow. Consequently, the capacity for massaging the figures is great.

Statistics on prisoners in custody are also difficult to interpret. Long periods between charge and court can mean an inefficient investigation, but can also indicate an over-burdened court system. Cases that eventually reach court only for the prosecution to offer no evidence can be the result of poor police work or a change of heart from a key witness or even because there has been a failure in notifying witnesses to attend.

Because of these types of issues, statistics provided by a government agency should, where possible, be validated against statistics from other sources, such as non-governmental organisations or international bodies.

- A. Are statistics compiled on crimes committed in the country concerned? What are the statistics actually measuring? Do they measure different types of offence? Are they cross-referenced for seriousness? What is the quoted clear-up/closure rate? What constitutes a “clear-up” (case closure)? Does this reflect how many of the crimes are actually solved or detected? How many of the cases resulted in conviction? Does the claimed success rate appear realistic? How does it compare to other countries with a similar demographic profile?

An analysis of the most significant types of crime reported (such as murder, serious assaults, robbery, burglary and drug supply), compared over five years, will suggest the types of crime most prevalent in the country concerned.

The UN Survey of Crime Trends and the Operation of Criminal Justice Systems' (www.unodc.org/unodc/crime_cicp_survey_seventh) is a valuable source of relevant comparative data. It has information on crime trends in 65 countries and can be used to compare the situation in countries of a similar size of population or profile to the country under review.

It is important not just to look at detection rates in isolation, but also to consider whether the number of criminal offences themselves have reduced over time.

- B. Are there figures available detailing and analysing the offences against solved crimes according to different cities, districts and regions? Are there any clear disparities or unusual examples of success or failure? Why?
- C. Are there figures available detailing performance in reducing and detecting crime across different policing agencies and/or specialist investigation teams? Are there any apparent anomalies or disparities? Why?
- D. How many court cases resulted in acquittals? Are there figures on how many of the acquittals were due to failures in police procedure?
- E. How many police are involved in crime investigations? What percentage is this of the entire police service personnel?
- F. On average, how many cases are investigators dealing with at any one time (i.e. the caseload)? What is the average "clear-up" per officer? How many of these cases reach court or have another form of formal disposal?

3. LEGAL AND REGULATORY FRAMEWORK

A well-developed legal framework that clearly stipulates and defines the roles and responsibilities involved in crime investigation is a pre-requisite for a criminal justice system that functions properly. Investigation is the gateway to the courts and unless it performs adequately, the quality of subsequent justice will be poor.

As mentioned above, there are two basic approaches to managing investigations. One is prosecutor/judge-led whilst the other is police-led. In both cases the techniques used will be essentially the same and both systems will include checks and balances as safeguards against abuse, but in one, key decisions will be referred to a prosecutor or judge, whilst in the other those decisions will be left mostly to the police hierarchy.

Because national parliaments tend to be overburdened with conflicting priorities, it is often the case that laws dealing with emerging issues in criminal justice are subject to delay. New initiatives may be prevented through the lack of political support and/or funding where they are considered in other countries to be a key component of the crime strategy (for instance, computer crime, evidential use of intercept (e.g. "wire-tap") material, or DNA databases). Ideas may also be rejected because of political realities on the ground (e.g. allowing "hot pursuit" across national frontiers is only feasible where the two countries concerned are involved in a dialogue at the political level). Conversely, governments may introduce, for political motives, legislation that is then impractical to implement because of the lack of resources.

Criminal offences will be described in criminal codes or statutes or possibly, less frequently, as a result of custom or "common law". In terms of assessing crime investigation these descriptions are only important insofar as they map the points for each offence that need to be proved in order to secure a conviction (an investigator (or prosecutor, or investigating judge) needs to ensure that each of them have been covered by evidence in the case file).

However, the assessor should also be aware that, sometimes, certain behaviour that would not be considered a crime elsewhere can be criminalised as a result of specific political, cultural and historical context. Such offences may include, for example, the unauthorised sale of tickets to a major soccer match; the denial of historical evidence of genocide; or insulting the memory and reputation of a country's national hero.

The regulatory framework for investigators will operate on three main levels: structure of the investigating services, national criminal procedure, and the powers available to investigators. The first will define who does what, the second what needs to be done, whilst the third will depict how far an investigator can go to do what must be done.

3.1 DEFINING CRIME

- A. Is there a code or series of laws or statutes that define and describe the behaviour and acts considered to be criminal? Do criminal justice professionals (and in particular the police) believe that the list is complete or are there important omissions? Do crime trends/statistics reveal that there are certain acts that occur on a regular basis but are not provided for by law?
- B. Has the Rome Statute of the International Criminal Court been signed and ratified? If so, has it been incorporated through domestic legislation? See, for example, pertinent laws in Canada and New Zealand. Is there any other domestic legislation concerning the definition of international crimes?
- C. Has the United Nations Convention on Transnational Organised Crime (UNTOC) been signed and ratified? Have its provisions been introduced into national law? Is any national definition of organised crime compatible with UNTOC? If not, where are the differences? What is the status of the additional protocols on trafficking persons, smuggling, firearms trafficking, etc.?
- D. Are there laws against money laundering? Do they provide for the seizure of assets, proceeds, and instrumentalities of crime? Does confiscation and seizure depend on conviction for another offence, i.e. so-called predicate offences, from which the proceeds have been acquired? Who benefits from confiscated assets?

- E. Is there a law against terrorism and terrorist acts? How is it defined? Is there a law of criminal association? How is that defined? Are criminal or terrorist groups defined and/or listed by name?
- F. Is there a federal political structure in place? Is there a federal system of criminal law? What brings a crime into the federal jurisdiction? Are there any crimes that are included in federal statutes, but not in local province or state law?

In some jurisdictions, the use of more intrusive police powers will depend on the seriousness of an offence. Seriousness, for instance, may be defined by reference to the potential penalties for that offence or because of other aggravating features. However, the level of seriousness can be clearly affected by context. For instance, the theft of a bicycle from someone who relies on it to earn his or her living is more serious than the theft of a Ferrari from a billionaire (For this reason some countries have laws that allow victims to make representations to the court before sentence).

- G. Does the law define a special category of crimes or give a list of aggravating features for ordinary crimes that allow the use of more intrusive investigation methods? Is there a definition of “seriousness” in terms of crime?
- H. Has the Government identified any priority crime areas? On what basis have these areas been chosen? Does their list reflect those crimes that cause the most harm? How do they know? Does this list create an imbalance in resource allocation? Are there sufficient resources to deal with other crimes?
- I. Is there a code on misdemeanours or are minor offences described in an administrative code?

3.2 LAWS ON CRIME INVESTIGATION

- A. Does a code, law, or other regulation establish the way in which criminal investigation should be conducted? How are the powers of investigators described in law? Is there a specific statute or are they described in a Criminal Procedure Law or Police Act? By virtue of these laws or regulations is an investigator able to do the following things:
- Arrest and detain a suspect?
 - Seize property as evidence?
 - Search for evidence (both in premises and on persons)?
 - Interview suspects (and, in doing so, question their honesty and character, which in some countries may otherwise be considered to be an act of defamation, a criminal offence)?
 - Require samples (such as fingerprints and DNA) and to take photographs?
 - Run identification procedures?
 - Interview witnesses?
 - Ask members of the public questions?
 - Keep and maintain personal and confidential information?
 - Use technical and personal surveillance and use other intrusive means to observe persons?
 - Work undercover (i.e. pretend to be someone else) or use informants?
 - Protect and relocate witnesses?
 - Undertake otherwise illegal activity (such as possess illegal substances, carry weapons, force entry to property, or monitor illegal internet traffic)?
- B. What legal requirements are there, if any, restricting police powers to search private premises or a person? Is judicial/supervisory authorisation or voluntary permission required?

- C. Are members of the public under a legal obligation to report a criminal offence to the police? Are police obliged to investigate a crime once a report has been made? Are witnesses to an offence obliged in law to provide a statement to the police?
- D. What are the legal pre-conditions for the use of intrusive powers such as the interception of communications (including telephone, mail and e-mail)? Are there time limits for the use of such techniques? Is there independent oversight? Please see further the section on covert surveillance below.
- E. Is there specific legislation governing the use of informants?
- F. Is there legislation permitting the storage and retention of data for law enforcement purposes? Does it stipulate how that data should be stored and managed, particularly with regard to the retention of personal data, for example, criminal records, fingerprints, DNA, etc.? Does it set conditions on to whom that information may be forwarded?
- G. Are there time limits on the length of time a suspect may be detained before charge? Does this change depend on the alleged offence under investigation? Are there differences for juveniles or vulnerable victims? Is a suspect entitled to free and independent legal advice whilst in custody? Can a suspect be interviewed without legal representation (if the suspect consents)? How is this consent documented? Is there a code of practice on how interviews should be conducted?
- H. Is there special legislation concerning the investigation of crimes with international components?

4. INVESTIGATORS

4.1 INVESTIGATIVE AGENCIES / STAFF

- A. Who has responsibility for managing a criminal investigation? A prosecutor, an investigating judge, or a police officer? Is there a difference perceived between the pre-investigation (or “intelligence”) phase of a case and the investigation phase? If so, who manages the pre-investigation? How are investigations assigned to investigators? Are different categories of crime dealt with by specialists? Are there regular coordination meetings at a senior level between prosecutors and the police? Do case conferences take place? Who attends and chairs such meetings?
- B. Which organisations, agencies, or bodies are involved in criminal investigation? Is there a specialist crime police or do all police have an investigative capacity? Are they sub-divided according to specialist crime areas? Is there a judicial police? Is criminal investigation a centralised function, i.e. attached and managed by headquarters? Are there special units or departments dealing with organised crime? Or is there a regional and/or local capacity? If there is a federal system, how does the federal system of investigators complement that at the local (state) or provincial level? Are there non-police departments of the government that also have investigative powers, such as tax authorities, or an environmental protection agency? Do the rules on criminal procedure also apply to them?
- C. Is state security a responsibility of a police agency or is it a separate function? If it is separate, are investigations governed by the same rules as for police?
- D. Where peacekeepers are present, what is the relationship between the military and the civil structure? Do the military have any responsibility for investigating crime? Does

the law provide for an official initiation of investigation such as a written decision made by the prosecutor to officially open the investigation? If yes, why? What kinds of crime do they investigate?

- E. Is there a forensic science service? Does it have local laboratories accessible to all investigators or is it centralised? Do the laboratories submit to any system of accreditation? To what standards do they calibrate their instruments? Have they received advice or assistance from the UNODC Laboratory and Scientific Section? Are the forensic laboratories independent of the police? Do they undertake forensic examination for colleagues in neighbouring countries?
- F. Can the forensic science service or equivalent process fingerprints and DNA? Can they process drug samples? Can they process ballistics? Can they process chemical analysis? Are they able to process video and audio samples or evidence? Is there a facility for analysing computer hard disks or mobile telephone technology? Do members of the forensic science service think that they have the necessary equipment and facilities to undertake their role? Is there any shortfall in capacity to meet existing demand?
- G. Do forensic pathologists (medical examiners) work as part of the forensic science service or are they in a separate management structure? Are post mortem (autopsy) examinations conducted as part of a law enforcement process or are they civil procedures? What is the relationship between those leading an investigation and a forensic pathologist (medical examiner)?

4.2 SELECTION AND TRAINING

Successful investigators require a particular skill set and proper training is essential to provide an investigator both with knowledge of the relevant issues and an awareness of the special techniques involved.

In recognition of the fact that some types of crime require a deeper knowledge and understanding than others, for instance, white collar fraud or counterfeiting, most countries will have specially selected and trained experts who will take responsibility for cases in their area of expertise.

There are multiple options for training delivery available (and this is an area in which the UN can provide active support, expertise and mentoring). Training can take place in the workplace (e.g. through an apprenticeship type arrangement or mentoring), via interactive computer-based systems, or delivered through formal classroom instruction. Training strategies need to ensure that the right people are trained and that those who receive special (and often expensive) courses are likely to remain in post long enough to ensure adequate return on the training investment.

All training needs to be supplemented with training manuals, standard operating policy and procedures and *aides mémoire* that should be available for reference and consultation as and when the need arises.

As the laws themselves change, and because criminals continually seek out new methods to commit their crime, it is important that knowledge and skills are refreshed and enhanced at regular intervals with additional training.

- A. Are investigators recruited directly into the crime investigation department or are they selected from the ranks of non-specialised police officers? How are they selected? What qualifications does someone applying to be an investigator require? Are they selected on the basis of an objective assessment and selection procedure? Are there formal examinations or other assessments? Is there an equal opportunity (non-discrimination) policy in force? Do investigating staff appear to reflect the gender and ethnicity profile of the community? Are officers positively vetted for integrity?
- B. How are investigators selected for promotion or specialist postings? Are promotion and specialist vacancies openly advertised? Is this on the basis of an objective assessment and unbiased selection procedure? Who validates this procedure?

- C. How long does the initial training for an investigator last? What does it include? Are there training modules on:
- Laws and guidelines related to investigatory powers?
 - Crime scene preservation?
 - Forensic techniques?
 - Searching?
 - Interviewing?
 - Preparing case files?
 - Dealing with vulnerable people (such as victims and witnesses as well as suspects)?
 - Diversity?
 - Cultural competence?
- D. Are there comprehensive training manuals in these areas available for guidance? Are junior investigators mentored by an experienced officer? Is there refresher training? Are officers in specialist units provided with dedicated training for their specialist roles?

4.3 INVESTIGATIVE FACILITIES / EQUIPMENT

Investigators need to have certain basic facilities with which to work, but these must be reviewed in the light of the local socio-economic conditions. To obtain a representative view, an assessor should visit at least two (and preferably more) different investigators' offices in different locations and settings with contrasting levels of prosperity.

- A. Do investigators have office accommodation allocated to them? What is it like? Is the office furniture sufficient and serviceable? Is there lighting? Is the supervisor or manager of the investigators located in that accommodation or nearby? If prosecutors lead the investigation, are they co-located or do they have easy access to the investigators?
- B. Do the offices have lockable cabinets or cupboards in which confidential paperwork and equipment can be safely stored? Is access to these offices open to the public? Are there details of current operations and targets openly displayed? Are there computers? Are there typewriters? Are the computers used for word processing or are they for specialist databases or police information systems? Are there sufficient computers or typewriters for the number of investigators? Is there Internet access? Is there a steady and reliable source of electricity? Is there a back-up generator? Does the generator work? Is there sufficient fuel for it?
- C. Do investigators have access to unmarked vehicles? Is there sufficient fuel available? Are they equipped with radios or other communications?
- D. Are there suitable facilities nearby where victims can be medically assessed/examined? Are medical personnel involved trained and equipped to gather the necessary medical evidence, especially for victims of sexual assault or rape?

5. INVESTIGATING CRIME

Criminal investigation can be a complicated process and its management may be deeply complex. (A basic diagram of a generic reactive investigation is annexed to this document.) The basic components of crime investigation are reproduced in the subsection below, but this list is not exhaustive.

5.1 REPORTED CRIMES

As soon as a crime is reported, someone should review (or “screen”) the allegation together with any supporting facts and allocate sufficient resources to deal with it. This decision can be made more difficult where there are competing priorities and only limited resources to deal with them.

The commission of a crime can come to police notice in a number of different ways. Police may discover or witness an offence for themselves during the course of patrol or routine enquiries, or they may be alerted by the activation of an automatic system or alarm, but, usually, a member of the public (either the victim or another witness) will telephone or attend a police station to make a report.

The initial reporting of the crime and the action taken immediately thereafter are considered extremely important. Investigators often talk about the “golden hour” following an offence during which evidence is still fresh, forensic samples have not been contaminated, witnesses are still in the area and, often, so is the suspect.

- A. What happens when an allegation or complaint about a crime is made? Is it recorded immediately? By whom? Is there a set format for recording initial crime reports? Is it made on paper or on a computer? How is immediate action identified and managed? How does the person initially recording the crime report escalate the issue? Who has to be notified about the crime? Is it a senior officer and/or a prosecutor?
- B. What the time limits to notify a prosecutor, if any? In states where the prosecutor supervises the investigation, what are the powers of the police to act to investigate the offence within this time without prosecutorial direction, e.g. to interview witnesses at the scene of the crime? This should all be provided for in the criminal procedure code.

5.2 PROACTIVE INVESTIGATIONS

In recent years, a greater emphasis has been placed on proactive rather than reactive policing strategies. At its heart, proactive policing seeks to target prominent and emerging crime threats to reduce the harm they cause rather than respond to crimes after they have been committed and as when they are reported. In such cases, the methodologies for investigators remain the same, but the crimes to which they are applied are identified through research. Typically, a prominent crime figure will be the focus of a full analysis profile and then subjected to a series of initiatives until the threat caused by him or her is negated, for instance, because he or she has been brought to justice or because the means by which he or she commits crime have been removed. This strategy is particularly useful against organised crime and an early example can be found in the celebrated “Untouchables” investigation of Al Capone. The Mafia crime lord was completely insulated from his main criminal enterprise, but proved vulnerable in terms of tax evasion.

- A. Are teams of investigators deployed to investigate pre-identified targets (i.e. prominent criminals) rather than in response to crime reports? Do they use analysts and profiling to build a case against the target? If yes, how are targets chosen? How many targeted operations have been conducted? How many targeted operations have been successful? Where they have been unsuccessful, do the investigators involved have a theory as to why?
- B. Is there a local criminal intelligence cell or unit that collects, collates, and analyses information related to crime and criminals? Does it produce analyses and profiles on the criminal and crime problems being targeted? How is this used by investigators? Do investigators identify new targets or subjects for operations through such analysis?

5.3 INFORMATION / EVIDENCE GATHERING

The presumption of innocence requires that the person charged be considered innocent until the prosecutor, who has the burden of proving the guilt of the accused, proves that the person committed the criminal offence “beyond a reasonable doubt” (the standard of proof). In some systems, the standard of proof is different. It may be that the prosecutor has the burden of proving the accused committed the criminal offence to the “intimate conviction” (the intimate conviction) of the judge. Thus, in a system that operates rationally, the outcome of a criminal case will depend on the quality and the weight of the evidence. Evidence is, in simple terms, the pieces of information that, when taken together indicate whether a crime was committed and by whom. Where there is sufficient evidence to convince the trier of fact (judge or juror or assessor) that there is no reasonable doubt that the person charged is the person who committed the crime, that then the appropriate verdict is that of guilty. The rules of evidence vary from state to state. In some states, there are free rules of evidence that allow almost all evidence to be considered by the judge in making his or her determination (these rules usually apply when the trier of fact is a judge). Under these systems, the judge may have had access to the evidence before the trial and therefore there is not the same weight attached to “live evidence” of witnesses at trial.

In other legal systems, there are complex rules of evidence that contain both exclusionary rules and also hearsay rules. The former rules seek to remove evidence that was gathered in violation of the rights of the suspect or the accused. For example, as required by Article 15 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, states must ensure that any statement which is established to have been made as a result of torture shall not be invoked in evidence in any proceedings, except where those proceedings are against the person accused of torture. The latter rules on “hearsay” evidence seek to exclude evidence, namely, a statement made outside of court. Many countries with exclusionary rules and rules against hearsay conduct criminal trials by way of jury. That said, given the mixing of different rules from different legal systems, exclusionary rules are being introduced to systems where there is no jury system and the case is adjudicated before a judge. An assessor should enquire into whether a judge or jury determines the guilt of the accused, whether a judge has access to the evidence in advance, whether there is a free system of evidence or whether there are strict hearsay rules. The assessor should also enquire into the existence of exclusionary rules.

The rules of evidence adopted by a justice system may preclude some types of information from being considered by the trier of fact because the evidence’s prejudice to the defendant (and its tendency to bias the trier of fact assessing the evidence) far outweighs its usefulness (probative value). An example of this is a prior criminal record, which may be allowed only where the crime committed is unique in pattern or another narrowly defined exception to the prohibition of the introduction of prior criminal history. Other types of evidence may be precluded because they are considered by some systems to be inherently unreliable, like hearsay (reports by others of what someone has said), though narrowly drawn exceptions to such evidence exist to allow the introduction of some statements like dying declarations, excited utterances, and statement made against one’s own interests.

Hearsay evidence is permissible in other systems, particularly where there is a professional judge, rather than a jury, adjudicating the case. The idea is that the judge is sufficiently competent to weigh the evidence and assign a probative value to it. Such rules do not exist in all countries, but it is important for the assessor to understand the influence of evidentiary rules or lack thereof on the investigative process. In that context, the importance of the thoroughness and care with which an investigator must assemble the information that comprises the evidence to overcome the burden of proof becomes self-evident.

- A. Following a report of crime, who decides whether to attend the scene of the alleged crime? What criteria does he or she apply? Are there statistics on how often a scene of crime is visited? On average, how long after a crime report is the scene of crime attended by general police? On average, how long after a crime report is made does an investigator attend the scene of crime? On average, how long after a crime report has been made does someone attend to examine the scene “forensically”, i.e. scientifically? Is this done by a specialist or by a normal officer? Does the forensic examiner work to the instructions of the person in charge of the investigation?
- B. Are all law enforcement officers, not just investigators, trained in crime scene preservation? Are they trained what to look for and how to protect evidence? Are they aware of potential cross-contamination issues? Are officers supplied with latex gloves or similar? Do they know how to bag, label, and record evidence and exhibits? In

major cases, is an officer designated to ensure continuity and preserve the integrity of evidence and exhibits (sometimes called the chain of evidence)? For further background, please see **POLICING: THE INTEGRITY AND ACCOUNTABILITY OF THE POLICE**.

- C. Is progress in an investigation recorded electronically or in a paper file? Who maintains these records? Are they updated regularly? Are all aspects of an investigation included or only those considered important? What happens to information or reports that the head of the investigation considers irrelevant or unimportant? Does the law require part or all material held by the prosecution to be disclosed to the defence? If so, how is this managed?
- D. Are there special arrangements and facilities in place to support the investigation into cases of:
- Organised crime?
 - Corruption?
 - Cyber-crime or “High-tech” crime (crime committed using computers or over the internet)?
 - Financial fraud and money laundering?
 - Counterfeit currency?
 - Intellectual property and counterfeit goods?
 - Hostage taking and Kidnapping?
 - Rape and sexual assault?
 - Crimes against children?
 - Domestic violence, i.e. violence against spouses, children, or elderly relatives?
 - Terrorism and terrorist acts?
- E. Is the victim kept informed of developments? How and by whom? Is there a victim/witness service unit or staff who work with crime victims and witnesses?

5.4 IDENTIFICATION

The entire investigative process is aimed at identifying the perpetrator of a crime, and a case will be greatly strengthened by good identification evidence. However, the procedures by which a suspect can be identified have to be strictly controlled in order to prevent miscarriages of justice. Suspects may already be known to the victim, in which case identification will not be an issue. More challenging are those situations where the suspect is a stranger to the victim. On these occasions, the suspect will be identified by forensic traces left at the scene, or because they have been seen by the victim or other witness, or because of they have confessed.

Eyewitness testimony can be influenced by many factors and has been found not to be as reliable as once thought. One of the chief difficulties is the way in which a police officer may inadvertently (or even deliberately) seek to influence a witness in their identification. Consequently, a number of practices have developed in order to present eyewitness identification in a form that is more objectively reliable. These include the use of books containing photographs of known criminals (“mug-shots” - often used when there is no known suspect), the use of photographic databases and, of course, the classic identification parade, also known as a line-up. In each of these procedures, care must be taken to ensure that the investigator does not signal a preference or indication as to whom he or she believes is responsible. The images in the photographs shown and those persons standing in a parade must be comparable to the suspect in terms of size, body shape, and ethnicity. A bad identification procedure can lead to unacceptable bias and to all resulting evidence being ruled inadmissible.

A further method for identifying a suspect can involve officers accompanying the victim or witness to the locality of the crime scene shortly after the offence has taken place or at similar times in the following weeks. This is done in the hope that the suspect may still be in the area (or normally frequents it) and that he or she will be picked out by the victim or witness. When a suspect has been identified in this way, any written description taken before the procedure can help to corroborate a positive sighting.

- A. Is a suspect’s description, where available, normally attached to the initial crime report?
- B. Do investigators have ledgers, files, or large books containing photographs of known criminals? How are these books organised? Are they classified according to physical

characteristics? Is there a procedure governing how they should be used? Are the contents updated on a regular basis?

- C. Do investigators have databases containing a number of photographic files that can be shown to a witness? Can these photographs be selected according to pre-set criteria? Is there a procedure governing how the photographs should be shown? Are the contents updated on a regular basis?
- D. Is a photo-fit kit available for making composite images of the suspects or are police artists available? How are such images and pictures used once they have been made?
- E. Are there established procedures in place for holding identification parades? Are the rights of the suspect protected by them? Is the identity of the witness protected? Are witnesses expected to be in the presence of the suspect when making the identification or can it be made, for instance, using CCTV or from behind a screen?
- F. What are the procedures in place concerning unidentified bodies? Which law-enforcement agency is responsible for that task? What equipment is used? Is there international cooperation in conducting such investigation (such as the publication of Interpol's Black Notice)? Do the same procedures apply for Disaster Victim Identification (DVI)? See, Interpol Manual on Disaster Victim Identification, available on Interpol's website at <http://www.interpol.com/Public/DisasterVictim/guide/default.asp>.

5.5 VICTIMS AND WITNESSES

PLEASE SEE ALSO CROSS-CUTTING ISSUES: VICTIMS AND WITNESS for further background.

- A. Are victims entitled to withdraw their allegations? What then happens to the case? Can victims be compelled to proceed? If yes, how often does this happen and in what kinds of cases?
- B. Are witnesses to a crime compelled by law to assist the police? Are witnesses paid expenses for appearing in court? Do they receive other payments? Are their identities concealed from the suspect? Is there a witness protection scheme available? Is there a witness relocation programme in place? How many persons have been relocated?
- C. Is it possible for vulnerable victims and witnesses to give evidence by video link or by way of pre-recorded evidence? If evidence is pre-recorded, does the defence have the right to always be present during the evidence giving in order to exercise the right of the accused to examine the witnesses against him or her?
- D. Are there formal or informal support services for victims and witnesses?

5.6 COVERT TECHNIQUES

Covert surveillance is a particularly intrusive method for collecting evidence. The use of covert surveillance measures involves a careful balancing of a suspect's right to privacy against the need to investigate serious criminality. Provisions on covert surveillance should fully take into account the rights of the suspect. There have been various decisions of international human rights bodies and courts on the permissibility of covert surveillance and the parameters of these measures. Reference should be made to these. An extensive discussion is contained in the commentary to Article 116 of the Model Code of Criminal Procedure (MCCP)(DRAFT, 30 May 2006). In those societies where the authorities exercise forceful control over the populations, the use of these techniques may be indiscriminate. Other systems will require a number of strict safeguards against abuse including the requirement that the offence be serious, that the use of the technique be vital to the case and that essential evidence cannot be secured by less intrusive means. Judicial or independent oversight is common and is required under international human rights law.

- A. Are investigators permitted to use covert investigation techniques including:
- Interception of telecommunications?
 - Interception of email traffic?
 - Interception of post/mail?
 - Use of listening devices?
 - Use of tracking devices?
 - Use of surveillance teams?
 - Use of photographic surveillance?
 - The use of false personal and company identities?
 - The use of informants?
 - Covert search of letters, packages, containers and parcels;
 - Simulated purchase of an item;
 - Simulation of a corruption offence;
 - Controlled delivery.
 - Covert real-time monitoring of financial transactions;
 - Disclosure of financial data. This measure is carried out through obtaining information from a bank or another financial institution on deposits, accounts or transactions.
 - Use of tracking and positioning devices.

See also **MCCP (DRAFT, 30 May 2006)** for a listing of covert measures.

- B. What are the preconditions for their use? Do these techniques require authorisation from a judicial or other independent source? What are the time limits on orders for covert surveillance? Does the law require that those implementing the order report to a judge on a weekly/monthly basis? Is their use monitored by an independent body? How is evidence obtained from these techniques presented in court? What are the arrangements made to destroy covert surveillance material that has not been used in an investigation? Should the person concerned be informed under the law? Can the person have access to the data? Are there rules precluding the covert recording of conversations between a suspect and his or her lawyer (as required under international human rights law)?
- C. Do investigators run undercover “buying” operations in which they pose as criminals? How often is this done? In what kinds of cases is it allowed? Is there a legal concept of entrapment (by which a law enforcement body encourages someone to commit a criminal act)? How does a court deal with such a situation?

5.7 INFORMANTS

Working with informants is a critical area of activity for the police. Anyone can give information to the police, but the term “informant” means someone who does so on a regular or structured basis.

On the one hand, the information provided by informants can be vital (and sometimes the only way) to prevent or solve a crime, but many informants are themselves criminals seeking to exploit the criminal justice system and to subvert police officers. It is, therefore, important to examine the systems employed for using, managing, and supervising informants and any payments made to them. Are the staff recruiting and meeting with informants properly trained? Are detailed records kept? Moreover, is there evidence of a risk assessment being made before they are deployed or their information is used?

Examples of abuse may include informants using police action to remove criminal competition, police using violence to intimidate informants, police using informants to fabricate a case against a suspect and police sharing any reward or payment made to an informant. Police have also been known to invent a “phantom” informant and to sell “information” to the police service gleaned from the media. For this reason, separating the handler from the payment process is desirable. In any case, close personal relationships between handlers and informants need to be discouraged.

For further information on issues associated with managing informants, please see **Section 5.7, POLICING: THE INTEGRITY AND ACCOUNTABILITY OF THE POLICE.**

- A. How are informants managed? Are their details registered in a confidential file? Are the personal details of informants only known to those dealing with them? Is there a senior officer with responsibility for supervision of informant handling? Is there a specialised informant-handling unit? Is there a special training in the use of informants? Are all investigators permitted to run informants or is it only permitted to specially selected officers?
- B. Is the identity of informants protected when giving testimony in court? How? Is it possible to place informant's evidence before the court without the informant giving evidence in person?
- C. How are informants paid? Are they paid by results or depending on the amount of information they provide? Is the investigator handling the informant involved in making the payment or is it done separately?

5.8 DATABASES

Information is the mainstay of crime investigation and although many countries will not have introduced computer databases, similar results can still be achieved through careful and accurate filing of paper files or index cards. The difference will normally be seen in the physical size of the file, the skills of the librarian and the speed of retrieval. Computer databases represent a significant investment that is often underestimated. Hardware can soon become obsolete and software licences require regular and expensive subscriptions. However, there are important benefits to be had in terms of managing volume data that would soon become otherwise unmanageable.

The main risk factor in both paper and electronic files is poor information management. Records may not have been properly completed in the first place or cross-referenced and inaccurate data entries or so-called "key-in" errors (typing mistakes) can mean not only that searches are incomplete, but also that false matches are made. As time goes by information may become dangerously out of date or incomplete (a significant risk factor where dangerous criminals are involved). Poor security protocols can mean that the data may not be secure from unauthorised access or tampering. All these risks can be offset by proper protocols, but they must be effectively applied, enforced, and supervised.

The questions below refer to electronic databases, but apply equally to paper based filing systems. For further information, please see **POLICING: POLICE INFORMATION AND INTELLIGENCE SYSTEMS**.

- A. Is there a crime reporting system in place? Does it contain suspect descriptions? Does it contain details of stolen property? Is there an efficient search engine? Is it accessible by investigators at local, regional, and national level? Are investigators responsible for updating the information? Do investigators cross-reference their active cases with historical cases?
- B. Is there a database on criminal convictions? Does that database include cross-referenced personal data on the offender including his or her name (and aliases), date of birth, gender, ethnicity, height, address, and distinguishing marks (tattoos or scars)? Is this information available to and searchable by investigators? How long does information take to be entered or filed in this system? Is there a time limit on how long it is stored? Can investigators at local, regional, and national level search it either directly or indirectly?
- C. Is there a database on fingerprints? How many files does it contain? For what reasons can someone's fingerprints be held? Is there an Automatic Fingerprint Identification System (AFIS)? Are speculative searches run against crime scene fingerprints? What powers do investigators have to require a person to give fingerprints?
- D. Is there a DNA database? How many entries does it contain? Does the country contribute to the Interpol DNA database? Are speculative searches run against crime scene DNA specimens? What powers do investigators have to require DNA samples?

Can investigators submit DNA for comparison against the database? How long does it take?

- E. Are other forms of biometric data held? If yes, what kinds and how are they stored? For what are they used?
- F. Is there a ballistic and explosives database? What does it contain? How many entries does it have? Are all registered firearms tested and entered into the database? Are speculative searches run against weapons and ammunition involved in crime? Can investigators request comparisons against the database? How long does it take?
- G. Is there a database on modus operandi? What information does it contain? Do investigators submit information for inclusion in the database? Are investigators at the local, regional, and national level able to search the database directly or indirectly?
- H. Are there electronic file management systems available for managing major investigations, e.g. Holmes2? Are there sufficient staff trained to use such systems? How often are they used?
- I. Is there a criminal intelligence (computerised) system? Is information logged and entered according to standard formats? Is the information assessed according to the reliability of its source? Is the information supervised and monitored to ensure integrity? Do investigators have access directly or indirectly to this data? Does the system allow for a hierarchy of access so that information is available on a “need to know” basis, i.e. only by those who need to know it in order to do their job?
- J. Where computer systems are in place, how reliable is the technical infrastructure? Is there significant “down time” when the information cannot be accessed due to technical failure?
- K. Is access to all databases protected by a personal password and/or additional security measures? Are confidential databases accessible only on stand-alone machines, i.e. not connected to the internet or intranet? Are there precautions against unauthorised copying of information, including such basic measures as sealing a floppy disk drive, disabling CD write software, and blocking the USB ports? Is every attempt at access logged against the user’s name, the date and time of access? Is strong anti-virus software used? Where information is sent out of the building, are secure lines with encryption devices used?
- L. Can investigators obtain telephone subscriber information? Can investigators obtain itemised call records for landline and mobile telephones? Can investigators obtain records of bank accounts and banking transactions? Does a request for this information require judicial oversight, such as a court order?
- M. Are there investigators trained in financial investigation? Is this expertise available locally? How often are the financial affairs of a suspect investigated in addition to any obvious criminal offence?
- N. How often are the computers belonging to suspects seized? Are their computer hard disks forensically examined? Is this expertise available locally or can investigators request such assistance?

5.9 INTERVIEWING

There are two basic types of interview conducted by the investigator: victim/witness interviews and interviews with suspects. The approach will be somewhat different.

Usually an investigator will need only to encourage a witness or victim to remember what happened and when (although sometimes, of course, a witness may not want to cooperate or may be concealing something).

On the other hand, suspects will normally be trying to avoid giving truthful answers to an investigator's questions and therefore, by implication, such interviews are more adversarial. Good practice and a respect for human rights, as well as the professionalism of the interviewer, should prevent suspect interviews from becoming violent, but there may be places in which severe interrogation techniques are tolerated, or even encouraged, and may involve the use of torture. Such practices are unacceptable and illegal under international law, standards, and norms.

Experience has shown that the conditions under which suspects make confessions or admissions can be related to their treatment in custody before the confession or admission has been made² This may be because of the threat or direct use of violence, i.e. torture, because of other indirect intimidation or menacing behaviour on the part of the interviewers or because the experience is otherwise physically or mentally distressing for the interviewee. People in police interviews are normally anxious and find themselves in an unequal dynamic in favour of the interviewer(s). There is ample evidence to show that certain people are predisposed to answering police questions in any way that will help to shorten the interview and some will wrongly confess to offences they did not commit. In some countries, this risk of a "false" confession is perceived to be so great that confessions of guilt made solely to a police officer are not admissible in court.

- A. Do investigators receive special training in interview techniques? What does it consist of? How many hours or days of training do they receive?

5.9.1 Suspects

- A. Are there guidelines or codes of practice on interviewing suspects? Do these guidelines or codes reflect international standards? See, for example, **UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**, **UN Code of Conduct for Law Enforcement Officials**; **Universal Declaration of Human Rights**. How many investigators are normally present at an interview? How long may an interview last without a break? Are suspects allowed to take breaks or rest? Are simultaneous notes/transcript made of what is said? Is the suspect offered the chance to endorse the simultaneous notes/transcript? Is the interview audio- or videotaped? Is physical contact between the interview and the suspect prohibited?
- B. Are suspects entitled not to answer questions? Is there a right against self-incrimination? If so, do the investigators advise the suspect his or her right to have independent legal advice during interview? Is the right honoured in practice? Are interpreting and translation facilities available? What happens if a suspect cannot speak the same language as the investigators?
- C. Are investigators aware of the risks of interviewing vulnerable persons? Is the right of juveniles and vulnerable persons the right to have an adult present to advise/assist them honoured?
- D. Are there separate interview rooms? How are they equipped? How are they arranged? Where is the suspect placed in relation to the interviewers? Is there recording equipment? Can the interviews be observed from outside (e.g. through a peephole or two-way mirror)? Is there a panic button or other system by which emergency help may be summoned?
- E. Are polygraphs used? Are polygraph technicians properly accredited? Are the results of polygraph tests admissible in court or are they only "presumptive" (i.e. indicative and requiring more substantive evidence for corroboration)?

- F. Are confessions of guilt made by a suspect to a police officer admissible in court? If not, when are they admissible? Are interview transcripts or simultaneous notes admissible in court? Is a formal written statement from the suspect required? If yes, who writes it? Does the suspect have the chance to read and sign the statement? What happens if the suspect is illiterate?
- G. Following conviction, do investigators routinely visit the convicted person and ask for information on other matters? Do they ask for information about other criminal activity of which the person is aware, but not directly involved?

The concept of post-conviction visits has been controversial. While an extremely effective method of acquiring information and intelligence, it can also be abused by investigators pressuring a suspect into confessing to crimes he or she did not commit so that they can “clear up” cases for which they are responsible.

- H. Is there a system of “plea bargaining” (plea negotiation) in place by which a suspect may plead guilty to a less serious charge or agree to a guaranteed sentence before pleading guilty? Who is authorized to make such an offer?

5.9.2 Victims & Witnesses

- A. What are the rules for the interviewing of victims and witnesses? Does the interviewer inform the witness of his or her right to freedom from self-incrimination during the interview? Does a witness have the right to have a lawyer present during the interview? If the witness is a child, does the law require that his or her parent, guardian or other responsible person is present? How are interviews recorded, e.g. audio- or video-recorded, transcribed or summarized?
- B. Are there rooms available for interviewing witnesses and victims? Are they separate from the cell/detention area? Do investigators know about and/or practice “cognitive interviewing” techniques (i.e. psychological techniques used to help someone remember)? Are there investigators who have been specially trained to interview children or vulnerable people? Are such interviews video taped? Is the videotape admissible in evidence?
- C. Are investigators designated as liaison officers to support visitors and families in cases of a sensitive and emotional nature? What training do they receive?
- D. Who takes a witness or victim statement? Does the victim or witness have the opportunity to read his or her statement and certify that each page is accurate? What happens when the witness or victim speaks cannot speak the same language? What happens where the witness or victim is illiterate? Do witnesses and victims have to provide their full contact details? Are they included in the witness statement? Are witness or victim statements included in the trial case file?

5.10 USE OF MEDIA

The media have been used to good effect in solving major crimes and in prompting new witnesses to come forward. Sometimes this has been achieved through appeals broadcast over a radio network or through partnership in a television programme. Police services have also been known to use news conferences in a similar way. The modern mass media can be a strong tool for mobilising public response, but there are dangers in terms of the extent of detail the media can demand.

The media can be a double-edged sword. An investigative reporter may have access to sources and witnesses who would be reluctant to talk to the authorities. On the other hand, journalists have been known to interfere with criminal investigations and disrupt court cases through injudicious campaigns and editorials.

The use of anonymous police hotlines has also been effective as a way of reaching out to the public.

- A. What use is made of the media in asking for help from the public? Are there examples where appeals for information have led to a case being solved?
- B. Is the person in charge of an investigation permitted to approach the media directly or is further permission required?
- C. Are there anonymous police hotlines available by which members of the public can submit information? How are these advertised? Who monitors and distributes the information received? Are rewards available for information? What are the criteria for payments?

5.11 INTERNATIONAL COOPERATION

- A. Who manages cases that involve an international dimension? Are investigators generally aware of the different international law enforcement organisations and what they offer? Are investigators aware of how to request assistance from law enforcement and judicial authorities in other countries?
- B. What international law enforcement bodies are present in the country? Are there liaison officers from other countries also present? Can investigators make requests to these organisations or officers directly? Do investigators have access to the databases of these organizations (such as Interpol's fingerprints or DNA database)? If so, is this access enables direct and in real time connection via secured telecommunication systems (such as Interpol's I-24/7)? Are investigators aware of the Interpol's Notice system?
- C. Is the country party to any international agreement concerning international police co-operation (for example, a bilateral agreement based on Interpol's Model (Bilateral) Police Co-operation Agreement)?
- D. Who deals with Letters of Request (“Rogatory Letters” or “Commissions Rogatoire”) for international assistance? Who is responsible for receiving and issuing such requests for mutual legal assistance? Do investigators know this? On average, how long does it take a Letter of Request to be issued?
- E. How are Letters of Request received from other countries processed and dealt with? How long, on average, does it take for a Letter of Request from another country to be answered and the requested action undertaken?
- F. Do investigators work with officers from other countries on combined operations? Is the concept of “controlled delivery”³ known to investigators?

- G. If there are peacekeeping forces present, on what basis do military and police investigators cooperate? Who has jurisdiction over crimes committed by peacekeepers?

5.12 PREPARING FOR CHARGE AND TRIAL

The result of a successful investigation will be the appearance of the suspect before the court, but for the success to be complete, the court needs to be made fully aware of the weight of evidence against the defendant. The case file represents the sum total of that evidence.

The assessor may consider reviewing one or more case files (linguistic skills permitting) to see how they are structured and what they contain.

- A. Who prepares the case file? Does a case file usually contain:
- The initial report of the allegation or the crime report?
 - Official initiation of investigation?
 - Summary of the case?
 - List of any exhibits?
 - Notes from the officers who first attended the scene?
 - Victim's statement?
 - Statements from the witnesses?
 - Lists or statements of property involved?
 - Details of any criminal history of the suspect and or the witnesses?
 - Any results of forensic or medical evidence?
 - Written statement of charge or draft charge?
 - Motion and applications that the prosecutor/police investigator has filed with the court?
 - Court orders/warrants and associated rulings that may accompany them?
- B. Is the preparation of this file supervised for quality assurance? By whom? If there is a distinction between a "pre-investigation" and "investigation" phase, is the case or evidence file amended from one stage to another? Does the prosecutor or judge see all information in police files? If not, why not? Is there a rule on disclosing the evidence to the defendant or suspect? What information is not disclosed? Are witness and victim details given to the defendant? If an investigator discovers something that tends to exonerate a suspect, is this disclosed to that suspect? How often are case files returned to investigators because additional work is required?
- C. Is there a case management system in place? Are there structured ways of filing and categorising the volume of information in a serious or major investigation?
- D. Are there guidelines on the standards of evidence required for charging someone with a criminal offence? Who considers the evidence and decides on the appropriate charges? Is an investigator designated as the responsible "officer in the case" for cases that go to trial? Does he or she attend the court hearings to assist the prosecution?
- E. Are there alternatives to charge and formal court proceedings available? What are they? Who decides whether they are appropriate? Who offers them?
- F. Are there cases where investigators and their families have been threatened or intimidated in order to prevent further investigation of a case?

6. PARTNERSHIPS AND COORDINATION

6.1 PARTNERSHIPS

The investigation of crime is a challenge for the whole community and involving other agencies helps to bring an additional dimension to the response. Engaging other agencies is not, however, always easy. Organisations and agencies are sometimes reluctant to help law enforcement because they feel they might alienate their constituents, because their priorities may be different, because the resources may not be available, or even because there are legal constraints (for instance in the case of data protection).

- A. How do these work? Do investigators have protocols enabling cooperation and information exchange with other criminal justice agencies, (such as the prisons service, customs and immigration agencies? Are there protocols in place allowing cooperation with other public institutions like local hospitals, municipal offices, and the tax authorities? Are organisations in the public sector required to assist and facilitate police investigations?
- B. In countries with a federal system, how do investigators cooperate with federal law enforcement officers? Are there clear agreements or protocols that define the respective jurisdictions? How often do they combine their investigations? Who has precedence? How often do federal investigators take over investigations started at the local, provincial, or state level?
- C. How do private security companies work with investigators?
- D. Do multi-agency teams exist that have been tasked with addressing a particular crime problem? Who manages the team? Have the teams been considered a success?
- E. Do Bank Secrecy Laws permit the supply of information to police agencies at the request of investigators?

6.2 DONOR COORDINATION

Being aware of the activities of donors in the areas of crime investigation will prevent unnecessary duplication and allow coordination of initiatives.

- A. Are there (or have there been) internationally funded initiatives aimed at developing crime investigation? What are the objectives of these projects? Are they being achieved? Is there evidence of duplication? Is there any coordination of the implementation of these initiatives? Are mechanisms in place that will ensure sustainability of any sponsored activity? Which countries or organisations are involved? What mentoring mechanisms are there in place? Are any stakeholders and/or donors obvious by their absence?
- B. Do (or did) these initiatives offer training? If so, are they training trainers to deliver cascade-training programmes or are they focusing on individuals? Is a system of computer-based training being offered?
- C. Do (or did) these initiatives provide equipment? If so, was the need for this equipment identified through an independent evaluation or was it the result of a government list? Are other donors providing the same or similar equipment? Are there plans for how the equipment will be maintained and replaced? Are there examples of the same or similar equipment being provided and then being misappropriated or not being used at all?

- D. In respect of these initiatives were any post-implementation reviews conducted that may have helped to identify good practice for replication elsewhere? Are the results of such initiatives collated and coordinated to inform future planning?

¹ See for example the British Crime Survey (www.statistics.gov.uk/ssd/surveys/british_crime_survey)

² Before the Police and Criminal Evidence Act (1984) introduced strict rules on the treatment and interviewing of suspects in England and Wales, convictions based on confessions and admissions exceeded 60% of all convictions. Afterwards it dropped to between 40% and 50% G Gudjonsson, G (1992) *The Psychology of Interrogations, Confessions and Testimony*, John Wiley & Sons, p. 81

³ A controlled delivery is where an illegal shipment of contraband is allowed to travel across international borders until it reaches its final destination. At all times the shipment remains under the constant surveillance of law enforcement officers

ANNEX A. KEY DOCUMENTS

UNITED NATIONS

- Convention against Transnational Organised Crime (UNTOC), (2000) and its related protocols on Trafficking in Persons, Smuggling in Persons and the Illicit Manufacture of Firearms and Ammunition (outlining important investigatory measures when tackling serious and organised crime);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention against Corruption
- Single Convention on Narcotic Drugs
- Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- Convention on Psychotropic Drugs
- The Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice, 2006, which contains source documents on crime prevention and criminal justice, and Human Rights texts including:
 - Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1975.
 - Minimum Rules for Non-Custodial Measures (Tokyo Rules).
 - Basic Principles on the Role of Lawyers
 - Guidelines on the Role of Prosecutors
 - United Nations Standards Minimum Rules for the Administration of Juvenile justice (Beijing Rules).
 - Code of Conduct for Law Enforcement Officials
 - United Nations Rules for the Protection of Juveniles Deprived of Their liberty.
 - Declaration of Basic Principles of justice for victims of crime and abuse of power (
 - Guidelines for Child Victims and Witnesses
 - Declaration on the Elimination of Violence against Women
 - Declaration on the Protection of All Persons from Enforced Disappearance
 - Declaration on the Rights of the Child
 - Standard Minimum Rules for the Administration of Juvenile Justice
- United Nations Survey of Crime Trends and the Operation of Criminal Justice Systems

DRAFT

- Model Police Act
- Model Code of Criminal Procedure (especially Parts 4 and 5)
- Model Criminal Code

PLEASE NOTE: *The Model Police Act (MPA), the Model Code of Criminal Procedure (MCCP), and the Model Criminal Code (MCC) are being cited as models of codes that fully integrate international standards and norms. At the time of publication, the MPA, the MCCP, and the MCC were still in DRAFT form and were being finalised. Assessors wishing to cite the MPA, the MCCP, and the MCC with accuracy should check the following websites to determine whether the finalised Codes have 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.

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

REGIONAL

- Council of Europe Criminal Law Convention on Corruption
- Inter-American Convention on Corruption
- OECD Convention on Corruption of Public Officials
- Council of Europe Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime
- Economic Community of West African States Convention on Extradition

- European Convention on Extradition and its additional protocols
- Arab League Convention on Mutual Legal Assistance in Criminal Matters
- Convention on Mutual Legal Assistance in Criminal Matters between Member States of the European Union
- European Convention on Mutual Legal Assistance in Criminal Matters and its additional protocols
- Inter-American Convention on Mutual Legal Assistance and Optional Protocol Thereto
- Arab Convention for the Suppression of Terrorism
- Inter-American Convention against Terrorism
- OAU Convention on the Prevention and Combating of Terrorism

OTHER USEFUL SOURCES

- www.ohchr.org/english/law/
- The British Crime Survey (www.statistic.gov.uk/ssd/surveys/british_crime_survey)
- www.interpol.org
- European Network of Forensic Science Institutes (ENFSI) www.enfsi.org
- Fraser Sampson, et al (2006) “Blackstone’s Police Investigator’s Manual and Workbook”, Oxford University Press

NATIONAL

- Criminal Code
- Criminal Procedure Code
- Other sources of criminal law
- Standard operating procedure, implementing/clarifying regulations
- Police training manuals and course materials

ANNEX B. ASSESSOR'S GUIDE / CHECKLIST

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

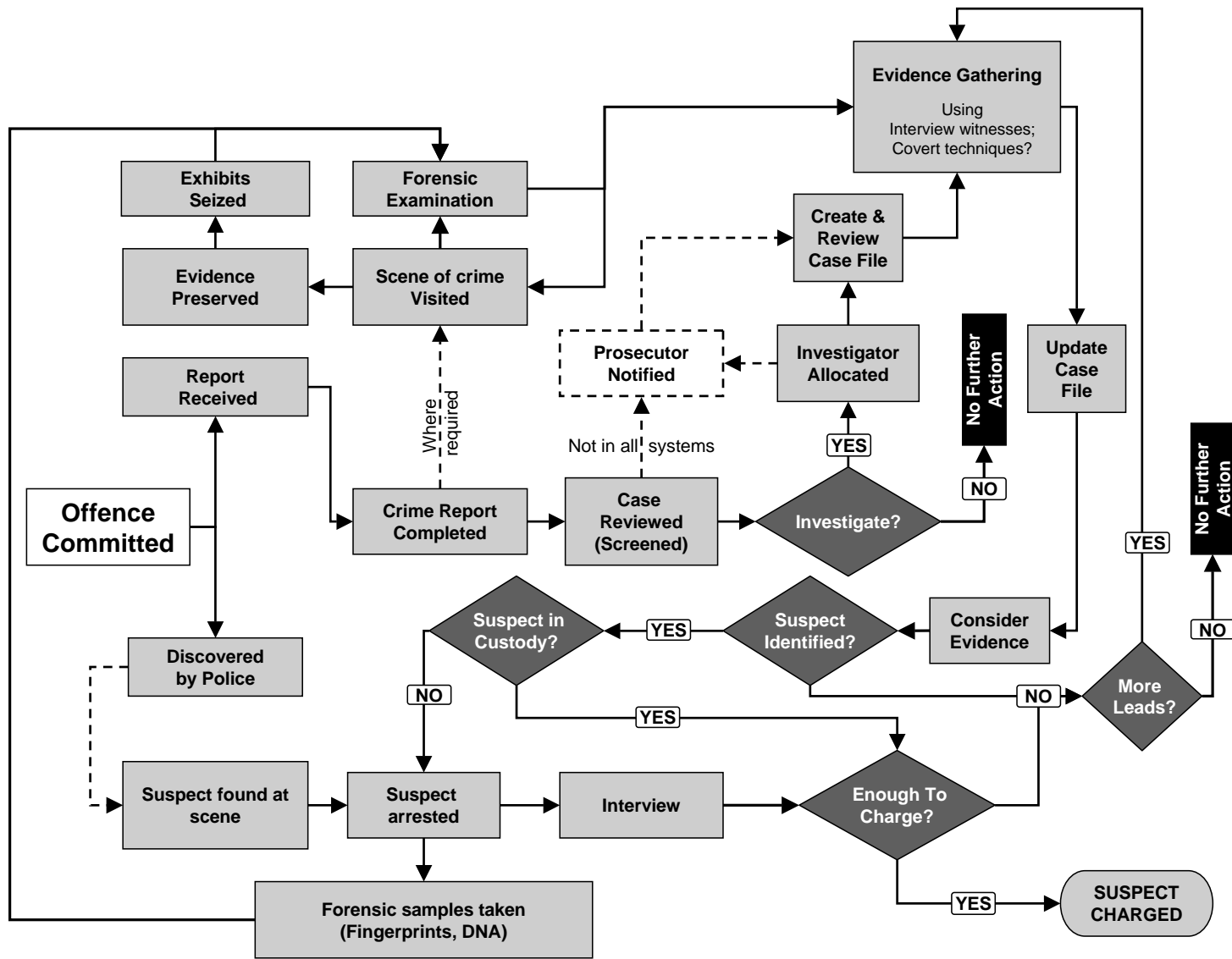
	TOPIC	SOURCES	CONTACTS	COMPLETED
2.1	STATISTICS	<ul style="list-style-type: none"> ▪ Ministry of Interior Reports ▪ Ministry of Justice Reports ▪ Ministerial Websites ▪ National & local Crime Statistics ▪ NGO Reports ▪ UN Regional & Country Analyses 	<ul style="list-style-type: none"> ▪ Any Office of National Statistics 	
3.1	DEFINING CRIME	<ul style="list-style-type: none"> ▪ Government department such as the Ministry of Justice or Ministry of the Interior; ▪ Government websites (especially for police) ▪ UN Convention on Transnational Organised Crime ▪ Police agency's publicity literature ▪ The internet can be a valuable source of national legislation (e.g. www.wings.buffalo.edu/law/bclc/resource); ▪ Global Legal Information Network www.glin.gov ▪ www.interpol.org ▪ Criminal Code or Statutes ▪ Code of Criminal Procedures ▪ Police Law 	<ul style="list-style-type: none"> ▪ Government Minister responsible for Justice and/or Internal Affairs; ▪ Representative from the government's legislative drafting department; ▪ State Prosecutor, Attorney General or Director of Public Prosecution; ▪ Policing agency's legal department ▪ Representative of local criminal bar association 	
3.2	LAWS ON CRIME INVESTIGATION	<ul style="list-style-type: none"> ▪ Investigators Manual or Handbook 		
4.1	INVESTIGATIVE AGENCIES AND STAFF	<ul style="list-style-type: none"> ▪ National crime strategy ▪ Protocols on cooperation and information exchange between law enforcement ▪ Organisational Charts ▪ Visits to investigative bodies ▪ Visits to National Forensic science laboratory ▪ UNODC Laboratory and Scientific Section 	<ul style="list-style-type: none"> ▪ Head of investigation ▪ Representative from any investigative bodies ▪ Prosecutors ▪ Forensic scientists 	
4.2	SELECTION & TRAINING	<ul style="list-style-type: none"> ▪ Job descriptions ▪ Selection procedure materials ▪ Any selection panel score-sheets ▪ Training manuals & material ▪ Visit to police academy 	<ul style="list-style-type: none"> ▪ Head of Human Resources ▪ Police staff generally Head of Human Resources ▪ Head of police training department ▪ Head of police academy ▪ Trainers ▪ Police students & recruits 	
4.3	FACILITIES AND EQUIPMENT	<ul style="list-style-type: none"> ▪ Visits to crime investigation offices 		
5.1	REPORTED CRIMES	<ul style="list-style-type: none"> ▪ Crime reports ▪ Visit to front office/desk ▪ Visit to Despatch Office or Unit (which manages response to calls) 	<ul style="list-style-type: none"> ▪ Head of crime investigation ▪ Person who allocates crimes ▪ Prosecutor 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
5.2	PROACTIVE INVESTIGATIONS	<ul style="list-style-type: none"> ▪ Police Information and Intelligence Systems Tool ▪ Any proactive operational plans & their terms of reference ▪ Analyses and profiles developed for proactive operations 	<ul style="list-style-type: none"> ▪ Prosecutor ▪ Investigator ▪ Analysts ▪ Head of any criminal intelligence cell 	
5.3	INFORMATION/EVIDENCE GATHERING	<ul style="list-style-type: none"> ▪ Codes on criminal procedure ▪ Training manuals and guidelines on how to deal with evidence ▪ Records of "failed" court cases ▪ Notes made by police about incidents or their notebooks ▪ Logs of evidence and exhibits ▪ Logs of premises searched ▪ Visit to secure property room 	<ul style="list-style-type: none"> ▪ Supervisor of police notebooks ▪ Prosecutors ▪ Person in charge of secure property room 	
5.4	IDENTIFICATION	<ul style="list-style-type: none"> ▪ Codes and protocols on identification ▪ Material used for showing suspects' photographs (books or software) ▪ Examples of photo-fits ▪ Codes on conducting identification parades ▪ Visit to identification parade 	<ul style="list-style-type: none"> ▪ Person responsible for conducting identification procedures ▪ Investigators ▪ Prosecutor ▪ Defence lawyer 	
5.5	VICTIMS AND WITNESSES	<ul style="list-style-type: none"> ▪ Guidelines on dealing with victims and witnesses ▪ Protocols on witness protection 	<ul style="list-style-type: none"> ▪ Criminal court judges ▪ Prosecutors ▪ Witness protection officers ▪ Any victim or witness support services 	
5.6	COVERT TECHNIQUES	<ul style="list-style-type: none"> ▪ Guidelines and standards for covert surveillance 	<ul style="list-style-type: none"> ▪ Criminal Court judges ▪ Prosecutors ▪ Investigators ▪ Technicians who conduct covert surveillance ▪ Representative from independent monitoring body 	
5.7	INFORMANTS	<ul style="list-style-type: none"> ▪ Tool: The Integrity and Accountability of the Police ▪ Guidelines on registering and use of informants 	<ul style="list-style-type: none"> ▪ Investigators (particularly those who handle informants) ▪ Prosecutors ▪ Person in charge of coordinating informants 	
5.8	DATABASES	<ul style="list-style-type: none"> ▪ Crime reporting system ▪ Different databases, their terms of reference (user requirement) and guidelines on use 	<ul style="list-style-type: none"> ▪ Supervisor of crime reports ▪ Chief information officer ▪ Database managers ▪ Technicians or consultants who manage the databases ▪ Prosecutors 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
5.9	INTERVIEWING 1.9.1 SUSPECTS 1.9.2 VICTIMS & WITNESSES	<ul style="list-style-type: none"> ▪ Guidelines on investigative interviewing ▪ Visit to interview rooms ▪ Guidelines on post-conviction visits ▪ Independent inspection reports 	<ul style="list-style-type: none"> ▪ Trainers of interviewing courses ▪ Prosecutors ▪ Investigators ▪ Police staff who take statements ▪ witnesses ▪ Polygraph technicians ▪ Representative of any independent monitoring organisation 	
5.10	USE OF MEDIA	<ul style="list-style-type: none"> ▪ Examples of public appeals ▪ Visit to any police hotline office ▪ Media reports and campaigns 	<ul style="list-style-type: none"> ▪ Police media (PR) officer ▪ Investigators ▪ Prosecutors ▪ Journalists, editors 	
5.11	INTERNATIONAL COOPERATION	<ul style="list-style-type: none"> ▪ Agreements with any international organisation ▪ Examples of Rogatory Letters/Letters of Request ▪ Visit to Interpol National Central Bureau 	<ul style="list-style-type: none"> ▪ Head of international liaison ▪ Local investigators ▪ Head of international judicial cooperation (mutual assistance bureau) ▪ Head of Interpol officer 	
5.12	PREPARING FOR CHARGE AND TRIAL	<ul style="list-style-type: none"> ▪ Case files ▪ Examples of charge sheets ▪ Manuals of guidance on crime investigation; ▪ Investigator job descriptions; ▪ Programmes for training crime investigators; ▪ Codes of practice and procedure on investigation; ▪ Crime reports; ▪ Case files; ▪ Databases available to investigators; ▪ Programmes of training for investigators; ▪ Forensic Laboratories; ▪ Exhibit stores; ▪ Interview rooms; ▪ Media and press reports; ▪ Visits to investigators' office(s); ▪ Visits to specialist crime units. 	<ul style="list-style-type: none"> ▪ Criminal Court Judge ▪ Person supervising case files ▪ Person preparing case files ▪ Prosecutors ▪ Defence Lawyers ▪ Government Minister responsible for law enforcement – possibly Minister of Justice or Interior; ▪ State Prosecutor, Attorney General or Director of Public Prosecution; ▪ Criminal Court Judges; ▪ Head of crime investigation department; ▪ Investigators; ▪ Officer responsible for supervising crime files; ▪ Head of personnel; ▪ Head of police training ; ▪ Trainers of investigation courses; ▪ Database managers; ▪ Forensic scientist; ▪ Forensic Pathologist (medical examiner) ▪ Defence Lawyer; ▪ Person in charge of criminal investigations; ▪ Officer responsible for screening crime reports; ▪ Victims/witnesses/suspects; ▪ Researchers in crime investigation issues; ▪ Journalists 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
6.1	PARTNERSHIPS	<ul style="list-style-type: none"> ▪ Protocols for cooperation with other agencies ▪ Notes of meetings between investigators and/or with prosecutors; ▪ Case conferences ▪ Local media/press reports; ▪ Site visits; 	<ul style="list-style-type: none"> ▪ Representatives of partner agencies; ▪ Head of police cooperation department; ▪ Head of Interpol National Central Bureau; ▪ Head of other international partners 	
6.2	DONOR COORDINATION	<ul style="list-style-type: none"> ▪ Internet Websites ▪ Programme and project documents; ▪ Project terms of reference; ▪ Public brochures and literature; ▪ Regional organisation offices ▪ Memoranda of Understanding with international community, organisations or donor countries (e.g. UN, European Commission, OSCE, ASEAN, Interpol etc) 	<ul style="list-style-type: none"> ▪ Senior police managers ▪ Local representatives of other international initiatives (particularly foreign law enforcement liaison officers). ▪ Representatives of relevant international or regional organisations working in the country; ▪ Embassies/Ministries for donor activity. ▪ Programme and project managers for international initiatives ▪ Local UN representative ▪ Local representatives of other international/regional organisations ▪ Embassies (especially foreign law enforcement liaison officers). 	

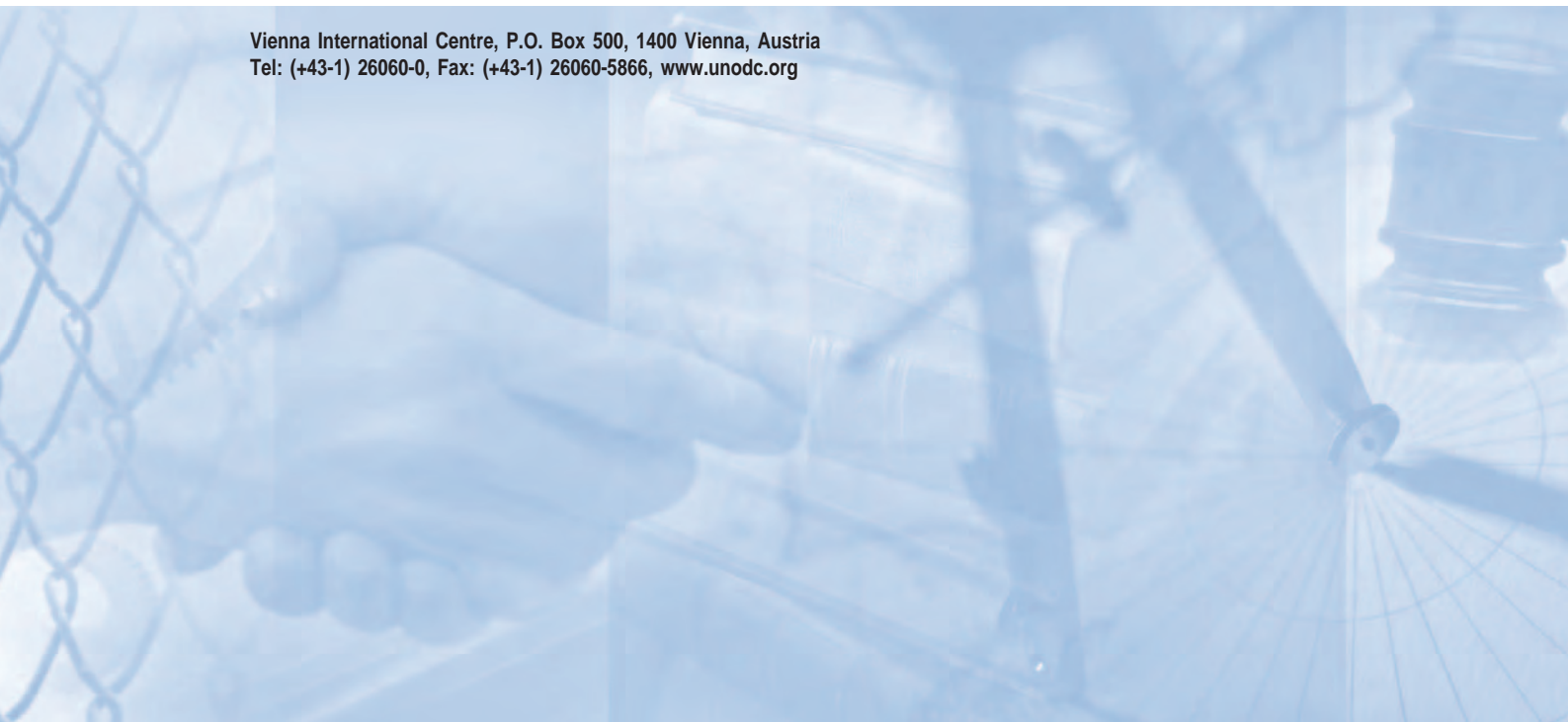
GENERIC REACTIVE INVESTIGATION





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POLICING

Police Information and Intelligence Systems

Criminal justice
assessment
toolkit

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Vienna

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UNITED NATIONS
New York, 2006

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This publication has not been formally edited.

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1. INTRODUCTION

The concept of “criminal intelligence” is neither easy to explain nor to translate. A direct translation can have negative political and historical associations in some parts of the world that make the word inappropriate in many international settings. As a result, it is often easier instead to use the word “information” and, indeed, the terms “information” and “intelligence” are often used interchangeably.

Definitions of what constitutes intelligence differ. Some say intelligence is “information designed for action”, some say that it is “assessed information”. Some say that information is transformed into intelligence through the analytical process, whilst it has also been called, “information which is significant, or potentially significant, for an enquiry or a potential enquiry”. The common theme is that intelligence is a special type of information with additional value that can be recognised or assigned through some kind of analytical process. “Criminal intelligence” is simply any information with additional value that can be used by law enforcement to deal with crime.

Acknowledgement should also be made of the current debate within the law enforcement analyst community as to whether their work actually has anything to do with intelligence at all. Some say that crime analysis is not an “intelligence” function, other say it is fundamental to it. For the purposes of this document, no distinction is made. Whatever they term is preferred, crime analysts and criminal intelligence analysts fulfil the same role and perform it in the same way.

As a law enforcement strategy, criminal intelligence has been in existence for many years. Indeed, although it has only recently been formalised, many of the basic (and intuitive) approaches of the traditional investigator are the same. For instance, officers have always attempted to identify the common thread that links clues in a case together, or kept a mental note of the habits of prominent criminals, or cultivated special relationships with people in the criminal underworld who provide inside information. This has always been simply considered to be good police work. Consequently, even in countries where the term “criminal intelligence” has not been formally adopted, it should be possible to find key components of a criminal intelligence system, such as the gathering of information about criminals, storage of fingerprints and/or DNA and use of covert investigation techniques, including informants.

Sophistication in the use of police information and intelligence has been steadily increasing over the last half-century. Police information systems which were formerly based on the collation of index cards managed by a librarian have evolved with information technology into departments using dedicated software and the skills of a professional crime analyst. The application of the information has also become more sophisticated. Intelligence techniques and methodologies have been developed to identify crime threats or to profile existing crimes or crime figures. Strategically and tactically, intelligence is now available that can be used to make police decision-making more accurate and easier to justify.

As already stated, the way in which the value of information is recognised or attributed is usually through some kind of analytical process. Practitioners have identified a series of common stages through which this happens.

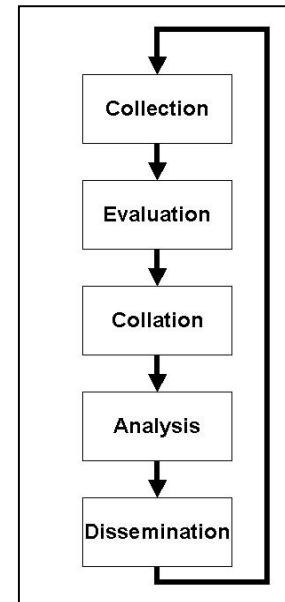
Whilst it is possible to find minor variations in these stages – all of them staunchly defended in different quarters –, this diagram represents the most common steps in developing intelligence. The arrow from the last box back to the start indicates that the process is an “intelligence cycle” through which information and intelligence is continually refined. Sometimes an additional box labelled “Direction” will be placed at the top of the cycle to represent how, in some models, there can be an element of management and tasking to the process. (A further diagram depicting simple intelligence flows is annexed to this document.)

Once information has been collected or gathered, it will be “evaluated” according to the reliability of its source as well as the relevance and validity of its content before being filed, cross referenced and ordered ready for use, that is, “collated”. The actual analysis will then consider the information in context, draw conclusions as to what it means and produce reports, briefings and other documentation representing that meaning. The results or products of this process will then be distributed, or “disseminated” to those who need to know it. The “need to know” principle is fundamental to working with sensitive information and intelligence. It means that, unless there is a clear professional reason for sharing information with another person that information should not be shared – even if he or she has

the appropriate security clearance level to receive it. The fewer people who know about something, the easier it is to keep it confidential.

In recent years there have been some important developments concerning the use of criminal intelligence by law enforcement agencies in many parts of the world and these have resulted in an increasing recognition amongst practitioners that:

- timely and actionable criminal intelligence is essential to make an impact on the prevention, reduction and investigation of serious and organised crime, particularly when it is of a trans-national nature. (“Timely” means that it is provided in good time and “actionable” means that its detail and reliability supports the taking of action.);
- criminal intelligence can play a significant role in helping with the directing and prioritising of resources in the prevention, reduction and detection of all forms of crime – through the identification and analysis of trends, modus operandi, “hotspots” and criminals – both at the national and transnational level; and
- intelligence can form the bedrock of an effective policing model – often termed “Intelligence Led Policing” – where intelligence is essential to providing strategic direction and central to the deployment of staff for all forms of tactical policing activity, including community policing and routine patrols.



Whilst significant differences will be seen in the understanding and acceptance of information and intelligence as a law enforcement tool, the fact remains that, in many countries and international organisations, criminal intelligence has been adopted as the law enforcement strategy of choice to drive policing forward in the next century.

One final point of which to be aware is that national police secrecy laws may well apply to questions related to police information and intelligence so that an assessor may not always receive complete answers to his or her questions. Such a barrier is easy to hide behind where answers to questions would be inconvenient or controversial, for instance, where human rights have been violated, but, on the other hand, there may be no such sinister motive at all.

In addition to developing an understanding of the strengths and weaknesses of a state’s approach to police information and intelligence, the assessor should be able to identify opportunities for reform and development. Technical assistance in the area of police information and intelligence systems in the context of a broader strategic framework may include work that will enhance the following:

- Drafting (or amendment) and implementation of legal instruments that provide responsible police powers related to the collection and use of information and intelligence together with appropriate safeguards;
- Drafting (or revision) of relevant guidelines and manuals;
- Development of an integrated system for managing and exchanging police information and intelligence;
- Creation of a national or central coordinating body for criminal intelligence and information;
- Development of independent safeguards and oversight mechanisms;
- Improvement in the technical infrastructure for the handling and integration of data (including enhancement of data security);
- Professional development of specialist staff (especially with respect to the skills of analytical staff and intelligence managers);
- Enhancing technical facilities available to staff working with information and intelligence (including support for the creation and development of key police databases and access to them);
- Facilitation and promotion of mechanisms (legal, institutional and technical) for sharing information between national agencies and international partners;
- Development of a methodology and structures for compiling a national organised crime threat assessment.

2. STATISTICAL OVERVIEW

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 public safety and police services delivery as well as the overall capacity of the criminal justice system of the country being assessed.

The availability of statistics related to policing will vary greatly. Statistics will also be variable in their reliability and integrity. Where possible, statistics provided by a government agency should be validated against statistics from other sources, such as non-governmental organisations or international bodies. As stated above, police information and intelligence can be a sensitive topic and may be protected by special secrecy laws that will preclude answers to some of the assessor's questions.

- A. Is there a national department for statistics? What does it produce in respect of crime analysis? Where does it get its information, and from whom?
- B. Is there a public or private sector crime research facility that provides analysis on crime trends or criminality? If yes, seek recent examples.
- C. Are statistics compiled regarding the incidence of criminal offences against a variety of criteria? Are they compiled in relation to local, regional and national geographical areas? Are these statistics available to the public? Are they available to local, regional and national police commanders?
- D. How many agencies are involved in criminal information and intelligence? Does any state security agency or department have any competence for combating crime? Who has competence to deal with counter terrorism?
- E. How many law enforcement agencies have an information/intelligence database or network of databases? How many collate records in a paper-based filing system, such as index cards? How many have access to a police intranet, a closed computer network that is shared by police agencies and officers? How many agencies have something designated as criminal intelligence unit? How many have access to proprietary analytical software like ibase/i2, Xanalys Watson, or Unisys Holmes2?
- F. Where intelligence-led policing has been adopted, are there figures on how many intelligence-led operations were conducted? What was the outcome?

3. LEGAL AND REGULATORY FRAMEWORK

Police information and intelligence can be heavily constrained by legislation that governs the type of information police may hold, the purposes for which it may be held and how it should be handled.

There may be laws that completely prevent any third party from knowing the content of government databases, including those of the police, or there may be Freedom of Information laws which, conversely, provide considerable access to them. However, there will always be some proportion of the information which may not be disseminated outside of those especially involved in it - whether because of cultural preferences for controlling information or because of operational reasons, i.e. not letting someone know that he or she is under suspicion.

The sensitive nature of some police information and intelligence, and the intrusive techniques that may sometimes be used to collect it, afford a particular importance to any supervisory mechanisms and security measures put in place. These will usually be contained within legislation or codes of procedure.

Every country will have something called "classified information" that is considered to be sensitive or secret. This will normally be "protectively marked" by having labels attached such as "confidential" or "secret". Because these labels or markings can be different from country to country, it has become common practice for government and military organisations working trans-nationally (for instance in the EU or NATO) to provide a "table of equivalence" indicating what each classification level is called and what it means. The most common terms used in English will be "restricted", "confidential", "secret" and "top secret", but there may be others.

Where information has been "classified" under one of these headings, special handling restrictions will come into play and access will only be given to people with the appropriate level of clearance. The special handling restrictions may define not only who can see the classified information, but also the conditions under which they may see it, in what medium it may be stored, how it may be transmitted and how it must be destroyed. It is quite possible that, under national police laws, any information in the possession of or generated by the police is automatically "classified" even though the content has no particular confidentiality.

In the last quarter of the 20th Century, prompted by unprecedented advances in information technology, a new doctrine of the protection of personal data (sometimes shortened to "data protection") has evolved. This has become highly developed in some countries, but not at all in others and is a highly complicated area of law. Those countries that subscribe to this doctrine believe that any data that can directly or indirectly identify a living individual (the "data subject") are owned by him or her and should not be held by others unless very strictly controlled. The data subject can consent to his or her data being held, but those data cannot be used for anything beyond the data subject's limited consent. Where the data are needed to prevent or combat crime, certain exceptions are made in respect of consent, but the other controls still apply. For instance, the doctrine says that: (a) data cannot be forwarded to anyone unless adequate controls and security for data protection are in place; (b) it should only be used for the purposes for which it was originally supplied; and (c) once those purposes have ceased to apply, the data should be deleted. This concept is by no means accepted by all countries, and there are, therefore, implications for information exchange between countries with data protection legislation and those without. To date, a universally acceptable solution to this dilemma has not been found.

Where data protection and privacy laws are well established, there will be an official independent supervisory body to which complaints may be made and which has powers to inspect and order changes to the way personal data is managed. In addition, a data subject will have the right to seek redress in the courts for any incompatible use of his or her personal data.

- A. Is there existing legislation or written guidance on the gathering, storage, analysis and dissemination of criminal intelligence or information by or for the purposes of law enforcement? What does it allow? What are the constraints and limitations?
- B. What laws or regulations apply to "classified" information? Is there a "protective marking" scheme? Is there a law on protecting "official secrets"? What consequences are there for someone who discloses classified information? Is it a criminal offence?
- C. Is there legislation related to the protection of personal data (i.e. data protection), data retention and/or freedom of information? What does it say about data gathered for the purposes of law enforcement activity? Does the law place a responsibility on the agency holding the data to ensure its accuracy and relevance? Is there a statutory review period at the end of which a decision has to be taken as to whether the purposes for holding personal data still apply or whether they should be deleted? Is there the right for a data subject to sue for damages where his or her rights have been breached?

- D. Is there an independent supervisory body for data protection and privacy complaints? What powers does it have? Is it consulted on new legislation related to information and intelligence? Does it oversee law enforcement information? Does it issue regular public reports on how law enforcement agencies deal with data?
- E. What other organisations exist to oversee the way police information and intelligence is managed? What powers do they have?
- F. Is there a parliamentary or other official committee that has oversight of police information and intelligence matters? What powers does it have? Does it receive strategic threat assessments from the police on serious and organised crime? See **Section 5.5** below. Does it receive other reports from the police on activities involving information and intelligence? Are its reports available to the public? What do they say?
- G. Is there an executive advisory committee that coordinates national intelligence matters? Is the law enforcement sector represented on it?
- H. Is the “need to know” doctrine described in legislation? If not, is it found in regulation or guidelines? Can officers describe what the “need to know” rule means and why it is important?
- I. Is there legislation and/or regulation on information security? Is there a protocol, regulation, order or set of instructions detailing minimum standards in information security?
- J. Is there legislation allowing the police to:
- Collect information, including personal data?
 - Store and use that information for the investigation, detection and prevention of crime?
 - Share information with other law enforcement agencies, nationally and transnationally?
 - Share information with international law enforcement organisations, such as Interpol?
- K. Is there legislation requiring the retention of billing records and subscriber usage details by mobile telephone companies and internet service providers?
- L. Are there police orders, guidelines or regulations regarding the use of criminal intelligence and information? What do they say? Is there a code of practice on the dissemination of data? When were they last updated? Are operational police officers and investigators aware of them?
- M. Has the United Nations Convention Against Transnational Organised Crime (UNTOC) been signed and ratified? In particular, have the provisions on the sharing of information and intelligence been implemented?

4. INFRASTRUCTURE

Although the assessor should not expect to find well-developed criminal intelligence processes in place, the presence of police information and its structured use will be ubiquitous. This need not involve computerised systems and the systematic and structured filing of paper records can be equally effective.

Although the use of police information and intelligence may have been given a strong legal basis, unless good practice is integrated into police culture, together with appropriate procedures and adequate resources, the legislation will have little impact.

In some countries there may be a special central agency for criminal intelligence, in some there may be dedicated units within existing policing agencies (even at local police station level), in others, the concept will not appear at all.

Where a national law enforcement framework consists of a number of different agencies or institutions (e.g. national police, gendarmerie, crime police, customs, border guard etc.), the volume and quality of information exchanged, and the speed with which requests are answered, will be indicative of the level of cooperation. Where no national criminal intelligence or information database exists, which is highly unlikely, the information and intelligence held will undoubtedly be fragmented and duplicated. Strong information exchange mechanisms can help to mitigate this.

Facilities for the use of technical surveillance, such as telephone interception and listening devices, can sometimes be concentrated in national security agencies. In such cases police requests for assistance will therefore be in competition with and subordinate to national security priorities.

4.1 POLICY

While almost all countries will have information sources and files of collated information of one kind or another, very few will have a uniform structured policy on how to combine them.

However, any integrated information and intelligence framework will embrace and engage every all level and aspect of law enforcement: Strategy will be decided on the basis of analysis; Priorities and resources will be allocated on the basis of analysis; Operations and police patrols will be directed on the basis of analysis.

- A. Is there a national strategy, national plan or similar document outlining priorities and objectives for “policing”? Within it, is there any reference to criminal intelligence or the gathering of information for the purposes of investigating crime, or policing generally? Who is responsible for this activity?

Intelligence-led policing is a strategy or tactic by which information and intelligence is used to inform the allocation of resources against those threats that have been shown, through analysis, to cause the greatest harm.

- B. Is there a national criminal intelligence strategy? What is in it? Who is in charge? Is the concept of intelligence-led policing described? Do other national crime strategies mention criminal intelligence? If yes, what do they say?

4.2 INSTITUTIONS

- A. If there is a national or principal agency dealing with criminal information and intelligence? If yes, what level of seniority does its executive manager have? To whom does he or she report? Does the organisation coordinate and lead on all activities related to criminal information and intelligence? What are its objectives? If it has a mission statement, what does it say? Does it have a business plan? How does that business plan expect to enhance and develop police information and intelligence in the future?

- B. Where a national or principal agency for criminal information and intelligence exists, how many staff does it have? Do its staff have police powers? Is it empowered to collect information and intelligence in its own right? Is it empowered to manage a network of informants?
- C. Which other organisations or agencies are involved in gathering, storing and using police information and intelligence?
- D. Where each law enforcement body is responsible for managing its own information and intelligence, is there a set of common standards for:
 - the collection, assessment and analysis of the information and intelligence?
 - the recording and logging of information and intelligence?
 - security standards?
 - reports and briefings?
- E. Are there criminal information and intelligence departments, units or sections at regional level? How many analysts, if any, do they have?
- F. Are there criminal information and intelligence departments, units or sections at local police station level? How many analysts, if any, do they have?
- G. Are criminal information and intelligence departments units or sections organised and managed as part of an independent crime police directorate or are they accountable to the local police manager?
- H. Are other police officers, prosecutors and judges trained in the collection and use of criminal information and intelligence? Are there special courses for managers of investigations on how to use analysts and how to task and direct their work?

4.3 STAFFING

Although not impregnable, prevailing wisdom states that technical and physical security systems are now so strong that criminals find it more cost effective to try to corrupt the people who administer them instead. It is, therefore, important to ensure the integrity of the staff working with police information and intelligence.

Due to the sensitive nature of criminal information and intelligence, those chosen to work in the area need to have higher credentials in terms of integrity than in some other policing roles. This is often measured through a system of positive security vetting that investigates the background of intelligence staff and assesses the risk that they may pose.

- A. Do staff recruited to work with information and intelligence undergo any addition selection procedures to assess their trustworthiness, that is, there a positive vetting system? Is that assessment reviewed regularly? What happens if someone “fails” the assessment? How often does that happen?
- B. There may not be anyone formally designated as an analyst and, where such a post does exist, he or she may not have been formally trained. However, there will often be someone who is responsible for maintaining local files and to whom other officers will turn when they need some background information on a criminal.

Skilled and experienced analysts are key to achieving an effective information and intelligence capacity. Analysts are expensive to train and, if their work is undervalued they can soon sell their skills in the private sector for far greater financial rewards. Retention of analyst staff is an acknowledged problem.

- C. Are there members of staff designated as “analysts”? How are they selected? Are they recruited from the pool of police officers or are they recruited directly from the general public? Are they recruited after an objective selection procedure? What are the selection criteria? What qualifications are required? Does the selection procedure include psychometric testing?
- D. How are analysts formally trained? Do they receive regular refresher training? Is there a career development and promotion structure for analysts? What proportion of analysts remain at least 5 years in police service after being trained? How do the salaries of analysts compare with police officers on patrol?
- E. Where staff have access to computers, are analysts provided with specialist analytical software? If yes, what? Are technical resources adequate to allow full use of this software? Where computers are available, are they reliable, e.g. in terms of memory and power supply?

4.4 ORGANISING THE INFORMATION

Information is the mainstay of crime investigation and although many countries will still not have introduced computer databases, similar results can be achieved through careful and accurate filing of paper files or index cards. The difference will normally be seen in the physical size of the file, the skills of the librarian and the speed of retrieval.

Computer databases represent a significant investment, which is often underestimated. Hardware can soon become obsolete and software licences require regular and expensive subscriptions. However, there are important benefits to be had in terms of managing volume data that would soon become otherwise unmanageable.

While the use of information technology can reduce the numbers of staff required to perform certain functions, any cost-benefit received is greatly reduced where human resources costs are low. Although, of course, a computer is much faster and the level of accuracy much greater, there is little that can be achieved by information technology that cannot be done by manual activity.

4.4.1 Where Information Is Kept Only In Hard Copy

- A. Are police records, files or indexes of useful information maintained? If yes, what do they contain? In particular do they contain crime reports, criminal records and fingerprints? Where are such files and records located? Is there a national or principal location, agency or registry for the files? If not, do different police agencies have their own central registry of such information? Do local police areas or districts keep such records? Is there any cross-referencing or indexing of the information? How easy is it to access and retrieve these records?
- B. Where they exist, how many files or records are there? How many new records are received on a daily basis? Who does it? Where does the information come from? How much old information is weeded (deleted) because it is no longer of use? What procedure is in place for making that decision?
- C. Can officers make direct requests for searches of information and intelligence files or is a senior officer or prosecutor required to authorise such a request? Do such requests have to be made in writing? On average, how long does it take for a request to be answered?
- D. At what levels (local, regional, and national) do police officers and/or analysts have access to national police information and intelligence files and records? How is this information sent? Is the transmission method secure and free from tampering?

Although the use of DNA in investigation is rapidly increasing, it is a relatively new field and it is accepted that the necessary technical support and expertise will be beyond the majority of countries. Questions on DNA are included in this tool only for the sake of completeness and are not to be considered indicative of any technical deficiency.

- E. Are DNA samples collected? How are they stored? How many files exist? Is DNA information shared with international law enforcement agencies such as Interpol?

It is important to note that Interpol has other databases that are useful for organizing information. These include, for example, the following databases: Fingerprints, Lost or Stolen Travel Documents (SLTD), Child Sexual Abuse Images, Stolen Works of Art, and Stolen Motor Vehicles.

- F. Do other files or records of collated information exist that may be of value for law enforcement, such as vehicle ownership, driving licence holders, credit ratings, residence? Do visitors to the country or region have to register with the local police, often done automatically through the hotel register? If so, at what level is this information collated? If citizens are issued with personal identification cards, are they issued by the police? Is this information available for the purposes of law enforcement investigation?
- G. Where files are accessed or requested, is there a log maintained of who accessed or made the request, when, and why? Is access restricted to those who need to know it?
- H. Are offices equipped with shredding machines for the destruction of sensitive documents? Are there special waste sacks for the disposal of confidential paperwork? What rules govern the control and use of these?

4.4.2 Where Information Is Also Kept Electronically

- A. Is there a national or principal database dealing with criminal information and intelligence? If not, do police agencies have their own information and intelligence databases? Are these different databases linked? Is it possible to do one search across all the databases in real time? If not, how easy is it to search all the databases applying the same search criteria?
- B. Where a national or principal criminal information and intelligence database exists, what is its infrastructure and architecture? How much data does it contain? How much new data is input on a daily basis? Who does it? Where does the data come from? How much old data is weeded (deleted) because it is no longer of use? What is the procedure for making that decision?
- C. Can officers make direct requests for searches of information and intelligence files (paper and electronic) or is a senior officer or prosecutor required to authorise such a request? Do such requests have to be made in writing? On average, how long does it take for a request to be answered?
- D. At what levels (local, regional, and national) do police officers and analysts have access to national police information and intelligence files and databases? Are there access terminals in the main police offices at the local, regional and national level? Are lines to these offices encrypted? Are terminals protected by personal passwords and/or other security?
- E. What arrangements exist for storing and searching, crime reports, criminal records, fingerprints and, if collected, DNA? Can any police officer access these records or is prosecutorial or judicial permission required? Is there a national DNA database? Is DNA shared with the Interpol DNA database? Is there an Automatic Fingerprint

Identification System (AFIS) in place? Where AFIS is present, where are the AFIS scanners located? Do all suspects have their fingerprints scanned on the AFIS system? How many fingerprint and DNA records are held? What happens to DNA and fingerprint records if the suspect is later proven not guilty?

- F. Do other databases exist (such as vehicle ownership, driving licence holders, credit ratings, residence) that may be of value for law enforcement? Do visitors to the country or region have to register with the local police (often done automatically through the hotel register)? If so, at what level is this information collated? Is it included in any database with wider access? If citizens are issued with personal identification cards, are they issued by the police? Do the police store the details from identification cards electronically? Are the data available for the purposes of law enforcement investigation?
- G. Where computer systems are in place, how reliable is the technical infrastructure? Is there significant “down time” when the information cannot be accessed due to technical failure? Is access to all databases protected by a personal password and/or additional security measures? Does the system allow for a hierarchy of access so that information is available on a “need to know” basis, that is, only by those who need to know it in order to do their job?
- H. Are confidential databases accessible only on stand-alone computer terminals (i.e. not connected to the internet or intranet)? Are there precautions against unauthorised copying of information (these may be as basic as sealing a floppy disk drive, disabling CD write software or blocking the USB ports)? Is every attempt at access logged against the user’s name, the date and time of access? Is a strong anti-virus software used? Where information is sent out of the building, are secure lines with encryption devices used?
- I. Are offices equipped with shredding machines for the destruction of sensitive documents? Are there special waste sacks for the disposal of confidential paperwork? What rules govern the control and use of these?
- J. Where is the hardware for police information and intelligence systems located? Are the buildings and/or offices structurally secure? Is there perimeter security preventing unauthorised access? Are staff and technicians vetted or security cleared? Is the building subdivided into security zones with staff access being restricted as appropriate?

5. CRIMINAL INTELLIGENCE AS A PROCESS

Wherever the concept of criminal intelligence has been formally adopted, the key stages of the intelligence cycle will be represented in some form or other: Collection; Evaluation; Collation; Analysis; Dissemination and, sometimes, Direction.

The following list reflects the minimum structure, functionality and facilities required for a rudimentary, but effective use of police information and intelligence:

- Rules on how information may be collected (and for which purposes);
- Rules on information security;
- Protective marking (classification) system;
- Knowledge and practice of “the need to know” principle;
- Rules on to whom information and intelligence may be distributed;
- System for collating information of interest and importance (on paper and/or computer);
- Active encouragement and facilities for all officers to submit such information;
- A system of quality assurance (and source evaluation) for any information submitted;
- System for collating key information catalogues (such as crime reports, criminal records and fingerprints);
- Access and search facilities for these;
- A mechanism for requesting information from other agencies, organisations or countries;
- Trained analysts;
- Guidelines and standards on the content of analytical briefings, reports and other intelligence products;
- Active consideration of analytical products as part of the management process.

Such components would be the same at the national, regional and local level, save for the question of scale and may be more or less sophisticated depending on the quantity and nature of specialist equipment and software available.

5.1 COLLECTION

The place or person from which information is obtained is called a “source”. Information and intelligence can be sourced anywhere and at anytime. However, the most important (and often most underutilised) source for criminal intelligence is the patrol officers who are in constant contact with the community and are the first to attend crime scenes. The more developed the concept of criminal intelligence is, the greater the volume of information and intelligence contributed by these patrol officers will be.

5.1.1 Primary Sources

- A. Are police officers able to submit an intelligence log (either on paper or electronically) as a matter of routine? Are officers encouraged to do so? Is there any kind of performance measure related to the submission of information and intelligence by police officers?
- B. Is there a common national standard for recording information and intelligence? Are common formats and terminologies used?
- C. Is there a network of specialist police officers deployed to gather and develop criminal information and intelligence? If yes, how many? What are their job descriptions? How are they managed?
- D. Once police operations have taken place, are they formally debriefed in terms of what lessons have been learned? Is this information forwarded as information or intelligence? How and to whom?

The term “open source” refers to any information that can be legitimately obtained (i.e. “sourced”) free on request, on payment of a fee, or otherwise. It is often said that strategic analysis relies for 90% of its evidence and research material on open sources. There are commercial concerns that offer powerful search engines and provide access to the world's media, academic journals and government reports. However, these services can be expensive. At the other extreme, reference to the local press and other media can also be useful.

- E. Do analysts have access to open source information? What are the major sources available to them? Are these in hard copy (e.g. newspapers) or electronic? Are there subscriptions maintained to commercial information providers (such as Reuters or Lexis-Nexis)?

5.1.2 Covert Surveillance

Covert surveillance is a particularly intrusive method for collecting information. The use of covert surveillance measures involves a careful balancing of a suspect's right to privacy against the need to investigate serious criminality. Provisions on covert surveillance should fully take into account the rights of the suspect. There have been various decisions of international human rights bodies and courts on the permissibility of covert surveillance and the parameters of these measures. Reference should be made to these. An extensive discussion is contained in the commentary to Article 116 of the Model Code of Criminal Procedure (MCCP)(DRAFT, 30 May 2006). In those societies where the authorities exercise forceful control over the populations, the use of these techniques may be indiscriminate. Other systems will require a number of strict safeguards against abuse including the requirement that the offence be serious, that the use of the technique be vital to the case and that essential evidence cannot be secured by less intrusive means. Judicial or independent oversight is common and is required under international human rights law.

- A. Are the following covert surveillance techniques deployed:
- Interception of telecommunications?
 - Interception of email traffic?
 - Interception of post/mail?
 - Use of listening devices?
 - Use of tracking devices?
 - Use of surveillance teams?
 - Use of photographic surveillance?
 - The use of fake personal and company identities?
 - Covert search of letters, packages, containers and parcels;
 - Simulated purchase of an item;
 - Simulation of a corruption offence;
 - Controlled delivery.
 - Covert real-time monitoring of financial transactions;
 - Disclosure of financial data. This measure is carried out through obtaining information from a bank or another financial institution on deposits, accounts or transactions
 - Use of tracking and positioning devices.
- See also **MCCP (DRAFT, 30 May 2006)** for a listing of covert measures.
- B. Is there legislation in place allowing their use? What preconditions must be satisfied before they can be used? Who authorises their use: prosecutor, judge or senior police officer? Are there time limits within which they must be used? Is there any independent oversight and monitoring of these techniques? Can the results of these techniques be used as evidence in court? Are there special rules of evidence that apply? If so, what?
- C. How many telephone interceptions (“wiretaps”) are made each year? How many other forms of interception are made each year?
- D. Are these techniques employed directly by the police or is another government agency involved? What do practitioners think about the capacity to use these techniques? Is it sufficient for national needs? If not, what else do they think would be needed?

5.1.3 Informants

The use of informants or human sources for gathering information and intelligence is age-old. In some countries the use and handling (i.e. “management”) of informants is centralised, in others, informants are the unsupervised personal contacts of individual officers. Informants may have many different motivations. They may, on the one hand, be “concerned citizens” providing information out of a sense of civic duty or, on the other, hardened criminals seeking to oust the opposition. Information may be provided as a bargaining chip for some personal advantage, or, most commonly, be traded for cash. Because of the secrecy involved in handling informants, and because of the potentially large sums of money, there is an enormous capacity for abuse. Generally speaking, the reliability and source of any information provided by an informant needs to be carefully assessed and, where possible, corroborated. At the same time, it must also be recognised that the police owe a duty of care to their informants and must protect them from retribution.

See also **Section 5.7, POLICING: THE INTEGRITY AND ACCOUNTABILITY OF THE POLICE**

- A. Is there legislation in place allowing the use of informants?
- B. How are informants managed? Are their details registered in a confidential file? Are the personal details of informants known only to those dealing with them? Is there a senior office with responsibility for supervision of informant handling? Is there a specialist informant handling unit? If yes, how many informants are currently active?
- C. Is there special training in the use of informants? Are all investigators permitted to run informants or is this restricted to specially selected officers? Is the identity of informants protected when giving testimony in court? Is there a policy on informants’ protection and court testimony?
- D. How are informants paid? Are they paid by results or depending on the amount of information they provide? Is the investigator handling the informant also involved in making the payment or is it done separately? How is the money accounted for? Are receipts required? Who audits payments made to informants?

5.1.4 Widening the net

No one can ever be in full possession of all the information or intelligence that exists on a subject. Gaps in the research material can seriously spoil the final product. However, an analyst can improve the situation by attempting to acquire all the available data on a subject by tapping into the information held by others.

Information sharing is a reciprocal concept based on mutual advantage and, unless information flows in both directions, the stream of information will soon dry up.

See also **Section 6, Partnerships** below

5.2 EVALUATION

Best practice has evolved whereby all information or intelligence submitted is evaluated on the basis of (a) the previous history of reliability of the source and, (b) to what degree the source has direct knowledge of the information he or she is providing (for instance, did the source acquire the information directly, or did he or she hear it from someone else?). There are different systems in use for this, but, essentially, the idea is the same: to provide an estimate of risk and reliability for the information. Often the evaluation will result in a ‘source evaluation code’ consisting of a letter and a number chosen from a standard grid of options. The evaluation needs to be kept under continuous review as new information may be discovered which changes the perception.

Allied to this evaluation, there may be a further “handling” or “dissemination” code added that limits the extent of permission for further distribution. This is intended to protect the information or intelligence from any unauthorised disclosure.

- A. Is a reporting officer required to make a source evaluation of the information and intelligence he or she is recording? How is this marked on the information or added to the record? Is a code added to the record stating to whom the information may be disclosed, sometimes called a dissemination or handling code? Is this evaluation kept under constant review?
- B. Is information and intelligence supervised and quality assured after submission? If so, what quantity of reports are returned for correction or further completion? How many reports are discarded because they do not meet required standards?
- C. Are there rules preventing the use of information that has been obtained in breach of human rights (e.g. through torture)?

5.3 COLLATION

- A. Are all records and logs received, either on paper or electronically, filed, cross-referenced, and ordered, ready for use? Who does this? Is data warehousing software used?

5.4 ANALYSIS

There are two basic categories of analysis: strategic analysis, which takes a higher “helicopter” and a longer-term perspective; and tactical analysis, which focuses on immediate, operational issues. Strategic information and intelligence considers trends and emerging threats. Tactical information and intelligence looks at an existing situation or current operation, often in real time.

Analysis considers information in context, draws conclusion as to what it means, highlights gaps in existing knowledge, suggests what is likely to happen next and makes recommendations as to possible future action.

The work may be prompted by anomalies, trends or connections noticed by the analyst him or herself during the course of his or her general research, but, more commonly, it will be initiated by senior managers asking a question or providing specific terms of reference.

The results may be presented in a number of different formats depending on the requirements of the person commissioning the work. These may range from in-depth reports on complex strategic issues to a short oral briefing about a particular operation.

Good criminal intelligence products are cogent, concise and accessible with clear and unequivocal recommendations justified by strong evidence. Unfortunately, where information flows and sources are weak, the analytical product will also be weak.

- A. Are there trained analysts? If not, are there officers tasked with maintaining and collating police information and records and to whom other officers can turn for background information or advice about a criminal?
- B. Are there guidelines on what different types of analytical report should contain? Are analysts aware of them? When were they written? Do they have a prescribed format? Do analytical reports contain executive summaries detailing the main evidence, conclusions and recommendations? Are they written in plain and unequivocal language? Do the conclusions and recommendations provide sufficient detail on which to base operational action? Are the recommendations supported by evidence?
- C. Are reports produced that describe certain crimes or criminal behaviour and their common characteristics, i.e. “problem profiles”? Are reports produced on prominent criminals, their lifestyles, associates and criminal activities, i.e. “target profiles”? Are reports produced about the way in which a criminal market conducts itself, i.e. “market profiles”?

- D. Hot spot analysis has become a common tool for mapping the density and other geo-temporal characteristics of criminal activity. Modern software can provide highly detailed interactive maps that contain an enormous amount of detail. However, similar results can be obtained through the use of coloured pins and flags on a printed map.
- E. Where analysts are employed, do they undertake hot spot analysis? Do they do this manually or using a computer? To whom are the maps distributed and for what reason? Are there examples of where these have influenced policy or prompted a tactical response?
- F. The link chart is also a common analysis tool that represents pictorially the relationships between different aspects of an enquiry or investigation, for instance individuals, locations, telephone numbers, motor vehicles, etc.

It is particularly useful when trying to collate and visualise connections between large quantities of data and can be helpful when presenting evidence in court. Advanced software (such as I-Base or Xanalys) exists for producing link charts, but they can also be produced manually.

- G. Do analysts know how to produce link charts? Are they produced manually or by using computer software?
- H. Do they perform other types of analysis, such as telephone and financial analysis?
- I. How often are analysts asked to produce a specific report? What do police managers think about the concept of criminal information and intelligence? What do investigators and patrol officers think? How do those who manage investigations, including prosecutors or judges where applicable, think that their work is supported by analysis? Are there any examples in which a case has been solved or substantially advanced because of the intervention of an analyst?
- J. Are analysts asked to work in real time on active operations? Are they co-opted onto major incident investigation teams or joint multi-agency task forces? What is the role assigned to them? Do they produce profiles and analyses that are used to inform and direct the decision making of the senior investigating officer or prosecutor?

5.5 DISSEMINATION

Analytical reports, unless written for public consumption, should only be distributed to those who “need to know it” (see above).

In formulating national management of and strategic approaches to the fight against organised crime, many governments have found value in compiling a national threat assessment for organised crime. Such a document collates and amalgamates all available information about who is responsible for the most crime, the harm they cause, and how their criminal activity is likely to develop in the future. At the same time, the document highlights any new phenomena or threats that appear to be growing in significance and which could be prevented by early intervention from becoming a major problem.

National strategic assessments of this kind are based on an accumulation of contributions developed at the local level and combined in order to acquire a national picture. Local conclusions can then be moderated and corroborated against those in other parts of the country.

Objective evidence provided in such a threat assessment is invaluable for policy makers who can then use it to design responses that will have maximum impact with the greatest economy through the targeted allocation of resources.

However, as with other forms of analytical product, the end result will depend on the quality and completeness of the data provided as well as the skills of the analyst preparing it.

5.5.1 Strategic Assessments

- A. Is there a national crime threat assessment or other strategic crime report? Does it assess and describe existing and emerging criminal activity on the national level? Who coordinates it? Who defines its terms of reference? For whom is it produced? Does the document satisfy the terms of reference?
- B. Are there regional and local crime threat assessments or strategic crime reports? Are they used to supplement and develop the national crime threat assessment or other strategic reports? Do they assess and describe existing and emerging criminal activity on the regional and/or local level?
- C. Are strategic assessments and analyses provided to the office of the chief of police in the organisation? Does the chief of police provide feedback on their content? What use is made of them? Are there examples in which such reports have led to new policies or strategies, or changes in them?

5.5.2 Tactical Assessments

- A. Do uniform police patrols receive regular information and intelligence briefings concerning their area of patrol? If yes, how often and what do they contain? Do the briefings suggest trends and possible developments in the area? Do police patrols think these briefings assist them?
- B. Do the local police commander and crime manager receive regular, if not daily intelligence briefings on the crime activity in their area? How often are intelligence briefings provided? What do they contain? Does the briefing provide sufficient detail for choices to be made on the management of resources and officer deployment?
- C. Are the results of analysis provided to partner law enforcement agencies? Are they provided to international organisations or police liaison officers from other countries? Is feedback received on them? Are the results of analysis received from partner agencies and organisations?
- D. Are different versions of intelligence products produced for different audiences, i.e. is there an “open” or “unclassified” version for public consumption, as well as classified versions for internal use?

5.6 DIRECTION

The idea of directing the collection and development of police information and intelligence is found in all formal criminal intelligence management structures, sometimes called “criminal intelligence models”. The intention is to focus activity on the most harmful crime problems, and the most active criminals, who are identified through analysis of the available information, and to allocate sufficient resources to negate that harm. The approach is methodical and predominantly proactive, but has different needs at different levels.

In a criminal intelligence model, the structural apparatus for targeting effort, sometimes called “tasking and coordination”, will be duplicated at each level in the hierarchy and is intended to have a cumulative effect.

Mention should also be made of the COMSTAT process. This is a police management system that brings police managers together in open meetings to confront them on the crime figures in their areas and on their personal intentions on how to deal with them. It has been credited with a good deal of success and has the merit of closely associating commanders with the performance of their command.

This level of direction and participation of senior managers is unlikely to be present in the majority of countries.

- A. Is there an organisational tasking and co-ordination mechanism that makes policy and resource decisions based on analytical reports? Does it issue instructions on what

criminal intelligence is required and where the focus of proactive police activity should be? How often does it do this? How are these instructions disseminated to the appropriate officers?

- B. Is there a meeting or mechanism through which police managers and commanders are expected to justify their performance against crime?

6. LOCAL USE OF INFORMATION AND INTELLIGENCE

Even where the use of police information and intelligence is not widespread or systematic, the main ideas may still be useful at the local level with a minimum of sophistication and equipment. The assessor is reminded that the essence of structured criminal intelligence and its practical application can be achieved through the use of a pen, a sheet of paper and old fashioned commonsense.

The assessor may wish to consider if, in the absence of formal criminal information and intelligence structures, whether the basic elements already exist, albeit in rudimentary form. If so, could they be replicated elsewhere or constitute the foundation of an extended network?

The questions below should be considered as indicative of a basic criminal intelligence capacity.

- A. Do local police stations have something called or otherwise identified as a criminal intelligence unit? If yes, where is it located? How is it staffed? What do the staff do? Do officers know about this unit? Do they know what it does? To whom is this unit accountable?
- B. How is this unit equipped? Does it have computers? If yes, does it have any specialist criminal intelligence software? Where computers are present, are there printers and paper available? Where computers are not present, are there typewriters? Is the equipment sufficient for the numbers of staff?
- C. Where there are computers, is there access to specialist databases or information? If yes, what information can be accessed? Is access to computers secure? Is it protected by personal password or similar? Do officers share their passwords? Is information and intelligence structured to ensure only authorised personnel can access particularly sensitive data? Are logs automatically created on who has accessed the data, when, and why? Is there any direct access to central or national records?
- D. Where there are no computers, is there an office, part of an office or room in which information is collated and filed? What are the criteria for information to be filed here? Are there rules and guidelines on what information these files can contain? What sorts of information does it actually contain? How is it filed? Is the information cross-referenced and indexed? Who is responsible for the collation and filing? Has that person received any training?
- E. Is access to this room restricted to authorised personnel only? Is access physically controlled by means of a key, keypad, or swipe card? Is sensitive information stored under additional security measures? How is access granted to these files? On what basis? Is an access log maintained? What does it say about patterns of access, who consults which files and how often?
- F. Can files be removed from this room? On what basis? How is the removal recorded?
- G. In all cases, how is new information added to the files? How are new files opened? Who has the authority to do this? How is this information submitted? Do officers receive training on this? How is new information submitted by officers supervised? By whom?

- H. How is information provided by informants recorded? Is an informant's real identity kept secret?
- I. Are there document shredding machines or confidential waste sacks for the disposal of sensitive information?
- J. For what is police information and intelligence used? Is it used for:
- Checking the status of someone stopped on the street?
 - Identifying a suspect?
 - Locating a suspect through known associates?
- K. Is it also used for:
- Identifying prominent criminals or trends in criminal offences?
 - Identifying appropriate subjects for proactive operations?
 - Identifying priorities for the allocation of resources?
- L. Are the identities of the most prominent local criminals and their associates made known to officers, especially those on routine patrol? How? Are their photographs on display or otherwise disseminated to officers? Are officers encouraged to submit any sightings or other information about these criminals? How is this done? Do they receive training on what to look for and how to report it?
- M. Where available, how do officers access information related to:
- Crime reports?
 - Criminal records?
 - Fingerprints?
 - Modus operandi?
 - Vehicle ownership?
 - Residence?
 - Warrants for arrest?
 - Other court orders?
- N. How quickly can such information be obtained?
- O. What arrangements are in place to request information from other agencies or organisations? How does this work? How long does it take? Do officers tend to use informal personal networks to obtain such information? Why?
- P. Do local officers employ covert techniques for obtaining information (such as telephone interception or listening devices)? Is the equipment to do this available locally? What permissions are needed? What are the limits on the uses of these techniques? How long does it take?
- Q. Can local investigators acquire telephone subscriber information? How? What permissions are needed? How long does it take?
- R. Is current and developing criminal behaviour brought to the attention of local officers? How? Do officers receive regular briefings on crime and criminals in their area? How? Are these briefings used to direct routine police patrols? How?
- S. Is there anyone tasked with reviewing all available information in order to identify trends or common characteristics in criminals or criminal behaviour? If yes, has that person received any formal training in analysis? Does that person conduct his or her research using computers or manually? What sources of information or data are available to him or her? Are there any sources of information to which this person believes he or she needs access, but does not have?

- T. Are statistics from crime reports gathered and collated? Who does this? How are the statistics presented? To whom are they given?
- U. Is crime activity in the area plotted and visually displayed on any maps? Is this done electronically or manually? What information do the maps show?
- V. Where a central or national agency or registry exists for police information and intelligence, how is local information forwarded to it? What are the criteria for such submissions? Who decides whether it should be forwarded?
- W. Where analysts are employed, on what basis does an analyst start a research project? Is he or she given specific terms of reference? How does that person document or report the results of his or her research? Are standard formats used? To whom are the results given? For what are they used?
- X. Are strategic documents produced that examine how much and what kinds of crime are committed and how this impacts on the local community? Do such documents identify areas that need additional police attention? Are they submitted to a central point for collation and amalgamation with similar documents from other areas? Are they then used to compile a strategic national overview of criminal activity?
- Y. On what basis do local police commanders allocate their resources? Are local crime patterns considered as part of the decision-making process? On what basis do local police commanders request additional resources from their superiors? Do they use evidence from local research in support of their requests?

7. PARTNERSHIPS AND COORDINATION

7.1 PARTNERSHIPS

While the police have considerable opportunities for gathering and collecting information and intelligence, there are also large stores of data held by other public and private interests all of which have a potential value for police purposes. Working in partnership with others increases the number of potential sources of information. Indeed, there may be situations in which a partner agency is the only possible source of a particular item of information.

Law enforcement officers often feel more comfortable when exchanging information through personal informal networks. It is often the case that informal contact is faster and more efficient. However, there are inherent dangers in obtaining information without the safeguards, checks and balances in the formal procedure – not least of which is the question of admissibility of the information in court. An effective and properly functioning mechanism for exchanging information (especially across borders) gives less cause for an investigator to “call a friend” and allows that officer to act with confidence on the basis of information received.

However, it is not always easy to establish partnerships with other agencies either at home or abroad. Sometimes this is because there are legal constraints restricting the sharing of data (especially personal data), or because of concerns about security. There will also be times when potential partners have different organisational objectives or agenda.

- A. How do law enforcement agencies or organisations share information and intelligence? Does this happen formally or informally or both? How is information shared? Are common standards used in terms of evaluation and formatting of the information provided?
- B. What kinds of information are shared? Is information of potential interest forwarded to partners automatically? Do joint investigations occur? How often?
- C. Is the information and intelligence stored in state prosecutor databases available for police investigators? Do state prosecutors have access to data stored in police databases?
- D. Do the police seek information and intelligence from other non-law enforcement agencies such as prisons, banks and the tax authorities? Are there protocols in place to allow this to happen? How does this system work? How often are requests made? How often are the requests fully answered? How long does it take?
- E. Is there some form of regular joint meeting between organisations to discuss general strategic or specific tactical criminal intelligence assessments? How often? Who is involved? Are there notes of these meetings? What are the outcomes?
- F. In a post-conflict situation, is there any joint intelligence-sharing protocol with the peacekeeping forces?
- G. Are there protocols in place for exchanging data bilaterally with other countries or international organisations, such as Interpol? Which countries or organisations are involved? Is authority required from a senior officer, prosecutor or judge before this can be done? Are there limits on the types of information that can be shared? If so, what are they?
- H. Can this be done directly or is a formal Letter of Request (Rogatory Letter) required? Do officers know how to make such a request? Is there a central office or bureau that deals with such requests? How long, on average, do requests take to answer?
- I. Are police liaison officers posted to other countries? How were these countries chosen? Do the duties of police liaison officers include building contacts for the exchange of information and intelligence?

- J. Is the country a member of any regional law enforcement sharing body, e.g. ASEAN, SECI, CARICC? What are the national obligations and privileges in respect of that body? How does the country interact with that organisation and the other members of it? How much information and intelligence is received from it? How much information and intelligence is sent to it?
- K. Can data be entered and searched in international databases, such as Interpol's DNA database? Can this be done directly and in real time via secured telecommunication systems, such as Interpol's I-24/7? If so, which law-enforcement agencies have direct access to these telecommunication systems? If not, how is data entered and searched in the international databases? How long does this take?

7.2 DONOR COORDINATION

Being aware of the activities of donors in the areas of crime investigation as well as the development of police information and intelligence systems will prevent unnecessary duplication and allow coordination of initiatives.

- A. Are there (or have there been) internationally funded initiatives aimed at developing police information and intelligence? What are the objectives of these projects? Are they being achieved? Is there evidence of duplication? Is the implementation of these initiatives being coordinated? Are mechanisms in place that will ensure the sustainability of any sponsored activity? Which countries or organisations are involved? What mentoring mechanisms are there in place? Are any stakeholders and/or donors obvious by their absence?
- B. Do (or did) these initiatives offer training? If so, are they training trainers (to deliver cascade training programmes) or are they focusing on individuals? Is a system of computer-based training being offered? Was a training needs assessment conducted in advance of these programmes? Are any of those identified needs still to be addressed?
- C. Do (or did) these initiatives provide equipment? If so, was the need for this equipment identified through an independent evaluation or was it the result of a government list? Are other donors providing the same or similar equipment? Are there plans for how the equipment will be maintained and replaced? Are there examples of the same or similar equipment being provided and then being misappropriated or not being used at all?
- D. Where information systems are being provided, was a user requirement prepared? Who prepared it? Does (or will) the system fulfil this requirement? Will the system be scalable, i.e. can it be expanded in the light of increased future need? Who owns the source code?
- E. In respect of these initiatives were any post-implementation reviews conducted that may have helped to identify good practice for replication elsewhere? Are the results of such initiatives collated and coordinated to inform future planning?

ANNEX A. KEY DOCUMENTS

UNITED NATIONS

- Convention against Transnational Organised Crime (UNTOC), (2000) and its related protocols on Trafficking in Persons, Smuggling in Persons and the Illicit Manufacture of Firearms and Ammunition (outlining important investigatory measures when tackling serious and organised crime);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention against Corruption
- Single Convention on Narcotic Drugs
- Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- Convention on Psychotropic Drugs
- The Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice, 2006, which contains source documents on crime prevention and criminal justice, and Human Rights texts including:
 - Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1975.
 - Minimum Rules for Non-Custodial Measures (Tokyo Rules).
 - Basic Principles on the Role of Lawyers
 - Guidelines on the Role of Prosecutors
 - United Nations Standards Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).
 - Code of Conduct for Law Enforcement Officials
 - Rules for the Protection of Juveniles Deprived of Their Liberty.
 - Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
 - Guidelines for Child Victims and Witnesses
 - Declaration on the Elimination of Violence against Women
 - Declaration on the Protection of All Persons from Enforced Disappearance
 - Declaration on the Rights of the Child
 - Standard Minimum Rules for the Administration of Juvenile Justice
- United Nations Survey of Crime Trends and the Operation of Criminal Justice Systems

DRAFT

- Model Police Act
- Model Code of Criminal Procedure
- Model Criminal Code

PLEASE NOTE: *The Model Police Act (MPA), the Model Code of Criminal Procedure (MCCP), and the Model Criminal Code (MCC) are being cited as models of codes that fully integrate international standards and norms. At the time of publication, the MPA, the MCCP, and the MCC were still in DRAFT form and were being finalised. Assessors wishing to cite the MPA, the MCCP, and the MCC with accuracy should check the following websites to determine whether the finalised Codes have 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.

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

REGIONAL

- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981), Council of Europe
- Recommendation R(87)15 on regulating the use of personal data in the police sector (1987) Committee of Ministers of Council of Europe

- Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and trans-border data flows (2001) Council of Europe
- Proposal for a Council Framework Decision on the exchange of personal data processed in the course of the activities of police and judicial cooperation (2005) European Commission (www.statewatch.org/news/2005/sep/com-data-protection-prop)

OTHER USEFUL SOURCES

- Ainsworth, P.B. (2001) "Offender Profiling and Crime Analysis" Willan Publishing
- Brown, S.D. (2006) "Criminal Intelligence: Data Prospecting or Seeking Significance". International Association of Law Enforcement Intelligence Analysts (IALEIA) Journal No 17 vol. 1
- Bruce, C.W. Hick, S.R. & Cooper, J.P. (Eds) (2004) "Exploring Crime Analysis" IACA Press
- Dixon, T (2003) "Intelligence Management Model for Europe: Guidelines for standards and best practice within the analysis function" (www.tulliallan.police.uk)
- IACA, (2004) "Exploring Crime Analysis: Readings on Essential Skills" International Association of Crime Analysts
- Law Enforcement Analytic Standards (2004) U.S. Dept of Justice and IALEIA (it.ojp.gov/documents/law_enforcement_analytic_standards)
- Ratcliffe, J.H. (2003) "Intelligence-led Policing" Australian Institute of Criminology: Trends and Issues in crime and Criminal Justice No 248 (www.aic.gov.au)
- Ratcliffe, J.H (Ed.) (2004) "Strategic Thinking in Criminal Intelligence" Federation Press
- Peterson, M.B. Morehouse, R & Wright, R (Eds) (2000) "Intelligence 2000: Revising the Basics" LEIU & IALEIA

NATIONAL

- Criminal Code
- Criminal Procedure Code
- Other sources of criminal law
- Standard operating procedure, implementing/clarifying regulations
- Police training manuals and course materials

ANNEX B. ASSESSOR'S GUIDE / CHECKLIST

The following table is 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 OVERVIEW	<ul style="list-style-type: none"> • Ministry of Interior Reports • Ministry of Justice Reports • Ministerial Websites • National & local Crime Statistics • NGO Reports • UN Regional & Country Analyses 	<ul style="list-style-type: none"> • Any Office of National Statistics 	
3.1	LEGAL AND REGULATORY FRAMEWORK	<ul style="list-style-type: none"> • Government department such as the Ministry of Justice or Ministry of the Interior; • Government websites (especially for police) • Police agency's publicity literature • The internet can be a valuable source of national legislation (e.g. www.wings.buffalo.edu/law/bclc/resource); • Global Legal Information Network www.glin.gov • www.interpol.org 	<ul style="list-style-type: none"> • Government Minister responsible for Justice and/or Internal Affairs; • Representative from the government's legislative drafting department; • State Prosecutor, Attorney General or Director of Public Prosecution; • Policing agency's legal department • Representative of local criminal bar association • Head of criminal intelligence agency; • Head of national security agency 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.1	POLICY	<ul style="list-style-type: none"> • Manuals of guidance on criminal intelligence/information; • Standard operating procedures policy/guidance on criminal intelligence/information gathering, analysis and dissemination; • Inspection reports by external organisation(s); • Guidance/rules on the security of intelligence and information; 	<ul style="list-style-type: none"> • Government Minister responsible for tackling crime – possibly Minister of Justice or Interior; • Senior civil servants; • Head of criminal intelligence agency; • Head of national security agency; • National or regional Prosecutor; • Judges of criminal cases; • Police Inspectorate or oversight/accountability body; • Researchers/academics who focus upon crime, human rights issues; • Senior crime managers; • Senior crime intelligence managers • Leaders of law enforcement agencies; • Representatives of a police board or oversight committee; • Head of criminal intelligence organisation; • Local police commanders; • Head of local criminal intelligence unit; • Senior officers in charge of crime investigators; • Intelligence officers; • Crime investigators/Detectives; • Analysts; • Informant handlers; • Surveillance operatives; • Trainers; • Patrol officers • Representatives of the public (an oversight committee, local councillors); • Researchers in crime investigation and intelligence issues. • Independent human rights/civil liberty/anti corruption groups; • Journalists (international, national or local, specialising in crime issues). 	
4.2	INSTITUTIONS	<ul style="list-style-type: none"> • Organisation chart of national police responsibilities • Charter or legislation setting up a criminal intelligence organisation • Policy and standards for information and intelligence handling and security • Relevant training manuals • • 	<ul style="list-style-type: none"> • Chief of police • Head of criminal intelligence agency; • Head of national security agency; • National or regional Prosecutor; • Judges of criminal cases; • Police Inspectorate or oversight/accountability body;; • Senior crime managers; • Senior crime intelligence managers • Representatives of a police board or oversight committee; • Local police commanders; • Head of local criminal intelligence unit; • Intelligence officers; • Patrol officers 	

Police Information and Intelligence Systems

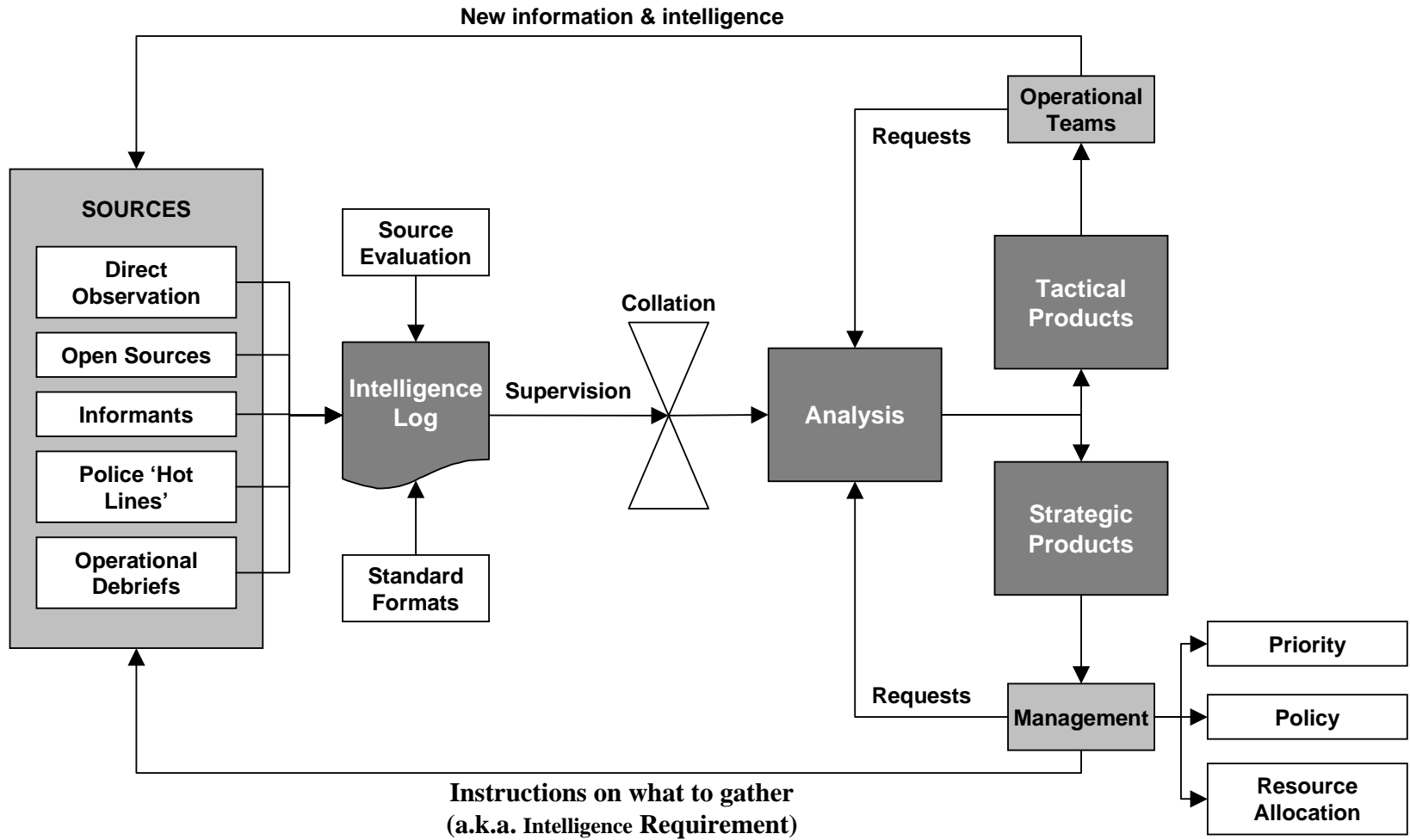
	TOPIC	SOURCES	CONTACTS	COMPLETED
4.3	STAFFING	<ul style="list-style-type: none"> • Security vetting and clearance criteria • Analyst and intelligence officer job descriptions and selection criteria; • Training programmes for analysts & other staff (particularly managers), • Visit intelligence unit(s) in relevant organisations. • Guidance on the selection of staff for criminal intelligence activities (in their broadest sense); • Programmes for training of staff involved in criminal intelligence activities 	<ul style="list-style-type: none"> • Head of police personnel, recruitment and promotion department; • Head of Police Training • Person in charge of staff security vetting • Analysts • Police staff working with information and intelligence 	
4.4	INFORMATION & INTELLIGENCE SYSTEMS	<ul style="list-style-type: none"> • User requirement • Available databases • Storage & retrieval systems for paper records (especially fingerprints & photographs) • Data model & architecture • Protocols on information security • inspection of computer • Inspection of server rooms • Database performance reports 	<ul style="list-style-type: none"> • Chief Information Officer for law enforcement • Any IT consultant employed by the police; • Any officer who uses the databases • Officers or staff who populate the system(s) • Any information security officer • Any data protection officers • Representative from any privacy or data protection body. • Analysts • Trainers 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
5.1	COLLECTION 5.1.1 Primary Sources 5.1.2 Covert Surveillance 5.1.3 Informants 5.1.4 Widening the net	<ul style="list-style-type: none"> Analyst and intelligence officer job descriptions; Training programmes for analysts,; Databases available to investigators; Programmes of training for investigators; Manuals of guidance on criminal intelligence/information; Standard operating procedure policy/guidance on criminal intelligence/information gathering, analysis and dissemination; Guidance on the use and supervision of informants, surveillance and other sensitive policing techniques; Guidance/rules on the security of intelligence and information; Programmes for training of staff involved in criminal intelligence activities Selection of strategic criminal intelligence assessment reports; Examples of local strategic and tactical criminal intelligence assessments or reports; Notes or minutes of meetings where intelligence material has been used to make decisions (tasking and coordination, deployment and operational meetings); Databases available to intelligence units and other staff; Open source access Examples of forms or templates (electronic and paper) used for collecting or disseminating information/intelligence Visit intelligence unit(s) in relevant organisations. 	<ul style="list-style-type: none"> Head of criminal intelligence agency; Head of national security agency; Independent human rights/civil liberty/anti corruption groups; National or regional Prosecutor; Judges of criminal cases; Senior police officers with responsibility for crime investigation and criminal intelligence; Journalists (international, national or local, specialising in crime issues). Leaders of law enforcement agencies charged with the criminal intelligence function; Head of crime investigation department; Head of criminal intelligence unit; Local police commander; Rank and file staff (analysts, informant supervisors and handlers, detectives); NGO researchers; Head of police personnel, recruitment and promotion department; Heads of law enforcement agencies (such as police, customs, border guards); Local police commanders; Head of local criminal intelligence unit; Senior officers in charge of crime Head of any information management department 	
5.2	EVALUATION	<ul style="list-style-type: none"> Intelligence logs and information Guidance on applying evaluation 	<ul style="list-style-type: none"> Rank and file staff (analysts, informant supervisors and handlers, detectives); Officer responsible for supervising intelligence logs; 	
5.3	COLLATION	<ul style="list-style-type: none"> Systems of filing Data model used Software in terms of data mining and case management systems Test or training platforms 	<ul style="list-style-type: none"> Any intelligence manager Persons responsible for collation Persons responsible for monitoring and supervising intelligence logs and data input 	
5.4	ANALYSIS	<ul style="list-style-type: none"> Analysts software suppliers; Examples of forms (electronic and paper) used for collecting or disseminating information/intelligence; Samples of link charts; Samples of hot-spot maps. 	<ul style="list-style-type: none"> Head of police training department. Head of criminal intelligence organisation; Principal Analyst; Analysts. 	

Police Information and Intelligence Systems

	TOPIC	SOURCES	CONTACTS	COMPLETED
5.5	DISSEMINATION	<ul style="list-style-type: none"> • Examples of daily or other briefings to operational teams and police managers; • Samples of strategic threat assessments, tactical reports and other analyses. • 	<ul style="list-style-type: none"> • Strategic police managers; • Operational Police managers; • Prosecutors and/or investigation managers; • Patrol officers; • Representatives of 3rd party law enforcement agencies. 	
5.6	DIRECTION	<ul style="list-style-type: none"> • Notes or minutes of meetings where intelligence material has been used to make decisions (tasking and coordination, deployment and operational meetings); • Any instructions issued on what kind of information or intelligence to collect or terms of reference for an analytical report • Any instructions on what intelligence is needed/ analytical terms of reference (i.e. "intelligence requirement") produced 	<ul style="list-style-type: none"> • Strategic police managers; • Operational Police managers; • Prosecutors and/or investigation managers; • Head of criminal intelligence agency; • Head of national security agency; • Independent human rights/civil liberty/anti corruption groups; • National or regional Prosecutor; • Judges of criminal cases; • Senior police officers with responsibility for crime investigation and criminal intelligence; • Leaders of law enforcement agencies with responsibility for criminal intelligence function. 	
6	LOCAL USE OF INFORMATION AND INTELLIGENCE	<ul style="list-style-type: none"> • Visit to local intelligence unit or collators office • Any reports or analyses produced • Any briefing materials on local crime patterns • Any proactive operation plans or proposals • Any instructions on what intelligence is needed/ analytical terms of reference 	<ul style="list-style-type: none"> • Local police commander • Local manager of investigators • Patrol officers • Person in charge of collating information • Any local analyst • Any staff member compiling crime statistics 	
7.1	PARTNERSHIPS	<ul style="list-style-type: none"> • Written protocols or directions requiring inter agency working; • Manuals of Guidance/Standard Operating Procedures; • Notes of meetings between criminal intelligence and crime investigation agencies and/or with prosecutors; and with other agencies; • Memoranda of Understanding or service level agreements • 	<ul style="list-style-type: none"> • Head of criminal intelligence agency or unit; • Head of crime investigation agency/department; • Head of Customs, Border Guard or specialist law enforcement agency (anti money laundering, counter corruption unit etc); • Criminal intelligence operatives; • Crime Investigation Supervisors and Investigators; • Prosecutor; • Analyst; • Interpol and any regional police organisation; 	
7.2	DONOR COORDINATION	<ul style="list-style-type: none"> • Internet Websites • Programme and project documents; • Project terms of reference; • Public brochures and literature; • Regional organisation offices • Memoranda of Understanding with international community, organisations or donor countries (e.g. UN, European Commission, OSCE, ASEAN, Interpol etc) • International and Regional organisations, • Embassies/Ministries 	<ul style="list-style-type: none"> • Senior police managers • Local representatives of other international initiatives (particularly foreign law enforcement liaison officers). • Representatives of relevant international or regional organisations working in the country; • Embassies/Ministries for donor activity. • Programme and project managers for international initiatives • Local UN representative • Local representatives of other international/regional organisations • Embassies (especially foreign law enforcement liaison officers). 	

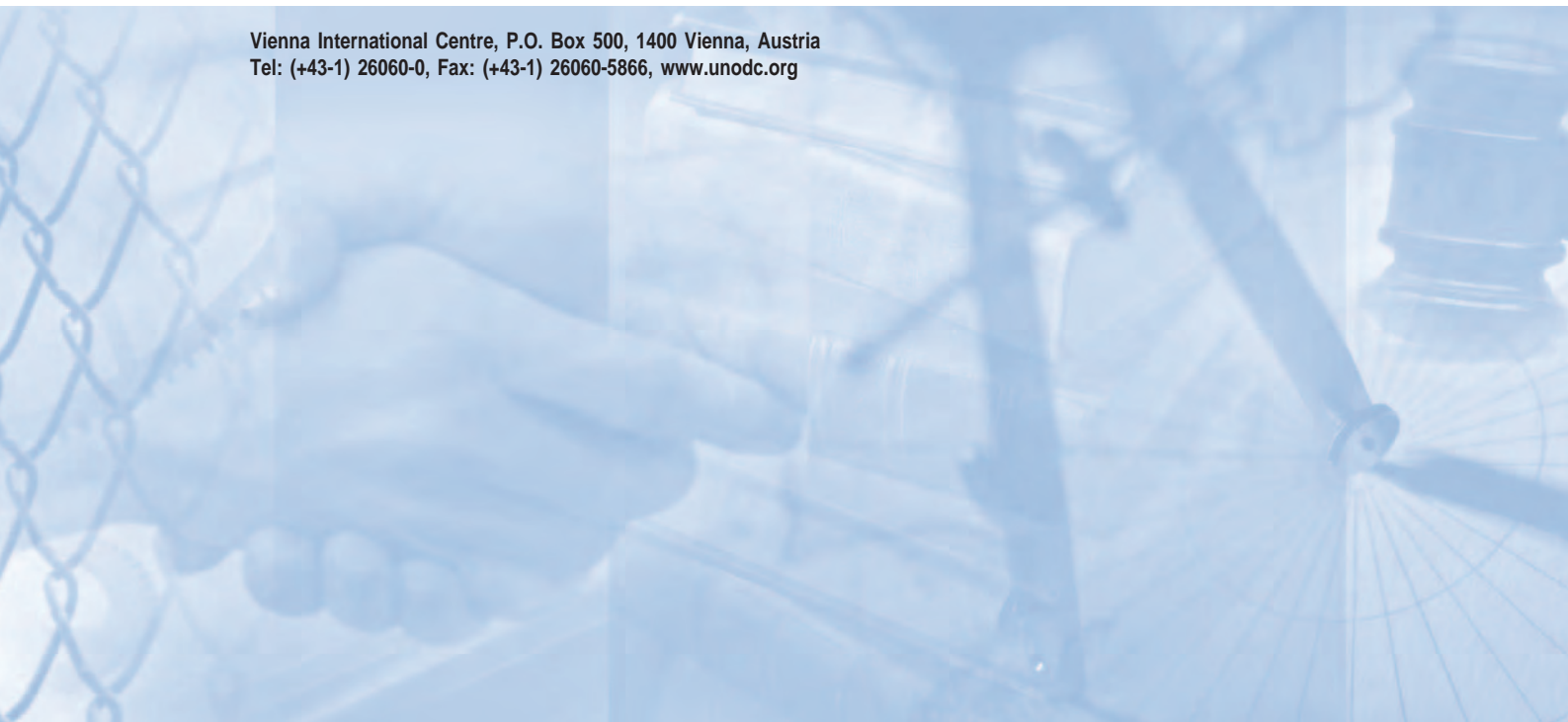
BASIC INFORMATION FLOW





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Forensic services and infrastructure

Criminal justice
assessment
toolkit

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UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

POLICING

Forensic services and infrastructure

CRIMINAL JUSTICE ASSESSMENT TOOLKIT



UNITED NATIONS
New York, 2010

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

This publication has not been formally edited.

PREFACE

The Criminal Justice Assessment Toolkit (CJAT) 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 assessment 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 Tools have been grouped within criminal justice system sectors: Policing, Access to Justice, Custodial and Non-Custodial measures, and Cross-Cutting Issues. Designed to be a dynamic set of documents that continue to meet assessment needs as they evolve, additional Tools will be developed and incorporated in the electronic version of the CJAT.

The present Tool provides guidance to assess forensic services and infrastructure, including crime scene investigations as well as forensic laboratory¹ operations, and is included under the policing sector.

The Tool has been designed to allow the assessor to assess the spectrum of forensic services and infrastructure, from countries with the most rudimentary of institutions and processes to those with a quite complex forensic infrastructure. It provides a practical and detailed guide to the key issues to be examined. The level of detail in the Tool is deliberate, allowing assessors to gain an understanding of the depth and complexity that a thorough assessment should involve. The Tool is not a checklist. An artificially simplified approach to conducting the assessment 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 Tool.

The CJAT 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, e.g., forensics.

CJAT is designed for use both in countries that have common law or civil law or hybrid criminal justice systems and assessors should find it particularly useful for countries undergoing transition or reconstruction.

¹The term forensic laboratory is used throughout this document as a synonym for forensic institute. While the tool can be easily adapted to forensic medicine or pathology specifically, and while they have been included, it is not primarily aimed at dealing comprehensively with clinical forensic medicine or forensic pathology.

USING THE TOOL

The Tool to assess forensic services and infrastructure is available both as part of the CJAT and as a stand-alone module. To facilitate its use as a stand-alone module, portions of the General Introduction to the CJAT have been included in the Preface of this Tool, and annex A.1 reproduces general guidelines for conducting assessments.

Assessors of forensic services and infrastructure are encouraged to make full use of the available general resources of the CJAT, which can be accessed at the following website address: www.unodc.org.²

The present Tool on forensic services and infrastructure is complemented by additional annexes specific to assessing forensic services and infrastructure. They include a glossary defining commonly used terms (highlighted in **bold** throughout this document); a flow chart illustrating the role of forensic services in the criminal justice process; a table outlining techniques routinely used in the different forensic science disciplines; and an overview of forensic science associations and networks.

Because of significant cross references throughout the document, it is recommended to read it in its entirety and not just those sections that appear relevant to the assessor in a given situation.

²The specific link as at November 2009 is: www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html

Acknowledgements

This Tool of the Criminal Justice Assessment Toolkit was conceptualized by the Laboratory and Scientific Section (LSS) of the United Nations Office on Drug and Crime (UNODC). The initial draft was prepared by Dr. Kimmo Himberg and Mr. Willem Neuteboom.

The development of this Tool would not have been possible without the valuable contributions of the following experts who participated in an Expert Group Meeting held in Vienna, Austria, in September 2008, and/or provided written comments:

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The preparation of this Tool was coordinated by Magali Bernard and Barbara Remberg, staff of UNODC LSS (headed by Justice Tettey). LSS gratefully acknowledges the significant editorial input by Susan Johns, assistance by Aline Girod, and also contributions by other UNODC staff.

UNODC wishes to thank the Government of Canada for the generous support to the development and publication of this additional Tool of the Criminal Justice Assessment Toolkit.

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1. Introduction

Forensic services are key to an effective and fair criminal justice system because they provide objective and timely information for multiple phases at different stages of the criminal justice process. For example, forensic services are used by police to identify suspects in the investigative phase of the criminal justice process. Forensic services are also used by attorneys and judges during the trial phase of the process. The ultimate objective of forensic science is to contribute to finding the truth, more precisely to provide the criminal justice system with answers, using objective evidence, and by questions aimed at determining the guilt or innocence of an offender. It is therefore essential that forensic services are provided by a highly qualified and impartial entity.³

Defining just what is meant by the term “forensic science” is difficult. Almost any science can be called a forensic science when used in a legal context (e.g., by police investigating a crime or by the courts during trials). This overly broad definition of forensic science is not particularly useful when attempting an assessment of forensic services. On the other hand, limiting the scope of forensic science to only analyses performed in a laboratory results in an overly narrow definition and therefore assessment of part of the infrastructure providing forensic services. In this document, forensic services and infrastructure go from the recognition, collection and examination of physical evidence from crime scenes, through the analysis and interpretation of evidence in a forensic laboratory, to the presentation of findings in court.

The provision of forensic services depends on the national legal systems and therefore the mandate and structure of forensic service providers are influenced by the political views and traditions in individual countries. There is no single model for the provision of forensic services.

Forensic services are mostly provided by laboratories. These are often part of the public sector, i.e. can be classified as governmental institutes, typically under ministries of interior or justice, but they may also be affiliated to ministries of health

³ While forensic science laboratories are often part of the law enforcement system and therefore most often not independent, the professionalism and responsibility of their staff ensures the provision of impartial opinions and reports.

(e.g., for toxicology or clinical analyses), or they may be part of government analyst services. In addition, certain forensic services are typically provided by other service providers: expertise in police facilities may be used to process crime scenes and perform (basic) forensic examinations (e.g., fingerprints), and universities may provide non-routine forensic services (e.g., archeology or entomology). Finally, private laboratories and independent experts may also provide forensic services, usually on a commercial basis.

In terms of infrastructure, there may be a single forensic laboratory, or multiple forensic laboratories, e.g., a central laboratory at federal or state level, complemented by subsidiary laboratories at state, provincial, regional or local level. In some countries, different law enforcement agencies have their own laboratories (e.g., police, gendarmerie and customs). Forensic medical services may be provided by a separate facility, or they can be part of the forensic laboratory. Specific narcotics laboratories may also exist as part of a national counternarcotics enforcement infrastructure. Document examination capacity is likely to exist in departments of immigration.

Most forensic laboratories perform a wide range of analyses on multiple evidence types (e.g., drugs, blood, firearms, etc.). The different evidence types, also called disciplines, may have different names and the analyses performed in the laboratory assessed may be grouped in different ways. This can be very confusing for an assessor. For example, in one laboratory, the term “drug analyses” may refer to the analysis of street drugs (solid dosage forms). In another laboratory, the same term (drug analysis) may be used to describe the analysis of drugs in biological fluids like blood or urine. Another laboratory may refer to the analysis of drugs in biological fluids as “toxicology”.


Not all forensic laboratories conduct the same types of analyses. Multi-disciplinary laboratories, even those referred to as “full service” laboratories, may not conduct all possible types of analyses in-house. When the laboratory has a need for additional testing capabilities, it may have a cooperative agreement with another laboratory (even one within another country) to provide assistance. A forensic laboratory may also collaborate with a university or a private laboratory for additional expertise. The scope of some laboratories is very narrow; i.e., they specialize on a single type of analysis (e.g., explosives, drugs, DNA).

Assessing forensic services from the crime scene to the courtroom is complex and should include legal, structural (e.g., affiliations), non-technical (e.g., reporting results, court presentations, laboratory management, planning, ethics and oversight, etc.) as well as technical aspects (i.e., examinations and analyses). The quality of the technical work performed at an individual forensic laboratory may not be uniform and can vary between disciplines. Additionally, although adequate equipment and instrumentation are necessary for a laboratory to provide good services, the equipment and instruments available in a laboratory are not, of themselves, a reflection of the quality of the services provided. An assessment also reviews how a laboratory maintains its equipment and is keeping up with new technology as well as the opportunities that exist to establish and maintain scientific expertise for forensic scientists. These

support functions (e.g., research and development, method validation, education and training) may be provided in-house or through collaboration with universities or other forensic laboratories. An assessment of the quality of forensic services also includes an assessment of crime scene investigation services: the expertise and capacity of first responders to take appropriate action, the review of procedures used to document, collect and preserve integrity and identity of evidence, and the communication channels and collaboration between the crime scene investigation service and the forensic laboratory.

In addition to developing an understanding of the strengths and weaknesses of a country's approach to forensic services, the assessor should be able to identify opportunities for reform and development. Technical assistance in the area of forensic science in the context of a broader strategic framework may include work that will enhance the following:

- Capacity of first responders at crime scenes to take appropriate action;
- Availability of dedicated crime scene investigation services;
- Procedures to ensure integrity and identity of evidence throughout the forensic process;
- Scope of forensic services provided by forensic laboratories;
- Quality level of forensic services and work towards accreditation;
- Availability of adequate, fit-for-purpose laboratory equipment, reference collections and databases, and commitment and resources for their maintenance;
- Education and training opportunities for scientists, police officers and other criminal justice practitioners;
- Capacity to generate strategic forensic information (“forensic intelligence”);
- Integration of forensic services into national drug control and crime prevention governance frameworks;
- Regional cooperation and synergies; and
- The overall governance structure of forensic science services in the country.



2. Overview/ contextual information

This section is anticipated to guide the assessor to get an initial overview of the crime situation at the national level and the existing forensic response to it, including an overview of the available forensic science services providers (i.e. the forensic infrastructure). The contextual information obtained will guide the assessor in the more specific assessments of individual institutions and entities involved, affected by or impacting on in the forensic process.

2.1 Crime situation

Section objective: to guide the assessor in obtaining an overview of crimes in the country to be assessed.

Gathering information to characterize the crime problem within a country is necessary because the need for forensic services is determined by the type and frequency of the committed crimes. The review of reports on crime patterns, trends and major threats developed by national and international bodies can provide relevant information. National statistics summarizing the annual number of crimes (e.g., homicides, rapes, stolen cars, burglaries, etc.) may be available. There may also be annual reports from police, prosecutors and/or the courts that provide statistics on the crimes being investigated and prosecuted. Statistics are also available from forensic institutes. However, they are typically **caseload** statistics and not a reflection of national crime trends. Nevertheless, they are useful indicators of priorities in terms of types of **examinations** requested. All statistics provided should, where possible, be validated against statistics from other sources.

Sample questions: crime situation

- What is considered the most significant national crime problem? What study supports this statement?
- What are the priorities for the government to fight crime? Are forensic services on the policy agenda at the government level? Is there any priority given to ensure that crime is “forensically” investigated?

- If forensic services are available, are they used in all types of cases? In what types of criminal cases are forensics services used? Are they only used in major cases or cases involving specific persons? Are there statistics on how often crime scenes are visited once reported to the authorities?
- Are reports on crime patterns, trends and threats available? Are statistics compiled on crimes committed in the country concerned? Are annual reports available from courts, offices of public prosecutors and police forces that provide figures on criminal activity?

2.2 Forensic infrastructure

Section objectives: to guide the assessor in obtaining an overview of the forensic infrastructure in place in a country or region.

This section will also assist the assessor in identifying relevant service providers for on-site assessments outlined in later sections of this Tool [see chapter 4: *Crime scene investigation* and chapter 5: *Forensic analyses and examinations in a laboratory or medical facility*]. To facilitate the work and as far as possible, names and affiliations for each **crime scene investigation services**, each forensic laboratory, and each entity available to conduct forensic **examinations** and **analyses** should be obtained. This also includes hospitals and medical facilities that can or do perform autopsies or post-mortem examinations to assist the medico-legal (or forensic) investigation of death. Such assistance will include: provision of the cause of death; a contribution where possible to the understanding of the circumstances surrounding the death; recording the post-mortem findings in such a way that another person at another time can come to his or her own conclusions about the death, including use of photography.

As there may be significant differences in infrastructure between the capital city and other regions of the assessed country, it is also advisable to obtain information on the ease of transportation and communication.

The forensic process begins at the **crime scene** and ends in the courtroom. When a crime is discovered and reported, police officers are one of the **first responders** to attend the scene. Their initial responsibilities are to preserve the integrity of the scene and the evidence to ensure that **no contamination** or destruction occurs. First responders are also responsible for the early documentation (i.e. keep a log of activities at the scene). Once the scene is secured, **physical evidence** must be recognized, protected and collected. Usually, the recognition and collection of physical evidence is performed by trained crime scene investigators or sometimes by forensic laboratory personnel. The samples of collected evidence are then transported either to police facilities or forensic laboratories for further analyses and examinations. As an aid to the assessor, the forensic investigation process and the roles of different participants within the process are schematically described in the attached flowchart (Annex C: Decision points in the Criminal Justice Process).

[Additional information on assessing crime scene investigation services and forensic laboratories and medical facilities is found in chapter 4 and 5, respectively].

Sample questions: forensic infrastructure

- Are forensic services available to investigative agencies? How many **forensic service providers** exist? Are there clear responsibilities established between the various forensic service providers?
- Do investigative agencies understand how to take a forensic approach to their work? Do investigative agencies understand how to use what forensic services they have? At a policy level, is there a proper understanding of the contribution that can be made by a forensic scientific approach being adopted from the crime scene to the court room? *[A more detailed assessment is found in chapter 7 “Partnerships and coordination”.]*
- What are the responsibilities of the first responders when arriving at a crime scene? Are they expected to protect and preserve crime scene and physical evidence? Keep a log? Are they expected to go beyond those activities?
- Are dedicated crime scene investigation services available in the country? Are they attending all crime scenes? Under which circumstances are those services deployed? Are they deployed in all parts of the country? Who decides on the deployment?
- Is there ease of transportation between major metropolitan areas? Between metropolitan and rural areas? Are there reliable mail and/or courier services?
- Are crime scene investigation services part of the police (i.e., special unit responsible for technical activities)? Are they part of a forensic laboratory? Are they part of a broader forensic institution?
- Are forensic laboratory(ies) available? Are forensic laboratory services accessible to any investigator at the local level? Under what agency(ies) are forensic services provided? Is there a single laboratory or is it part of a national system of laboratories? Are there provincial, regional or satellite laboratories under a central laboratory in the national infrastructure? Are other individuals or entities such as private experts, private or non-governmental laboratories, or universities involved in forensic **casework**?
- What key forensic services are available in the country? Are the following analyses/examinations available at country-level: drug samples? fingerprints? biological material (for instance DNA analysis)? questioned documents? identity and official documents? firearms, ammunition components and toolmarks? fire debris and explosives? fibres? hairs? paints? glass? electronic devices? audio and video recordings? Others (including non-traditional forensic services, such as forensic accounting)? *[The assessment in this section aims at obtaining an overview of the situation in the country; guidance for a more detailed assessment of the services of individual laboratories is found in chapter 5, section 2 “Scope of Services”.]*
- For services not available in the country, can assistance be obtained from abroad? Are services offered at the regional level? Which? By whom?

- Are forensic medical experts/forensic medical disciplines (e.g., pathology, odontology, anthropology) available? Have they got recognizable forensic medical qualifications, or are they hospital doctors or general practitioners simply doing the forensic work? Are they considered part of the forensic laboratory or are they included in a separate management structure?
- Once forensic examinations and analyses are performed, are reports/results provided? To whom are routinely provided the reports/results (e.g., police, crime investigator, prosecutor, judge, suspect, defence lawyer, victim, and/or other)? Are the reports/results provided to these individuals simultaneously or at different times? What is the general procedure for issuing results/reports?
- Do forensic **databases** exist? Is there a database on fingerprints? On DNA? On firearms? Others? *[A more detailed assessment of databases is found in chapter 5, section 8 “Databases”.]*
- What are the major challenges or problems for the delivery of forensic services in the current system?



3. Legal framework

Section objective: to guide the assessor in reviewing the legal framework related to the use of physical evidence and forensic services in criminal investigations and proceedings, to include identifying any relevant laws, rules and regulations, as well as applicable code(s) of professional conduct.

The legal framework in place affects many aspects of the provision of forensic services. It relates to issues such as how to obtain authority to enter the suspected **crime scenes**, to conduct the investigation, to handle evidence (e.g., the type of sealing procedures required), to submit **physical evidence** to a forensic laboratory, to analyse physical evidence and how to dispose of evidence, including the pre-trial destruction, for example, of illicit drug seizures. It typically includes provisions to establish or authorize a forensic laboratory and may specify the governmental agency which operates the forensic laboratory as well as where (geographically) the laboratory is located. It may also govern how forensic evidence is used in criminal proceedings. Forensic **databases** (e.g., fingerprint and DNA) are governed by the legal framework which may regulate data use, maintenance and removal.

Regardless of the local laws, rules and regulations, codes of professional conduct outline ethical obligations of personnel working at crime scenes and in a forensic laboratory.

It is of utmost importance for the assessor to identify and obtain copies of existing applicable laws, rules and regulations and assess their suitability to enable the forensic process in the country. If adequate laws, rules and regulations to enable the forensic process do not exist or if existing ones are limiting the forensic process, the enactment of new legislation or the adaptation of the existing one may be necessary.

Sample questions: legal framework

- What is the legal system based on? Is there a different legal system (e.g., tribal law) that operates in rural areas?
- Does the legal framework include any provision on the use of physical evidence and forensic services? Does the legal framework regulate:
 - The work at the crime scene/crime scene investigation
 - The proper handling of evidence gathered, and regulations providing for the proper **chain of custody** of such evidence

- The establishment, functioning and funding of forensic services
 - The use and admissibility of physical evidence in court proceedings
 - Forensic databases
- Are responsibilities of all persons involved in forensic services from the crime scene to the laboratory defined in the national legal framework? What provisions govern the different types of personnel and in which way?
 - Does the legal framework govern the use of physical evidence by **forensic service providers** (e.g., crime scene investigators, laboratory analysts)? Obtain copies of laws, regulations, etc.
 - What do provisions on evidence handling govern? Do they cover evidence integrity (**chain of custody**), evidence storage, evidence security, and disposal of evidence? Are there laws or regulations on evidence transfers from the crime scene to the laboratory?
 - Is there a code of conduct for crime scene investigators and forensic experts in the legal framework? What does it govern?
 - How detailed is the legal framework governing laboratory services? Are specific services (e.g., DNA, fingerprints, toxicology, firearms, etc.) required to be established? Does the legal framework define techniques and methods to be used in forensic **analyses** and **examinations**? Are there requirements in the national legal framework for the quantification of drugs? If yes, what is required to initiate court proceedings?
 - Does the legal framework define the way the forensic personnel report their findings? Do the law enforcement authorities, prosecutors or courts have specific legal/technical requirements concerning forensic reports?
 - Are external assessments of the performance of forensic services required by the national legal framework? Are there any other measures required to demonstrate the quality of forensic services, such as the internal/systematic assessment of individual scientists? Are there requirements for laboratory **accreditation**? Are there requirements for a forensic scientist to be certified or registered at the national level? If yes, what are the criteria for **certification** or registration? *[The assessment in this section aims at obtaining information on the legal requirements related to **quality assurance** and the **chain of custody** in the country; guidance to assess the scope of quality assurance measures in individual laboratories is found in chapter 5, section 9 “Quality assurance”.]*
 - Does the legal framework limit in any manner the admissibility of forensic evidence in criminal proceedings? Does the legal framework include provisions concerning the **competence** of experts? What are the requirements set for forensic experts to be accepted as an expert witness in court? Are these requirements specified in the legal framework? Are there differences between the acceptability of forensic evidence depending on the expert witness or forensic laboratory? If so, what factors determine this? Are these factors specified in the legal framework?

- Are there any requirements in the legal framework to ensure attorneys (defence, prosecutors) and judges understand the weight of forensic evidence, like evidence and sentencing guidelines? Is training available? Do any of the law faculties have forensic science/medicine as a subject in their undergraduate law courses?
- Does the legal framework include specific elements for databases containing personal information? DNA? Fingerprints? Does the legal framework contain elements for the exchange of information from databases at the international level? *[The assessment in this section aims at obtaining information on the legal requirements related to databases in the country; guidance to assess the availability and use of databases is found in chapter 5, section 8 “Databases”.]*
- Is there any current or planned review of the legal framework? *[See also chapter 7, section 3 “Donor coordination”]*



4. Crime scene investigation

Section objective: to guide the assessor in obtaining an overview of technical and scientific capacities and practices at crime scenes, focusing on personnel's education and skills, equipment, procedures and management issues.

Crime scene is the starting point of the forensic process. **Crime scene investigation** is a process that aims at recording the scene as it is first encountered and recognizing and collecting all **physical evidence** potentially relevant to the solution of the case.

Initial responsibilities lie with **first responder(s)**, often police officers. They include the preservation of the scene and the integrity of the evidence, as well as early documentation of the crime scene, its evidence and all activities at the scene (i.e. keeping a log). Crime scene investigators who have received comprehensive forensic training usually quickly take over the work at the scene.

Under ideal circumstances, a close relationship is established between the forensic science laboratory and crime scene investigators to ensure that the best samples are identified, collected and submitted to the laboratory. It might also happen for laboratory personnel to be called to crime scenes.

The equipment necessary to process a crime scene and a mechanism to secure and transport the evidence to either the laboratory or police facilities, should be available to the personnel processing crime scenes. For certain types of crimes, the crime scene investigator may use specifically designed **crime scene investigation kits** (e.g., kits for drugs and precursors, sexual assault kit, gun shot residues collection kit) for the collection of the evidence.

[Additional information on the various steps of the crime scene investigation process and why they are important is found in the UNODC manual "Crime scene and physical evidence awareness for non-forensic personnel" (ST/NAR/39; available on-line at www.unodc.org).]

4.1 First responders

Sample questions: first responders

- Following a report of crime, who decides whether and who to initially attend the scene of the alleged crime? What criteria does he or she apply? Who is called first when a potential crime is discovered? On average, how long after a crime report is the crime scene attended by a police officer? On average, how long after a crime report is the crime scene attended by an investigator?
- What is the extent of the responsibility of the first police officer/first responder at the scene? Is the first responder expected to protect and preserve the crime scene and physical evidence? Keep a log? Are first responders expected to go beyond those of the initial tasks of preserving and documenting? If so, in what types of cases and situations can this happen? What types of evidence does the first responder collect in these cases and situations?
- Is there specific training for police officers in general crime scene and physical evidence awareness and potential **contamination** issues? Training in initial actions at the scene/crime scene preservation for first responders? Is this training part of the training curriculum for all police officers, i.e. part of the police academy curriculum? How long does the training last? Does it include practical parts?
- Are police officers/first responders trained on what to look for and how to protect evidence/implement anti-contamination measures in cases they sometimes have to do so? Do they know/are they trained on how to package, seal, preserve, label, record and store evidence and samples?
- What type of material, such as barrier tape, gloves, is available to police officers?

4.2 Crime scene investigation (CSI) services

Sample questions: CSI services

- Are dedicated crime scene investigation services available in the country? Are CSI services a special police unit (i.e., special unit responsible for technical activities), part of a forensic laboratory, or are they part of a different organization (not police or laboratory)?
- What is the total number of CSI services in the country? Where are each of the CSI services located? What is the funding system for the CSI services? Do the CSI services have separate budgets? How large is the budget for a typical CSI unit?
- Are crime scenes routinely processed, meaning a full crime scene investigation is done? If not all crime scenes are routinely processed, what types of crime scenes are processed?

- How many total crime scene investigations are performed per year in the country? If there are multiple CSI services, how many crime scene investigations are performed by each CSI unit per year? If there are multiple crime scene investigators, how many crime scene investigations are performed by each crime scene investigator per year?
- How is the work performed and managed at the scene? What are the procedures in place? How is the crime scene preserved/protected? How are the scene, physical evidence and activities at the scene documented? Which means are used: are photographs and/or videos taken? Do standard operating procedures (SOPs) exist for preservation, collection, labelling, packaging and storage of evidence? What kind of processes and practices are in place to avoid contamination at the scene? To avoid contamination between samples?
- Are there **quality assurance** procedures implemented for crime scene investigations?
- How are responsibilities divided among law enforcement officers (i.e., first responders and police investigators/detectives), crime scene investigators, laboratory personnel/forensic experts, and prosecutors? When are facts and findings from the crime scene investigation communicated to the police investigator responsible for the investigation? Do police investigators/detective and prosecutors understand the potential and limitations of forensic evidence and crime scene investigation?
- How is work between crime scene investigators and forensic laboratories coordinated? Are forensic experts from a laboratory involved in crime scene investigations? If so, in what types of cases?
- Are there (or have there been) internationally funded initiatives aimed at developing CSI services? [*Specific guidance for donor coordination is found in chapter 7, section 3 “Donor coordination”.*]

4.3 CSI facilities and equipment

Sample questions: CSI facilities and equipment

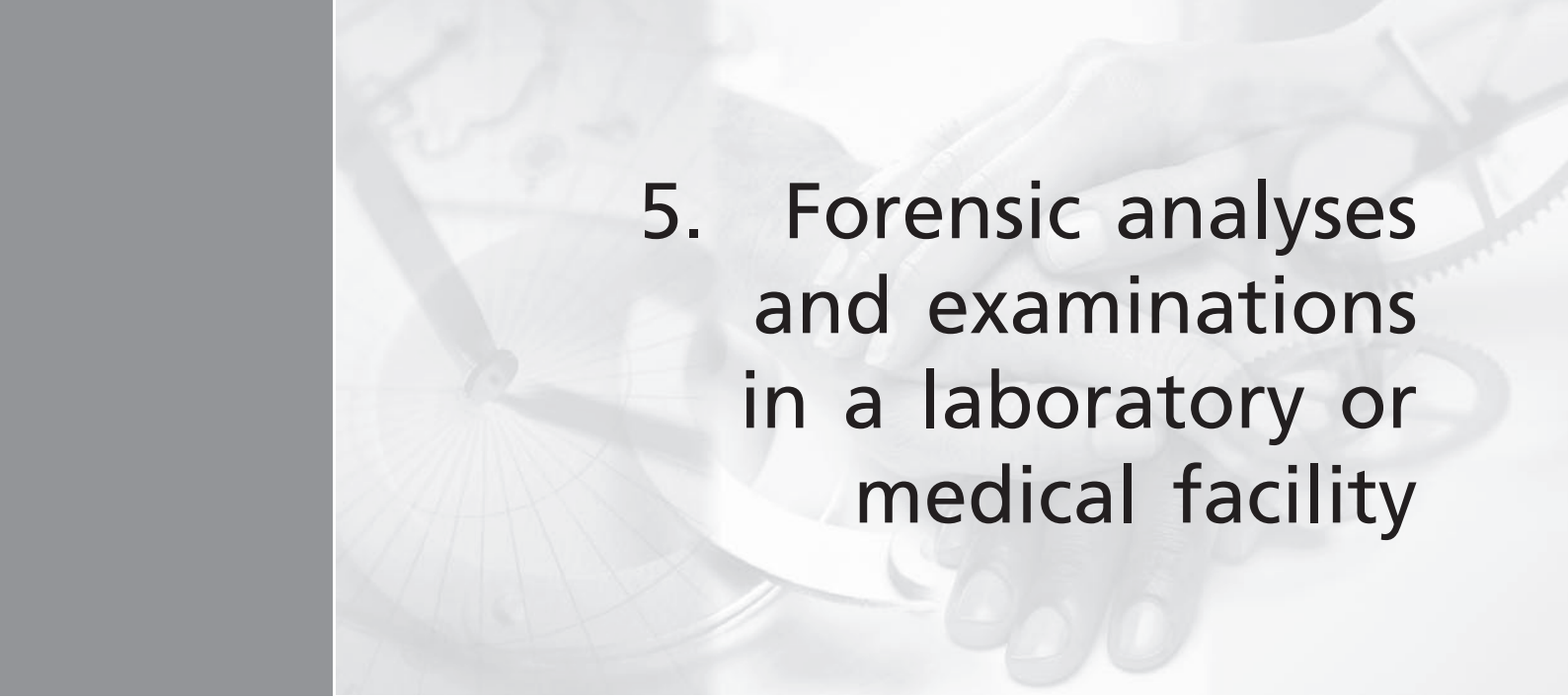
- What types of facilities are available to crime scene investigators? Do CSI services have dedicated facilities to examine evidence collected from crime scenes? What **examinations** are performed in these facilities: colour tests for drugs? Fingerprints detection and enhancement? Basic examinations of questioned documents? Comparison of ammunition? Others? Which?
- Do CSI services have dedicated cars and regular access to fuel for their own use? Are cars specially equipped for crime scene investigations with crime scene investigation equipment and material? Are mobile laboratories available? What equipment is included in those mobile laboratories?

- What type of equipment and material are available to crime scene investigators to process crime scenes? Are equipment and material for protection and safety, for detection, for collection, for packaging and for documentation available? Do crime scene investigators have access to casting techniques for 3D marks, to serial number restoration techniques, material for detection and enhancement of fingerprints and material for ink exemplars? *[Additional guidance on equipment and material for crime scene investigation is found in UNODC manual “Staff Skill Requirements and Equipment Recommendations for Forensic Science Laboratories”, available on-line at www.unodc.org.]*
- Are equipment and material for crime scene investigation made available in a standardized manner, i.e., in the form of crime scene investigation kits or suitcases containing all necessary equipment and material? Are those kits made available using national/local resources? Or are they provided through bilateral assistance? Are specialized kits available: sexual assault kits? Gunshot residue **field detection test kits**? Drug and precursor field detection test kits? Are specialized kits available from commercial sources? Or are they developed locally? In the forensic laboratory?
- Are CSI services equipped with IT equipment? Do CSI services perform analyses in the field with portable (analytical) equipment? What types of crimes are processed using portable equipment? What type(s) of portable equipment are available, e.g., are portable ion-scan spectrometry, portable Fourier transform infrared or portable Raman spectroscopy available?
- Is there any current or planned external assistance to upgrade CSI capacity? *[See chapter 7, section 3 “Donor Coordination”.]*

4.4 CSI staff selection and training

Sample questions: CSI staff selection and training

- If there are dedicated crime scene investigation services, how are crime scene investigators recruited? What are the requirements for the position? Are crime scene investigators required to be law enforcement officers or can non-law enforcement personnel serve as crime scene investigators? What type of experience is required? Is a scientific background required?
- Once selected, is education and training provided for new crime scene investigators? Does this initial training include mentoring? Are specific training courses available? What is the length of the initial training period for a crime scene investigator? What topics does the initial training include?
- How are the professional skills of crime scene investigators maintained and developed? Is ongoing training available for experienced crime scene investigators?
- What is the turn-over rate for individuals assigned as crime scene investigators? What is the average length of service for crime scene investigators?



5. Forensic analyses and examinations in a laboratory or medical facility

Chapter objective: to guide the assessment of individual forensic laboratory(ies) and medical facility(ies)⁴ in the country.

This chapter of the tool should be used to assess each laboratory separately.

5.1 General laboratory information

Sample questions: general laboratory information

- What is the name of the laboratory? To what agency is the laboratory affiliated (e.g., Ministry of Justice, Ministry of Interior)? What is the address of the laboratory (include street, postal code and city)? What are the telephone and fax numbers for the laboratory? What is the e-mail address for the laboratory? What is the name of the laboratory director? If not the director, obtain the name of the main contact person.
- What is the legal status of the laboratory? Is the laboratory an official/designated national forensic laboratory? Are results from the laboratory accepted in court proceedings? Is the laboratory a public or private institution?
- Does the laboratory have subsidiary laboratories? If so, what are the responsibilities of the main (central) laboratory and the subsidiaries? Where are the subsidiaries located?

[Annex A.3 “General institution information” may be used to record relevant information.]

⁴ For the purposes of this document, the term “forensic laboratory” is used hereafter to include forensic medical facilities, i.e. sample questions are also applicable to the assessment of forensic medical services.

5.2 Scope of services

Section objective: to guide the assessor in obtaining an overview of the scope of services and disciplines provided by the forensic laboratory.

It is important to identify the forensic services provided by the laboratory and those that are not. There are several reasons why a laboratory may not offer certain disciplines. There may not be sufficient demand based on the types of crimes being committed in the area served by the laboratory. To avoid duplication, the laboratory may not offer a service which is already offered by another laboratory within the country. If, however, there is sufficient need for the service, the laboratory may need to plan to add the discipline. Detailed information about necessary equipment, training and other costs should be gathered for the development of an implementation plan for the forensic discipline(s) in question.

The assessor is reminded that forensic disciplines may have different names and the tests performed in the laboratory may be grouped in different ways. The assessor should ask for clarification when necessary.

[Annex A.4 "Scope of services" may be used as a guide in assessing the scope of services provided by the laboratory or medical facility.]

Sample questions: scope of services

- What services are available in the laboratory? What are the disciplines/sub-disciplines covered by the laboratory? *[Refer to annex A.4 for a listing of forensic disciplines and sub-disciplines]*
- How are these disciplines grouped/organized in the laboratory? What are the sections/units in the laboratory?
- Is the laboratory providing **crime scene investigation services**? In what type of cases?
- Are forensic medical services provided by the laboratory? Which services: Pathology/autopsy services? Odontology? Anthropology? Forensic medical examinations of live victims (e.g., rape victims and/or assault victims)? Others? Which? Are there legal, cultural and/or religious prohibitions against performing autopsies? Are autopsies performed in all questionable deaths?

5.3 Customers

Section objective: to guide the assessor in obtaining an understanding of the customers of the laboratory and their relationship.

A public/governmental laboratory will customarily accept requests from other governmental law enforcement agencies (e.g., police, prosecutors, judges, customs, etc.). Other customers may include defence attorneys, insurance companies, or citizens. In some

cases, the laboratory may provide services to an agency to which it is closely affiliated. The level of independence (financial, managerial, etc.) in these instances is important to ensure objectivity. It is also important that sufficient communications exists between the laboratory and customers to ensure that adequate services are provided to address the case questions.

Laboratories may have case acceptance criteria. These criteria may be determined by the analytical resources of the laboratory or may be implemented to address a backlog problem. Limits on the number of cases which may be submitted or limits on the number of samples which may be submitted on each case are examples of criteria which may be included in a case acceptance policy.

Sample questions: customers

- From what agencies does the laboratory accept requests for **analysis**? What agency is the main customer of the laboratory?
- Do the customers need permission prior to submitting a case to the laboratory? Who are the individual or agency approving laboratory submissions? Is the procedure to request **examinations** and **analyses** the same for all customers?
- Are customers charged for laboratory services? Which customers are charged? How are these charges determined?
- Are there limitations on the annual number of cases which can be submitted to the laboratory? Are there limitations on the number of samples per case submitted? Does the laboratory have the right to refuse cases? What are the criteria used?
- When a case is submitted to the laboratory, is there any discussion between forensic personnel and the customer submitting the case? Prior to beginning analysis, is there any discussion between the laboratory and the customer on the types of analyses which will be most likely to answer the case questions? Are there regular “case conferences” as the analysis and the case proceed? Is there any agreement between the laboratory and the customer on a deadline for providing the report?
- Do customers inform the laboratory if analyses are no longer required?
- Are forensic findings used other than for criminal proceedings? For which purposes?

5.4 Laboratory staff selection and training

Section objective: to guide the assessor in obtaining a detailed understanding of laboratory staff, to include personal competencies, formal education, training and experience.

Laboratory counts scientific staff (professional and technical staff) and administrative staff. Scientific staff is the most critical laboratory resource. Professional staff, also called forensic scientists/forensic experts, usually have a scientific education (background) with

tertiary qualifications (BSc, MSc or equivalent, PhD). Technical staff, also called laboratory technicians, usually are graduates with a diploma from a technical college. In addition to performing laboratory work, professional staff in many countries may testify as expert witnesses in court proceedings.

In addition to a formal scientific education, forensic scientists need personal competencies, training and experience. The personal competencies include analytical thinking and decision making, attention to detail, and written and oral communication skills, and are normally considered during the recruitment and hiring process.

Initial training is also needed to qualify an individual as a forensic expert. Forensic training builds on the scientific education and provides the specific knowledge, skills and abilities necessary for work in the laboratory and within the specialty area (e.g., DNA, toxicology, etc.). There are many training options, including on-the-job training such as in the form of an apprenticeship or mentoring, or a formal training period in the laboratory with in-house training courses. Training may also be provided at other laboratories. Training is needed for continued competency and specialization. Access to relevant scientific literature is also important for continued learning. The assessor should get copies of and review training curricula available.

Experience contributes strongly to the development and capability of a forensic expert. Obviously, experience is something that can only be gained with time. As a result, incentives to retain experienced staff and the staff retention rate should be considered when assessing the experience level of forensic expertise in the laboratory.

[Additional guidance on staff skill requirements for the core forensic disciplines is available in the UNODC manual "Staff Skill Requirements and Equipment Recommendations for Forensic Science Laboratories", available on-line at www.unodc.org.]

Sample questions: laboratory staff selection and training

- How many staff work at the laboratory? Of these, how many are professional staff with a relevant degree in science (BSc, MSc or equivalent, PhD) or medicine (e.g., M.D., PhD, DDS, etc.) from a university? What are the duties and responsibilities of staff members with relevant university degrees? Are staff without relevant degree in science assigned with the same duties and responsibilities? How many are technical staff graduates with a diploma from a technical college? How many are administrative staff?
- Is the number of staff sufficient for the caseload? If not, in which disciplines is additional staff needed? Is the number of staff sufficient to maintain an adequate level of in-house research and development?
- What is the retention rate of staff? What incentives exist to retain experienced staff?
- How are professional and technical staff selected for their positions? What are the required competencies and qualifications (educational, professional experience and personal) for professional staff? And for technical staff?
- Have the forensic medical experts got recognizable forensic medical qualifications, or are they hospital doctors or general practitioners simply doing the forensic work?

- Are training opportunities available to scientific staff? How are training needs identified? Is there a requirement for regular participation in training courses?
- Is training provided in-house? Is training provided externally? Is the training basic or advanced? What training courses are available? Is training on the use of scientific techniques provided, for instance on GC techniques? Is training provided for individual forensic disciplines in the laboratory? In which disciplines is training provided? Is training provided for interpretation of results and for court testimony? Is training on management and non-scientific issues provided?
- Do the training courses have curricula? Are training courses documented?
- Are training courses evaluated periodically? By whom? Are evaluation reports of the various training courses available?
- Does the laboratory have access to scientific information/literature/books? Does the laboratory have internet access for laboratory staff?
- Does the laboratory provide training to external scientific staff? If so, is the training national, regional and/or international? In which disciplines is the training provided? Why is this external training provided?
- Does the laboratory provide training for law enforcement officers (e.g., police officers)? Is this awareness-raising training? Does it include practical parts, e.g., on initial actions at the scene? Does the laboratory provide forensic training for crime scene investigators? What is the curriculum of the training for **crime scene investigators** provided by the laboratory? How long lasts the course? Are these training courses included in the curriculum of law enforcement academies?
- Is there any current or planned external assistance to upgrade forensic capabilities? [*See also chapter 7, section 3 “Donor coordination”.*]

5.5 Facilities and sample handling

Section objective: to guide the assessor in obtaining a detailed view of forensic facilities and sample handling procedures.

Fit-for-purpose facilities, and laboratory space that is adequate for the functions being performed, ensure the delivery of reliable, efficient and cost-effective forensic services. For example, certain sample handling functions (e.g., evidence receipt and evidence storage) must be separated from analytical functions (e.g., wet chemistry and instrumentation).

Adequate sample handling procedures and storage facilities should be available. For example, some biological samples may require refrigeration or freezing. Other conditions such as hermetic (airtight) seals, protection against bacteria or sunlight may also be necessary for sample preservation and storage. Ideally, the laboratory layout provides some flexibility for expansion or laboratory improvement.

Laboratory conditions should be appropriate for the analytical tests being conducted, and allow instrumentation to function properly. Some instruments may require stable utilities (e.g., electricity, temperature, water, etc.).

Conditions, such as laboratory security, access control, and staff health and safety, should be appropriate for the laboratory operations.

Sample handling procedures should also be appropriate to ensure sample integrity. These procedures include sample labeling (e.g., with a unique identifier) and other requirements to prevent sample mishandling such as sample loss and switching. Sample handling procedures also include steps to prevent sample **contamination**. These may include: wearing gloves; using protective clothing; using appropriate procedures to separate victim and suspect samples; and cleaning examination rooms and equipment.

A laboratory information management system (LIMS) may be available to ensure control over routine procedures and facilitates the management of data generated in the laboratory.

[Additional guidance on laboratory layout and setup is available in UNODC manual "Staff Skill Requirements and Equipment Recommendations for Forensic Science Laboratories", available online at www.unodc.org.]

Sample questions: facilities and sample handling

- Are the laboratory facilities fit-for-purpose/adequate for the functions and analyses performed? What is the size and layout of the laboratory? How many laboratory rooms are there? Are separate rooms available for:
 - Sample receipt?
 - Wet chemistry?
 - Instrumentation?
 - Storage of chemicals?
 - Evidence storage?
 - Bulk storage?
 - Balances (weighing)?
 - Office (report writing)?
 - Examination of contamination-sensitive items?
 - Forensic medical facilities: Refrigerated and clean body storage facility; room, which is clean, to undertake dissection, with fixed or movable tables, plumbing delivering water to the table, related instruments, hand washing facilities and with adjacent change rooms including shower facilities; histology laboratory; special storage space for retained organs and tissues, including skeletal tissue.
- How is the access to the evidence storage room controlled? Are special storage conditions (e.g., low temperature) available, if needed?

- Does the laboratory layout allow for the possibility for expansion? Would the facility allow for an increase in the number of analyses and/or new types of analyses to be performed?
- Does the laboratory have access to appropriate utilities and supplies? Do these include:
 - Uninterrupted electricity power supply?
 - Purified water, where necessary?
 - Air-conditioning, where necessary?
 - Internet access?
- What security measures are being used in the laboratory? Is entrance to the laboratory restricted and is access controlled? Are visitors required to register when entering the laboratory? Are the doors to the laboratory locked?
- Are appropriate measures in place and used to ensure safety and health of staff (e.g., fire suppression equipment, safety showers, eye washes, chemical fume hoods)? Do hazardous chemicals have warning labels? Do employees have periodic medical check-ups?
- How are samples handled in the laboratory during **examinations** and **analyses**? Is each sample labeled with a unique number? How is the integrity of evidence documented (chain of custody)? What contamination prevention measures are used in the laboratory?
- Is there any current or planned external assistance to upgrade laboratory facilities? [See chapter 7, section 3 “Donor coordination”.]
- Are there plans to expand/move facilities in the next 2-3 years?

5.6 Laboratory equipment, procedures and materials

Section objective: to guide the assessor in obtaining a detailed view of the technical resources of the laboratory.

Laboratory equipment should be fit-for-purpose/adequate for the types of forensic **examinations** and **analyses** being carried out in the laboratory. [See annex D “Routinely Used Forensic Techniques” for a listing of commonly used techniques in the various forensic fields.]

Local socio-economic conditions may also be a factor in determining the availability and appropriateness of equipment. It is important for the assessor to be aware that the equipment available in a laboratory is not, of itself, a reflection of the quality of the services provided: quality forensic **casework** can be performed with very basic equipment by staff with appropriate education, training and skills. Complex analyses may require more sophisticated equipment.

Equipment needs maintaining to keep it in good working order by a vendor maintenance service or by staff trained to provide instrument maintenance in-house to ensure quality

of the work performed. Supplies should be available, to include those needed for instrument operation such as purified air and gases (e.g., nitrogen, oxygen, hydrogen, argon, helium, etc.), as well as spare parts and consumables, including solvents and reagents.

Forensic laboratories validate their methods and procedures. Standard operating procedures (SOPs) based on these **validations** should be available for all technical tests and instruments used.

The materials and accessories available in the laboratory should also be fit-for-purpose for the techniques, methods and procedures used.

In addition, reference materials and reference collections are often used in a forensic laboratory. **Reference materials** are substances, one or more properties of which are sufficiently well established to be used for the calibration of an apparatus, the assessment of a measurement method, or for assigning values to materials. They can be **certified reference materials** obtained from a recognized standards authority or in-house reference materials whose composition has been established by the laboratory, for example by a reference method or in collaboration with other laboratories. Reference materials and certified reference materials play a central role in chemical analyses and should have relevant certificates of authenticity.

Reference collections are sets of samples and objects used in forensic casework for identification and comparison purposes (e.g., firearms and ammunition; genuine banknotes; ID documents; glass particles; shoe soles; drug packaging; inks).

[Additional guidance on laboratory equipment, material and accessories is found in UNODC manual "Staff Skill Requirements and Equipment Recommendations for Forensic Science Laboratories", available online at www.unodc.org.]

Sample questions: laboratory equipment, procedures and materials

- Which techniques are available in the laboratory? Which techniques are in use? For example:
 - Optical detection (forensic light sources, multispectral imaging)
 - Electrostatic detection systems
 - Photography: digital or analogue, black and white or colour, polaroid
 - Casting techniques for 3D marks
 - Microscopy (e.g., stereomicroscopy, brightfield microscopy, comparison microscopy, SEM)
 - Colour tests (for drugs, GSR, biological material), immuno-chromatographic tests
 - Microcrystal tests
 - Serial number restoration
 - Fingerprints detection and enhancement (e.g., DFO, ninhydrin)
 - Chromatography (e.g., TLC, GC, HPLC)

- Spectroscopy/spectrometry (e.g., UV-VIS, FTIR, X-Ray analysis)
- Techniques for DNA analysis
- Techniques for computer forensics and audio and video recordings
- Histology, including special staining techniques, for preparing post mortem tissue specimens for microscopy
- Radiography (e.g., for fractures, foreign body identification—metallic fragments, dental evaluation and comparison)
- Which techniques are used in the various disciplines/units of the laboratory? *[Annex A.5 “Available laboratory procedures and equipment” may be used as a guide when assessing the techniques used in the various forensic disciplines in the laboratory.]*
- Is the equipment appropriate for the analyses needed? Is equipment lacking for any essential analyses?
- Is all laboratory equipment in good working order? Are supplies and spare parts available for the equipment? In the event of a malfunction, is there backup or alternative equipment available?
- Is there an uninterrupted supply of consumables, chemicals, gases and solvents? How are these materials obtained? Are there any difficulties faced in purchasing and getting these materials?
- How is the equipment maintained? Has the laboratory a maintenance service contract? Is maintenance provided in-house? Is maintenance provided by vendors or instrument suppliers?
- Have scientific staff been trained and are competent to use the available equipment? For recently acquired equipment, has initial training been provided with the equipment?
- Does the laboratory have written procedures for the analyses performed in the laboratory and operation of equipment available? Have these procedures been validated? Are the validations documented? Is there a manual with Standard Operating Procedures (SOPs)? *[Additional guidance to assess the quality of the work in the laboratory is found in chapter 5, section 9 “Quality assurance”.]*
- Are preliminary analyses (screening) used prior to confirmatory analyses? What techniques are used for preliminary analyses in the various disciplines of the laboratory? What techniques are used for confirmatory analyses in the various disciplines of the laboratory?
- Does the laboratory have access to reference materials necessary for casework? Are they certified reference materials? Where does the laboratory obtain its reference materials? Who is authorized to use the reference materials?
- Are reference collections used in the laboratory? What are those collections: firearms? Genuine banknotes? Genuine ID documents? Drug samples of known origin? Others?

- Who is responsible for the reference collections (e.g., maintenance, tracking, updating, completeness, integrity, access authorization, etc.)? Who is authorized to use the reference collections? If there are currently no reference collections, are there any plans to create any?
- Is there any current or planned external assistance to improve technical resources of the laboratory? [See chapter 7, section 3 “Donor coordination”.]

5.7. Reporting

*Section objective: to guide the assessor in obtaining an overview of how the laboratory reports the results of its **analyses** and **examinations**.*

At the conclusion of analyses, the forensic science laboratory issues a report. This report includes the actual results of analyses performed. Many results, however, need to be interpreted by a forensic expert. As a consequence, forensic reports also include a section presenting the interpretation of the results. A clear distinction is made between the outcomes of the analysis (e.g., observations, measurements) and the interpretations (conclusions) of those outcomes.

Laboratory scientific staff may testify in court proceedings. This testimony should be supported by the analyses performed and should be consistent with the report(s) issued. The laboratory or courts may require specific credentials or qualifications from laboratory staff providing expert testimony.

Sample questions: reporting

- Are written reports systematically issued? If not, when is a report not issued? Are reports issued for inconclusive or negative results? Is verbal reporting (e.g., by telephone) used as an alternative for a written report? If so, what governs this approach?
- How are the results of analyses and examinations performed presented? How are reports structured? Are results interpreted? Is a clear distinction made between the results of the analyses and the interpretation of the results?
- Does the laboratory receive sufficient circumstantial information to provide useful reports, i.e., is the laboratory in a position to interpret the results they produce in the circumstances of the particular case?
- Do laboratory scientific staff testify in court? Are there special qualifications for laboratory staff to testify as experts? Are there special requirements related to analyst availability (e.g., requirement that only the analyst that did the testing of the samples could present those findings in court)?

5.8 Databases

Section objective: to guide the assessor in obtaining information about existing databases.

Searchable **databases** are powerful tools used by forensic laboratories. These databases can be divided into two broad categories: national databases and in-house/internal databases.

- National databases. National databases are typically created for DNA, fingerprints, and ballistics. DNA and fingerprint databases contain unique and unchangeable biometric information linked to an individual. Ballistics databases contain information which can link projectiles and casings to crimes. In most countries national legislation exists which defines legal and technical requirements for these databases [see chapter 3 “Legal Framework”]. Forensic laboratories are often maintaining and administering these databases. International sharing of database information is contributing significantly to the investigation of cross-border crime. At the same time, issues related to the legal authority for establishing/maintaining databases and privacy issues need to be considered.
- In-house databases. Laboratories may have in-house/internal databases which are essentially collections of information about materials encountered in past **casework**. Examples include databases with information on shoeprints, tyre marks, glass particles, paint particles, fibres and chemical profiles of drugs. Computer technology allows this information to be easily stored, searched and retrieved. These databases are primarily used by laboratories to assist with identifying materials in casework. They are also used to establish links with other cases and to assist with recognizing patterns.

Sample questions: databases

- Are there national databases available? Are there databases for:
 - Fingerprints (Automated Fingerprints Integrated System, AFIS)?
 - DNA
 - Ballistics
 - Other? (Specify)
- Who is responsible for maintenance, backup, uploading and updating, completeness, integrity, access authorization to national databases? Who uses/is authorized to use the databases? Are the databases used only by laboratory staff or are they available to others as well?
- Are data shared among different law enforcement agencies (e.g., civil police, gendarmerie and customs)?
- Are data shared internationally? If yes, for what purposes? What mechanism is used for data sharing? Are there any legal issues with the international use of the forensic databases? Who “owns” the forensic data in the database? Is there privacy legislation in place which regulates the use of the data in the

database? Does legislation limit the use of forensic data in the database? [See chapter 3 “Legal framework” and chapter 6 “Using forensic data and information”.]

- Do national databases also contain personal data, e.g., photo identification cards, passport applications? Does legislation allow these data to be used in criminal investigations?
- Does the laboratory maintain in-house/internal databases with materials from casework? Are these databases hardcopy or electronic? What types of databases exist: Shoemarks? Tyremarks? Glass? Paint? Fibres? Chemical profiles of illicit drugs? Other? Which?
- In the forensic medical field, are autopsy databases or photography databases of injuries from post mortem or clinical cases being maintained?
- How are the in-house databases structured? What characteristics are used to classify the collected items? Who is responsible for the in-house databases (e.g., for maintenance, backup, uploading and updating, completeness, integrity, access authorization, etc.)? Who uses/is authorized to use the databases? (If applicable: are these databases available to subsidiary laboratories as well?)
- If there are currently no national or in-house databases available, are there any plans to create one or more of them? Does the laboratory receive external assistance to establish the necessary database infrastructure? [See chapter 7, section 3 “Donor coordination”.]

5.9 Quality assurance

Section objective: to guide the assessor in obtaining information about the quality assurance measures in place in the laboratory.

The primary responsibility of a forensic science laboratory is to provide reliable and timely scientific evidence which can be used in criminal investigations and court proceedings. Numerous **quality assurance** procedures are implemented by laboratories to monitor, measure and improve the quality of the work conducted. Some of the relatively simple quality assurance measures implemented by a laboratory may include:

- Documented staff training
- Unique identification of exhibits and controlled exhibit handling/storage
- Method **validations**
- Use of written methods and procedures
- Provision of Standard Operating Procedures (SOPs)
- **Contamination** avoidance and monitoring
- Use of **(certified) reference materials** [for definition see glossary or chapter 5, section 6 “Laboratory equipment, procedures and materials”]

- Instrument calibrations and instrument maintenance records
- Use of blanks, check standards, duplicate analyses, sample/data transfer checks,
- Calculation checks, peer review, audits
- Participation in inter-laboratory comparisons (**proficiency tests** or **collaborative exercises**).

The assessor should get documentation related to the implementation of these measures.

In some cases, a forensic science laboratory may implement a formal **quality management system** (QMS) based on international standard(s). ISO/IEC include ISO 17025 which is the most frequently used standard for forensic laboratories; ISO9001 which describes a QMS but does not address technical requirements; and ISO 17020 which has been adopted for **crime scene** work in some parts of the world. A laboratory that meets the requirements of the ISO 17020 or ISO 17025 can request recognition of specified aspects of its work by an official independent accreditation body. The assessor should get a copy of the Schedule of Accreditation and the most recent (re-) assessment report.

Additionally or alternatively, a laboratory, person or product may be certified by an independent certifying body as formal recognition that the body, person or product complies with given specifications (e.g., for its QMS in compliance with ISO 9001)

Quality measures and **accreditation** can be implemented in one or several disciplines in a laboratory. It is therefore important to ask the following set of questions to each of the different departments/units of the laboratory.

Sample questions: quality assurance

- Does the laboratory implement quality measures? Has a quality manager been appointed? What are the duties and responsibilities of the quality manager?
- For each forensic discipline, does the laboratory have written procedures? Are scientific staff offered training opportunities? Are these documented? [See chapter 5, section 4 “Laboratory staff selection and training”.] Does the laboratory use validated methods for **casework**? Does the laboratory conduct equipment checks? Calibration? Regular maintenance of equipment? Does the laboratory have access to reference materials and/or certified reference materials? [See chapter 5, section 6 “Laboratory equipment, procedures and materials”.] Does the laboratory participate in proficiency tests and/or collaborative exercises? Where does the laboratory obtain its collaborative exercises and/or proficiency tests? What was the recent performance in collaborative exercises and/or proficiency tests? Is casework evaluated or reviewed? Prior to being responsible for casework, do scientific staff complete proficiency tests and/or collaborative exercises? What are the measures in place regarding the number of duplicate analyses to be carried out?
- Is the laboratory accredited? What are the disciplines accredited? Against which ISO standard? What is the name of the accreditation body? When was the laboratory accredited? Date of last (re-)assessment? Obtain copy of report.

- If the laboratory is not yet accredited, has the laboratory begun the accreditation process with an accreditation body? What are the disciplines being in the process of accreditation? What is the name of the accreditation body? What is the target date for accreditation?
- Does the laboratory receive external assistance to establish and improve its quality procedures? [See chapter 7, section 3 “Donor coordination”.]

5.10 Caseload

Section objective: to assist the assessor in obtaining information about the capacity of the laboratory to meet its caseload demand and analyze its cases in a timely manner.

Caseload characteristics data is essential in order to estimate the demand for the services of the laboratory and to assess the capacity of the laboratory. These statistics are often collected on an annual basis. However, in many situations, the best that an assessor can expect is partial data on caseload from which estimates will have to be derived.

The primary objective of a forensic science laboratory is the **analysis** of evidence, therefore the number of cases (caseload) submitted to the laboratory, the number of cases completed and the length of time to complete the cases (turnaround time) are metrics/statistics used to measure the work performed by the laboratory in a given period of time.

Those data are difficult to compare among laboratories because work is not defined uniformly. Laboratories may differ in the amount of work performed on a case. Most laboratories establish case acceptance and case analysis policies which determine the types and number of samples analyzed per case. There are also differences in the statistics used by the laboratory to measure work. For example, some laboratories will base their statistics on cases, while others may base their measures on the individual items of evidence in a case, or even on the number of tests carried out. A case (judicial entity) is often defined by an incident being investigated and may include multiple items of evidence in one or more forensic discipline. Those laboratories basing their statistics on items or tests appear to have more work than those laboratories which base statistics on cases. Laboratory **quality assurance** measures may also differ among laboratories. These quality measures may affect the amount of work performed. Turnaround times among laboratories are dependent on both the amount of work performed on cases as well as the number of analysts performing analyses in the required disciplines.

As part of the assessment all relevant information about legal and technical requirements impacting on caseload and turnaround time should be collected.

Sample questions: caseload

- What is the number of cases submitted to the laboratory per year (= number of requests from the customer that may include forensic investigations in one or several forensic disciplines)?
- One case may include several exhibits/samples, what is the number of samples submitted to the laboratory per year?

- What is the number of scientific staff in full time equivalent for each forensic discipline? (For example, if one expert works $\frac{1}{2}$ time in a discipline and another works full time in the same discipline, then together they provide 1.5 full time equivalent positions in that discipline.)
- What is the turnaround time? (=the average number of days/weeks a case remains in the laboratory before being reported.)
- Are those data available for the different disciplines? If yes, the set of questions above can be used to gather this information.

[Annex A.6 “Caseload statistics for the last full calendar year” may be used to collect those data.]

5.11 Management and planning

Section objective: to guide the assessor in obtaining an overview of the management and planning systems of the forensic laboratory, to include budget and financial support.

Effective management and planning systems are very important for a forensic laboratory. Management support for quality systems will ensure such systems are implemented and will have a positive effect on forensic services. Management and planning will also maximize the resources available to the laboratory, even in situations where human and financial resources are limited. Although forensic laboratories have some unique characteristics, general principles of good management and planning (e.g., finance, planning and control, human resources, etc.) do apply.

Sample questions: management and planning

- Who has the ultimate responsibility for managing the laboratory? What is his/her mandate? To whom is he/she accountable?
- What is the management structure of the laboratory (e.g., director, deputies, heads of departments and support staff)? Does the management staff meet regularly (i.e., are meetings structured and scheduled)? Are minutes of these meetings taken? To whom are the minutes distributed?
- How is the laboratory financed? Publicly or privately? If publicly, by which ministry? By the Ministry of Justice, Ministry of Interior, etc.? Does the laboratory have an annual budget? If so, what parameters are used when developing the budget? How is budget planning and control organized? Does the laboratory conduct internal reviews (e.g., monthly, quarterly or annually) of the budget? How does the laboratory control costs?
- Does the laboratory require customers to pay for service? If so, is this payment based on the requested **analysis**? Obtain details on costs per different analysis.

- Are there sufficient resources for consumables to carry out routine work and to maintain/replace equipment and **databases**? Are there sufficient resources for quality procedures/improvements/**accreditation**? Is funding for support programmes (e.g., research and development, training, participation in scientific conferences) available? From internal or external funds?
- Is there structured training for laboratory staff? Is there succession planning (i.e., is there a mechanism to replace managers and staff who resign or retire)? Does the laboratory encourage/support its staff to participate regularly in regional/international scientific meetings and conferences? [*See also chapter 7, section 2 “Scientific community”.*]
- Does the forensic science laboratory use subcontractors to analyze **casework** materials? If so, what is included in these subcontracts and how are they determined? How is the **competence** of the subcontractors assessed? Does the forensic science laboratory use subcontractor(s) for other services (e.g., research, training or **quality assurance**)?
- Does the laboratory collect metrics/statistics (e.g., **caseload**, turnaround time, number of staff, etc.) and are these statistics used as a management tool?
- Is there (or have there been) nationally/internationally funded assistance programmes provided to the laboratory? [*See also chapter 7, section 3 “Donor coordination”.*]



6. Using forensic data and information

Section objective: to assist the assessor in obtaining an overview of how forensic data and scientific findings are provided to and used by the criminal justice system and other customers.

Scientific findings/information/data provided by **forensic service providers**, mostly by laboratories, are used by different stakeholders for different purposes.

Within the criminal justice system, results reported by laboratories are used to guide the investigative process and as evidence in court proceedings. Forensic information in **data-bases** (e.g., fingerprints or DNA) are shared with other agencies, both nationally and internationally, for various investigative and identification purposes. Forensic data can also be used for intelligence gathering and national security.

Forensic data and statistics can also be used outside the criminal justice system. For example, data may be collected and analyzed to determine drug trends. Forensic information, statistics and metrics can also be used for other non-criminal purposes to include: strategic analyses, policymaking, regulatory needs, legislation, budget planning, and health and research purposes.

Sample questions: using forensic data and information

- What role does forensic evidence play in crime investigations and the criminal justice system?
- Are forensic results used early in an investigation to guide further actions and to direct the investigation processes? [*See also chapter 5, section 3 “Customers”.*]
- Are forensic results used as evidence in court proceedings? Are findings reported by forensic laboratory(ies) generally accepted by those within the criminal justice system (e.g., prosecutors, defence lawyers, courts, etc.)? Do those within the criminal justice system use forensic data to support the criminal justice process? Is the **quality assurance** of forensic data a consideration for those in the criminal justice system?
- Are forensic data used to provide intelligence for law enforcement strategic activities?

- Are forensic data and information collected for other purposes than casework? Are they regularly used for a given purpose? Is there a specific structure or format used to collect forensic data for the different purposes? Is the data collection computerized? Are the data compiled or centralized? Who compiles these data?
- Are data collected for national trends analysis and policymaking? Are forensic data used for international reporting on the status of the country? Are forensic data used for strategic planning and/or action-oriented interventions? If so, what data are used and by whom?
- Are forensic data used for legislation or regulatory purposes? If so, what data are used and by whom? Are forensic data used by health authorities? If so, what data are used and for what purposes (e.g., early warning on new drug trends)?
- Does the laboratory use the data for its own purposes (e.g., management)? *[See chapter 5, section 11 “Management and planning”.]*
- Do forensic laboratories provide crime trend data? If so, in what disciplines are trend data provided?
- Are forensic science laboratory data used for research? If so, what kind of data are used and by whom? Are forensic science laboratory data available for external research?
- Are forensic databases (e.g., fingerprints, DNA) shared internationally? If so, for what purposes? *[See chapter 5, section 8 “Databases”.]*



7. Partnerships and coordination

Section objectives (chapter 7, sections 1 and 2): to guide the assessor in obtaining information about the existence and extent of collaboration, cooperation, coordination and partnerships, both within the criminal justice system and at the scientific level. Chapter 7, section 3 assists the assessor in identifying donor interests and support.

[Some of the partnership/coordination issues relate to individual laboratories, others more generally to the scientific community in a country.]

7.1 The criminal justice system

Active cooperation between all stakeholders is needed to ensure that adequate forensic services are provided for the criminal justice system. Obtaining an overview of the nature and extent of collaboration, cooperation and partnership between **forensic service providers** and their customers in the criminal justice system, both in individual cases as well as at higher levels, is therefore an important part of the assessment.

One of the primary challenges within the criminal justice system is communication. Non-scientists (e.g., investigators, lawyers, prosecutors, attorneys and judges) depend on laboratory personnel to provide information and answer questions. Investigators must understand the conclusions that can be drawn from scientific testing as well as the limitations of those tests. Decisions are often based on scientific information provided by the laboratory. Laboratory personnel must communicate effectively with police, attorneys and other members of the system so that the laboratory can provide appropriate services.

To avoid potential communication gaps, it is important that mechanisms be established which enable all stakeholders in the criminal justice system to work in partnership. Laboratories may drive this process, for example, by offering training to police or attorneys on new technology and its potential use. Laboratories may also provide an opportunity for investigators to consult with laboratory personnel during investigations and/or make laboratory personnel available to participate on investigative teams. Whatever the mechanism used, it is essential that the laboratories take an active role in helping all members of the criminal justice system use scientific evidence.

Sample questions: partnerships and coordination/the criminal justice system

- Is there a national/regional infrastructure for scientific and forensic education, e.g., universities, colleges with dedicated curricula? Is forensic awareness part of the curriculum of national police academies?
- Do investigators understand the possibilities and limitations of forensic **casework**?
- Do forensic personnel understand the legal and investigative issues inherent in the criminal justice process? Do they understand the use of forensic data in the criminal justice system? Do they understand the implications of conclusions based on forensic **analyses** and **examinations**? Are forensic personnel sufficiently versed in relevant legislation?
- Are investigators meeting regularly with forensic service providers during the investigation of a major case? Are laboratory personnel involved in investigative teams? How do investigators and scientists, and prosecuting lawyers and scientists, integrate their work to produce the best results for individual cases?
- How do forensic laboratories ensure that attorneys and law enforcement personnel have the necessary knowledge to effectively use forensic services? Do laboratories provide training to raise awareness about the forensic process and **physical evidence**? Do attorneys and law enforcement personnel and other customers of forensic data understand the possibilities and limitations of forensic analysis and examination? Do they know the right questions to ask and do they understand the answers?
- What mechanisms do the laboratories use to communicate with stakeholders and customers? Are there regular meetings between forensic service providers and their customers? How often? Are there regular training sessions for stakeholders/customers? Do laboratories provide communications/newsletters to stakeholders to discuss/provide information on forensic issues?

7.2 The scientific community

Forensic service providers are part of a larger scientific community, both nationally and internationally, and their position within this broader community is important.

To maintain and further their expertise, forensic personnel should have regular contact/meetings with other forensic personnel. Where they exist, regional forensic networks and professional associations are ideal platforms for exchanging information. Forensic experts may also make contacts with other experts by regularly participating in scientific meetings and conferences which are often organized internationally.

Contacts with academia, and other scientific laboratories outside the forensic community, both on a national and international level, also provide benefits to forensic service providers. These contacts often facilitate joint projects (e.g., research projects, benchmarking)

and promote quality in forensic services. The cooperation may also lead to **casework** assistance agreements or subcontracting.

[Annex E: "Overview of forensic associations and international players" provides information on existing regional forensic associations and networks, and relevant international organizations with a mandate related to forensics.]

Sample questions: partnerships and coordination/the scientific community

- Do the forensic service personnel regularly participate in scientific meetings and conferences related to their discipline or expertise? Obtain examples of recent participation.
- Do the forensic laboratories cooperate with other forensic laboratories? Do forensic personnel contact other experts? If so, on which subjects, for which purposes, and what type of communication is used (e.g., e-mail)?
- Do forensic personnel meet regularly with other experts to discuss common issues? If so, how often do they meet and how is the participation supported by the laboratory management? Is the laboratory a member in the applicable regional network of forensic service providers? If so, what is the name of the network and what are its objectives/activities? What is the type of cooperation: Training? Exchange of techniques/procedures? Casework? Research? **Quality assurance**? Other? (Specify.)
- Do the forensic service providers cooperate with non-forensic, scientific laboratories? With academia?
- Do the forensic service providers collaborate with UNODC, as either beneficiary or contributor?

7.3 Donor coordination

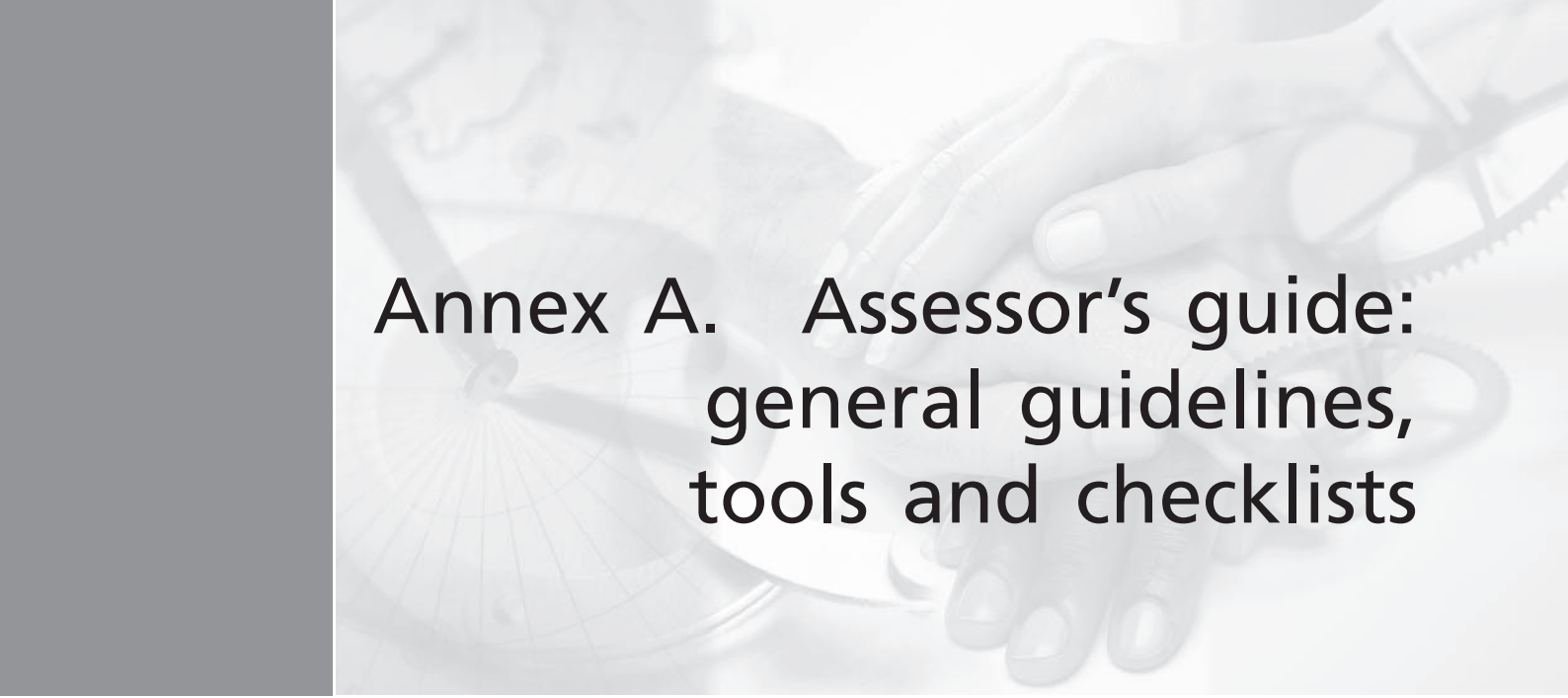
Section objective: to guide the assessor in determining the extent and scope of ongoing/planned donor support and identify gaps for additional assistance.

It is important to determine the overall level of external support for the development of forensic services to prevent unnecessary duplication of support activities and to allow the coordination of initiatives. It is also important to understand which previous donor programmes have been successful and sustainable and which have not.

Different donors have different initiatives they are willing to support, reflecting their individual interests.

Sample questions: donor coordination

- Are there (or have there been) internationally funded initiatives aimed at developing forensic services? If so, identify the objectives for each of these projects. Are those objectives being achieved? Is there any overlap or duplication among these projects? If there are multiple initiatives/projects, are they being coordinated? Is there a need to call for a donor coordination meeting?
- Which countries or organizations are involved in donor projects? Are any stakeholders and/or donors obvious by their absence?
- Are mechanisms in place that will ensure the sustainability of any sponsored activity? Are there mentoring mechanisms in place?
- Do (or did) these initiatives offer training? If so, are these initiatives training trainers (to deliver cascade training programmes)? Is computer-based training being offered? Was a training needs assessment conducted in advance of these programmes? Are any of those identified training needs still to be addressed?
- Do (or did) these initiatives provide equipment? If so, how was the need for this equipment identified? Was the need for this equipment identified through an independent evaluation? Was a government list used to identify equipment? Are other donors providing the same or similar equipment? Are there plans for how the equipment will be maintained and replaced in the future? Are there examples of the same or similar equipment being provided and then being misappropriated or not being used at all? Were staff trained to use the equipment?
- Have any post-implementation reviews been conducted to identify good practice for a similar programme elsewhere? Are the results of any post-implementation reviews been collated and coordinated for use in future planning? Obtain copies of available reviews.



Annex A. Assessor's guide: general guidelines, tools and checklists

A.1 General guidelines for conducting assessments

What follows are general guidelines for conducting assessments, reproduced from the CJAT for the stand-alone Tool on forensic services and infrastructure assessments. The guidelines are a distillation of the experience of some sixty experts in criminal justice who participated in the process of formulating the initial toolkit. 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?

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.

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 challenges other 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 current economic situation—and its outlook? 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. [See also the Tool "Cross-Cutting Issues: Criminal Justice Information", available online at www.unodc.org,⁵ 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, and professional organizations concerned with the issues you may encounter on the assessment mission, as well as donors including

⁵The specific link as at November 2009 is: www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html

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.
- **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?
- Ask for supporting documents.
- 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;
 - United Nations (UN Development Programme, Department of Peacekeeping Operations, the Office of the High Commissioner for Human Rights, Office on Drugs and Crime), the European Union, Council of Europe, Organization for Security and Co-operation in Europe, the African Union or the Organization of American States; and other regional and international law enforcement organizations;

- Lawyers, including legal aid/public defenders;
- Judges;
- Academic institutions;
- Donor countries;
- Assistance/aid agencies.

[See the suggested sources and contacts in annex A.2 “Checklist”.]

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 is 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.

Assessors 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.

A.2 Checklist

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

TOPIC	SOURCES	CONTACTS	COMPLETED
1	INTRODUCTION TO THE ISSUE		N/A
2	OVERVIEW/CONTEXTUAL INFORMATION		
2.1	CRIME SITUATION	<ul style="list-style-type: none"> National statistics Annual reports from laboratories 	<ul style="list-style-type: none"> Staff members of relevant ministries (e.g., Ministry of Interior, Ministry of Justice)
2.2	FORENSIC INFRASTRUCTURE		<ul style="list-style-type: none"> Courts, prosecutor's offices, police headquarters, and foreign liaison officers UNODC national or regional offices are suggested as initial contacts
3	LEGAL FRAMEWORK	<ul style="list-style-type: none"> Laws and regulations for criminal proceedings Laws and regulations for police and forensic databases Controlled substances laws and regulations Operational procedures 	<ul style="list-style-type: none"> Directors of law enforcement agencies and forensic laboratories Chief prosecutors, supreme and appellate court judges
4	CRIME SCENE INVESTIGATION		
4.1	FIRST RESPONDERS	<ul style="list-style-type: none"> Laws and regulations, and operational procedures on crime scene investigation 	<ul style="list-style-type: none"> Directors of law enforcement agencies and forensic institutes
4.2	CRIME SCENE INVESTIGATION (CSI) SERVICES	<ul style="list-style-type: none"> Crime scene investigation handbooks and training materials 	<ul style="list-style-type: none"> Directors and staff of crime scene units
4.3	CSI FACILITIES AND EQUIPMENT		<ul style="list-style-type: none"> Foreign liaison officers
4.4	CSI STAFF SELECTION AND TRAINING		<ul style="list-style-type: none"> UNODC national or regional offices

5 FORENSIC ANALYSES AND EXAMINATIONS IN A LABORATORY OR MEDICAL FACILITY

- 5.1 GENERAL LABORATORY INFORMATION
 - Annual reports
 - Director of forensic laboratory
- 5.2 SCOPE OF SERVICES
 - Organization diagram of the laboratory
 - Staff members with overview of services provided by the laboratory
- 5.3 CUSTOMERS
 - Customers of the laboratory (e.g., police officers, prosecutors, judges)
- 5.4 LABORATORY STAFF SELECTION AND TRAINING
 - Legal duties of the laboratory (found in national legislation)
 - National accreditation body (in case of an accredited laboratory)
- 5.5 FACILITIES AND SAMPLE HANDLING
 - Case reports
- 5.6 LABORATORY EQUIPMENT, PROCEDURES AND MATERIALS
 - Lab operations handbook
 - Quality management manual
- 5.7 REPORTING
- 5.8 DATABASES
- 5.9 QUALITY ASSURANCE
- 5.10 CASELOAD
- 5.11 MANAGEMENT AND PLANNING

6 USING FORENSIC DATA AND INFORMATION

- National statistics, planning and policy documents
- Heads of law enforcement agencies
- Research reports
- Heads of forensic laboratories
- Supreme and appeal court judges, researchers
- Policymakers

7 PARTNERSHIPS AND COORDINATION

- 7.1 THE CRIMINAL JUSTICE SYSTEM
 - Cooperative agreements
 - Directors and other personnel in law enforcement agencies
 - Contracts
 - Directors and other personnel in forensic laboratories
 - Project plans
 - Individuals responsible for crime scene investigations
 - Project reports
 - Prosecutors, appeal and supreme court judges

TOPIC	SOURCES	CONTACTS	COMPLETED
7.2 THE SCIENTIFIC COMMUNITY	<ul style="list-style-type: none"> • Cooperative agreements • Contracts • Project plans • Project reports 	<ul style="list-style-type: none"> • Directors of forensic laboratories • Individuals responsible for crime scene investigations • Directors of research institutes outside the criminal justice system • Directors of other laboratories (health, food, pharmaceutical control, etc.) 	COMPLETED
7.3 DONOR COORDINATION	<ul style="list-style-type: none"> • Internet websites • Programme and project documents • Project terms of reference • Regional organization offices • Agreements (e.g., Memoranda of Understanding) with the international community, organization or donor countries (e.g., United Nations, European Commission, OSCE, Interpol, etc) • Embassies • Ministries 	<ul style="list-style-type: none"> • Directors of law enforcement agencies • Directors of forensic laboratories • Individuals responsible for crime scene investigations • Local representatives of international initiatives • Representatives of relevant international or regional organizations working in the country • Embassies/ministries for donor activity • Programme and project managers for international initiatives • Local United Nations representatives 	COMPLETED

A.3 General institution information

Name of institution

Agency affiliation (e.g., Ministry of Justice)

Address

Street

Postal code

City

Country

Telephone number

Fax number

General e-mail address

Head of the laboratory

Name

Telephone number

E-mail address

Name and location of subsidiary laboratory(ies), if any

Name, position and contact details of main contact for questions related to the assessment (if different from head of laboratory):

A.4 Scope of services

<i>Discipline</i>	<i>Sub-discipline</i>
Drugs and precursors <input type="checkbox"/>	Seized materials <input type="checkbox"/> Biological specimens (toxicology) <input type="checkbox"/> Other(s) <input type="checkbox"/> , specify
Fingerprints <input type="checkbox"/>	Detection and enhancement <input type="checkbox"/> Comparisons <input type="checkbox"/> Other(s) <input type="checkbox"/> , specify
Shoemarks and tyre marks <input type="checkbox"/>	Shoemarks <input type="checkbox"/> Tyre marks <input type="checkbox"/> Other(s) <input type="checkbox"/> , specify
Biological material and DNA <input type="checkbox"/>	
Questioned documents <input type="checkbox"/>	Documents <input type="checkbox"/> Handwriting <input type="checkbox"/> Other(s) <input type="checkbox"/> , specify
Firearms and toolmarks <input type="checkbox"/>	Gun shot residues <input type="checkbox"/> Ammunition components <input type="checkbox"/> Tool marks <input type="checkbox"/> Serial number restoration <input type="checkbox"/> Other(s) <input type="checkbox"/> , specify
Fire debris and explosives <input type="checkbox"/>	Flammables/Combustibles <input type="checkbox"/> Explosives <input type="checkbox"/>
Trace materials <input type="checkbox"/>	Fibres <input type="checkbox"/> Hairs <input type="checkbox"/> Paint <input type="checkbox"/> Glass <input type="checkbox"/> Other(s) <input type="checkbox"/> , specify
Forensic medicine <input type="checkbox"/>	Pathology <input type="checkbox"/> Odontology <input type="checkbox"/> Anthropology <input type="checkbox"/> Other(s)* <input type="checkbox"/> , specify
Digital and multimedia evidence <input type="checkbox"/>	Computer forensics <input type="checkbox"/> Forensic audio <input type="checkbox"/> Video and image analysis <input type="checkbox"/>
Crime scene investigation <input type="checkbox"/>	Specify the types of cases
Other(s) <input type="checkbox"/>	Specify

*For example, clinical forensic medicine; histology; photography; toxicology.

A.5 Available laboratory procedures and equipment

[A table listing commonly used techniques in the various forensic disciplines is found in Annex D]

Forensic discipline		Available techniques (e.g., microscope, colour test, balance, SEM, GC-MS, FT-IR, UV-VIS, LC/MS, etc.). <i>Note the number of instruments for each technique as appropriate.</i>
Drugs and precursors	Seized materials Biological specimens (toxicology)	
Fingerprints		
Shoe and tyre marks	Shoemarks Tyre marks	
Biological material, including DNA		
Questioned document	Documents Handwriting Other	
Firearms and toolmarks	Gun shot residues Ammunition components Tool marks Serial number restoration Other	
Fire and explosion	Flammables/combustibles Explosives	
Fibres, paints, glass and other micro traces	Fibres Hairs Paint Glass Other(s)	
Forensic-medical expertise	Pathology Odontology Anthropology Other(s)	
Digital and multimedia evidence	Computer forensics Forensic audio Video and image analysis	
Crime scene investigation		
Other(s)		

A.6 Caseload statistics for the last full calendar year

<i>Forensic discipline</i>		<i>Annual number of cases submitted¹</i>	<i>Annual number of samples submitted²</i>	<i>Number of analysts per discipline³ [Full time equivalents]</i>	<i>Turn around time⁴ [Average in days]</i>
Drugs and precursors	Seized materials				
	Biological specimens (toxicology)				
Fingerprints					
Shoe and tyre marks	Shoemarks				
	Tyre marks				
Biological material, including DNA					
Questioned document	Documents				
	Handwriting				
	Other				
Firearms and toolmarks	Gunshot residues				
	Ammunition components				
	Tool marks				
	Serial number restoration				
Fire and explosion	Flammables/combustibles				
	Explosives				
Fibres, paints, glass and other micro traces	Fibres				
	Hairs				
	Paint				
	Glass				
	Other				

<i>Forensic discipline</i>		<i>Annual number of cases submitted¹</i>	<i>Annual number of samples submitted²</i>	<i>Number of analysts per discipline³ [Full time equivalents]</i>	<i>Turn around time⁴ [Average in days]</i>
Forensic-medical expertise	Pathology				
	Odontology				
	Anthropology				
	Clinical forensic medicine				
	Histology				
	Other				
Digital and multi-media evidence	Computer forensics				
	Forensic audio				
	Video and image analysis				
Crime scene					
Other					

¹A case (judicial entity) is defined as a request from the customer that may include forensic investigations in one or several forensic disciplines.

²One case may include several exhibits, samples, etc. So, the number in this column is a multiple of the number in the first column.

³Provide full time equivalent positions based on the amount of time an analyst/expert spends in each discipline. For example, if one expert works ½ time in a discipline and another works full time in the same discipline, then together they provide 1.5 full time equivalent positions in that discipline.

⁴The average number of days a case remains in the laboratory before being reported.



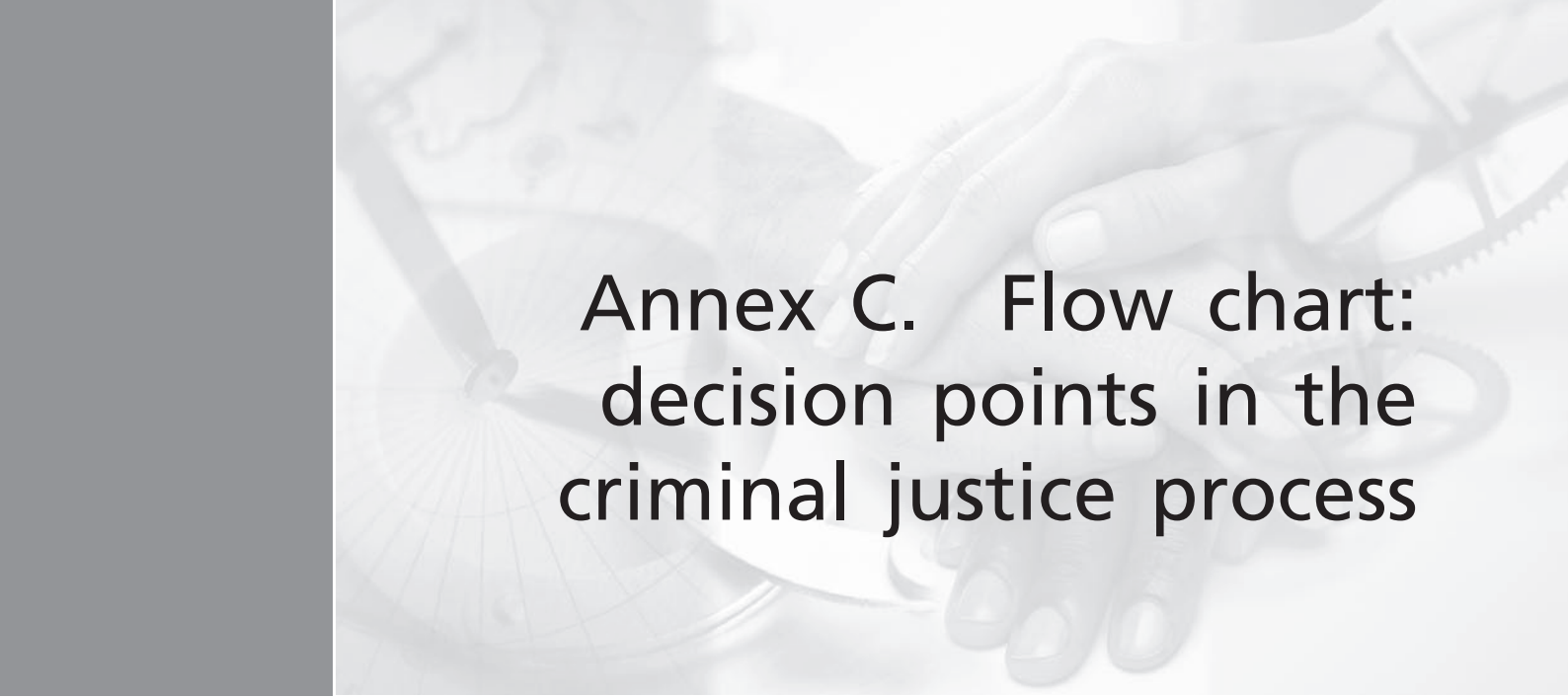
Annex B. Glossary

Glossary of terms used in the Criminal Justice Assessment Tool “Forensic services and infrastructure”.

Accreditation	Accreditation aims at establishing the status, legitimacy or appropriateness of a service provider by an independent body (often called a national accreditation body); <i>in a forensic context</i> , typically refers to the official assessment of a forensic science laboratory or forensic service provider, based on internationally accepted standards, such as ISO 17025, 17020. [See also certification.]
Analysis and examination	Analysis of samples aims at determining its composition; <i>in a forensic context</i> , usually a chemical analysis. Examination of samples refers to non-chemical analysis, e.g., observation, comparison.
Caseload	Number of cases submitted, investigated, examined or analysed by a laboratory or forensic service provider in a given time period.
Casework	Investigation of criminal cases or evidence resulting from an investigation; the process of case analysis and examination in a laboratory.
Certification	A procedure by which a competent independent body (certifying body) evaluates and gives formal recognition either to an individual or organization as meeting predetermined requirements or criteria; <i>in this context</i> the term typically refers to a formal recognition of the competence of a forensic expert. [See also accreditation.]
Certified reference materials (CRM)	[See reference materials.]
Chain of custody	Procedures and documents that account for the integrity of physical evidence by tracking its handling and storage from its point of collection to its final disposition. Other terms used: chain of evidence, traceability.

Collaborative exercise	An exercise, where tests are carried out on the same or similar items or materials by two or more different laboratories in accordance with predetermined conditions. The main purpose is validation of analytical methods or establishment of reference methods.
Competence	A demonstrated ability to perform a task to a specific, predetermined standard.
Contamination	The direct or indirect transfer of extraneous material to a forensic sample or scene of crime; Other term used: cross contamination.
Crime scene and crime scene investigation	A site containing records of past activities, alleged to be a crime. <ul style="list-style-type: none"> • Crime scene investigation is a process that aims at recording the scene as it is first encountered and recognizing and collecting all relevant physical evidence Other term used: crime scene examination. <ul style="list-style-type: none"> • Crime scene investigation service is a dedicated team or organizational unit consisting of crime scene investigators whose main function is to process crime scenes. • Crime scene investigator is an individual with the professional knowledge and skills (who received adequate forensic training) to perform crime scene investigation. Other term used: crime scene examiner.
Crime scene investigation kit	A specially prepared collection of supplies contained in some carry-all, needed to preserve, document, collect and package physical evidence at crime scenes. Contents of kits vary but typically include containers to gather evidence, labels, gloves, measuring devices and hand tools to help in the recognition and collection of evidence, such as light sources.
Database	<i>In a forensic context</i> , searchable collection of data or information, usually but not necessarily, in an electronic/digital format, e.g., Automated Fingerprints Integrated System (AFIS), Combined DNA Index System (CODIS), Integrated Ballistics Identification System (IBIS). [See also reference collection.]
First responder	First person arriving at a crime scene, e.g., law enforcement officer, fire personnel, emergency medical personnel.
Fingerprint	A mark left on a surface that was touched by an individual. Other term used: fingermark. Also used for the fingerprint ink exemplar taken from an individual for comparison purposes.
Field detection test kit	A specially prepared kit for performing preliminary tests on samples outside of laboratory facilities, e.g., for field testing drugs and precursors.
Forensic service provider	A public or private agency/institution/institute/laboratory performing forensic analyses and examinations, including crime scene investigations and forensic medical examinations, and preparing reports used by the criminal justice system.

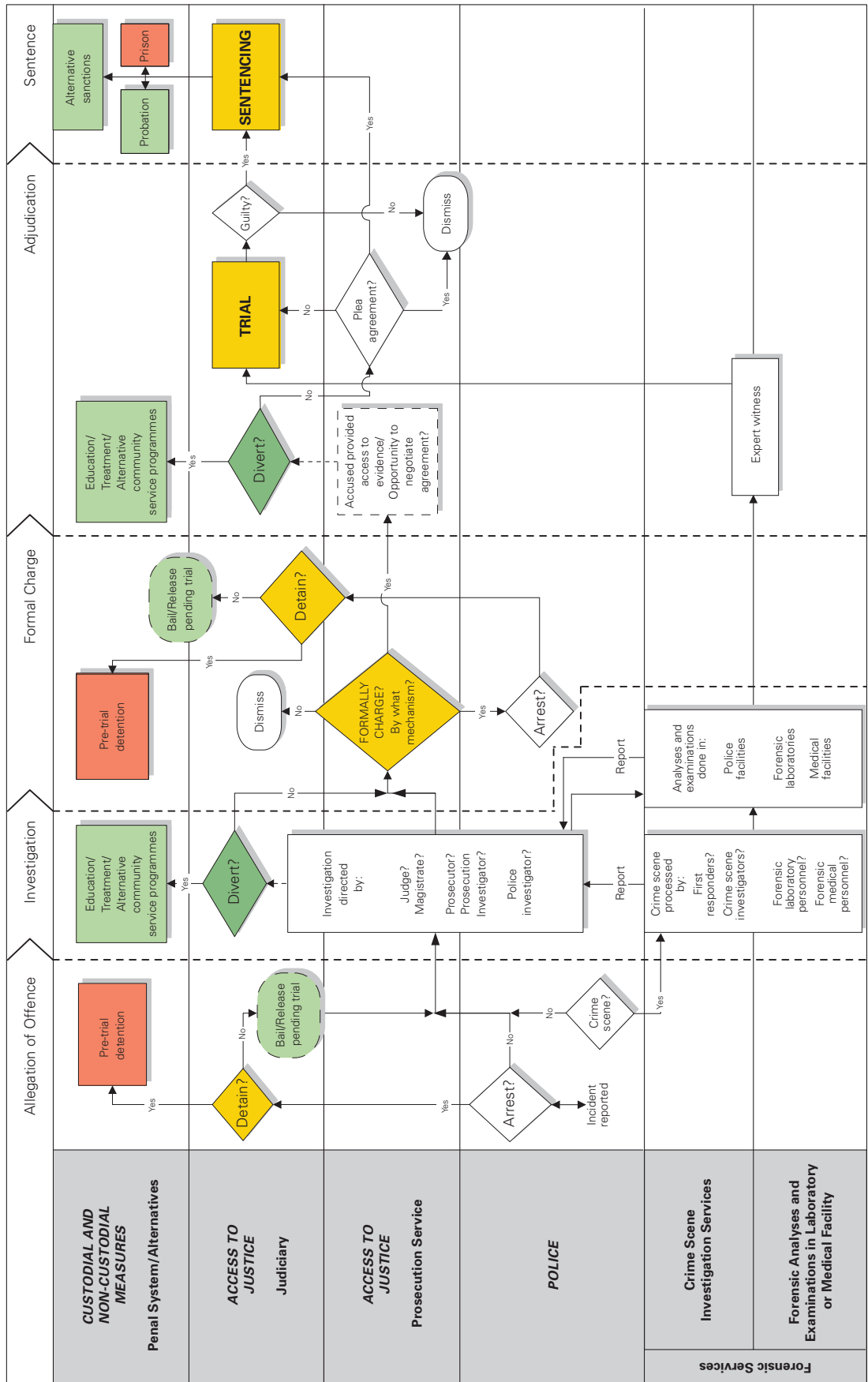
Physical evidence	Any tangible item associated with a crime.
Proficiency test	Test to evaluate the competence of analysts and the quality of performance of a laboratory; in open tests, the analysts are aware that they are being tested; in blind tests, they are not aware.
Quality assurance	All planned and systematic activities implemented within the quality management system to provide adequate confidence that the laboratory will fulfil requirements for quality.
Quality management system (QMS)	The QMS consists of documentation of a laboratory's policies, systems, procedures and instructions to the extent necessary to assure the quality of its results, to meet relevant jurisdictional, regulatory and safety requirements and to satisfy the needs of the clients.
Reference collection	A set of samples and objects used in forensic casework for identification and comparison purposes (e.g., firearms and ammunition; genuine banknotes; ID documents; glass particles; shoe soles; drug packaging; inks). <i>[See also databases.]</i>
Reference material, certified reference material (CRM)	Materials or substances, one or more properties of which are sufficiently well established to be used for the calibration of an apparatus, the assessment of a measurement method, or for assigning values to materials. They can be <i>certified reference materials</i> obtained from a recognized standards authority or <i>in-house reference materials</i> whose composition has been established by the laboratory, for example by a reference method or in collaboration with other laboratories. Reference materials and certified reference materials play a central role in forensic analysis and examinations and should have relevant certificates of authenticity.
Traceability	<i>[See chain of custody.]</i>
Validation	Process of testing and/or demonstrating the applicability of a technique, method, or instrument for a defined measurement, analysis or examination.



Annex C. Flow chart: decision points in the criminal justice process

Continued on opposite page.

DECISION POINTS IN THE CRIMINAL JUSTICE PROCESS





Annex D. Routinely used forensic techniques

Continued on opposite page.



Annex E. Overview of forensic associations and international players

There are several regional and international forensic associations and networks with various goals and objectives, as well as international organizations working with forensic service providers. An overview of these bodies is presented below in alphabetical order.

Regional forensic associations and networks

- American Academy of Forensic Sciences (AAFS), www.aafs.org
- Academia Iberoamericana de Criminalística y Estudios Forenses (AICEF), www.aicef.net
- American Society of Crime Laboratory Directors (ASCLD), www.asclcd.org
- Asian Forensic Sciences Network (AFSN), www.asianforensic.net
- European Council of Legal Medicine (ECLM), www.irm.unizh.ch/eclm/index.php
- European Network of Forensic Science Institutes (ENFSI), www.enfsi.eu
- Indo-Pacific Association of Law, Medicine and Science (INPALMS), <http://inpalms.tripod.com/>
- International Association of Forensic Science (IAFS), www.iafs2005.com/
- International Academy of Legal Medicine (IALM), www.irm.unizh.ch/ialm/index.php
- International Committee of the Red Cross (ICRC), www.icrc.org
- International Forensic Strategic Alliance (IFSA), www.enfsi.eu/page.php?uid=8
- International Criminal Police Organization (INTERPOL), www.interpol.int/Public/Forensic/Default.asp
- Mediterranean Association of Forensic Sciences (MAFS), www.mafs2009.com
- National Association of Medical Examiners (NAME), <http://thename.org/index>
- Senior Managers Australian and New Zealand Forensic Laboratories (SMANZFL), www.nifs.com.au and www.nifs.com.au/SMANZFL/SMANZFL.html?index.asp&1
- The International Forensic Summit (TIFS), www.theforensicsummit.org
- United Nations Office on Drugs and Crime (UNODC), www.unodc.org and www.unodc.org/unodc/en/scientists/laboratory-and-forensic-science-services.html

AAFS

The American Academy of Forensic Sciences (AAFS) is an association of practitioners of forensic science in a broad sense. It defines itself “a professional society dedicated to the application of science to the law”. Its main activities are:

- To publish the Journal of Forensic Sciences and newsletters;
- To organize an annual scientific meeting, seminars and meetings;
- To initiate actions and reactions to various issues of concern;
- To represent its members to the public and serve as the focal point for public information concerning the forensic science profession.

AAFS was founded in 1948 and it currently has over 6000 members, from the United States and Canada as well as from 55 other countries. The AAFS has 10 sections structured on the basis of forensic expertise fields and related forensic disciplines. Each year (usually in February) a large scientific congress is organized in the United States.

AFSN

The Asian Forensic Sciences Network (AFSN) is the association of forensic science institutes in Asia. The network was inaugurated in November 2009, and currently includes institutes from South-East⁶ and East Asian countries, namely Brunei Darussalam, Indonesia, Lao PDR, Malaysia, Philippines, PR China, Republic of Korea, Singapore, Thailand and Viet Nam, with the aim of further expansion over time.

The purpose of AFSN is formulated as follows:

- To provide a forum for forensic science institutes in Asia for discussion on issues relating to forensic services.
- To enhance the quality of forensic services in Asia through expert working groups, training, collaborative studies, proficiency tests and accreditation.
- To establish links with other similar networks for the promotion and advancement of forensic science.
- To formulate strategies relating to forensic science issues in Asia.

Membership is open for directors (or a representative appointed by the director) of forensic institutes in Asia that have a credible status (i.e. institutes that are regular suppliers of reports used by police forces, prosecutors or judges) in their own country. The forensic institute can be one that covers multiple forensic disciplines or a specialist institution offering forensic service in selected disciplines.

AICEF

Academia Iberoamericana de Criminalística y estudios forenses (AICEF) is the association of the forensic laboratories from countries with Spanish or Portuguese as the main language. The majority of its members are located in Latin America, but membership also extends to laboratories in Portugal and Spain. The managerial support from Spain is substantial.

AICEF accepts as a member any official, public forensic laboratory of the Iberoamerican region (Latin America plus Portugal and Spain), i.e. laboratories used by the Police, Ministry of Justice, Attorney General Office, Supreme Court, or independent but public forensic facilities. AICEF also considers forensic laboratories used by public universities.

The main aim of AICEF is to extend and facilitate cooperation and training in the different forensic areas, to increase the quality of criminalistics throughout Latin America and in cooperation with other international networks through IFSA. AICEF works through Working Groups set up for the different forensic specialties.

⁶Specifically, member countries of the Association of Southeast Asian Nations (ASEAN).

ASCLD

The mission of the American Society of Crime Laboratory Directors (ASCLD) is "Excellence Through Leadership in Forensic Science Management" and its aims are formulated as:

- To serve the common professional interests of its members;
- To promote and foster the development of crime laboratory management principles and techniques;
- To acquire, preserve and disseminate information related to the utilization of crime laboratories;
- To maintain and improve communications among crime laboratory directors;
- To promote, encourage and maintain the highest standards of practice in the field of crime laboratory services;
- To promote an increase in the effective utilization of crime laboratory services;
- To strive for the suitable and proper accomplishment of any purpose herein set forth or any objective of a professional association.

Membership is not only open to directors of laboratories, but also for individual scientists and students. Memberships is also open to scientists from outside the United States. Each year a large scientific congress is organized in the United States.

ECLM

The European Council of Legal Medicine (ECLM) represents the European forensic medical practitioners who are involved in the investigations of non-natural causes of death. The focus is not only the scientific aspects, but also on the recognition of the profession by the European Union and the Council of Europe.

ENFSI

The European Network of Forensic Science Institutes (ENFSI) is the leading organisation for forensic institutes in Europe. ENFSI is recognized as a pre-eminent voice in forensic science worldwide by "ensuring the quality of development and delivery of forensic science throughout Europe".

Exchange of scientific expertise and experience takes place within the 16 ENFSI Working Groups. The main activities of the Working Groups are the publishing of Best Practice Manuals, organizing of seminars and workshops, and organizing proficiency tests and collaborative exercises. As a result of these activities the scientists in a particular expertise field have close contact with each other.

ENFSI organizes an open, triennial scientific congress under the name European Academy of Forensic Science (EAFS). The objective of these conferences is to enhance the contacts of ENFSI and the relevant scientists outside the ENFSI community.

IAI

The International Association for Identification (IAI) is the world's oldest and largest forensic science/identification association, with more than 7,000 members from the United States and over 50 countries. The advancement of forensic disciplines through education continues to be one of IAI's top priorities.

The IAI now has seven Certification Programmes including Crime Scene Certification, Forensic Art, Footwear and Tiretrack Analysis, Bloodstain Pattern Analysis, Forensic Photography/Imaging, Tenprint Fingerprint Certification, and Latent Print. The IAI publishes the Journal of Forensic Identification (JFI), an internationally recognized bimonthly scientific journal provided to all IAI members. The JFI includes articles by international authorities on original investigations, experiments, testing, and reviews in all branches of forensic identification. The IAI also has an annual International Educational Conference, presented at a different location each year.

IAFS

The International Association of Forensic Science (IAFS) was established in 1957. Its main objective is organizing a triennial scientific congress. The IAFS is directed by a Council composed from the previous chairmen. There is no membership in IAFS similar to that of the aforementioned organizations.

IALM

The International Academy of Legal Medicine (IALM)—the former International Academy of Legal and Social Medicine—was established in 1938. As indicated by its name, it focusses on the medical aspects of forensic science. Its aims are “the furthering of scientific progress in the field of Legal Medicine, especially promoting collaboration and information exchange among specialists on an international level, by holding scientific meetings and congresses, and through scientific publications” and “to collaborate with other scientific societies and endeavor to provide as required the information and expertise to answer public inquiries related to the discipline of Legal Medicine”.

ICRC

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance. It directs and coordinates the international relief activities in situations of conflict. It also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles.

Soon after the *International Conference of Governmental and Non-Governmental Experts on the Missing and their Families*, held in Geneva, Switzerland, in 2003, the ICRC established its own forensic services. Their goal is to help the ICRC promote the implementation of recommendations from this Conference which are related to the management of human remains and information on the dead in armed conflicts and other situations of armed violence, to help ensure the right of families of the missing to know the fate of their loved ones, to recover and to mourn their remains. The recommendations have also proved valuable for the management of the dead in catastrophes. The ICRC is the only humanitarian organization which offers forensic services, including advice, training and support, exclusively for humanitarian purposes.

IFSA

IFSA stands for the International Forensic Strategic Alliance. IFSA is a partnership between the regional networks of operational forensic laboratories including:

- American Society of Crime Laboratory Directors (ASCLD)
- European Network of Forensic Science Institutes (ENFSI)

- Senior Managers of Australian and New Zealand Forensic Laboratories (SMANZFL)
- Academia Iberoamericana de Criminalística y Estudios Forenses (AICEF)

These autonomous networks represent forensic science laboratory management for their specific regions. They have similar roles, functions and objectives and recognize the value to be gained through long-term collaboration and cooperation on strategic issues related to the management of forensic science laboratories and the promotion of forensic science. It is recognized that IFSA has no legal status but represents a cooperative entity comprising the member networks.

Goals and objectives

- To represent the operational forensic science community;
- To develop and execute a rolling agenda for strategic issues related to forensic science;
- To be a strategic partner to other relevant international organisations and partnerships;
- To encourage the exchange of information related to experience, knowledge and skills between the member networks.

INPALMS

The Indo-Pacific Association of Law, Medicine and Science (INPALMS) was established in 1986. It is an association of individual forensic physicians, pathologists as well as national forensic and medico-legal organizations, with focus on forensic medical disciplines. INPALMS organizes a triennial scientific congress and offers, in conjunction with the Victorian Institute of Forensic Medicine (VIFM), a scholarship for those wishing to undertake postgraduate studies in forensic medicine.

INTERPOL

Interpol (founded in 1923) is the largest international cooperation of national police forces in the world (184 member-states). The secretariat is located in Lyon (France). There are regional centres and liaison officers in almost every country. The main task of Interpol is to facilitate the international police cooperation and to support all organizations which are combating cross-border criminality.

One of the main responsibilities of Interpol is submitting operational information e.g., from databases containing fingerprints, DNA-profiles, stolen works of art, etc. to police forces.

The interest by Interpol in forensic science is reflected by the triennial Interpol International Forensic Science Symposium in Lyon (IFSS). Overviews of the state of art of the forensic disciplines are presented and current topics are discussed. All (detailed) documents can be downloaded from the internet. Interpol is active in promoting the application of DNA-technology in the combat against criminality. A special Interpol DNA Unit has been established with the goal of providing strategic and technical support to enhance member states' DNA profiling capacity and promote widespread use in the international law enforcement environment. The Interpol DNA Unit organizes expert meetings, works on establishing and extending a DNA databank, and has published a DNA handbook.

MAFS

The Mediterranean Association of Forensic Sciences (MAFS) is focusing on the laboratories in the countries located round the Mediterranean Sea. Its aims are:

- To develop forensic sciences;
- To exchange scientific knowledge and technical experience in this field;
- To organize scientific meetings, workshops and training courses;
- To create conviviality and friendship between persons interested in forensic sciences.

NAME

The National Association of Medical Examiners (NAME) is the national professional organization of physician medical examiners, medical death investigators and death investigation system administrators who perform the official duties of the medico-legal investigation of deaths of public interest. NAME was founded in 1966 with the dual purposes of fostering the professional growth of physician death investigators and disseminating the professional and technical information vital to the continuing improvement of the medical investigation of violent, suspicious and unusual deaths.

SMANZFL

The Senior Managers of Australian and New Zealand Forensic Laboratories (SMANZFL) represents the key forensic science service providers for New Zealand and the eight States and Territories in Australia. Two representatives are elected from each of these jurisdictions to form the SMANZFL Committee and eight representatives from the Committee are elected to the SMANZFL Executive. The Director of the National Institute of Forensic Science (NIFS) serves as an ex-officio member of the Executive.

The mission of SMANZFL is “to provide leadership in the forensic sciences in the pursuit of excellence”. Concrete objectives following this mission are:

- To provide leadership and best management practice in the forensic sciences;
- To promote interaction and cooperation with stakeholders;
- To promote science excellence;
- To contribute to police issues in the justice system;
- To promote confidence in the forensic science;
- To promote efficient and effective use of resources.

TIFS

The International Forensic Summit (TIFS) is a global partnership between multiple regional forensic science networks representing a broad range of forensic groups; e.g., science, medicine, patterned evidence, and crime scenes. The groups participating include not only directors of forensic institutes, but learned societies representing practitioners at all levels, educational groups, and key enabling bodies. The organization has a true global perspective and is attempting to link organizations from that global perspective. This website provides information about TIFS and its objectives. The website also provides a mechanism for TIFS participants to collaborate and share information via its registered users area.

Led by a Steering Committee, TIFS is working to provide the framework to enable participating forensic organizations to coordinate, cooperate and collaborate on matters of international importance. TIFS is the mechanism by which the forensic sciences (including both science and medicine) become a united front to guide the global development of the profession. TIFS also supports forensic science in emerging nations.

TIFS has been established to promote information sharing on a global scale; to identify forensic science issues and promote solutions to those issues; and to serve as subject matter experts on global forensic science issues.

UNODC

The United Nations Office on Drugs and Crime (UNODC) through its Laboratory and Scientific Section works with nations to improve their scientific and forensic capacity and capabilities to meet internationally accepted standards; ensure the worldwide availability and accessibility of such standards; and increase the use of forensic science services, data and information for evidence-based operational purposes, strategic interventions and policy and decision-making.

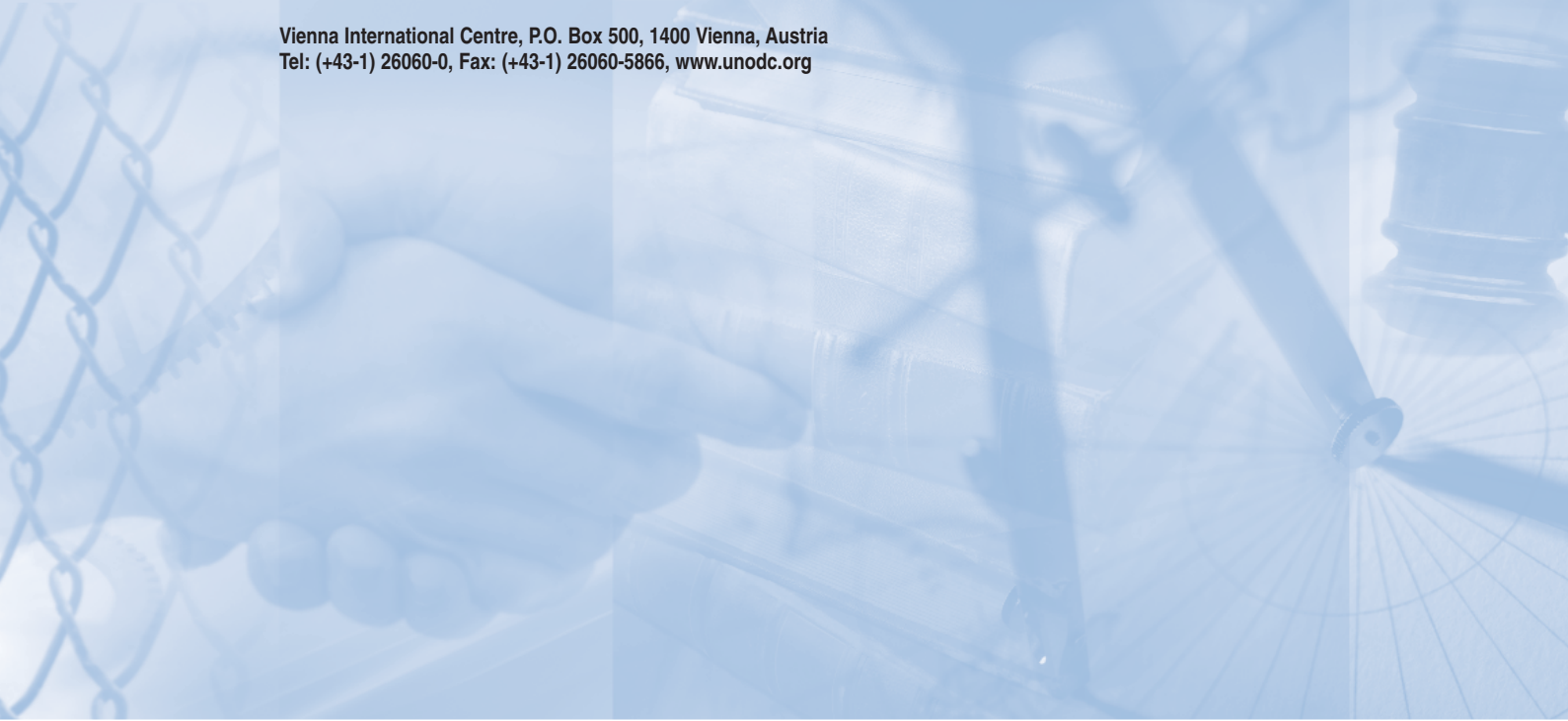
UNODC also facilitates international forensic cooperation, including through the formation of and support to new associations and networks.



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UNITED NATIONS
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ACCESS TO JUSTICE
The Courts

Criminal justice
assessment
toolkit

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UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

ACCESS TO JUSTICE

The Courts

Criminal Justice Assessment Toolkit



UNITED NATIONS
New York, 2006

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This publication has not been formally edited.

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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 a 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.

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)
- Lilongwe Declaration on Accessing Legal Aid in Africa (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 & 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 & regulations to those Acts Court Rules & 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	

	TOPIC	SOURCES	CONTACTS	COMPLETED
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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UNITED NATIONS
Office on Drugs and Crime



ACCESS TO JUSTICE

The Independence, Impartiality and Integrity of the Judiciary

Criminal justice
assessment
toolkit

2

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

ACCESS TO JUSTICE

The Independence, Impartiality and Integrity of the Judiciary

Criminal Justice Assessment Toolkit



UNITED NATIONS
New York, 2006

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This publication has not been formally edited.

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1. INTRODUCTION TO THE ISSUE

This tool guides the assessment of the judiciary, with a focus on integrity, independence, and impartiality, and their impact on access to justice. In conducting assessments of the judiciary, the assessor should use this tool in conjunction with **Access to Justice: The Courts**.

In all countries, judiciaries play an important role in stabilizing the balance of power within government, and their performance can enhance public confidence in the integrity of government. Historically, common law and civil law systems differed in their conceptualisation of the institution of the judiciary. In recent decades, however, these systems have evolved and been influenced toward increased commonality. It is therefore important not only to understand the historical background to a country's judiciary, but also to recognize and acknowledge the changes that have been made in recent years.

In systems with roots in the common law, the judiciary has traditionally enjoyed significant power and independence. The separation of powers model has always viewed the judiciary as a separate and independent arm of government. Common law system judges typically have security of tenure, and considerable autonomy over their budgets and internal governance. A disadvantage associated with such systems however can be that the judicial appointments procedure in some countries is political--in some jurisdictions judges may be popularly elected--, rather than merit-based, and may lack transparency.

In some civil law systems, the judiciary has not been necessarily viewed as a separate arm of government, but rather placed under the governance of a "judicial council", including the Head of State and the Minister of Justice. However, in many countries with a civil law tradition, the appointment of judges is based on a career and promotion track, rather than an appointment process.

Over the past several decades, many states have merged aspects of good practice from other systems into their own. Several civil law countries have adopted reforms that enhance the independence and authority of the judiciary. In common law countries, the appointments of judges are now often undertaken or at least vetted by councils or commissions that include representatives from the executive, judiciary and the legislature, as well as members of the public. The legal profession and even legal educators may have a role in these processes in some countries.

The trend worldwide is toward increased autonomy and self-governance. Increased security of tenure is considered an important feature that protects judges from outside pressures. Appropriate appointment, promotion, and disciplinary measures that are transparent, predictable and objective are viewed as the best protections for security of tenure.

In countries undergoing transition from one political system to another, the challenges are greater as the judiciary itself is often required to transform its role under the previous regime while working to build public trust in the new regime. This often takes place against a backdrop of political and economic struggles to articulate what the profile of the new state will be, as well as problems with crime and corruption that are often present in transitional societies. Acts of corruption may tear down in moments the hard-won trust in public institutions. In few systems is public trust more critical to fulfilling its mandate than to an independent judiciary, for how can there be justice without fairness, impartiality and integrity? While the challenge may be greatest to judiciaries in transitional societies, all judiciaries must earn and maintain the public trust in its ability to deliver justice on a daily, case-by-case basis.

The right to a competent, independent, and impartial tribunal is articulated in the **Universal Declaration of Human Rights** (Article 10) and the **International Covenant on Civil and Political Rights** (Article 14), as well as in regional treaties and conventions including the **European Convention for the Protection of Human Rights and Fundamental Freedoms** (Article 6), the **American Convention on Human Rights** (Article 8), and the **African Charter on Human and Peoples' Rights** (Article 7). Recognizing the essential role played by a competent, independent and impartial judiciary in the protection of human rights and fundamental freedoms, in 1985, the seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders adopted and the General Assembly endorsed the **Basic Principles on the Independence of the Judiciary**, which are to be “taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general.” The Principles cover the independence of the judiciary; freedom of expression and association; qualifications, selection and training; conditions of service and tenure; as well as discipline, suspension and removal. As such, the Guidelines provide a framework of the international standards with which to assess the judiciary of a state.

As further recognition that judges must conduct themselves in a manner that supports the key values of an independent judiciary, the UN Economic and Social Council adopted in July 2006 a resolution entitled: “**Strengthening the basic principles of judicial conduct**” that seeks to finalize the principles of judicial conduct set down in the **Bangalore Principles of Judicial Conduct**. Though subject to revision after further review by an intergovernmental expert group, the **Bangalore Principles of Judicial Conduct** establish the standards for the ethical conduct of judges and provide both guidance to judges as well a framework in which the judiciary may regulate judicial conduct. The Principles are organized around the key values of: independence; impartiality; integrity; propriety; equality; and competence and diligence. The Principles are clearly written to assist both executive and legislative branch officials, lawyers and members of the public to understand and support the judiciary. As such, that framework will be used to provide the assessor guidance in assessing the standards of judicial conduct essential to an independent judiciary.

This Tool will further guide the assessor in evaluating the role, capacity and resources of the judiciary, its relationship with other stakeholders in the criminal justice system, and its accountability to the public it serves. Finally, the Tool will guide the assessor in evaluating the extent to which the judiciary’s policies and practices promote access to justice for the victims, witnesses and the accused and builds public trust in the criminal justice system.

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 targeting the judiciary and the criminal justice system in the context of a broader strategic framework may include work that will enhance the following:

- Support the development of legislation that will allow the judiciary to function independently.
- Enhance the capacity for the judiciary to train and educate judges and judicial officers.
- Enhance both judicial integrity and develop effective and transparent mechanisms to prosecute instances of corruption.
- Enhance capacity of the judiciary to uphold human rights standards and norms in criminal cases.
- Foster and develop good communication and co-operation between all the stakeholders involved in the criminal justice systems.
- Develop collaborative systemic responses to the challenges confronting the criminal justice system.
- 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, by year:
- Number of court levels at which criminal matters are heard?
 - Number of judges authorized per level?
 - Number of judges on the bench at each level?
 - Number of judicial officers who possess limited judicial authority and exercise a limited role in criminal cases (sometimes known as magistrates, court commissioners, justices of the peace, master)?
 - Overall court caseload?
 - Overall criminal caseload?
- B. 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)? Number sentenced?
 - Average, median, high, low resolved caseload per judge, by level/assignment

- Average, median, high, low pending caseload per judge a, by level/assignment
 - Average, median, high, low resolved criminal caseload per judge, by level/assignment
 - Average, median, high, low pending criminal caseload per judge, by level/assignment
 - Average/Median time to disposition for any case by court level. /assignment
 - Average/Median time to disposition for any criminal case by court level/assignment. Can this be calculated for the minor criminal caseload? The serious criminal caseload? For criminal cases in which the defendant is detained?
- C. What percent of the criminal caseload is resolved within the statutory or otherwise mandated time frame? What percent exceeds the statutory or mandated time frame? By more than 50%? By more than 100%
- D. Backlog of court's caseload, if known? Backlog of the criminal caseload, if known. Are the backlogs increasing? Decreasing?
- E. What percentage of criminal cases is appealed at each level? What percent are overturned on appeal? What percent are sent back for further proceedings, including re-trial?
- F. Can the above statistics be broken down (disaggregated) by judge?
- G. How many complaints were received by the judicial disciplinary body, if one exists?
- How many complaints were investigated?
 - How many complaints were dismissed as unfounded after investigation?
 - How many complaints were substantiated by an investigation?
 - How many judges were the subjects of formal disciplinary action?
 - How many were reprimanded? Privately? Publicly?
 - How many were removed from the bench?
 - How many were prosecuted criminally? Convicted?
- H. Is this statistical information publicly available? Portions of it? How is it made public? By request, via annual or other reports?
- I. If not, to whom is it made available? Is it known to criminal justice officers at least at a senior level?
- J. 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 FRAMEWORK AND STRUCTURE OF THE JUDICIARY

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 the judiciary. [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, including a Law on the Courts, criminal law codes and criminal procedure laws.
- Court Rules: There are often multiple sets of court rules, often generated by the judiciary, 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 judiciary intends to administer justice for the court and the administration of justice to function 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 and Court policy documents, "standing orders", circulars and opinions 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 judiciary to function is to examine how it actually does function. In addition to examining the reports of the relevant government departments or ministries on the judiciary, law reports (reported cases), independent reports by NGOs, and academic research papers, it is important to conduct site visits to a number of representative courts and to interview judges and judicial officers at multiple levels, including 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 the judicial function in that context with that of the general criminal courts.

The authority granted to the judiciary by the Constitution and any enabling statutes are critical in determining the role of the judiciary and what the relationship among the branches of government will be. The source of authority for the administration of justice will be found not only in statutes, including the criminal law and criminal procedures codes, but also in Rules that are promulgated, often by the courts themselves, often with input from representatives of other stakeholders in the criminal justice system. Absent such authority, the judiciary may define its authority in rulings and opinions, but this tends to be the exception. The above also are the primary sources for the legal basis for any framework or organization that regulates the behaviour and conduct of judges. A close analysis is required to determine whether the existing framework/mechanisms support the independence and integrity of the judiciary or inappropriately impinge on those key values by granting supervisory authority to another branch of government.

The **UN Basic Principles on the Independence of the Judiciary** set out the elements of the independence of the judiciary in Principles 1-7. As a basic premise, the independence of the judiciary must be guaranteed by the State and enshrined in the Constitution or in the law of the country.

The judiciary must decide matters impartially on the basics of facts and the application of law, without any restrictions, improper influences, inducements, pressures, threats or interferences. The courts themselves shall decide whether they have jurisdiction to hear a matter. There must be no unwarranted interference with the judicial process, including the assignment of judges, by the other branches of government (legislative and executive).

The government may not displace the jurisdiction of the ordinary courts with a tribunal that does not follow established legal procedures. As such, all citizens shall have the right to be tried by ordinary courts or tribunals using established legal procedures. (Alternative processes may be established, such as truth commissions or special tribunals; however, these cannot be ad hoc, must be duly established by law, and must afford the minimum guarantees established by international law.)

The judiciary has the authority and obligation to ensure that judicial proceedings are conducted fairly and that the rights of parties are respected.

Judicial decisions may not be revised by other branches of government with the exception of commutation of sentences by appropriate authorities such as prison officials or parole boards or a valid executive pardons process.

The provision of adequate resources so that the judiciary is able to function properly is a final prerequisite for independence.

- A. Does the Constitution or other legislation set out the powers of the judiciary? Does the Constitution or legislation expressly guarantee independence of the judiciary?

Principle 1, UN Basic Principles on the Independence of the Judiciary

- B. Does the Constitution or law grant the judiciary jurisdiction to decide all judicial matters? Does it grant the judiciary the power to determine whether it has jurisdiction over a particular matter?

Principle 3, UN Basic Principles on the Independence of the Judiciary.

Does it do so in practice?

- C. Does the Constitution or law grant the judiciary the final say about existing laws? May only a higher court reverse a judicial decision?

Principle 4, UN Basic Principles on the Independence of the Judiciary.

Has the authority to revise the rulings of the court been granted to another body under the Constitution or law? Which body? How often is this authority exercised?

- D. Does the Constitution or law grant judges the authority to strike down or invalidate laws on the basis that a law is unconstitutional or in conflict with a binding human rights treaty? To review executive actions? Do all judges at all court levels have this authority? If the authority has not been explicitly granted, has judiciary defined this authority for itself? Has this authority been granted to another body under the Constitution or law? If so, which?

- E. Has the legislative branch passed legislation that have retrospectively rendered judges' decisions moot?

- F. Does the Constitution or law vest any part of the judiciary with advisory jurisdiction with regard to the executive branch?

- G. Does the Constitution or law place limits upon the powers of the judiciary?

This may range from laws that legitimately guide judicial discretion—examples include mandatory sentencing guidelines or protocols or mandatory minimum sentences—to improper restrictions under international standards and norms.

Is any area of legislative or executive action deemed by the Constitution or the law to be beyond the review of the court?

- H. Has the government established ad hoc courts or tribunals that bypass the normal courts and the authority of the judiciary?

- I. Are there any military courts in operation? Can civilians be tried by military courts? Generally? Under what specific circumstances defined by law? Is there a right to appeal to a civilian court?

- J. Does the Constitution or law provide for any special courts or tribunals? Are any currently in operation? Does the law define the judges' roles in these tribunals?

- K. Under the law, is an order or decision by a court binding? Upon whom? Does this include governmental bodies? Are judgments enforced? If not, why not?

- L. Do judicial precedents add to the body of the law? Are they legally binding? When the highest court renders a decision, is it binding upon the entire country? Regionally?

- M. Have judges been granted have contempt powers to enforce judicial orders and to maintain the decorum of the court? Does this include the power to detain? Are contempt powers used by the court? What mechanisms are in place to prevent abuse of contempt powers?

3.1.1 Legal Framework and Judicial Officers

- A. Does the law grant judges immunity from civil and/or criminal liability in judicial matters? Is this absolute or is it limited?

Principle 16, UN Basic Principles on the Independence of the Judiciary, provides for personal civil immunity for judges for improper acts or omissions in the exercise of judicial functions. Judicial immunity from liability is an element of judicial independence because it allows the judges to do their work without fear of unreasonable civil or criminal actions. This immunity is not necessarily absolute, with some limitations including that judges must act lawfully, with due care, and with good faith intent. The personal civil liability of a judge must be viewed separately from the liability of government for gross errors or unlawful conduct on the part of its judges. A person injured in this way should have a right to bring suit against the government for damages. Similarly the immunity urged by Principle 16 does not prejudice disciplinary proceedings that might be pursued against a judge who committed an improper act or neglected to perform a necessary act.

- B. Does the law establish the terms of service and set the remuneration for all judges?

Principle 11, UN Basic Principles on the Independence of the Judiciary

Can this be retrospectively modified? Has this occurred during periods of political conflict with other branches of government?

- C. Does the Constitution or law guarantee judges tenure until a mandatory retirement age or their term of office expires?

Principle 12, UN Basic Principles on the Independence of the Judiciary

If it does not, what other provisions exist, if any, to protect judges from politically or otherwise improperly motivated attempts to remove judges? Are the grounds on which a judge can be suspended or removed set out in law?

Principle 18, UN Basic Principles on the Independence of the Judiciary requires that judges be suspended or removed only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

Can judges be removed at the urging of another branch of government? Can judges be removed for being overturned on appeal on more than one occasion?

- D. Do the law or Rules establish an ethics code for judges? Who developed the ethics code? If the judiciary did not, has it been endorsed or adopted by the judiciary? What does the ethics code cover?

Principle 19, UN Basic Principles on the Independence of the Judiciary requires that all disciplinary, suspension or removal proceedings be determined in accordance with established standards of conduct.

- E. Is the ethics code enforceable? Do the Law or Rules provide the legal framework for a disciplinary system to uphold the ethics code and hold judges who violate the code accountable? Is there an established procedure and process by which complaints are investigated and, if substantiated, prosecuted? Do judges have the right to a fair hearing? To confidentiality at the investigative stage? To independent review of the proceedings?

Please see **Principle 20, UN Basic Principles on the Independence of the Judiciary**.

Although they are independent, judges are not above the law and do need to be held accountable. A code of ethics is a useful beginning, as well as a mechanism for the reception and consideration of complaints about judges. There should be room for legitimate public criticism of judges as a means of ensuring accountability. (Contempt proceedings, however, are not appropriate mechanisms for dealing with such criticism, though they have been used to that end.) Accountability mechanisms must be carefully balanced so that judges do not fear arbitrary removal if they deliver judgments that go against a powerful branch of government or individual. Grounds for removal should therefore be limited to inability to perform their duties and serious misconduct.

3.2 STRUCTURE OF THE JUDICIARY

- A. How does the Constitution or law direct the organization of the judiciary? Does it establish the judiciary including all its component levels as a single institution? Are all judicial officers accorded similar status?
- B. What is the basic structure of the judiciary, type of system, and the role played by judges?
- C. Describe the levels of the judiciary (for example, judges, magistrates, lay judges, masters, commissioners, justices of the peace) and their civil and criminal jurisdiction (types of cases, sentencing powers, extent of judicial authority for court officers with limited judicial authority). What is the complement of judges and judicial officers at each level?
- D. Where are the courts physically located? Are they located outside of the capital and large cities? Are circuit courts in use, that is, the court and judge travel to convene court sessions in different specific locations in a geographic region?
- E. What functions do the judicial officers perform at each level? Do they relieve judges of some of the workload? Do they handle minor cases? Preliminary matters?
- F. How does each court level's jurisdiction (that is the type of case they are legally authorised to hear) affect the different levels of the judiciary? Are the judges of the lower courts overwhelmed by a large general caseload, for example?
- G. Are there investigating judges within the system? What is their role in criminal cases? At what point in a criminal investigation do they become involved? How is their role defined in relation to the prosecutor, if there is a prosecutor? Are they functionally separated from the judges who will hear the case and render a verdict? Are they allowed to conduct investigations without interference from other judges or other branches of government or private individuals?

Investigating judges belong to the civil law tradition of criminal justice. An investigating judge becomes involved prior to the trial to direct the collection of evidence and in some systems is responsible for deciding whether or not a case will go to trial. Investigating judges have been a feature of a number of special courts or tribunals set up in post-conflict societies, and are also provided for in the draft Model Code of Criminal Procedure. Please see **Access to Justice: The Prosecution Service, Section 3.2** for further examination of the role of the investigating judge.

4. MANAGEMENT AUTHORITY AND FISCAL CONTROL

4.1 MANAGEMENT AUTHORITY

- A. Is there an official government policy on the judiciary? Who develops it? Whose input is sought? To what extent do the Ministry of Justice or the executive branch determine policy on the judiciary? Does the policy recognize the independence of the judiciary?
- B. Has there recently been any restructuring of the judiciary? Is any such restructuring planned? What are the reasons for such restructuring?
- C. Is there a strategic plan on improving the functioning of the judiciary? Who participates in strategic planning for the judiciary? To what extent do other governmental branches participate? Whose input is sought? How many years into the future does the strategic plan project? What are the strategies it will employ to improve:
- Access to justice?
 - Integrity of judicial processes and functions?
 - The day-to-day functioning of the judiciary?
 - Timely resolution of the caseload and reduction of any backlogs that may exist?
 - Its capacity to handle specialized or complex crimes, including corruption?
 - Services/support provided to victims? To vulnerable populations?
 - Its accountability to the public it serves?
- D. If there is no strategic plan, why is there not? Does the judiciary have the capacity to engage in strategic planning? Is there a lack of data upon which to base strategic planning? Is the leadership overwhelmed by day-to-day administration?
- E. What is the leadership/management structure of the judiciary? Is there a supervising body like a Judicial Council? What role does it play? What is its relationship to the Ministry of Justice? Who sits on it? Is the chief judge or justice of the highest court the leader of the judiciary? How is the chief judge chosen? Does the Chief Judge have administrative authority over all of the courts? Is there a senior judge with administrative authority in each court? To what extent has the day-to-day operation of the court been delegated to an administrator or court manager? In practice, how has the delegation of authority to judges and administrators affected the independence of individual judges? Have senior judges, for example, directed judges on matters of substantive law in individual cases?

The delegation of authority to supervise the court system must be balanced so that the independence of individual judges is maintained. **Principle 2 of the UN Basic Principles on the Independence of the Judiciary** requires that judges decide cases impartially and without improper influence, pressure, or interference from any quarter or for any reason. **Principle 1.4 of the Bangalore Principles of Judicial Conduct** requires that judges be independent of judicial colleagues in making decisions that a judge is required to make independently.

PLEASE REFER TO **ACCESS TO JUSTICE: THE COURTS** FOR COMPREHENSIVE GUIDANCE ON ASSESSING COURT MANAGEMENT AND SERVICE DELIVERY.

4.2 FISCAL CONTROL

Adequate funding is often lacking for the judiciary, both in terms of institutional resources and also with regard to the salaries of judges. It is generally accepted that proper funding is an important ingredient for the operation of an effective, independent judiciary. **Principle 7 of the UN Basic Principles on the Independence of the Judiciary** and **Procedure 5 of the UN Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary** reiterate 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.”

- A. How is the judiciary funded? What is the budgetary process under the law? Does the judiciary 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 own spending? Is the budget sufficient for the judiciary to carry out its mandates?
- B. Does the judiciary 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. How does the judiciary account for its expenditures? Is this accounting made public?
- D. How are the terms of service, compensation, etc. determined for judges? By law or regulation? What is the range of salary for judges? Are the salaries paid? On time? Are salaries legally secured against reduction, once established? Have judicial salaries been the subject of or used in political disputes?
- E. Does a lack of resources cause the judiciary to make compromises that might be injurious to independence – for example sharing offices with prosecutors or travelling together with prosecutors when undertaking circuit court work?

5. JUDGES and JUDICIAL OFFICERS

5.1 QUALIFICATIONS, SELECTION, AND TRAINING

5.1.1 Qualifications

Principle 10 of the UN Basic Principles on the Independence of the Judiciary requires that “(p)ersons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law”. While determining ability and qualifications may be relatively simple, the quality of integrity is more elusive. The method of appointments is important in ensuring that appropriate persons are selected. The **Basic Principles** prohibit discrimination (with the exception of citizenship requirements), but do not further describe processes for selection, other than urging that the process employs safeguards that prevent appointment for improper motives. Some countries go further than following the non-discrimination principle and in fact promote the appointment of certain previously or currently disadvantaged groups through legal provisions or through policy.

- A. What are the minimum qualifications for judges for each level of court? For lesser judicial officers? Do the qualifications include characteristics that would reflect integrity? Are the qualifications gender and ethno-culturally neutral, that is, non-discriminatory? Do they require that the candidate be a citizen? How are judicial candidates vetted? Do they undergo formal background checks? What disqualifies a candidate from eligibility/consideration? Are the background checks updated each time they stand for appointment to a higher level court?

- B. From where are new judges generally drawn? (For example, private legal profession, the prosecution service, academia, lower ranks of the judiciary)
- C. Does the demographic makeup of judges and judicial officers resemble the population? Is it reflected at senior levels? Is any group over- or under-represented? Are women proportionally represented? Have they been historically part of the judiciary? Are efforts being made to attract qualified candidates from under-represented or disadvantaged groups? Are bilingual or multilingual judges and judicial officers who speak ethnic minority languages recruited? If not, why not?

5.1.2 Selection

In some countries, in particular those with common law roots, the usual approach has been for judges to be drawn from the ranks of practicing senior lawyers. The appointments procedures often differ for the judiciary of the lower and superior courts. The appointment is often made by the executive, and this has led to political interference in a number of common law countries. In other countries, judges run for office or may be appointed initially and then must stand for election.

In other systems, more typical of those with a civil law heritage, the approach is based at least in part on qualifications, with candidates sitting exams to be considered for the judiciary. Even relatively recent law graduates may be appointed to serve as judges, though they will start at the lower court level and work their way up through the "career path" rather in the manner of any other civil servant.

In practice, there are many hybrids in the approach to selection of candidates. A judicial council that sits to decide on judicial appointments is traditionally a civil law institution, but has become increasingly popular as a reform measure in common law systems. The role of a judicial council may differ from one country to another. In some they may deal only with appointments, in others their functions include disciplinary measures and removal of judges. The question of where the members of such councils should be drawn, and how they should be appointed, is one that draws varied responses. The ideal appears to be to keep a balance between the organs of government, including judges, and to allow a role for civil society, perhaps through the involvement of the legal profession or the law teachers profession. The key ingredient is the avoidance of domination by any arm of government or any political elite.

The transparency of the process is as important as how the council is constituted. The vacancies should be advertised; the backgrounds of the candidates must be made public. Some judicial councils or commissions allow for media to be in attendance and even, in some cases, for the interviews of judges to be televised. The transparency of the process is a key issue in the reform of judicial selection.

- A. What is the process of appointment to judicial office? Is it formalised in the law or Rules? Is the process known to the legal community in particular and the public in general? Are vacancies within the judiciary advertised? Are the candidates' names made known to the public?
- B. Is there a judicial appointments/nominating committee or council? What is the role of such a council? Who sits on it? For how long a term? What bodies or institutions are represented? Is there any civil society participation in the council? How are the council members themselves appointed? Is the work of such a council guided by regulations or protocols?
- C. Does the judicial nominating or appointment council or commission, if one exists, hold its sessions in public? If the council conducts interviews of judicial candidates, are those interviews open to the public? Are the media allowed to attend interviews of judicial candidates? Are they allowed to be televised? What is the public/legal community's perception of the legitimacy of the appointment/ nominating council?
- D. Have efforts been made to increase appointments and/or accelerate promotion of disadvantaged or previously disadvantaged groups, that is groups that have suffered previously from discrimination? How has this been received?
- E. Is it possible for a recently qualified lawyer to become a judge by sitting an examination? Can a junior judge reach the highest levels of the judiciary via a career path? Does this occur?

- F. Is the judge/judicial officer required to be sworn in or otherwise make a solemn commitment to uphold the Constitution and the law upon being appointed to judicial office?

5.1.3 Training

Many countries have judicial training centres, and the location of these institutions is considered an important issue in relation to the independence of the judiciary. Some judges are understandably resistant to being trained by a government run institution and would prefer to have the training schools run by the judiciary, with the curriculum to be developed and the training to be delivered by the judges themselves, sometimes in partnerships with university law professors. Training curricula vary, some focusing on theory, others on practical issues, and still others on ethics and on issues associated with the transitional systems. Training in international law and human rights is considered very valuable, particularly in transitional countries or newly established democracies. In such countries there is often a deluge of law reform, so the judges must be constantly updated on changes to the law.

- A. Does a special course of study/training exist for those who want to become judges or lesser judicial officers? What are its components? Officers?
- B. What, if any, initial training do judges/judicial officers receive? Is it mandated by law or rule? Policy? Who develops the training curriculum for judges? Who delivers the training? Is there a judicial training centre or other independent institution? How long is the training period? Are new judges/judicial officers assigned to a mentor/trainer for on-the-job-training? What topics are covered? Does the training include the special ethical obligations upon judges/judicial officers and their basis? Does the training include the constitutional and statutory protections of the rights of suspects as well as victims? Does training cover human rights and the fundamental freedoms recognized by national and international law?
- C. Is continuing training/education required for all judges? How often? Does it occur? What topics does it cover? Is it adequate? Are training materials and curricula available for review? Does it include relevant developments in international law, in particular those related to human rights norm? How do judges keep informed of changes in the law or the passage of new laws?
- D. If judges sit in specialized courts, have they received any special training to develop their competence in dealing with those cases, i.e. juvenile courts, drug treatment courts, etc.? What are the sources of specialized training?

Principle 6.3 of the Bangalore Principles of Judicial Conduct, in support of the key values of competence and diligence require judges to take reasonable steps to maintain and enhance knowledge and skill, including taking advantage of training. Principle 6.4 requires that judges keep themselves informed about developments in international law.

- E. Do judges and other judicial officers participate in joint training with other criminal justice officials? Are members of the legal defence bar included? Has participation with other official generated any allegations of lack of impartiality or independence?
- F. Is training accessible to all judges in the country, including those in remote areas? How is training delivered to judges/judicial officers in remote areas? Is training delivered in more than one language in multilingual countries?

5.2 CONDITIONS OF SERVICE AND TENURE

Principles 11-13 of the UN Basic Principles on the Independence of the Judiciary requires that term of office, independence, security, conditions of service, pensions and age of retirement be adequately secured by law.

- A. What is the status of judges and judicial officers? 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? Do they receive pensions upon retirement?

PLEASE see also **Section 3.1.1 LEGAL FRAMEWORK ON JUDICIAL OFFICERS**, Questions B and C for legal provision and protections associated with the independent status, terms of service and tenure. Please also see Question D, **Section 4.2 FISCAL CONTROL** regarding judicial salaries.

- B. What measures are taken to provide security for judges and judicial officers?

PLEASE refer to **Access to Justice: The Courts, Section 10** for further guidance on adequacy of security provided within the court facility.

Are judges and judicial officers provided security outside the court facility? For example, do they have secured parking for their private vehicles, are they escorted to those vehicles, do they have drivers? Are judges provided security measures for their homes? In general or only when a threat has been made? Is it common for judges or judicial officers received threats associated with their official functions? Have they or their family members been attacked? Is there a sense a relative safety or risk among judges? Do judges handling organized crime or other high-level criminal cases received enhanced security as a matter of policy or on a case-by-case basis?

- C. Do judges receive performance evaluations? On what basis are they evaluated? Who is responsible for evaluating the judge's performance? Do the evaluations deal with how well a judge functions administratively or do they also assess how well a judge applies the law? What are performance evaluations used for? Can they be used to dismiss a judge? Have they been abused?
- D. How are judges promoted? Is this an appointment process? Is promotion based on seniority? Are some leadership positions elected by members of the judiciary? Appointed by the Chief Judge?
- E. Are judges subject to transfer to other court locations? Has this been used punitively?
- F. Where courts are being restructured or consolidated, what process is being used to govern the reassignment of judges? Are the judges subject to such restructuring given choices about where they will sit? Is the process viewed as fair? Was it developed with the participation of the judges affected by the restructuring? Has the process become politicised?
- G. Are judges and judicial officers required to submit financial disclosure reports? Must they declare any gifts or honoraria they have accepted? Do they do so? Are the financial reports audited? By whom? Have these audits uncovered any instances of corruption by judges? How were these handled?

5.3 FREEDOM OF EXPRESSION AND ASSOCIATION

Members of the judiciary, like other citizens, are entitled to freedom of expression, belief, association and assembly. However, in exercising such rights, judges must always conduct themselves in a manner that preserves the dignity of their office and the impartiality and independence of the judiciary.

Principle 8 of the UN Basic Principles on the Independence of the Judiciary, mirrored by **Principle 4.2 of the Bangalore Principles of Judicial Conduct**. **Principle 9 of the UN Basic Principles** endorses the formation of and participation in judges' associations.

- A. Are judicial officers free to form and join an association of judges and other organisations? Is there a national or regional association of judges? What issues and activities has it focused upon? Is it considered an effective voice for the judges? What other organizations do judges belong to? What is their role?

- B. Do the law, Rules, the ethics code or the judiciary itself via policy provide guidance to judges about what forms of expression are allowed and what should be limited or restricted in order to maintain the dignity of the office and impartiality and independence of the judiciary? For example, may judges attend and speak at public forums? Are judges allowed to be politically active? Are judges allowed to defend themselves when criticised in the press? Have judges' activities in this arena generated controversies? How have they been resolved or do they continue? Have these been the sources of disciplinary proceedings against any individual judge?
- C. Are judges involved or consulted in the law making process? What is their role? Do judges testify, for example, before legislative committees about proposed legislation or the need for legislation in an area where it may be unclear, conflicting or lacking?

5.4 INTEGRITY IN THE PERFORMANCE OF JUDICIAL FUNCTIONS

- A. How are cases allocated to individual judges? May a judge request a specific case? Are any measures in place to prevent the manipulation of case assignment for corrupt or preferential purposes? Have there been allegations of improper assignment of cases? How have these been dealt with?

Principle 14 indicates that the assignment of case to judges is an internal matter of judicial administration. However, the process by which this occurs needs to be transparent, whether assignment is done by the senior judge or court staff. Preferential assignment of cases at best creates the appearance of impropriety and has long been an area vulnerable to corruption. If case assignment is not done on a random basis, then the manner in which cases are assigned must follow personality neutral protocols.) Please see also **Access to Justice: The Courts, Section 8, Case Flow Management, Question D.**

- B. Does the ethics code or judiciary policy provide direction on when a judge must recuse or disqualify him/herself from handling a case? Is there a procedure that has been established for this action?

This may include cases in which the judge is related to or is close friends with or was otherwise closely associated with one of the principles in a case, i.e. defendant, victim, defence attorney, prosecutor. Please see **Value 4 (Propriety) of the Bangalore Principles of Judicial Conduct** for other examples in which judges would be expected to disqualify themselves to prevent the appearance of partiality or impropriety.

- C. How often do judges disqualify or recuse themselves from particular cases? What is the procedure for recusal? Do judges sometimes disclose that they know someone in a case and ask the parties whether they object to the judge's continued participation? Are the parties expected to waive their objections? Do judges typically recuse themselves if there is an objection/ this considered?
- D. To what extent are the judges' and lesser judicial officers decisions free from restrictions, improper influences, inducements, pressures, threats or interferences by/from other branches of government? From any other quarter? (For example, by organised criminal syndicates or gangs, political or religious groups or even internal factions within the judiciary.)
- E. Do judges typically exclude illegally obtained evidence? Where an allegation has been made that torture or mistreatment has been used to obtain evidence, do the judges pursue that allegation? Is there a pattern of allowing illegally obtained evidence to be used?
- F. What is the quality of the decisions rendered by the judiciary? Are judgments reasoned, given in public and within a reasonable time? Do rulings consider or take into account the opposing view, discuss why challenged evidence is being admitted or excluded, document objections so that they are preserved for appeal? Does the conclusion, decision or even the verdict comport logically with the reasoning of the

decision or does there seem to be an arbitrary shift in logic? What are the possible reasons for cases with illogical outcomes?

- G. Do judges issue written decisions promptly especially with respect to appeal deadlines? Is there a habit among judges or a particular judge of taking a case under advisement for long periods of time?

Please see Principle 6.5 of the Bangalore Principles of Judicial Conduct.

- H. Does a judicial officer have the legal authority to control the amount of time that a case takes? Do they exercise that authority? For example, may he/she refuse an unreasonable request for a further postponement if the accused had been in custody for a lengthy period? Must a senior judge rule upon requests for delays that require special findings justifying those delays?

5.4.1 The Rights of Suspects and the Accused

The integrity and independence of the judiciary is integrally intertwined with the integrity of judicial process and the extent to which the public perceives the criminal justice process as fair and just. The extent to which judges properly uphold the international standards and norms in conducting criminal trials and proceedings reflects upon both the integrity of the judge, the court and the system of justice.

- A. Do judges allow the accused to waive his/her right to be present in court as a matter of course? Is court transport a source of delay in cases? Do judges order the transport of defendants who are detained?
- B. Does the court have a legal duty to enquire as to whether the rights of the suspect or accused have been respected? Where allegations of abuse or torture are raised, does the court make its own inquiry into the allegation?
- C. Do judges visit prisons or police cells? Are they required to do so by law? What is the frequency of such visits? What is the purpose of such visit?
- D. Where prisoner transport may be an issue, do judges hold detention hearings at the prisons, detention centres or police cells rather than at court? Has this been considered? If it was rejected, what are the perceived obstacles?
- E. If an accused person appears before the court undefended, does the judicial officer have an obligation to enquire whether legal representation is needed? If the accused person is ineligible for legal aid, does the judge become more inquisitorial or participate more actively in the proceedings? Is this required by law (or legal precedent)? For example, if the accused does not bring a formal bail application, does the judicial officer conduct a bail enquiry of his/her own accord, without a motion from either the defence or prosecution?
- F. Does the judge have the ability to appoint counsel for unrepresented accused persons or defendants? Can the judge simply appoint the legal aid service, which will then choose specific counsel? Is the appointment process a transparent one? Are there allegations that the appointments process may be tainted by corrupt practices or favouritism toward certain lawyers whose advocacy may be less zealous on behalf of their clients?
- G. Do judges ensure that defence counsel are present before proceeding with a hearing? Do judges require their presence? Do they conduct hearings without them? Have any defence counsel been held in contempt for failing to appear or been otherwise sanctioned or disciplined?

- H. Do judges ensure that the defendant understands the language that the proceeding is being conducted in? Do the judges obtain interpreters when it becomes apparent that the defendant cannot follow the proceedings in the official language? Do they proceed without an interpreter?
- I. How are accused persons/defendants treated by the court? Are they addressed with patience, courtesy and dignity consistent with others appearing before the court? Are defendants of minority ethnic, racial or religious backgrounds treated in the same manner as majority defendants? Are there disparities in the resolution of their cases? Sentences?

PLEASE see the principles of **Value 5 (Equality) of the Bangalore Principles of Judicial Conduct.**

5.4.2 Victims and Witnesses

Access to justice for victims and witnesses is a crucial element of fair and effective criminal justice systems. Particular attention should also be paid to vulnerable groups. Please refer to **ACCESS TO JUSTICE: THE COURTS, Section 6.3**, Special Services for Victims and Witnesses for guidance on assessing the services courts may be providing victims and witnesses. PLEASE see **Cross-Cutting Issues: Victims and Witnesses, the Declaration of the Basic Principles of Justice Victims of Crime and Abuse of Power 1985** and the **UN Guidelines on Child Victims and Witnesses of Crime 2005** for further background.

- A. Is there a victims and witnesses unit in the courts?
- B. Do the judges or court unit make the victims aware of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information?
- C. Do the judges allow victims to express their views and concerns at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system?
- D. Do the judges order measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation?

An effective witness protection programme is often an essential tool in the fight against crime. Those who face investigation and criminal prosecution may attempt to frustrate the course of justice through intimidation or by causing physical or other harm to witnesses or their relatives. Hence the need for protection to prevent the justice system from getting paralysed due to uncooperative witnesses. Witness protection measures are particularly crucial in the investigation and prosecution of serious crimes where there is normally so much at stake.

- E. Do the judges work to avoid unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims?
- F. Do the judges refer, if possible and appropriate, cases to informal/alternative mechanisms for dispute resolution, including mediation, arbitration and customary justice or indigenous practices, to facilitate conciliation and redress for victims?
- G. How do the judges treat victims and witnesses? Are they addressed with patience, courtesy and dignity consistent with others appearing in court? Are victims and witnesses of differing social, ethnic, and cultural backgrounds accorded patience, courtesy, and dignity?

Please see the **Principles of Value 5 (Equality) of the Bangalore Principles of Judicial Conduct.**

5.5 DISCIPLINE, SUSPENSION, AND REMOVAL

Principles 17-20 of the UN Basic Principles on the Independence of the Judiciary provide guidance for the fair and appropriate investigation and responses to complaints or allegations made against judges, balancing the need to respond to valid allegations and to protect the judge from allegations that are made without basis. Please see also **Section 3.1.1 LEGAL FRAMEWORK ON JUDICIAL OFFICERS**.

- A. Is there an established procedure for making a complaint against a judge in his/her professional capacity? Who may lodge a complaint? May anyone or must the complainant be an attorney? Are attorneys reluctant to file complaints?
- B. Does the disciplinary framework define the types of judicial misbehaviour that constitute judicial disability? Has the disciplinary system become a second avenue of appeal of rulings or the verdict in a case?
- C. Who investigates the complaint? Is there a time limit within which such an investigation must be completed? Can extensions be granted upon showings of good cause? Is the investigation kept confidential until a determination is made that evidence exists substantiating the allegation?
- D. What are the possible outcomes of an investigation? For example, reprimand, suspension, removal?
- E. Once such a finding/recommendation is made, is the judge entitled to a hearing? Before what court?
- F. Is it possible for the judge to be charged criminally as well? Are simultaneous criminal charges possible? Are they consolidated into one trial? Who prosecutes a case against a judge? Have any been prosecuted? What were the outcomes?
- G. Are the findings of lower courts regarding judicial disability subject to review by a higher court? Does any other branch of government have the right to review the judicial disciplinary proceeding findings of the highest court?
- H. Have any judges been removed from office during the past five years or during the current government's administration? On what basis? Were the legal procedures followed? Was the outcome considered fair by the legal community/public?

6. PUBLIC ACCOUNTABILITY AND TRUST

- A. What is the public perception of the criminal justice system? Is it considered fair? Effective? Efficient? If not, why not? What are the perceived key issues facing the criminal justice system?
- B. How does the public view the judiciary? Is it considered fair? Impartial? Independent? Effective? Efficient? Competent? If not, why not? Is it considered a source of criminal justice integrity and/or reform? Is the judiciary perceived to be dealing effectively with public corruption?
- C. What is the public perception of the average individual judge? Fair? Competent? Diligent? Honest?
- D. What does the judiciary do with regard to educating the public about the functions it performs and how well it performs them? Does the judiciary conduct community outreach? Does the judiciary seek to involve the community in addressing criminal justice priorities? How? Does it reach out to ethnic, religious and minority communities with the same level of effort?
- E. Does the judiciary facilitate or restrict access to public information about criminal cases that are pending in court? Is there a public information capacity so that press and individual citizens may obtain public information about cases? What is the relationship with the press?
- F. How has public perception about the judiciary changed over the last five years? What are the key factors in this change? What else needs to be done to gain and keep public trust?

7. PARTNERSHIPS AND COORDINATION

7.1 SYSTEM COORDINATION

A competent judiciary recognizes the need to coordinate responses to criminal justice issue, as well as its own critical role in their success. Judiciaries 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? Is there a Law Reform or Criminal Justice Coordinating body? Are judicial officers involved in it? 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 or 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. Are there trial monitoring groups working in the courts? What are their findings about the manner in which trials are conducted? What are the key issues they have identified that interfere with the capacity to deal with cases fairly and impartially?
- E. 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)

7.2 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 earmarked for the justice sector.
- B. Is this subject (independent judiciary) discussed in individual donor country action plans/or strategy papers?
- C. Where direct budget support is supplied, identify how much has been set aside for the justice sector?
- D. Where a Medium Term Expenditure Framework is in place, indicate what is allocated for justice in general and the judiciary/courts in particular?
- E. Which donor/development partners are active in judicial and criminal justice issues? Is the approach by donors targeted to the institution concerned (i.e. developing a judicial training centre, 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

INTERNATIONAL

- 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

- Declaration on the Right to a Fair Trial and a Remedy
- Bangalore Principles of Judicial Conduct, subject to revision, 2006
- 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.

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
- Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and Judicial Independence 1998 (updated 2002)
- Proposed Principles of Judicial Independence for the SADC Region (Part of the Blantyre Rule of Law/Separation of Powers Communiqué 2003)
- Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms
- Council of Europe: Consultative Council of European Judges, Opinion No 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges (Recommendation No R(94)12 on the independence, efficiency and role of judges and the

relevance of its standards and any other international standards to current problems in these fields);

- Opinion No 2 (2001) on the funding and management of courts with reference to the efficiency of the judiciary and to Article 6 of the European Convention on Human Rights;
- Opinion No 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality;
- African Charter on Human and Peoples' Rights
- African Commission on Human and Peoples' Rights, ACHPR/Res.41(XXVI)99: Resolution on the Right to Fair Trial and Legal Aid in Africa (1996)

Generally Applicable

- Guidance for Promoting Judicial Independence and Impartiality (USAID, Office for Democracy and Governance, Washington, 2002)
- The Model State of the Judiciary Reform: A Strategic Tool for the Promoting, Monitoring and Reporting on Judicial Integrity Reforms (Henderson and Autheman, IFES 2003)
- Measuring Progress towards Safety and Justice: A Global Guide to the Design of Performance Indicators Across the Justice Sector (Vera Institute of Justice, New York 2003)
- White Paper: Global Best Practice: Judicial Councils: Lessons Learned from Europe and Latin America (V Autheman, S Elena, K Henderson, 2004)

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 written sources and with whom:

	TOPIC	SOURCES	CONTACTS	COMPLETED
2.1	STATISTICAL DATA	<ul style="list-style-type: none"> ▪ Court Annual Reports ▪ Ministry of Justice reports ▪ Ministry of Interior reports ▪ National Police Crime reports ▪ Penal System reports ▪ NGO reports: criminal justice system 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Ministry of Interior ▪ 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	<ul style="list-style-type: none"> ▪ The Constitution ▪ Acts of Parliament and regulations to those Acts ▪ Court Rules/ Judge's Bench Book ▪ Ethics Code ▪ Judicial/Government policy documents, "standing orders", circulars ▪ Law Reports (reported cases) ▪ Independent reports made by non-governmental organisations. ▪ Legal textbooks or academic research papers. 	<ul style="list-style-type: none"> ▪ Chief judge or Justice ▪ Ministry of Justice ▪ Judicial Council, if one exists ▪ Association of Judges or equivalent, if one exists ▪ Legislative committee dealing with judiciary ▪ Bar association ▪ Legal non-governmental organizations (NGOs) ▪ Senior Court personnel ▪ Court Administrator ▪ Registrar/Court Manager ▪ Law Schools ▪ Internet sites ▪ NGOs working on criminal justice matters ▪ Donor organisations working on the criminal justice sector 	
3.1.1	LEGAL FRAMEWORK: JUDICIAL OFFICERS	See above	<ul style="list-style-type: none"> ▪ See above 	
3.2	STRUCTURE OF THE JUDICIARY	See above	<ul style="list-style-type: none"> ▪ See above 	
4.1	MANAGEMENT AUTHORITY	<ul style="list-style-type: none"> ▪ Constitution ▪ Acts of Parliament and regulations to those Acts ▪ Government and judiciary policy documents, "standing orders", circulars 	<ul style="list-style-type: none"> ▪ Legislative offices ▪ Ministry of Justice ▪ Judicial Council, if one exists ▪ Chief Judge/Justice ▪ 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	

	TOPIC	SOURCES	CONTACTS	COMPLETED
5.0	JUDGES AND JUDICIAL OFFICERS			
5.1	QUALIFICATIONS, SELECTION, AND TRAINING	<ul style="list-style-type: none"> ▪ Acts of Parliament and regulations to those Acts ▪ Court rules/Bench books ▪ Judiciary policy documents, “standing orders”, circulars, instructions, opinions ▪ Court Policy/Procedure Manuals, handbooks, circulars ▪ Training Manuals/Curricula ▪ Training materials ▪ Ethics Code <p>SITE VISITS</p>	<ul style="list-style-type: none"> ▪ Chief Judge ▪ Senior Court personnel ▪ Court Administrator ▪ Judicial Council, if one exists ▪ Nominating or Selection Commission/Committee ▪ Judicial Training Centre Director ▪ Bar Associations/Lawyer’s groups ▪ Legal assistance programs ▪ NGOs as above ▪ Public defence agency (Legal Aid) ▪ Prosecutor’s Office ▪ Law Schools ▪ Donor organisations as above ▪ Media representatives 	
5.1.1	QUALIFICATIONS	SEE ABOVE	SEE ABOVE	
5.1.2	SELECTION	SEE ABOVE	SEE ABOVE	
5.1.3	TRAINING	SEE ABOVE	SEE ABOVE	
5.2	CONDITIONS OF SERVICE AND TENURE	SEE ABOVE	SEE ABOVE	
5.3	FREEDOM OF EXPRESSION AND ASSOCIATION	SEE ABOVE	SEE ABOVE PLUS : Judges’ association	

	TOPIC	SOURCES	CONTACTS	COMPLETED
5.4	INTEGRITY IN THE PERFORMANCE OF JUDICIAL FUNCTIONS	<ul style="list-style-type: none"> ▪ Acts of Parliament and regulations to those Acts ▪ Court rules/Bench books ▪ Judiciary policy documents, “standing orders”, circulars, instructions, opinions ▪ Court Policy/Procedure Manuals, handbooks, circulars ▪ Ethics Code ▪ Trial monitoring organization reports <p>SITE VISITS</p>	<ul style="list-style-type: none"> ▪ Chief Judge/Justice ▪ Senior Court personnel ▪ Court Administrator ▪ Registrar/Court Manager ▪ Mid-level & entry level court support staff ▪ Court Visitors (random) ▪ Bar Associations/Lawyer’s groups ▪ Legal assistance programs ▪ NGOs ▪ Trial Monitoring Organization ▪ Public defence agency (Legal Aid) ▪ Prosecutor’s Office ▪ Law Schools ▪ Donor organisations 	
5.4.1	THE RIGHTS OF SUSPECTS AND THE ACCUSED	<ul style="list-style-type: none"> ▪ Constitution ▪ Acts of Parliament & regulations to those Acts ▪ Court Rules & Court Policy ▪ Procedure Manuals, handbooks, ▪ Government policy documents, “standing orders”, circulars ▪ Ethics Code ▪ Trial monitoring organization reports <p>SITE VISITS</p>	<ul style="list-style-type: none"> ▪ Chief Judge/Justice ▪ Senior Court personnel ▪ Court Administrator ▪ Registrar/ Court Manager ▪ Court Interpreters ▪ Prosecutors ▪ Defence Attorneys ▪ Public defence agency (Legal Aid) ▪ NGOs ▪ Trial Monitoring Organization ▪ Donor organisations 	
5.4.2.	VICTIMS AND WITNESSES	SEE ABOVE	SEE ABOVE PLUS : <ul style="list-style-type: none"> ▪ Victim/witness Unit staff, if exists ▪ NGOs working with victims 	
5.5	DISCIPLINE, SUSPENSION AND REMOVAL	<ul style="list-style-type: none"> ▪ Acts of Parliament and regulations to those Acts ▪ Judiciary policy documents, “standing orders”, circulars, instructions, opinions ▪ Court rules ▪ Court Policy/Procedure Manuals, handbooks, circulars ▪ Judicial Disciplinary procedures ▪ Bench Books ▪ Ethics Code ▪ Trial monitoring organization reports <p>SITE VISITS</p>	<ul style="list-style-type: none"> ▪ Chief Judge/Justice ▪ Senior Court personnel ▪ Judicial Disability/Disciplinary body ▪ Judges’ association ▪ Bar Associations/Lawyer’s groups ▪ Legal assistance programs ▪ NGOs ▪ Trial Monitoring Organizations ▪ Public defence agency (Legal Aid) ▪ Prosecutor’s Office ▪ Law Schools ▪ Donor organisations 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
6.0	PUBLIC ACCOUNTABILITY AND TRUST	<ul style="list-style-type: none"> ▪ Constitution ▪ Acts of Parliament and regulations to those Acts ▪ Court Rules/Bench Books ▪ Court Policy/Procedure Manuals, handbooks, circulars ▪ Press releases ▪ Media reports ▪ Trial monitoring organization reports <p>SITE VISITS</p>	<ul style="list-style-type: none"> ▪ 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 ▪ Trial Monitoring Organizations ▪ Donor organisations ▪ Members of the media 	
7.1	SYSTEM COORDINATION	<ul style="list-style-type: none"> ▪ Acts of Parliament and regulations to those Acts ▪ Court Rules ▪ Court Policy/Procedure Manuals, handbooks, circulars ▪ Government policy documents, "standing orders", circulars ▪ Reports of coordinating bodies/Minutes of meetings ▪ Reports of NGOs <p>SITE VISITS</p>	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Heads of other Criminal Justice entities: <ul style="list-style-type: none"> ○ Prosecutor ○ Director of Penal System ○ Police Chief ▪ Chief Judge or Justice ▪ Court Administrator/ Registrar/Court Manager ▪ Judicial Council, if one exists ▪ Coordinating body ▪ Judicial Training Centre ▪ Association of Judges, if exists ▪ Bar associations/Lawyers' associations ▪ Legal assistance programs ▪ Public defender agency, if any ▪ Law Schools ▪ Legal/Justice/Criminal Justice NGOs ▪ Donor organizations 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
7.2	DONOR COORDINATION	<ul style="list-style-type: none"> ▪ Donor Strategy papers ▪ Progress reports by donor organizations ▪ Independent studies/reports conducted by universities/NGOs 	<ul style="list-style-type: none"> ▪ Donor organisations ▪ Ministry of Justice ▪ Heads of Criminal Justice entities: <ul style="list-style-type: none"> ○ Prosecutor ○ Director of Penal System ○ Police Chief ▪ Chief Judge or Justice ▪ Court Administrator/ Registrar/Court Manager ▪ Judicial Council, if one exists ▪ Coordinating body ▪ Judicial Training Centre ▪ Association of Judges, if exists ▪ Bar associations/Lawyers' groups ▪ Legal assistance programs ▪ Public defender agency, if any ▪ Law Schools ▪ Legal/Justice/Criminal Justice-focused non-governmental organizations (NGOs) 	



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UNITED NATIONS
Office on Drugs and Crime



ACCESS TO JUSTICE
**The Prosecution
Service**

Criminal justice
assessment
toolkit

INTERNATIONAL ASSOCIATION



OF PROSECUTORS

3

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

ACCESS TO JUSTICE
The Prosecution Service
Criminal Justice Assessment Toolkit



UNITED NATIONS
New York, 2006

Access to Justice: The Prosecution Service was prepared in collaboration with the International Association of Prosecutors.

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This publication has not been formally edited.

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1. INTRODUCTION TO THE ISSUE

Perhaps nowhere else in the criminal justice system does a function vary more than the does the delivery of prosecution services among states. In assessing a state's prosecution services, the assessor must remain aware of the broader system in which the prosecution process is operating. States that once adhered to common law or to civil law systems, for example, may differ considerably with regard to prosecution and investigation structures and services, even though their systems may currently demonstrate a legal framework that blends multiple legal traditions and other cultural influences. Understanding that a state follows a common law or civil law or a customary law system or a mixed or parallel system is only a first step¹. Rather than making assumptions about a system based upon a classification, it is more useful to understand the sources of the structures of the criminal justice system that may have influenced what is currently in place. Within any of these systems are unique approaches applied by different states that may reflect their indigenous history, an overlay of a colonial or otherwise imported systems in the past, and more recent implementation of reforms.

Due to the sheer diversity of prosecution structures and approaches, it is difficult to address all the potential issues in every system in a single assessment tool. In conducting assessments of the prosecution services within the criminal justice system, the assessor should use this tool in conjunction with the other **Access to Justice Tools**, as well as **Policing: Criminal Investigation**. This tool, **The Prosecution Service**, guides, with cautions about possible points of difference among systems, the assessment of the system of public prosecution of criminal offences, with a focus on access to justice by members of the public, including victims, witnesses, and the accused.

Public prosecutors play a unique role in criminal cases in that they appear on behalf of the government as the representative of the people rather than an individual victim. This necessarily differs in scope from the role of the defence lawyer, whose obligation is to represent the accused as zealously as possible within the law. A public prosecutor has the broader obligation to uphold the rule of law, with an attendant ethical and professional duty to ensure that a person accused of a crime receives a fair trial. Where prosecutors fail to fulfil these obligations, miscarriages of justice ranging from malicious prosecutions to wrongful convictions result, damaging the integrity of the justice system and violating the public's trust.

In 1990 the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders at Havana, Cuba adopted the **Guidelines on the Role of Prosecutors**. The **Guidelines** assist member states in ensuring that certain basic values and human rights protections underpin their prosecution services by promoting effectiveness, impartiality and fairness of prosecutors in criminal proceedings. Guideline 12 of the **UN Guidelines on the Role of Prosecutors** provides that "Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system." In addition the guidelines deal with the selection, training and status of prosecutors, their expected tasks and conduct, means to enhance their contribution to the criminal justice system, guidance on their co-operation with police, the scope of their discretionary powers, and their role in criminal proceedings. As such, the **Guidelines** provide a framework of the international standards with which to assess the prosecution service of a state.

¹ Please see ANNEX 1, COMPARATIVE LEGAL SYSTEMS for further background.

These **Guidelines** may be supplemented by the **Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors** (“Standards”) adopted by the International Association of Prosecutors. This instrument prescribes minimum standards to be observed by prosecution agencies worldwide, addressing the areas of Professional Conduct, Independence, Impartiality, Role in Criminal Proceedings, Co-operation and Empowerment.

This Tool will further guide the assessor in evaluating the role, capacity and resources of the prosecution service, the extent to which it functions independently, how it uses its discretionary powers, how it deals with misconduct, and its accountability to the public it serves. In addition, the Tool guides assessing the relationship of the prosecution service to others, ranging from alternative conflict resolution systems to the coordination of criminal justice initiatives to international cooperation. Finally, the Tool will guide the assessor in evaluating the extent to which the prosecution service’s policies and practices promote access to justice for the victims, witnesses and the accused and build public trust in the criminal justice system.

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 targeting the prosecution service and the criminal justice system in the context of a broader strategic framework may include work that will enhance the following:

- Legislative reforms to enable/enhance prosecutorial independence and discretion.
- Develop capacity of the prosecution service to plan, implement and manage change.
- Support processes that ensure the responsive operation of running of the prosecution service through the effective and efficient management of human and physical resources.
- Improve allocation of resources through sound budgeting processes and financial management.
- Provide operational support to prosecution personnel.
- Improve operational capacity via improved case screening and caseload management.
- Develop the professional and administrative skills necessary to meet the demands of increasingly complex criminal caseloads, especially in countries that are signatories to international conventions that require a sophisticated response to certain types of crimes as well as the capacity to provide cooperative legal assistance.
- Enhance the capacity to develop and manage strategic planning, including the development of meaningful caseload and workload indicators.
- Enhance both human and technical resource capacity for the use of information technology with regard to case and caseload management.
- Enhance the coordinated response to addressing issues confronting the criminal justice system like prison overcrowding and pre-trial delay.
- Enhance service delivery for vulnerable victims and witnesses.
- Enhance both accountability and public understanding of the prosecution service.
- Provide improved access to justice.

2. OVERVIEW

2.1 STATISTICS

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:

- Prosecutor's Annual Reports
- Ministry of Justice reports
- Ministry of Interior/National Police Crime reports/Penal System reports
- Non-governmental organisation reports on the criminal justice system

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

- Ministry of Justice
- Chief Prosecution Authority
- Senior Prosecution personnel
- Non-governmental organisations working on criminal justice matters
- Donor organisations working on the criminal justice sector

In some cases, it may be that the prosecutor's office does not keep statistical records at all. If a prosecutor's office does not have the capacity to collect data on caseload and workload, technical assistance interventions to develop these capacities may be appropriate.

- A. What are the general criminal justice trends and challenges facing the nation being assessed?
- B. What is the crime rate for serious offences, i.e. murder, rape, robbery, kidnapping? How many people per 100,000 population are charged for each category of offence annually?
- C. In jurisdictions where the police file the original charging documents, how many criminal cases are received by the prosecutor's office for action on an annual basis? In jurisdictions where the prosecutor is responsible for the filing of charges in court, how many such cases are filed annually? Do these numbers include original filings only or do they also include appeals, other legal challenges, etc.? How many criminal cases are resolved annually by the prosecutor's office? Via trials? Via pleas of guilty? Of these, how many were plea agreements, if they are possible? How many cases result in a conviction of guilt to at least one of the charges? How many cases are withdrawn/dismissed? Of these, how many cases are diverted? To what types of alternatives to prosecution?
- D. Can these be broken down (disaggregated) by:
 - Severity of crime: i.e., major vs. minor or violent vs. non-violent, felony v. misdemeanour? Indictable v. summary?
 - Crime category?
 - By outcome, i.e. trial, plea, dismissal, verdict?
 - Gender of accused or victim?

- Race or ethnicity of accused or victim?
 - Geographical or political jurisdiction where the offence occurred?
- E. Can these statistics be broken down (disaggregated) by prosecutor?
- F. What is the average annual caseload assigned per prosecutor? If there are several levels of prosecutors or prosecutors assigned to different court levels or specialized units, can an annual caseload per prosecutor at each level/unit be determined? If the actual annual caseload cannot be determined, can a rough average number per prosecutor be calculated?
- G. What is the average annual caseload resolved per prosecutor? If there are several levels of prosecutors or prosecutors assigned to different court levels or specialized units, can an annual resolved caseload per prosecutor at each level/unit be determined? If the actual annual caseload resolved cannot be determined, can a rough average number per prosecutor be calculated?
- H. Is it possible to determine how many pending cases a prosecutor may be handling at any one time? Without going to the prosecutor's desk/office and counting files? Can a rough average number of pending cases per prosecutor be calculated?
- I. Is it possible to determine how long a case assigned to a prosecutor has been pending without an examination of the individual file?
- J. Is it possible to obtain the ages of all pending cases, by prosecutor? Is there a backlog of cases? Of certain types of cases?
- K. Is this statistical information publicly available? Portions of it? How is it made public? By request, via annual or other reports?
- L. If not, to whom is it made available? Is it known to criminal justice officials at least at a senior level?
- M. 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 prosecutor's office to produce the statistical information requested above?

3. LEGAL FRAMEWORK AND DELEGATION OF AUTHORITY

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 the prosecution of criminal offences, including the delegation of authority for both prosecution and associated investigative functions. [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 who is responsible for the prosecution of criminal cases, in what branch of government that authority resides, the powers and obligations of the prosecution/investigation authority, as well as the related institutions including the judiciary, the courts, and ministries associated with the administration of justice. The assessor should also be aware of other constitutional provisions concerning the rights of offenders and victims as these will affect both the prosecutorial function as well as the allocation of prosecutorial resources.

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. Some countries may have a specific Act dealing with the prosecution or investigation authority, including a code of ethics.

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 how the criminal process in the courts is intended to operate, covering everything from the kind of the evidence that can be introduced to the procedures and timeframes for the filing of motions and requests for summonses or subpoenas. 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, including the prosecutor's office, or the community at large. The rules may include an ethics code or code of professional responsibility for lawyers, with special provisions relating to prosecutors.

Policy and Guideline documents, "standing orders", circulars, instructional memoranda, etc. issued by the prosecution or investigation authority (or the government) often contain the detailed information that regulates the manner in which a prosecutor's office or related institutions like the police operate.

In addition, the assessor should ascertain the prosecuting authority's other designated functions on behalf of the government and the extent to which these obligations compete for resources with criminal prosecution. These functions may range from providing legal advice to the government to representation of the government in non-criminal cases and appeals to the supervisory function of former Soviet systems in which the procurator general was the extremely powerful official charged with ensuring that the other branches of government fulfilled their mandates. Such a role raises at the very least separation of power concerns. While most former Soviet states have passed legislation limiting or eliminating such a function, the historical subordination of other stakeholders in the criminal justice system, i.e. the judiciary and defence, has lingered and may hinder the development of the robust defence bar and independent judiciary critical for a fair, just and effective criminal justice system.

The essential counterpart to determining how the legal and regulatory framework intends for the prosecuting authority or prosecutor's office and the prosecution service to function is to examine how they actually function. In addition to examining the reports of the relevant government departments or ministries on the prosecuting authority, independent reports by NGOs, and academic research papers, it is important to conduct site visits to a number of representative prosecutor's offices (if there is more than one) and observing court proceedings. This is especially true where prosecution as a function has been de-centralized and would include visits to offices and courts in rural and urban settings, in both relatively well-to-do and impoverished locales. Where specialized prosecution units exist, site visits are useful to be able to compare and contrast practices with the units or offices that prosecute the general criminal caseload.

3.2 DELEGATION OF PROSECUTORIAL AUTHORITY

- A. Under the law and procedures of this criminal justice system, how does a criminal case proceed from the allegation or suspicion of a criminal offence to advice to investigators to formal charging to adjudication and disposition?
- B. Determine where the prosecution (and investigation) authority resides in the criminal justice system being assessed. Is it part of the judiciary? Is the prosecution authority vested in a prosecutor, an investigative judge, or both?

Please refer to **Access to Justice: The Judiciary** for further guidance on assessing the judicial integrity/independence issues associated with investigating judges.

- C. What does the Constitution say about the powers and duties of the prosecuting authority? Is there a separate statute or a section/chapter of a statute that sets out such powers, duties and any immunities (for example, protection from civil liability for official acts)? Does the prosecuting authority also have legal mandates beyond the prosecution of criminal cases, i.e. providing legal advice to the government, representing the government in civil legal proceedings or the appeals process? How do these other mandates and obligations affect the prosecution service's ability to handle the criminal caseload?
- D. Is the head/senior prosecutor appointed and if so, by whom? Elected? What is the term of office? How can the head prosecutor be removed? Has this occurred in the past five years? If so, what was the reason? Was the law followed in removing the prosecutor?
- E. Does the prosecution service have supervisory power over other branches of government? Other government ministries? How does the prosecution service exercise this supervisory authority?
- F. Does the system include investigating judges? What is their role? How many have been appointed? At what level of the court system do they function?
- G. If the prosecution authority includes a separate prosecutor's office, does it reside within the executive branch of government or the judiciary? If part of the judiciary, to what extent is the prosecuting function separated from the judiciary? How is this achieved? Is it achieved in reality? If part of the executive, to what extent is the prosecuting function independent from other branches of the executive?

Please see **Guideline 10, UN Guidelines on the Role of Prosecutors.**
- H. In addition to the rights of the accused, does the Constitution enumerate rights held by victims of crime? What obligations under the law does the prosecuting authority have toward crime victims or witnesses in criminal cases? What is the impact on the prosecuting authority in terms of resources? How do these obligations affect practices and procedures?
- I. Does the law provide for a system of compensation for persons acquitted or found to have been wrongly convicted? Is their recourse a civil suit against the prosecution service or police, if these are not shielded by legal immunity from liability? Legal action against the government of the state?
- J. Is there special statutory authority to investigate or prosecute public officials for corruption or abuse of power?
- K. Does the law provide for private prosecutions? How do private prosecutions relate procedurally to prosecutions by the state? To what extent are private prosecutions pursued? May they be initiated at any time or only after the prosecution service determines that it will not pursue a criminal prosecution? Does a procedural mechanism exist for the government/public prosecutor to assume or re-assume responsibility for a private prosecution? On what basis?
- L. Do the Rules or law include an ethics code for prosecutors? Are the obligations consistent with the **UN Guidelines on the Role of Prosecutors**? If there is no ethics code specifically for prosecutors, do the rules or law include an ethics code for lawyers?

Please note that not all systems require that prosecutors be lawyers. See **SECTION 6.1, QUALIFICATIONS.**

3.2.1 Traditional / Customary Courts / Alternative Resolution Forums

- A. Does the Constitution or criminal procedure code grant jurisdiction to a customary or traditional court or alternative resolution forum for any class of criminal offence? Are there limitations on the types of punishments or penalties that can be imposed?
- B. How does this system interact procedurally with the formal criminal justice system? Do these systems refer cases to the prosecution service? Does the law allow the prosecution service to refer cases to such system as a form of diversion?
- C. Where there is no legal recognition of such alternative systems, does the prosecution service take into consideration whether the other system has conducted its own proceedings or resolved the case in determining whether to initiate a prosecution for the criminal offence?
- D. To what extent does the population rely on such systems to resolve criminal matters? What is the reason for doing so? Proximity, low cost, tradition, religious faith, barriers to the formal system, lack of trust in the formal system, pressure from family or social setting? Are the poor, rural, or ethnic minorities or members of certain religious faiths more likely to rely on these other systems?
- E. Are there human rights or due process issues associated with any of these systems? How has the prosecution service dealt with these issues?

3.3 THE ROLE OF THE PROSECUTOR IN CRIMINAL PROCEEDINGS

In many countries with a civil law legacy, the prosecution of criminal offences may be undertaken by a special prosecuting authority, which may be a public prosecutor or an investigating judge, though in some systems, both may exist. In some states, the investigating judge will provide judicial oversight for the entire process of investigation and prosecution. Where an investigative judge directs the evidence-gathering phase of a criminal prosecution, judicial police may provide the investigative resources to carry out the investigative judge's orders/directives.

Countries with a common law heritage may differentiate firmly between the investigation process and the prosecution process. The police usually conduct the investigation, and the prosecutor must then objectively assess whether there is sufficient evidence to prosecute. (This model may also be followed in some civil law countries.) In practice, this division is not strictly followed, and in some systems the prosecutor is directly involved in the investigation process, by way of legal advice or otherwise. In such systems, the judiciary must be approached separately to obtain certain types of evidence, which is usually done by way of issuing a warrant. The legality of the manner in which evidence is obtained is challenged, either prior to or during trial. The prosecution must prove that the evidence was obtained in accordance with the law and that the rights of the accused were not violated. The trial judge must rule on the admissibility of the evidence; if the manner in which evidence was obtained was in violation of the law, that evidence is excluded and cannot be used in determining guilt.

While many systems require that the prosecutor disclose any potentially exculpatory evidence (evidence that may show that the accused did not commit the offence or that someone else may have done so) obtained in the course of an investigation, **Article 34 of the Model Code of Criminal Procedure (DRAFT, 30 May 2006) (MCCP)** requires that the office of the prosecutor investigate both incriminating and exonerating circumstances equally. The **MCCP** does not utilize an investigating judge, but rather is inspired by a new type of prosecutorial model that is a blend of different systems. Under this model, the prosecutor must investigate both exonerating and incriminating evidence in a role that is particularly necessary in a post conflict state where defence lawyers who are able to conduct investigations on behalf of their clients may not be available. The prosecutor's role provides a model that ensures fairness of process, given few systems exist in which the defence has access to resources at a level equivalent to those available to the prosecutor's office.

- A. Under the criminal procedure code or its equivalent, who is responsible for the investigation of crime prior to the initiation of a prosecution? Do prosecutors undertake or oversee investigations? Do prosecutors supervise investigations that are carried out by other agencies? Is this supervision direct or are they simply kept

apprised of progress or issues and offer advice on how to proceed? From which stage do the prosecutors get involved, if they do, in the investigation?

- B. What kinds of evidence gathering require a warrant being requested from a judge? Do the police or the prosecutor request warrant? Does the prosecutor give advice to the police when to seek warrants and whether the evidentiary basis for their request is sufficient?
- C. Are prosecutors legally bound by the results of a police investigation? What is the structure for the relationship, if any, with the police? With investigators? What is the relationship with the Ministry of Justice or Ministry of the Interior, if they exist?
- D. Does the prosecutor have the legal authority to order continued detention of a suspect?
- This is ordinarily a judicial oversight function that will raise human rights concerns when delegated to the prosecuting authority that may be directly involved in the investigation of the crime and will be responsible for its eventual prosecution.
- E. Does the prosecutor have the power to institute a prosecution? How?
- F. What is the process by which formal charges are filed? Does a formal charging document need to be presented for approval or review? To what body or member of the judiciary? What is the basis for the review/ approval?
- G. In systems where there is an investigating judge, at what point does that official become responsible for the development, investigation or evidence gathering in a criminal case? What is the role of the judicial police, if any with regard to any investigative judge? Who is legally obligated to carry out the directives and orders of an investigative judge in gathering evidence?
- H. Where both a public prosecutor and an investigating judge have authority over a criminal case, at which points do each or either have investigative responsibility? Does that change as a criminal prosecution proceeds? If so, how?
- I. When a criminal case goes to trial, what is the role of the prosecutor? At sentencing? On appeal?
- In a common law adversarial system, the prosecutor's role will be central to the presentation of evidence and argument on the law; in a civil law system, the prosecutor's role at the actual trial may be minimal, if not nonexistent, as the investigative judge presents evidence and findings to the trial judge(s).
- J. May the prosecution appeal the verdict of a criminal case? Appeal rulings made by the court? To what extent does this occur?

3.3.1 Prosecutorial Discretion

The extent to which prosecutorial discretion exists varies among systems. In some civil law systems, the decision to prosecute is made by the investigating judge after a preliminary inquiry, while in others; the public prosecutor decides whether a case should be prosecuted. Certain civil law countries follow a policy of requiring that every case be prosecuted where sufficient evidence exists to do so. This is known as the principle of legality or the concept of obligatory prosecution, in which only the lack of sufficient evidence may be the basis for declining to prosecute a case and is premised upon the principle of equality before the law—that is that all people are equal before the law and are to be treated equally when suspected of committing a criminal offence. In other civil law systems the prosecutor has discretion to prosecute; to dispose of a case upon the fulfilment of conditions by the accused such as the payment of restitution or a fine, performance of community service, undergoing treatment or completing a programme, etc.; or not to proceed at all. Some systems grant this discretion on a limited basis, for instance, for offences whose punishment is less than a year in jail while others grant this discretion, if not unconditionally, then with the broad sweep of allowing that which is in the public interest. In some civil law systems, the discretion to divert a case is vested in a judicial officer rather than the prosecutor.

In almost all common law systems, exercising discretion whether prosecute is a key function of the office of the public prosecutor though the extent to which this is delegated down to prosecutors or held by the senior prosecutors differs. This broad discretion to do what is fair and just under the circumstance has been termed as the principle of opportunity or expediency. The exercise of discretion may depend on a range of factors over and above the adequacy of evidence. Other decisions that prosecutors make also require the exercise of discretion, such as whether to recommend the release of a suspect on bail in a detention hearing, whether to make a plea offer to a lesser charge than the primary charge, whether to allow a person to be diverted to a particular programme, though these latter two issues may require judicial approval in some countries.

The **UN Guidelines on the Role of Prosecutors** recognize both the potential benefits of the exercise of prosecutorial discretion and its potential unfairness if applied inconsistently or improperly. **Guideline 17** requires a legal or regulatory framework that guides the exercise of discretion to ensure fairness and consistency. **Guidelines 18** and **19** emphasise the value of prosecutorial discretion in resolving appropriate cases, including those involving juveniles, by using alternatives to formal adjudication. As such, prosecutorial discretion becomes a powerful mechanism to address issues ranging from reducing excessive caseloads that challenge the prison systems to the avoiding where unnecessary the stigmatization and social costs of criminal prosecution and conviction, both to adults and particularly to children in conflict with the law. Therefore, enhancing the ability and capacity to exercise prosecutorial discretion appropriately may be a rich area for technical assistance.

- A. Where an investigating judge has conducted a preliminary inquiry or investigation, how often does this result in a declination to proceed?
- B. Does the prosecutor have discretion over whether to pursue charges? On what basis? How often does the prosecutor decline to prosecute? What happens to the case? How often does the prosecutor send the case back for additional investigation instead of declining?
This practice has in some countries led to police obtaining coerced confessions when the case has been returned.
- C. Does a prosecutor in declining to prosecute or withdrawing a criminal case need to provide a reason for doing so? Are reasons published? Does this occur in practice? Up to what point in the process may a prosecutor exercise the discretion to decline or withdraw a case? At what point may only a judge dismiss a criminal case?
- D. Can the decision to proceed, decline to prosecute, withdraw or dismiss the case be overruled by a member of the executive branch? Can it be overruled by a member of the judiciary? Can it be overruled by a government minister? To what extent does this occur in practice?
- E. Does the prosecutor have the legal authority to conditionally dismiss a case? At what stages? For what types of crime? For what type of offender? Do the law or regulatory framework guide conditional dismissals? Internal policy/procedures? Does a judge have to approve of this agreement? What record is made of the agreement? Who verifies fulfilment of the conditions?
- F. Does the prosecutor have the legal authority to divert cases to alternatives to criminal prosecution such as mediation, treatment or community service? (Do any such alternatives exist?) If so, does this require judicial approval? At all stages? Are such alternatives limited to juveniles, drug offences, mental health, domestic violence, etc.?
- G. Does the prosecutor have the legal authority to negotiate plea agreements, if there is a legal basis for plea agreements? To what extent is the prosecutor's discretion to negotiate a plea controlled by a regulatory framework? What are the limitations of that framework? Does the prosecutor have an obligation to make a plea offer? Does the prosecutor have a legal obligation to consult with or inform the victim about a plea offer or agreement? Is it a policy (and practice) for providing access to evidence (discovery) to facilitate early acceptance of plea offers (rather than on the day of trial)? Does there need to be judicial approval or acceptance of the agreement?

3.3.2 Alternatives to Prosecution

Prosecutors are directed by **Guideline 18** of the **UN Guidelines on the Role of Prosecutors** to give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally or diverting cases from the formal justice system, with full respect for the rights of suspects and victims.

Diversion is the channelling of certain cases away from the criminal justice system, usually on certain conditions. In common law systems it is generally achieved through the operation of the prosecutor's discretion while in civil law systems it may be the judicial officer who makes the decision to divert matters. Diversion may occur at the charging and pre-adjudication stage; it may also be premised on an acknowledgment of responsibility for the offence, and an agreement to make amends for the crime, usually by performing community service or compensating the victim. Sometimes the offender is sent to a course or programme to deal with a specific problem (e.g. drug addiction, sexual offences, anger management, self-esteem) In some systems the referral for diversion is to a mediation process, where the victim and the offender (and in some models, other members of the community) meet face to face and a plan is made about how the offender will put the wrong right. This kind of interaction between victims and offenders is the basis of restorative justice, an approach that has gained in popularity in many systems throughout the world in the past few decades.

Diversion may occur at different stages in different systems and for different classes of offender. In its classic form, it occurs prior to the trial and avoids the trial process altogether. In some systems, a matter that is diverted does not come to court at all, in others the performance of the diversion conditions is overseen by the court.

There are many advantages inherent in the process of diversion. For the offender, he or she may avoid a criminal record and its negative consequences, he or she will learn things from the programmes that are specifically relevant to avoid re-offending in the future, he or she may make direct amends to the victim and through this may learn empathy and a sense of social responsibility. In restorative justice processes, victims often express high levels of victim satisfaction. Diversion may allow for involvement of communities and a role for traditional conflict resolution processes. The prosecution service and the court benefits as well in that resources are freed to address more serious or complex cases and, where diversion programmes are effective, the likelihood that the defendant will offend in the future is reduced.

- A. Is diversion (to treatment programs or alternative programs like community service) currently being practiced? Does such diversion require judicial or prosecutorial approval? For what types of case? What types of offenders? Are there established protocols for diversion? Who has developed them? What do they cover?
- B. Is this done in the case of child offenders, if there is no separate adjudication system for children in conflict with the law whose mandate recognizes the special needs of rehabilitation and guidance for such children?
Please see **Guideline 19** of the **UN Guidelines on the Role of Prosecutors**.
- C. If diversion is not occurring, what are the impediments to it? For example, are prosecutors not permitted to withdraw charges? Are there no programmes? Are existing programmes viewed as ineffectual? Are there special courts dealing with classes of cases that might otherwise be diverted, such as drug treatment courts, mental health courts, family violence courts?
- D. Are there any mediation services to which parties to a case may be referred? Is there a mechanism or protocol for determining which cases are appropriate for mediation?
Cases involving domestic violence or sexual violence where the balance of power is skewed by the use of violence by one party have been recognized as inappropriate for mediation.
- E. Are there traditional or customary law dispute resolution systems? Please see **Section 3.2.1**. Where the prosecutor has the authority to refer cases to such forums, does this occur? If not, why not?
- F. Does the payment of restitution in certain cases provide a basis for a decision by the prosecutor not to prosecute? Are other protections in place to ensure that ability to pay restitution does not create an unfair advantage for those with means?
- G. Does the prosecution service support alternatives to prosecution? If not, why not?

4. MANAGEMENT AUTHORITY AND FISCAL CONTROL

4.1 MANAGEMENT AUTHORITY

- A. Is there an official government policy on the prosecution service? Who develops it? Whose input is sought? Does the policy address the separation of the prosecutorial function from judicial functions?

Please see **Guideline 10, UN Guidelines on the Role of Prosecutors.**

- B. To what extent do the Ministry of Justice or the judiciary play a role in the management of the prosecution service? In the supervision of prosecutors? Is either legally allowed to give direction on specific cases?
- C. To what extent is the leadership of the prosecution service able to determine how the prosecution service will achieve its mandates? Develop public prosecution priorities, policies and strategies? To whom does the head prosecutor answer, if anyone?
- D. Has there recently been any restructuring of the prosecuting authority? Is any such restructuring planned? What are the reasons for such restructuring?

Restructuring the prosecution system may be done for political reasons, particularly in countries undergoing post conflict transformation. Other reasons for restructuring may be to increase efficiency, or to reflect modern approaches to prosecution, and to improve co-operation at an international level – see for example, the **UN Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators**.

- E. Is there a strategic plan for the prosecution service? Who prepares it? Whose input is sought? How many years into the future does the strategic plan project? What are the strategies it will employ to improve:
- Access to justice?
 - The day-to day functioning of the prosecution service?
 - Case management, including the development of case screening mechanisms and protocols for diversion?
 - Timely resolution of the caseload?
 - Reduction of any backlogs that may exist.
 - Its capacity to handle specialized or complex crimes, including corruption?
 - Its effectiveness in responding to domestic violence?
 - Services/support provided to victims?
 - Its accountability to the public it serves?
- F. If there is no strategic plan, why is there not? Does the prosecution service have the capacity to engage in strategic planning? Is there a lack of data upon which to base strategic planning? Is the leadership overwhelmed by day-to-day management issues?

4.2 FISCAL CONTROL

- A. Is criminal prosecution a centralized or de-centralized function? Who or what body determines the distribution of prosecutorial resources nationally? Regionally? What proportion of resources of the prosecution service, i.e. personnel and budget is devoted to criminal prosecution, as opposed to other functions or mandates? Does legislation authorize a specific number of prosecutors? Where are regional or rural offices

located, if there are such offices? What level of resources do they receive as compared to headquarters or central/urban offices?

- B. How is the prosecution service funded? What is the budgetary process under the law? Does the prosecution service 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? If the prosecution service is part of the judiciary, does the judiciary oversee its spending? Is the budget sufficient for the prosecution service to carry out its mandates?
- C. Does the prosecution service 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?
- D. Is the budget sufficient to allow long-term investigations/ prosecutions? What mechanism exists for the prosecution service to obtain additional funding when an extremely resource-intensive prosecution emerges?
- E. How well does the prosecution service manage costs associated with a prosecution, i.e. forensics costs, expert witnesses, witness travel expenses, etc.?
- F. Does the prosecution service control the resources available for witness protection measures? If it does not, how does it obtain access to those funds when such measures are necessary?
- G. How does the prosecution service account for its expenditures? Is this accounting made public?

5. ORGANIZATIONAL MANAGEMENT AND OPERATION

5.1 MANAGEMENT

- A. What is the leadership/management structure of the prosecution service? How does the senior prosecutor delegate or retain decision-making authority?
- B. How do the senior prosecutor and his/her management team develop policy? What data is used? Is policy based on research or evidence-based practices?
- C. How is policy implemented and enforced? Does the prosecution service have written policy/procedure? (If policy has not been reduced to writing, how is it conveyed?) Compiled into a manual for staff? Available to the public? Available upon request?
- D. How does the senior prosecutor guide the exercise of discretion among subordinates? What is the system of delegation in place? Is discretion delegated down to each individual prosecutor?
For example, may a prosecutor working in the lower courts withdraw a charge without the approval of a senior prosecutor?
May a prosecutor working in the lower courts accept a plea of guilty to a lesser charge without the approval of a senior prosecutor?
May a senior prosecutor order a more junior prosecutor to withdraw a case? Must there be a written record of such a directive, with the basis for the withdrawal?
- E. What is the prosecution service policy on instituting prosecutions? Must a prosecution be initiated whenever an impartial investigation has shown that there is a well-founded charge (or prima facie evidence of a crime)? Is there policy guidance on when diversion is appropriate or preferred?
- F. What is the prosecution service's policy when an impartial investigation shows that a charge is unfounded?

Guideline 14, UN Guidelines on the Role of Prosecutors requires prosecutors not to initiate, to discontinue any ongoing prosecution, and to make every effort to stay proceedings that may be ongoing when this occurs. Ethical obligations under a code of ethics typically also require that the prosecutor prevent an unfounded case from going forward to protect the rights of the accused and to protect the integrity of the criminal justice process.

- G. What is the prosecution service's policy on requesting pre-trial detention? Does the prosecution service request remand in all cases for which remand is possible or are protocols in place that assess the accused's potential flight risk and danger to the community prior to trial? Does lengthy pre-trial detention become leverage in obtaining guilty pleas?
- H. What is the prosecution service policy on illegally obtained evidence? If prosecutors become aware that evidence provided by the police or other agencies was obtained through illegal means, what is their obligation ethically, legally and according to policy? Do they advise defence counsel? The court? What is their role with regard to the investigators who obtained the evidence illegally? Is there a qualitative distinction made between an investigator who acted in good faith but committed a procedural error and the investigator who knowingly acted illegally? Who committed a criminal offence in obtaining the evidence?

Guideline 16, UN Guidelines on the Role of Prosecutors, requires prosecutors to refuse to use evidence that was obtained in violation of the law AND in grave violation of the suspect's human rights and to further take all necessary steps to bring those using such methods to justice. Again, ethical obligations may require that prosecutors refuse to prosecute a case based upon evidence obtained improperly even where the evidence was not obtained via a grave violation of human rights like torture.

- I. What is the prosecution service's policy on the disclosure of evidence to the defence? Does it mandate timely disclosure to allow time for preparation of a defence or the negotiation of a plea agreement? Does it provide access only to the evidence required to be disclosed by law or does it provide full disclosure of the evidence in its possession? If the policy is the latter, what proportion of the workload is consumed by litigating defence requests to obtain access to evidence? Is the practice by prosecutors consistent with the disclosure policy? What obligations does the prosecution policy/practice impose upon criminal investigators? Are investigators required to certify that they have made full disclosure to the prosecution? Does this occur in practice?
- J. What is the prosecution service's policy regarding the prosecutor's role in relation to vulnerable groups? (Where no written policy exists, are staff members able to verbalize what they believe the policy is?)
 - On the provision of special services to victims of sexual offences? Victims of domestic violence?
 - On the provision of services to victims, including the poor and elderly?
 - On the treatment of children, both victims and those in conflict with the law, including diversion from the adult criminal justice system?
 - On reducing inconvenience to and protecting witnesses?
- K. Does the prosecution service participate in any special therapeutic courts such as drug treatment, family violence, or mental health courts? How has the prosecution service defined the role of the prosecutor on these teams?
- L. What policy and procedures are in place, if any, for the review of claims of miscarriages of justice such as wrongful convictions or abuse of prosecutorial discretion/power? Is DNA testing available, for example, to ascertain whether the person convicted of a crime whose prosecution involved evidence containing the genetic material of the offender is a genetic match to an appropriate statistical certainty? Does the physical evidence gathered in such cases still exist? What measures are taken to ensure that such evidence is preserved? If these are not available, what steps are taken by the prosecution service to investigate such claims?
- M. Has the prosecution service participated in developing policy in any amnesty programs? If not, what was the prosecution service's position on the granting of amnesty? For what types of crime? What was the rationale for the amnesty granted?

5.2 ORGANIZATION

- A. How is the prosecution service organized? Is there an organizational chart showing the lines of authority, the assignment of prosecutors, investigators (if employed by or permanently assigned to the prosecution service), and support staff including victim/witness support staff, if they exist?
- B. Are prosecutors and support staff assigned to prosecution teams handling cases at various court levels? To specialized crime units? By geographic region? A combination of the above? Does the prosecution service follow a community-oriented approach to prosecution or does it follow a more authoritarian model? How do team assignments reflect the professed philosophy? Is the prosecution service philosophy consistent with the approach employed by the police?

5.2.1 Specialized Units

- A. Does the prosecution service have specialized units for prosecuting with crimes involving vulnerable victims? Domestic violence? Sexual offences, including child victims?

Please see **Cross-Cutting Issues: Victims and Witnesses**, the **Declaration of the Basic Principles of Justice Victims of Crime and Abuse of Power 1985** and the **UN Guidelines on Child Victims and Witnesses of Crime 2005** for further background.

- B. Does the prosecution service have a separate unit for dealing with juvenile offenders (juveniles in conflict with the law)? How are prosecutors chosen for this assignment?

Please see **Cross-Cutting Issues: Juvenile Justice** for further guidance on the issues and needs associated with the adjudication of children in conflict with the law.

- C. Is the prosecution service able to assemble a multidisciplinary team to prosecute complex cases? How are prosecutors chosen for such teams? Who else may be assigned to such a team? What resources or mechanisms are available for long-term or complex investigations? Has the prosecution service initiated any prosecutions of note? Has the prosecution service organized separate units to prosecute such cases? (If not, how are these case handled, if at all?):

- Financial crimes, including arson for profit, theft of software and other intellectual property
- Organized crime, including drug distribution
- Public corruption
- Misconduct by officials, including lawyers and police officers
- Obstruction of justice
- Human rights and war crimes

- D. Has the prosecution service, in the past 5 years (or under the current government's administration), dealt with the investigation or prosecution of any public officials for corruption or abuse of power? Is it likely?

- E. Does the prosecution service have a dedicated unit for requesting and responding to requests for assistance in obtaining evidence pursuant to international cooperative agreements and conventions? Does it otherwise have the capacity both to use these mechanisms and to meet reciprocal obligations?

5.3 CASELOAD MANAGEMENT

- A. What mechanisms does the prosecution service use to manage the incoming caseload? Are all cases assigned to prosecutors on arrival? By crime type or court level? What kinds of cases are assigned vertically, that is every aspect of the case from investigation to presentation for formal charges to trial and sentencing, will be handled by a single prosecutor?

Vertical prosecution is a resource intensive approach usually reserved for more serious or complex cases. If used more generally, scheduling cases becomes difficult and may be the cause of delay.

- B. Are more minor cases already scheduled for court dockets, with prosecutors being assigned to cover the entire docket? Are these dockets of a manageable size, that is, can all the cases scheduled for a docket be reached within the time scheduled for it?

- C. Has the prosecution service implemented a screening process that allows cases to be assessed even prior to their assignment? What level staff is assigned to screen cases? Have written protocols been developed to guide the screening of cases, including assessing the level of criminal history (if it exists), the instant offence (violent, non-

violent), the quality and sufficiency of evidence, victim input, mental health and addiction issues, if any? Do these protocols include screening cases for possible diversion or alternative resolution mechanisms? Are the recommendations made by the screening staff binding upon the prosecutor who handles the case in court?

- D. Has the prosecution service implemented any initiatives to expedite the resolution of certain categories of cases? What are they? Have such initiatives been successful? Are they short-term initiatives to address crises (such as overwhelmed court dockets or prisons/detention centres approaching bursting levels, that is where the daily population is high enough to trigger mandatory releases of prisoners) or have they been institutionalized?
- E. What statistics does the prosecution service keep? Please see to **Section 2.1, Statistics**, for the types of statistics that may be used in caseload/workload management. Are they kept manually or on an automated basis or in combination? Are they compiled into reports? Do the reports reflect caseload or workload or both? For what purpose(s) are these statistics used? Annual reports? Budget process? Resource allocation? Strategic planning? Identification of delay? Are the statistics collected meaningful to management? Does management get the reports it needs? Do they trust their reliability?
- F. Does the prosecution service have identified performance indicators? If so, what are they? How were these developed? Were they imposed externally (by a budgeting authority) or developed internally? Are they numerical outputs or qualitative in nature?
- In some countries the prosecution services are using new and less conventional indicators of performance that get closer to measuring important outcomes. In common law systems these often focus on improving pre-trial practices, reducing bias in the use of discretion and on improving services to victims. This might mean undertaking surveys to find out from court users how they experience prosecution service.
- G. How does the prosecution service monitor the caseloads/workloads of individual prosecutors and prosecution teams? Does it use statistical reports? What data do these reports capture? Type of disposition? Means to disposition, i.e. trial (jury or court), plea agreement? Time to disposition? If a withdrawal, reason for withdrawal such as insufficient evidence, successful completion of conditions, witness unavailability?
- H. How is the data gathered? Is it complete? Accurate? Timely? If it is entered into an automated system, who is responsible for the data entry? What quality control mechanisms are in place to check its accuracy? Does anyone audit the data?

5.3.1 Case Management

These questions will best be answered during site visits. The automation of case management may be an attractive area for technical assistance; however, care must be taken to assess the capacity to maintain such a system. Where no such capacity exists or is limited, any technical assistance intervention must fully integrate the development of a sustainable capacity to support automation.

- A. What tools does the prosecution service use to facilitate individual case management? Does the prosecution service rely on a paper case file system, automated support or both? How does support staff assist in case management?
- B. Is there an automated system that allows cases to be tracked on an individual basis? Is it integrated with the automated system that monitors caseload? Is it part of a wider integrated system that may include police information, court schedules, and detention information? If so, what information is shared and what information is protected? To what level is confidential case information protected? Down to the individual prosecutor?

- C. How are case files kept? Are they organized in a consistent, logical manner? Are case information, schedule, and status easy to find? What should a file contain? Are the files generally complete?
- D. How do prosecutors keep track of their cases? How do prosecutors organize the evidence that will be presented in court? Does the automated system, if it exists, allow the cross referencing of the elements of each charge with the pertinent evidence and witnesses? If not, do prosecutors do this manually?
- E. Are prosecutors handling complex cases able to manage and organize a large volume of evidence? Are case management challenges an obstacle to the prosecutions service's ability to undertake such prosecutions?
- F. How are witnesses and their appearances in court coordinated?

5.4 VICTIM AND WITNESS SERVICES

Guideline 13(d), UN Guidelines on the Role of Prosecutors requires that prosecutors consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the declaration of Basic Principles of Justice for Victims of Crime and Abuse.

Please see also **Cross-Cutting Issues: Victims and Witnesses**, the **Declaration of the Basic Principles of Justice Victims of Crime and Abuse of Power 1985** and the **UN Guidelines on Child Victims and Witnesses of Crime 2005** for further background.

- A. How does the prosecution service seek to meet the needs of vulnerable persons specially addressed (for example: women, children, victims of sexual abuse or domestic violence, persons with physical, intellectual; or emotional incapacities)? Are prosecutors and staff working with vulnerable victims aware of the special needs and sensitivities of such victims? Do they possess the skills with such victims?
- B. Is there staff whose primary function is to work with victims and witnesses. What formal training/education are they required to have? Are there special support services/training for prosecution service personnel dealing with vulnerable persons? What services do such staff provide?
- C. Does such staff or the prosecutor provide an orientation to the criminal justice process for vulnerable victims? Do they arrange for a child victim, for example, to sit in the witness chair in a courtroom when court is not in session prior to trial?
- D. During a trial or other hearing, are victims and witnesses required to appear in court on a daily basis until called? Does the prosecution service staff work with victims and witnesses to minimize the inconvenience of multiple court appearances, many of which are the result of cases being continued to a later date? Is there, for example an on-call system in which victims/witnesses may go about their business but are required to appear in court within a certain timeframe (an hour) if called?
- E. Does the prosecution staff arrange for transport for victims and witnesses who do not have the means to come to court on their own?
- F. Does the prosecution service staff provide victims and witnesses with information about the services that are available, what protections they may seek? How?
- G. Under the law, are crime victims entitled to seek restitution or compensation for losses within a criminal case? Does the prosecution service regularly seek such restitution? What assistance does the prosecution provide in such circumstances?

- H. If the law provides for the submission of victim impact statements, does the prosecution service make a practice of advising victims of this right and encourage them to submit them?
- I. How are victims and witnesses kept informed about cases, including verdicts and sentences by the prosecution service? Does the prosecution service staff notify victims and witnesses about hearings that may have been scheduled or whose time or date may have changed?
- J. To what extent does the prosecution service consider the wishes of the victim when deciding how to proceed in a case? How does the prosecution service work with victims who do not wish to proceed or may be under pressure to ask the prosecutor to drop charges?
- K. Does the prosecution staff escort vulnerable victims and witnesses to court? Are there separate areas where they can wait so they do not have to confront the accused?
- L. 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, e.g. testifying via closed circuit television, behind a screen in court, by the tender of pre-recorded evidence?
- M. Are there legal provisions for a witness protection system that the prosecution service 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?
- N. Are witnesses in criminal cases legally entitled compensation for lost wages or other expenses associated with their appearance in court? If so, does the prosecution service provide this compensation? Is the prosecution service 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?

5.5 ADEQUACY OF PROSECUTION SUPPORT

- A. Do prosecutors have sufficient office space to be able to get their work done? Are offices equipped with telephones? Computers? Are the facilities in which the prosecution service has its office(s) convenient to the court? Are they secure?
- B. Are there safes in individual offices or an evidence room to secure evidence in the custody of the prosecution service?
- C. Do prosecutors have copies of the relevant criminal code, criminal procedure code, and rules? Are they current?
- D. Does the prosecution service have a library or is there a law library to which prosecutors have access to do legal research? Are they able to use electronic databases to conduct research?
- E. Do prosecutors have access to staff interpreters or other interpreters to be able to conduct interviews with witnesses whose first language is not the official language of the court?

6. PROSECUTION SERVICE STAFF

6.1 GENERAL STAFFING

- A. How many prosecutors are currently employed by the prosecution service? Investigators? Support staff? Is the number sufficient to handle the criminal caseload/workload? At all levels? In the regions/rural/impooverished areas?
- B. Does the prosecution service hire, promote, discipline and fire its own staff? If so:
- How is prosecution staff, including prosecutors, recruited? What selection process does the prosecution service use?
 - Are positions advertised? Posted? Where?
 - Are there minimum qualifications for each position?
 - 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? Is it practiced?
- C. What types of support staff are employed by the prosecution service? Administrative, secretarial, paralegal, victim/witness assistance? How are they supervised? To whom do they report?
- D. How is prosecution service support staff evaluated? Promoted? Disciplined? Demoted? Terminated? Is there a written procedure for each?
- E. Does the prosecution service have civil service status or other such protections? Does the staff work at the pleasure or at the will of the senior prosecutor?

6.1.1 Investigators

For those systems where the prosecution service conducts investigations.

- A. Does the prosecution service have its own staff investigators? If so, what are their backgrounds? Former police detectives/investigators? Are they junior prosecutors in training? Does it have investigators assigned to the prosecution service from outside agencies? Which agencies? To whom are these investigators accountable? Are such investigators assigned to special teams or units? Does this create issues when police officers/investigators from those agencies are the subject of investigations or prosecutions? How is the potential conflict dealt with?
- B. How are investigator candidates vetted? Do they undergo formal background checks? What disqualifies a candidate from eligibility/consideration?
- C. Is the investigator required to be sworn in or otherwise make a solemn commitment to uphold the Constitution and the law upon being appointed as a prosecutor? Does the prosecution service require investigators to make a declaration or sign any commitment upon appointment?
- D. What, if any, initial training do investigators receive? Is it mandated by law or rule? Policy? Who or what agency provides for the training of investigators? How long is the initial training period? Are investigators assigned to a mentor/trainer for on-the-job-training? What topics are covered? Does the training include the special ethical obligations upon prosecution services and their basis? Does the training include the

constitutional and statutory protections of the rights of suspects as well as victims? Does training cover human rights and the fundamental freedoms recognized by national and international law?

- E. Do investigators receive in-service training? How often? On what topics?
- F. Are investigators required to file financial disclosure reports? At all levels of seniority? Are reports submitted? Are they audited? By whom? Have these audits uncovered any instances of corruption by investigators? How were these handled?

6.2 PROSECUTORS

6.2.1 Qualifications, Selection, and Training

Guideline 1, UN Guidelines on the Role of Prosecutors requires that prosecutors be individuals of integrity and ability, with appropriate training and qualifications, while **Guideline 2** provides that the selection process for prosecutors demonstrate integrity, rejecting both partiality and prejudice. In addition, prosecutors are to be made aware of the ideals and obligation of their office, the legal protections of the rights of suspects and victims as well as the human rights and fundamental freedoms recognized by international and national law.

- A. Who serves as a prosecutor? Are prosecutors required to have law degrees? Must they be admitted to the practice of law? Do (former) police officers serve as prosecutors? Are they required to undergo any training on the legal, ethical and functional requirements of prosecutors? Do they receive that training?

The use of untrained and unqualified police officers in lieu of prosecutors may be a common practice in some systems, especially in remote areas and in the lower courts. Prosecutions, with their attendant impact upon the accused, typically proceed without the critical review of the sufficiency and legality of the evidence obtained.

- B. What are the selection criteria for prosecutors? Are they objective? Do they focus on competence and integrity? See **Section 6.1, Question B** on hiring and recruitment policies and practices. Are the criteria used? Does the demographic makeup of staff prosecutors resemble the population? Is it reflected at senior levels? Is any group over- or under-represented? Is the prosecution leadership actively recruiting candidates to make the staff more representative? Are bilingual or multilingual prosecutors who speak ethnic minority languages recruited? If not, why not?
- C. How are prosecutor candidates vetted? Do they undergo formal background checks? Are candidates required to file financial disclosure reports? What disqualifies a candidate from eligibility/consideration?
- D. Is the prosecutor required to be sworn in or otherwise make a solemn commitment to uphold the Constitution and the law upon being appointed as a prosecutor? Does the prosecution service require prosecutors to make a declaration or sign any commitment upon appointment? If so, do any of these include or are they consistent with the obligations to:
 - Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual, or any other kind of discrimination?
Guideline 13(a), UN Guidelines on the Role of Prosecutors.
 - Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect?
Guideline 13(b), UN Guidelines on the Role of Prosecutors.

- E. What, if any, initial training do prosecutors receive? Is it mandated by law or rule? Policy? Who or what agency provides for the training of prosecutors? How long is the training period? Are new prosecutors assigned to a mentor/trainer for on-the-job-training? What topics are covered? Does the training include the special ethical obligations upon prosecutors and their basis? Does the training include the constitutional and statutory protections of the rights of suspects as well as victims? Does training cover human rights and the fundamental freedoms recognized by national and international law?
- F. What ongoing training is available for prosecutors in the area of trial skills, investigative techniques, policy, professionalism, ethics, forensic evidence, changes in the law, procedure? Is there a training budget and, if so, what percentage of the prosecutor's budget does it comprise? How often do prosecutors participate in training? Weekly meetings? Monthly? Annually? Do prosecutors get opportunities to attend outside training seminars and courses? Who has attended and to what types of training?
- G. Do prosecutors assigned to specialized units receive training specific to those functions? For example, do prosecutors handling sex offences receive training in working with such victims? Child victims? Have they been trained in to conduct interviews using trauma-minimizing, yet non-leading techniques? Have domestic violence prosecutors received training on the dynamics of domestic violence and effective law enforcement responses to domestic violence? Do financial crimes prosecutors receive training on forensic accounting? If the specialized unit prosecutors do not receive such training, how do they develop the necessary skills?

6.2.2 Status and Conditions of Service

Guideline 3 of the UN Guidelines on the Role of Prosecutors places the obligation upon prosecutors to maintain the honour and dignity of their profession, as "essential agents of the administration of justice". Guidelines 4 through 6 address the conditions necessary for the prosecutors to be able to perform their functions, that interference, ranging from adequate salary and benefits to physical security to freedom from interference in carrying out their duties.

- A. How are the terms of service, compensation, etc. determined for prosecutors? By law or regulation? What is the range of salary for prosecutors? Are the salaries paid? 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, such as housing, other than salary as part of their compensation?

Their pay (including allowances), in comparison with the national average income, can also be a valuable indicator of the status of law enforcement officials and may provide an indication of economic pressures that may drive corrupt practices.

- B. Are prosecutors able to do their work without interference or intimidation from other parts of the government? Have resources or legislation authorizing or restricting funding or compensation been delayed or enacted retrospectively as a means of pressuring the prosecution service?

Please see also **Question D, Section 3.3.1, Prosecutorial Discretion**, which addresses the extent to which the legal framework may allow other branches of government to restrict or override prosecutorial discretion.

- C. Have prosecutors (or their families) been threatened or attacked as a result of carrying out their prosecutorial functions? What measures have been taken to provide security for prosecutors in the workplace? In court? At home? Are the measures generally applicable or only when a threat has been made? Are the measures adequate? How are they funded or resourced? Is there a sense of relative safety or risk among prosecutors? Where police officers may be the source of the threat, what protective measures can be taken?

- D. Can prosecutors be sued for actions arising from the course of their work?

Please see also **Question C, Section 3.2, Delegating Prosecutorial Authority with regard to immunity**, which is intended to protect prosecutors from intimidation in the course of the duties.

- E. Is potential liability limited to acts of gross negligence or unlawful intention? Is a prosecutor who has acted in good faith and followed legal procedure makes an error, for example, charges the wrong person, protected from liability?

With regard to civil or penal liability, a distinction should be made between the individual prosecutor and the prosecuting authority. While an individual prosecutor may generally be protected from liability, the prosecuting authority may nevertheless be liable for damages arising from errors and negligence on the part of prosecutorial staff.

6.2.3 Freedom of Expression and Association

Guidelines 8 and 9 of the UN Guidelines on the Role of Prosecutors affirm the rights of prosecutors as citizens to freedom of expression, belief, association and assembly. Prosecutors should be free to participate in public discussion and to join or form local, national or international organizations and attend their meetings without suffering professional disadvantage as a result. However, the guidelines stress that in exercising these rights, prosecutors must conduct themselves in accordance with the rule of law and the recognized standards and ethics of their profession. Further prosecutors should be free to form and join professional associations and organization that represent their interests, promote the professional training and protect their status.

- A. Are there any legal restrictions upon prosecutors that restrain their freedom of expression or freedom to associate?
- B. Does the prosecution service allow prosecutors to participate in public discussions about the law, administration of justice, or the promotion and protection of human rights? If not, why not? Does the prosecution service oblige the prosecutors to make it clear whether they are participating as representatives of the prosecution service or in a non-official/individual capacity? Are prosecutors allowed to form or join organizations at any level and attend their meetings? If not, why not?
- C. Does the prosecution service allow prosecutors to form or join professional associations or other organizations that represent their interests, promote their professional development, or protect their status? If not, why not? Does the prosecution service encourage such membership? Does the prosecution service cover dues or pay for the cost of professional skills training provided by such associations or allow the prosecutor to take paid leave to attend them?

6.2.4 Integrity, Ethics and Performance

- A. In addition to any existing ethics code in the law or rules, has the prosecution service developed an internal ethics code or code of conduct? Is it part of the policy and procedures manual, if one exists? What does it cover? Does it require that ethical violations be reported? Does it make the failure to report an ethical violation in and of itself?
- B. Are prosecutors required to file financial/asset disclosure reports? At all levels of seniority? Are reports submitted? Are they audited? By whom? Have these audits uncovered any instances of corruption by prosecutors? How were these handled?
- C. Are prosecutors encouraged to consult with supervisors or an ethics officer on ethical questions? Please refer also to **Section 6.2.1, Questions E and F** with regard to ethics training.
- D. Are prosecutors required to keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise?

Guideline 13(d) of the UN Guidelines on the Role of Prosecutors.

- E. Does the prosecution service and its leadership emphasize ethical behaviour and integrity of prosecutors as priorities? Is such behaviour factored into performance evaluations and decisions about promotions?
- F. How is the performance of prosecutors evaluated? Is there a formal evaluation process? Do prosecutors receive written evaluations? How often? How is performance defined? Is it linked to outputs like number of convictions? Number of case resolved? What qualitative evaluation is performed? Are trial skills evaluated? Understanding and application of ethical obligations? Consistency, and fairness in applying policy to caseload? Thoroughness of investigation/review of investigation balanced with timely decision making? Effectiveness and sensitivity in dealing with victims, in particular vulnerable victims? Ability to maintain a productive working relationship with police, the judiciary, the defence bar, and members of the public while maintaining the integrity and independence necessary for the prosecutorial function? Appropriate use of discretion? Appropriate use of alternatives to prosecution?
- G. Does the evaluation of prosecutorial performance allow for creativity with regard to the use of alternatives? For example is a diversion viewed merely as a withdrawal, therefore impacting negatively on statistics, which may be measured according to completed trials or conviction?
- H. Is the evaluation process part of the basis for promotion? For assignment to specialized teams? If not, why not?
- I. Is there a written promotion policy for prosecutors? Is there a promotion process based on objective factors like professional qualifications, ability, integrity, and experience? **Guideline 7, UN Guidelines on the Role of Prosecutors.** If not, what is the basis for promotion? Is there a competitive process for more senior or supervisory positions, i.e. application, interviews?
- J. How are complaints against prosecutors handled? How are allegations of ethical misconduct handled? How are allegations of corruption handled? Is there a formal disciplinary system? Is it governed by a legal or regulatory framework? Is it internal or external to the prosecution service? Who administers it? How is it structured? Who sits on the disciplinary board, if one exists? What is the relationship of internal disciplinary proceedings with external disciplinary bodies such as the bar grievance process, if any? Is the public made aware of the existence of a complaints process? Is it used? How often? Does the complainant learn of the outcome? Does the disciplinary body report its findings publicly? How are prosecutors insulated from the damage of false allegations? **Guidelines 21 and 22, UN Guidelines on the Role of Prosecutors.**
- K. Are prosecutors disciplined or reprimanded informally? How? Are prosecutors punished by transfer? Do prosecutors have a means to contest a punitive transfer?
- L. If a defendant complains about the involvement or behaviour of a particular prosecutor in a case, under what circumstances would that prosecutor be removed? Would there be an investigation of the allegations? What is the procedure while an allegation is investigated? Is a prosecutor temporarily removed? Does a senior prosecutor second the case? Has this occurred? What were the outcomes in these circumstances? How were the cases affected?

7. PUBLIC ACCOUNTABILITY

- A. What is the public perception of the criminal justice system? Is it considered fair? Effective? Efficient? If not, why not? What are the perceived key issues facing the criminal justice system?
- B. How does the public view the prosecution service? Is it considered fair? Effective? Efficient? Competent? If not, why not? Is it considered a source of criminal justice integrity and/or reform? Is the prosecution service perceived to be dealing effectively with public corruption?
- C. What is the public perception of the average individual prosecutor? Fair? Competent? Diligent?
- D. What does the prosecution service do with regard to educating the public about the functions it performs and how well it performs them? Does the prosecution service conduct community outreach? Does the prosecution service seek to involve the community in addressing criminal justice priorities? How? Does it reach out to ethnic, religious and minority communities with the same level of effort?
- E. Does the prosecution service facilitate or restrict access to public information about cases that it is prosecuting? Is there a public information capacity so that press and individual citizens may obtain public information about cases? What is the relationship with the press?
- F. Does the prosecution service make a prosecutor or staff available to answer questions citizens may have about the criminal law?

8. PARTNERSHIPS AND COORDINATION

8.1 SYSTEM COORDINATION

Guideline 20 of the UN Guidelines on the Role of Prosecutors exhorts prosecutors to strive to cooperate with the other stakeholders in the criminal justice system to ensure the fairness and effectiveness of prosecution.

- 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 or who need to be brought on board in the future
- B. Does the prosecution service participate in collaborative initiatives to resolve issues challenging the criminal justice system? Does it provide leadership in these initiatives?
- C. To what extent does the prosecution service acknowledge its role in alleviating systemic problems like pre-trial delay or prison overcrowding?
- D. What examples of co-operation are there with other government agencies or institutions? For example, police, the courts, the defence bar, alternative dispute resolution programmes, treatment programmes, probation, the penal system?
- E. Do prosecutors work with non-governmental organisations for example: NGOs dealing with domestic violence or sexual offences, victim support groups, child rights organisations etc.
- F. What partnerships, if any, have been forged with the community (e.g. victim support, referral from or to traditional courts)?
- G. Do some civil society organisations provide services or alternative programmes used by the prosecution service? What are they? What type of activity e.g. diversion programmes for child offenders or to support for victims of sexual abuse, domestic violence?
- H. Do other civil society organizations monitor the work of the prosecuting authority?
- I. How well have cooperative initiatives worked? Have they become institutionalized? Were they failed, what are the reasons cited? What lessons can be drawn from those past efforts.
- J. Has the prosecution service participated or collaborated in the creation of regional or multinational training programs, facilities, sharing of forensic expertise? Is this an ongoing effort? Is it sustainable?

8.2 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. Which donor/development partners are active in criminal justice or prosecution service-related issues, like investigation and prosecution issues?
- B. Is the approach targeted to the prosecution service in particular and divided between donors or sector wide (i.e. taking the issue of criminal justice reform as a whole)?
- C. Is this subject (the prosecution service or the investigation and prosecution of criminal cases) discussed in individual donor country action plans/or strategy papers?
- D. Identify the donor strategy papers for the justice sector and amount of money set aside in support?
- E. Where direct budget support is supplied, identify how much has been earmarked aside for the justice sector?
- F. Where a Medium Term Expenditure Framework is in place, indicate what is set aside for justice in general and for prosecution services in particular?
- G. 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

- International Covenant on Civil and Political Rights 1966
- The Convention Against Transnational Organized Crime 2000
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
- The Convention Against Corruption 2003, see esp. Article 11
- Guidelines on the Role of Prosecutors 1990
- Declaration of 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
- Code of Conduct for Law Enforcement Officials 1979
- Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters 2002
- Code of Conduct for Public Officials (General Assembly resolution 51/59)
- Basic Principles on the Independence of the Judiciary 1985
- 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

- Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators 2004

INTERNATIONAL ASSOCIATIONS

- Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors of the International Association of Prosecutors (IAP), www.iap.nl.com

DRAFT

- 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.

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 1986
- 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

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
- Prosecution Service Policy/Procedure Manuals, Codes of Conduct, ethics codes, 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 towards Safety and Justice: A Global Guide to the Design of Performance Indicators Across the Justice Sector (Vera Institute of Justice, New York 2003)

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 written sources, and with whom:

	TOPIC	SOURCES	CONTACTS	COMPLETED
2.1	STATISTICAL DATA	<ul style="list-style-type: none"> ▪ Prosecution Service Annual Reports ▪ Ministry of Justice reports ▪ Ministry of Interior reports ▪ National Police Crime reports ▪ Penal System reports ▪ NGO reports: criminal justice system 	<ul style="list-style-type: none"> ▪ Senior Prosecutor ▪ Prosecution Service Management ▪ Prosecution Service Administrator ▪ Ministry of Justice ▪ NGOs working on criminal justice matters ▪ Donor organisations working on the criminal justice sector 	
3.1	LEGAL FRAMEWORK	<ul style="list-style-type: none"> ▪ The Constitution ▪ Acts of the legislature and regulations to those Acts ▪ Court Rules ▪ Government policy documents, "standing orders", circulars ▪ Independent reports made by non-governmental organisations. ▪ Legal texts or academic research papers. 	<ul style="list-style-type: none"> ▪ Legislative offices ▪ Ministry of Justice ▪ Senior Prosecutor ▪ Prosecution Service Management ▪ Prosecution Service Administrator ▪ NGOs working on criminal justice matters ▪ Donor organisations working on the criminal justice sector 	
3.2	DELEGATION OF AUTHORITY	SEE ABOVE	SEE ABOVE	
3.2.1	TRADITIONAL/ CUSTOMARY COURTS	SEE ABOVE	PLUS <ul style="list-style-type: none"> ▪ Leaders of ethnic, tribal or religious communities 	
3.3	THE ROLE OF THE PROSECUTOR IN CRIMINAL PROCEEDINGS	SEE ABOVE	SEE ABOVE	
3.3.1	PROSECUTORIAL DISCRETION	Constitution Acts of the legislature/ regulations to those Acts Court Rules Government policy documents, "standing orders", circulars Prosecution Service Policy and Procedure Manual	<ul style="list-style-type: none"> ▪ Legislative offices ▪ Ministry of Justice ▪ Senior Prosecutor ▪ Prosecution Service Management ▪ Prosecution Service Administrator ▪ NGOs working on criminal justice matters ▪ Donor organisations working on the criminal justice sector 	
3.3.2	ALTERNATIVES TO PROSECUTION	SEE ABOVE	PLUS <ul style="list-style-type: none"> ▪ Bar Associations/Lawyer's groups ▪ Legal Aid ▪ Representatives of alternative programmes 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.1	MANAGEMENT AUTHORITY	<ul style="list-style-type: none"> ▪ The Constitution ▪ Acts of the legislature and regulations to those Acts ▪ Court Rules ▪ Government policy documents, "standing orders", circulars ▪ Independent reports made by non-governmental organisations. ▪ Legal texts or academic research papers. 	<ul style="list-style-type: none"> ▪ Legislative offices ▪ Ministry of Justice ▪ Senior Prosecutor ▪ Prosecution Service Management ▪ Prosecution Service Administrator ▪ NGOs working on criminal justice matters ▪ Donor organisations working on the criminal justice sector 	
4.2	FISCAL CONTROL	<p style="text-align: center;">SEE ABOVE</p> <ul style="list-style-type: none"> ▪ PLUS: Budget documents/reports 	SEE ABOVE	
5.1	MANAGEMENT	<ul style="list-style-type: none"> ▪ Acts of legislature and regulations to those Acts ▪ Government policy documents, "standing orders", circulars ▪ Prosecution Service Policy/Procedure Manuals, handbooks, circulars ▪ SITE VISITS 	<ul style="list-style-type: none"> ▪ Senior Prosecutor ▪ Prosecution Service Management ▪ Prosecution Service Administrator ▪ Line prosecutors ▪ Support staff ▪ NGOs working on criminal justice matters ▪ Donor organisations working on the criminal justice sector ▪ Bar Associations/Lawyer's groups ▪ Legal assistance programs ▪ NGOs as above ▪ Donor organisations as above 	
5.2	ORGANIZATION	<ul style="list-style-type: none"> ▪ Government policy documents, "standing orders", circulars ▪ Prosecution Service Policy/Procedure Manual, handbooks, circulars ▪ Organization chart 	<ul style="list-style-type: none"> ▪ Senior Prosecutor ▪ Prosecution Service Management ▪ Prosecution Service Administrator ▪ Line prosecutors ▪ Support staff ▪ NGOs as above ▪ Donor organisations as above 	
5.2.1	SPECIALIZED UNITS	Same as above	Same as above	
5.3	CASELOAD MANAGEMENT	<ul style="list-style-type: none"> ▪ Prosecution Service Annual Reports ▪ Budget documents ▪ Internal statistical reports ▪ Management reports on caseload ▪ Workload <p>SITE VISITS</p>	<ul style="list-style-type: none"> ▪ Legislative offices ▪ Ministry of Justice ▪ Senior Prosecutor ▪ Prosecution Service Management ▪ Prosecution Service Administrator ▪ NGOs working on criminal justice matters ▪ Donor organisations working on the criminal justice sector 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
5.3.1	CASE MANAGEMENT	<ul style="list-style-type: none"> ▪ Case Files ▪ Documentation of case management system SITE VISITS	<ul style="list-style-type: none"> ▪ Senior Prosecutor ▪ Prosecution Service Management ▪ Prosecution Service Administrator ▪ Prosecutors ▪ Support Staff ▪ NGOs working on criminal justice matters ▪ Donor organisations working on the criminal justice sector 	
5.4	VICTIM WITNESS SERVICES	<ul style="list-style-type: none"> ▪ Constitution ▪ Acts of legislature and regulations to those Acts ▪ Government policy documents, "standing orders", circulars ▪ Prosecution Service Policy/Procedure Manuals, handbooks, circulars ▪ Victim Impact Statements SITE VISITS	<ul style="list-style-type: none"> ▪ Senior Prosecutor ▪ Prosecution Service Management ▪ Prosecution Service Administrator ▪ Prosecutors ▪ Support Staff, especially those assigned to V/W services ▪ Victims, Witnesses ▪ NGOs working on criminal justice matters ▪ Donor organisations working on the criminal justice sector 	
5.5	ADEQUACY OF PROSECUTION SUPPORT	SITE VISITS	<ul style="list-style-type: none"> ▪ Senior Prosecutor ▪ Prosecution Service Management ▪ Prosecution Service Administrator ▪ Prosecutors ▪ Support Staff, ▪ NGOs ▪ Donor organisations 	
6.1	GENERAL STAFFING	<ul style="list-style-type: none"> ▪ Government policy documents, "standing orders", circulars ▪ Prosecution Service Policy/Procedure Manuals, handbooks, circulars ▪ Ethics code ▪ Samples of Recruitment/ Human resources/interview questions Training materials 	<ul style="list-style-type: none"> ▪ Senior Prosecutor ▪ Prosecution Service Management ▪ Prosecution Service Administrator ▪ Prosecutors ▪ Support Staff, ▪ NGOs working on criminal justice matters ▪ Donor organisations working on the criminal justice sector 	
6.1.1	INVESTIGATORS	SEE ABOVE	SEE ABOVE	
6.2	PROSECUTORS			
6.2.1	QUALIFICATIONS SELECTION TRAINING	SEE ABOVE	SEE ABOVE	
6.2.2	STATUS AND CONDITIONS OF SERVICE	SEE ABOVE	SEE ABOVE	
6.2.3	FREEDOM OF EXPRESSION AND ASSOCIATION	SEE ABOVE	SEE ABOVE	
			<ul style="list-style-type: none"> ▪ PLUS: PROFESSIONAL ASSOCIATION 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
6.2.4	INTEGRITY, ETHICS AND PERFORMANCE	SEE ABOVE	SEE ABOVE PLUS: Disciplinary body ▪ BAR Association representative ▪ Defence bar	
7.0	PUBLIC ACCOUNTABILITY	SEE ABOVE	SEE ABOVE PLUS Media ▪ MEMBERS OF PUBLIC ▪ Including former victims, witnesses, accused ▪ MEDIA	
8.1	SYSTEM COORDINATION	<ul style="list-style-type: none"> ▪ Acts of Parliament and regulations to those Acts ▪ Rules ▪ Prosecution Service Policy/Procedure Manuals, handbooks, circular ▪ Government policy documents, "standing orders", circulars ▪ Reports/Minutes of coordinating meetings ▪ Reports/Minutes of community group meetings ▪ 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Senior prosecutor ▪ Heads of other Criminal Justice entities: ▪ Chief Judge ▪ Director of Penal System ▪ Police Chief ▪ Senior Prosecutor ▪ Prosecution Service Management ▪ Prosecution Service Administrator ▪ Non-governmental organisations working on criminal justice matters ▪ Bar associations/Lawyers' associations ▪ Legal assistance programs ▪ Public defender agency, if any ▪ Law Schools ▪ Donor organisations 	
8.2	DONOR COORDINATION	<ul style="list-style-type: none"> ▪ Donor Strategy papers ▪ Progress reports by donor organizations ▪ Independent studies conducted by universities/NGOs 	<ul style="list-style-type: none"> ▪ Donor organisations ▪ Ministry of Justice ▪ Senior Prosecutor ▪ Heads of other Criminal Justice entities: ▪ Chief Judge ▪ Director of Penal System ▪ Police Chief ▪ Prosecution Service Management ▪ Prosecution Service Administrator ▪ 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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ACCESS TO JUSTICE

**Legal Defence
and Legal Aid**

Criminal justice
assessment
toolkit

UNITED NATIONS OFFICE ON DRUGS AND CRIME
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Legal Defence and Legal Aid

Criminal Justice Assessment Toolkit



UNITED NATIONS
New York, 2006

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This publication has not been formally edited.

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1. INTRODUCTION TO THE ISSUE

This tool guides the assessment of the provision of legal representation to people being investigated for or charged with a criminal offence with a focus on provision of these services to the poor or indigent accused. Access to justice is fundamental to the protection of human rights as is evidenced in numerous human rights instruments. In securing justice as a basic human right, the **Universal Declaration of Human Rights** enshrines the key principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, along with all the guarantees necessary for the defence of anyone charged with a penal offence. Article 14 of the **International Covenant on Civil and Political Rights** grants among the minimum guarantees the right to be tried without undue delay, the right to a fair and public hearing by a competent, independent and impartial tribunal established by law and to “defend [oneself] in person or through legal assistance of [one’s] own choosing; to be informed, if [one] does not have legal assistance, of this right; and to have legal assistance assigned to [one], in any case where the interests of justice so require, and without payment” as well as the right to “have adequate time and facilities for the preparation of [one’s] defence and to communicate with counsel of [one’s] own choosing.” The **Body of Principles for the Protection of All Persons under Any Form of Detention** provides that a detained person shall be entitled to have the assistance of counsel, while the **Standard Minimum Rules for the Treatment of Prisoners** recommends that legal assistance be assured for prisoners pending adjudication.

These instruments recognize that when a person's fundamental rights to liberty and life are put at risk by the State, that person has a right to legal assistance to ensure that the State properly meets the burdens and obligations imposed by law to do so, and further, has not violated the rights of the individual in the process. As a result, the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders adopted in 1990 the **UN Basic Principles on the Role of Lawyers** making its first principle the following: “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.” The Basic Principles further place responsibility upon the government and the legal profession itself to ensure access to counsel to everyone, regardless of means or background, as a means of ensuring the right to equality before the law. As a logical extension, governments have the responsibility for funding legal representation when the accused do not have the means to pay for it themselves.

In many countries, the right to counsel at least at some point in the criminal justice process has long been established in the legal or Constitutional framework, though it may be only for the most serious of crimes. The extent to which citizens are aware of this right, as well as their other civil rights, and are able to exercise the right to counsel varies greatly, however. The delivery of legal services to criminal defendants may also vary greatly even within a country, depending on where a person lives, what resources that person has, and what mechanisms are in place to provide such assistance, whether via an appointment system, a contractual system, a legal aid/public defender service or a combination of such mechanisms. The quality of representation by lawyers is influenced by a number of factors as well, starting with the competence of counsel, a sufficient number of competent counsel, the quality of education and training, the caseload carried by that lawyer, the extent to which the duties and obligations of a robust ethical and disciplinary system functions, and whether corrupt practices within the criminal justice system have been allowed to undermine the rule of law.

Further challenging even the most dedicated and honourable of defence lawyers who work on behalf of the poor is the chronic under-funding of their function, despite the recognition of its critical importance in international human rights instruments and often in national constitutional law. Few legislators, facing an electorate that typically responds to law and order initiatives, will advocate higher funding levels for legal representation for the indigent accused as a budgetary priority. As a result, such lawyers are typically paid less than their counterparts in the judiciary and the prosecution service, and they often carry excessive caseloads, pressuring their capacity to provide zealous and effective representation of their clients. Such economic pressures may also act as drivers to yield to pressure to modify advocacy, to challenge only perhaps the most egregious procedural and legal violations in an occasional case, and in the worst scenarios, to engage in corrupt practices, including the payment of bribes to judges,

prosecutors or police officers. Even where defence lawyers do not resort to such misconduct, their status and effectiveness within the courtroom may be diminished by the lack of resources, contrary to the concept of equality of arms, a basic tenet of justice inherent to the right to a fair trial that holds for the process to be fair and just that the prosecution and defence should have access to at least approximately equivalent resources to investigate, prepare and present their cases. Where a defence lawyer has no means or sufficient time to investigate a case independently and the prosecution does not provide access to the evidence it intends to use at trial far enough in advance that the defence lawyer can prepare a defence, then even the most conscientious and dedicated lawyer will be thwarted in providing effective assistance of counsel.

And, because defence lawyers represent people who have been charged with crimes, public opinion tends to associate them with that negative behaviour rather than with the protection of the rights to liberty and justice, even when instances of innocent citizens who have been falsely accused emerge. Further, the advocacy function of lawyers tends to place them in the public eye during times of political and social upheaval. As a result, defence lawyers may even find themselves at physical risk. The response of the public and government in providing protection is less automatic, in many countries, than it might be when a judge or prosecutor is threatened. The Basic Principles mandate that lawyers must be able to carry out their professional duties without official interference, restrictions, threats, or intimidation, but in some countries, defence lawyers are faced with such challenges on a regular basis. And some pay with their freedom or even their lives.

The issues challenging both the legal profession and the mechanisms by which legal representation is made available to the poor must be evaluated when assessing the quality and extent to which criminal defendants receive the assistance of counsel guaranteed under international standards and norms and in designing technical assistance intervention that strengthens the capacity and function of defence counsel and the delivery of their services to the poor.

Technical assistance in the area of the provision of criminal defence may include enhancement of the following:

- Support legislative reforms that guarantee legal representation in accordance with international standards and norms
- Develop an integrated provision of legal assistance for criminal defendants and suspects at all critical stages in criminal cases.
- Enhance the regulatory body that governs the practice of law and the licensing/accreditation of lawyers
- Improve the quality of legal education
- Improve the integrity of the justice system
- Enhance the ethics/professional responsibility/conduct code and their practical adoption and application by lawyers.
- Develop a robust disciplinary system that supports integrity in the practice of law by effective enforcement of the ethics/professional responsibility/conduct code.
- Improve allocation of resources for criminal defence services through sound budgeting and financial management.
- Provide improved access to justice, including the use of paralegal assistance as a short-term source of limited legal services where shortages of lawyers leave the poor or rural population with no other access to legal assistance.

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.

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

- Legal Aid/Public Defender Service Reports
- Court Annual reports
- Ministry of Justice reports
- Bar Association Reports
- Ministry of Interior/National Police Crime reports/Penal System reports
- Government bureau of statistics and data collection
- Nongovernmental organisation reports on the criminal justice system

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

- Legal Aid/Public Defender Service
- Ministry of Justice
- Senior Court personnel
- Registrars or Court Managers
- Prosecution agencies
- Bar Associations
- Non-governmental organisations working on criminal justice matters
- Donor organisations working on the criminal justice sector

In some cases, it may be that there is no integrated source of information about the representation of criminal suspects and defendants, especially where no organization exists whose mandate is to provide such representation. Even then the organization may keep statistics only on the clients it has, rather than the number of clients who need such services, so additional data collection may be necessary. The courts and prisons tend to be the next best sources for information about who is represented and who is not, though this may require hand review of court files and prison records. An assessor may need to piece together a statistical profile of who receives legal representation and how through various sources. Technical assistance interventions may include developing the capacity to collect and analyse information about representation of suspects and defendants.

Where such information is available, it will be helpful in helping identify where and what types of legal resources are needed at different stages of the criminal justice process and indicating what entry points for technical intervention opportunities might exist.

- A. How many professionally accredited/licensed lawyers are there in the country being assessed, including per 100,000 of population? How many are actively engaged in the practice of law? How many practice criminal law? Where are they distributed geographically? Are there local shortages of lawyers?
- B. On an annual basis, under rights accorded by the Constitution or national law, how many criminal suspects/defendants were entitled to legal representation during criminal investigation or court proceedings for the last three to five years?
- C. On an annual or other periodic basis, is it possible to determine how many/what percentage of criminal defendants were represented by counsel:
 - At any stage of the criminal proceedings?
 - During the investigative stage?
 - Upon arrest?
 - At their initial hearing?
 - At trial?
 - At sentencing?
 - On appeal?

- D. Is it possible to disaggregate the above information to determine how many/what proportion of the represented defendants were:
- Represented by privately retained counsel for a fee?
 - Represented by privately retained counsel acting pro bono publico?
 - Represented by private counsel appointed by the court (appointed counsel)?
 - Represented by a lawyer who is under a government contract to provide legal services?
 - Represented by a lawyer who is part of a legal aid/public defender system?
 - Represented by a non-lawyer, such as a paralegal or a lay advocate?
- E. Of the criminal defendants who were not represented, is it possible to disaggregate them by:
- Income level? What proportion is poor? Indigent?
 - Custody status (in detention or in the community prior to trial/resolution of case)?
 - Whether they requested the assistance of counsel?
 - Whether they were advised of right to counsel and waived that right?
- F. What is the typical number of clients carried by a private criminal defence lawyer? What is the typical number of clients handled by a legal aid lawyer/public defender at any one time?

3. LEGAL FRAMEWORK FOR ACCESS TO LAWYERS AND LEGAL SERVICES

The following documents are likely to be sources from which to gain an understanding of the legal and regulatory framework for the practice of law and the representation of criminal defendants. 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 rights of criminal defendants and suspects, including the right to representation; the right not to be compelled to give evidence against oneself, the right to be brought before court within a certain number of hours after arrest, the right to be tried without undue delay, etc.
- 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 law, including the establishment of legal representation funding and/or a state-funded legal aid or public defender systems. Criminal procedure codes may establish the courts' obligation to appoint counsel for unrepresented defendants. Other legislative acts may include the establishment of funds held in trust to compensate victims of lawyer misconduct.
- 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 the established procedures for the professional accreditation of lawyers practicing before the court, the ethics code governing the conduct of lawyers, the disciplinary system, and procedures for the violations of the ethics code.
- The Bar Association or Collegium's written procedures and protocols governing admission, pro bono (good works obligations) of lawyers, continuing legal education obligations, etc., bar examination protocol.
- Law school admissions policies, requirements for graduation, clinical programmatic material.
- Government policy documents, "standing orders", circulars and the like often contain the detailed information that regulates the running of the legal aid/public defender systems on a day-to-day basis.

The essential counterpart to determining how the legal and regulatory framework provides for individuals facing criminal charges to obtain legal representation is to examine how and whether it actually occurs and what the quality of the representation is. 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 courts and legal aid/public defender offices, including visits to courts in rural and urban settings, in both relatively well-to-do and impoverished locales.

3.1 RIGHT TO COUNSEL

The right to counsel when charged with a criminal act is integral to the right to a fair trial, a fundamental right recognized by the **Universal Declaration of Human Rights**, the **International Covenant on Civil and Political Rights, Article 14**; and regional human rights treaties and conventions, including the **European Convention On Human Rights and Fundamental Freedoms, Article 6**; the **American Convention on Human Rights, Article 8**; and the **African Convention on Human and Peoples' Rights, Article 7**.

Principle 1 of the **UN Basic Principles on the Role of Lawyers** states: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings." **Principle 5** requires that all people detained or arrested or charged be immediately informed of their right to be assisted by a lawyer of their own choosing, with **Principle 7** requiring that a person who has been detained or arrested be given prompt access to a lawyer, but no later than forty-eight hours from the time of arrest or detention. **Principle 6** requires that "in all cases which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.

Principles 2 and 3 require governments to implement efficient procedures and mechanisms that allow effective and equal access to lawyers, and that such access is provided to everyone present in the country and subject to that country's jurisdiction, "without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status." Further governments shall provide sufficient funding and resources to provide legal services for the poor and the disadvantaged, with professional associations of lawyers directed to cooperate in the organization and provision of services, resources, and facilities. The need for communications between lawyer and client to be confidential is a critical to a meaningful exercise of the right to counsel and its attendant lawyer client relationship. **Principle 8** requires that all people who are in custody be provided "with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality." While such visits may be observed, they may not be overheard. Similarly, **Principle 22** requires governments to "recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

In some post-conflict countries, much of the legal profession may have been targeted and decimated by one or more of the factions engaged in the conflict. As a result, many lawyers may have been forced to flee the country or were killed in the conflict, with the result that in the post-conflict, literally a handful of lawyers remain in the country (see e.g. Cambodia or Rwanda). Even where the Constitution and laws guarantee the right to counsel, in such situations, they may simply be unavailable, requiring that alternative sources of legal assistance, including volunteers from outside the country or paralegals for limited legal assistance, be sought until the population of qualified lawyers can be restored.

- A. Is the right to counsel granted by the Constitution or the law? If yes, at what stage does the right to counsel attach or take effect? Investigation? Arrest? Charging? Trial? Appeal? When a judge determines that justice requires?
- B. Is the right to counsel guaranteed to certain vulnerable individuals, like juveniles or mentally disabled adults? Please see **CROSS-CUTTING ISSUES: JUVENILE JUSTICE** for further background on the special skills required for representation of juveniles and their special needs. Are lawyers appointed to such individuals immediately, regardless of means?
- C. Does the law require that people who are detained or arrested be advised of their right to the assistance of legal counsel? How soon after arrest? Please see the **Standard Minimum Rules for the Treatment of Prisoners (SMR), Rule 92**. Are there provisions in the law that prevent the use of admissions made after a request for a lawyer is made, but the request is not honoured?
- D. Does the law require that counsel be appointed with costs borne by the state if the defendant is not able to afford to retain counsel for him/herself? What is the legal standard used? Must the defendant be indigent? Poverty level? Working poor? Are procedures established by law or regulations for determining who qualifies for appointed counsel at no cost or nominal cost?
- E. Does the law establish a mechanism for the provision of legal services to the poor and disadvantaged? Is it a funding scheme or does it also establish a state-funded entity to provide legal services? Does the entity (often known as Legal Aid or the Public Defender)

provide only criminal representation? What other legal services/assistances may its legal staff provide? Please see also **Section 4**.

- F. If appointments are made by the court, is it at the initial detention review hearing or only upon the filing of formal charges? Are indigent defendants represented in the course of the process from arraignment through the appeals hearings, not just at trial? Once appointed, are lawyers allowed by law to be present at interrogations? Does this occur in practice?
- G. Under the law do appointed counsel merely have the obligation/authority to advise defendants on their legal rights and options or do they appear in court to represent the defendant in criminal proceedings? Do they represent criminal defendants in any corollary proceedings such as civil suits for injuries or damages? Does the law distinguish between legal advice and representation?
- H. Is there a right to choice of legal counsel, so long as they are qualified? What happens when a criminal defendant wants to change lawyers? What happens when a criminal defendant wants to change his/her court-appointed lawyer? Does the law make provisions for allowing counsel from another jurisdiction (or country) to represent a defendant? To what extent do either of these occur in practice?
- I. Does the law allow defendants to choose to represent themselves? What legal provisions/procedures/inquiries are required to verify that self-represented clients are choosing this option freely and knowingly? Does the law allow judges to appoint back-up counsel to assist a defendant where justice may require? Is self-representation in reality typically a choice or the consequence of a lack of funds or information or availability of defence counsel?
- J. Does the law create a lawyer–client privilege, protecting lawyer client communications from disclosure? Are there narrowly drawn exceptions such as criminal behaviour and disclosure to prevent serious injury or death? Does this privilege cover all the consultations between the client and his lawyer, particularly the initial consultation a client seeks from a potential defence counsel? Does this privilege extend to other employees of the lawyer? If there is no privilege, what is the impact on lawyer-client communications? Are defence counsel allowed reasonable access to their clients who are detained? Do defence counsel need to obtain the permission of the prosecutor to get access? Are conversations private and confidential even if the meeting is visually monitored?

3.1.1 Legal Literacy / Public Awareness

Even the most comprehensive constitutional and legal framework will not protect the rights of the people if they are unaware of or do not understand those rights and protections and either do not assert them or waive them without understanding the consequences. Such lack of understanding can be especially detrimental in the context of criminal investigations and proceedings. **Principle 4 of the of the UN Basic Principles on the Role of Lawyers** calls upon both the government and professional associations of lawyers to promote programmes to educate and inform the members of public about their rights and duties under the law and the role of lawyers in protecting fundamental freedoms, with special attention to be given to assisting the poor and other disadvantaged to enable them to assert their rights and to call upon the assistance of lawyers when necessary.

- A. To what extent have members of the public been educated about their civil (human) rights and duties? Is such education required in public schools? Have the government and/or the lawyers professional associations (bar association or collegium) developed and implemented community legal education initiatives? What avenues have been used to raise public awareness of civil rights: multi-media campaigns, community forums, public service announcements, adult education programmes)? Have such initiatives targeted poor or otherwise disadvantaged audiences? Are such initiatives conducted in minority languages as well as the official language(s)? If not, why not?

- B. Does the typical person who has been arrested or detained or questioned understand the legal rights they have and what the ramifications may be of waiving those rights? For example, when being questioned by the police, would that person have sufficient education to understand, for example, that he/she has the right to remain silent, that he/she has the right to consult a lawyer before answering questions and that to waive those rights may mean that what he/she says may be used as evidence against him/her? Are police officers legally obligated to inform suspects/arrestees of these rights? Is the burden upon the government to show that the defendant understood those rights and understood what it meant to waive them if it tries to use evidence obtained via such a waiver in a criminal proceeding?

3.1.2 Right to Counsel in Traditional / Customary Courts

Please see **ANNEX 1, COMPARATIVE LEGAL SYSTEMS** for further background. Please see also **Access to Justice: The Courts, Section 3.3.1**

- 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? If they hear criminal cases, do they have limits on their criminal jurisdiction (types of cases they can hear) and the sentences that they can pass down?
- C. Where such courts hear criminal cases, do the accused have a right to counsel? Are lawyers allowed to appear on behalf of their clients? If they are not, what level of legal assistance or advice do they provide? Are there consequential human rights or equal protection issues?

3.1.3 Legal Representation before Military Courts / Special Tribunals

Please see also **Access to Justice: The Courts, Section 3.3.2**

- A. Are there military courts operating in the country with jurisdiction over civilians or special tribunals outside the conventional court system? Under what circumstance do military courts or special tribunals try civilians for criminal offences? How do such civilians obtain representation? Does the military provide legal representation through a system of its own? May civilian lawyers represent these defendants? Are they represented by counsel at all?
- B. Where special chambers of courts or panels (outside the general structure of courts) have been created to deal with the aftermath of armed conflict or have exclusive jurisdiction over serious crimes such as crimes against humanity, genocide, war crimes and torture, what rights to legal counsel/representation do defendants charged with crimes handled by such bodies have? Do they differ from what is provided in the standard criminal courts? How?

3.2 LEGAL FRAMEWORK OF THE PRACTICE OF LAW

- A. Are there statutory provisions or rules that regulate who may engage in the practice of law? Were these promulgated by the highest court or the legislature? Who, possessing what qualifications, may hold themselves out to be lawyers authorized to practice law? Are there different types of lawyers, e.g. the British differentiation between barristers and

solicitors? What other types of legal professionals and services are recognized and/or regulated by the law and rules? Please see also **Sections 5.1 and 5.2** regarding qualifications.

- B. What statutory or regulatory provisions govern the handling of client funds and resources? Are they enforced?
- C. Are lawyers required by law to indemnify themselves so that their clients are protected against losses caused by malpractice or misconduct? Does the law provide for a fund into which lawyers must contribute to compensate clients whose funds were misappropriated by lawyers?

3.2.1 Professional Responsibility

- A. Do the law or rules contain a code of ethics (code of professional responsibility/conduct) for lawyers under the law or rules? If not, has one been established by the governing body of the legal profession? Has a code been promulgated? Is it available to the public? If so, does the code create standards of care or performance in the representation of clients? What obligations and duties does the code impose upon lawyers who represent criminal suspects and defendants? Are lawyers bound by the code of ethics? Is it aspirational? Is it followed in practice? What obligations does the ethics code place on lawyers who become aware of ethical breaches by other lawyers?

Principle 26 of the **UN Basic Principles on the Role of Lawyers** requires that a code of professional conduct be established by the legal profession through its appropriate organs or by legislation in accordance with national law and custom, as well as international standards and norms.

- B. Are the obligations concerning conflicts of interest clearly explained? Are they followed?
- C. Does the law create a disciplinary system for lawyers who breach ethical or legal obligations? Who controls the disciplinary body, i.e. the bar, the courts, the Ministry of Justice? How are complaints made? Who investigates them? Are lawyers advised when complaints are made against them? Are the complaints kept confidential until there are at least some indicia that they may be substantive? Are those complained against entitled to a hearing? To representation by counsel? Who conducts the disciplinary hearing? Is there a right to appeal the decision to a court? Have disciplinary proceedings taken place? With what results? Have lawyers been reprimanded? Suspended from the practice of law for a certain time? Disbarred, that is, lost the right to practice law? Have any also been criminally prosecuted? What were the results? Are the outcomes of any of these proceedings publicized?

Principles 27 through 29 of the **UN Basic Principles on the Role of Lawyers** require that charges or complaints made against lawyers shall be handled promptly and fairly and according to established procedures. Lawyers must have a right to a fair hearing, including the right to be assisted by a lawyer of their choice. Disciplinary proceedings are to be held before an impartial disciplinary committee established by the legal profession or an independent statutory authority or before a court, with decisions being subject to independent judicial review, with the basis for the determinations of the disciplinary proceeding being the code of professional conduct and other recognized ethical standards.

- D. Are fee disputes handled in separate proceedings?

4. ACCESS TO LEGAL DEFENCE SERVICES

The provision of legal defence services to people who are suspected or have been charged with committing a crime can be accomplished in a variety of ways and in many countries several or all mechanisms for the obtaining legal representation described below may be present and used in combination. The availability of legal representation for people with means is rarely an issue with the exception of those who may be in remote regions where there are no lawyers available or in the post-conflict countries where the population of lawyers has been decimated. Far more common is the challenge of providing the poor with access to defence services that are competent and sufficiently resourced. Legal assistance may be provided only by lawyers, but where they are in short supply, some limited legal services may be provided by paralegals, lawyers-in-training, law students, or lay advocates. With proper supervision and training, such assistance can be a vital resource for populations whose needs might go otherwise unmet. In systems where the provision of legal services is not regulated by law or self-regulated by the bar, however, the quality of legal services provided by anyone, lawyer or not, may be unreliable. Where such fundamental freedoms as the right to liberty are at risk, the provision of quality legal assistance to the poor is especially critical in criminal cases. Three basic approaches are summarised below:

Appointed (*Ex officio*) Counsel: A lawyer in private practice is appointed typically by a judge or other court official to represent an indigent (or otherwise entitled to assistance of counsel) criminal defendant. Appointment of counsel in some systems may be made instead by the bar or a legal aid agency. Appointment criteria may range from simply being admitted to the practice of law and happening to be in the courtroom to having completed training and other requirements to be included on a list of qualified criminal defence lawyers from which appointments may be made, often on a rotating basis, depending upon the complexity of the case and their level of experience, to prevent the appearance of favouritism and to reduce the pressure upon lawyers to conduct themselves in a manner that will encourage appointments to cases in the future, rather than necessarily what is in the clients' interest. Again, the latter approach may ensure a higher quality of legal representation, especially where the performance of lawyers evaluated in the context of the duties and obligations of the code of professional responsibility. Lawyers' fees are paid by state funds, ranging from a set fee per case to a set hourly rate, with the lawyer submitting a bill describing the time and effort spent. Some appointment systems provide a budget for or reimburse expenses associated with case preparation and investigation. Those systems that do not run the risk of forcing lawyers to decide whether to reduce further via out of pocket expenses what may already be quite modest fee in order to mount an appropriate defence. In some cases, lawyers may volunteer their services as a means of fulfilling the obligation to public service associated with being admitted to the practice of law (mandatory in some systems, hortatory in others). However, the need for criminal defence representation far exceeds the availability of lawyers being willing or able to work on a pro bono basis.

Contractual Defence Lawyers: Governments, using their contracting and procurement authority, award contracts to law firms, local bar associations, NGOs and individual lawyers to provide criminal defence representation on affixed fee basis for a geographic jurisdiction or for a pre-determined number and type of criminal case. Contracts may be awarded on a competitive or simple application and qualification basis. Many jurisdictions have provided for a number of quality control clauses that include verification of compliance with the duties and obligations of the code of professional conduct, maintenance of contact logs, records and files. Where sufficient monitoring of contract performance exists, this can be an effective means for providing criminal defence representation.

Legal Aid (Public Defender): Here the legislature funds a separate governmental agency whose mandate is to provide legal representation to the poor. In some Legal Aid systems, a wide range of legal services is provided. In others, especially in those referred to as the named Public Defender, legal representation is limited to criminal defence and appeals. In essence a governmental law firm whose clients are the poor, these agencies employ a staff of full-time lawyers, paralegals, and often support staff including investigators, interpreters and social workers. These agencies are challenged by inadequate levels of funding to provide sufficient staff and resources to defend the number of defendants who qualify for representation, with caseloads becoming overwhelmingly large and unmanageable. In some systems, these agencies have the ability to hire private lawyers to take on individual cases that require special expertise or where the representation of multiple defendants who may be mounting differing legal defences presents an ethical conflict. The same ethical duties and obligations of the code of professional conduct apply to legal aid lawyers/public defenders as the private bar in the vast majority of jurisdictions.

In addition to the above mechanisms for legal services, some countries support other approaches to providing legal aid to indigents, including legal clinics, pro bono and Street Law programs, which can indeed serve as supplementary means for providing legal aid. However, few provide the depth of service required in the representation of criminal clients on a sustainable basis to provide the basis for a system of providing legal services.

4.1 PRIVATE REPRESENTATION

- A. Does it exist? Can a person who has the means to do so obtain private counsel? What estimated proportion of criminal defendants can afford private counsel? What is the extent to which private defence lawyers are used? Other than ability to pay, what are the barriers that a person who is criminally charged may encounter to obtaining private counsel?
- B. What is the customary manner of charging clients for the private lawyer' s services in criminal cases? Flat fee? Paid in advance? Over time? Hourly rate charged against a set amount? Do lawyers accept barter, i.e. goods and services in lieu of cash?
- C. In countries where no effective public appointment or legal aid public defender system exists, what sorts of economic burdens are placed upon the families of defendants in order to raise the money required for legal fees? Do they go into debt?

4.2 APPOINTED (EX OFFICIO) REPRESENTATION

- A. In systems where criminal suspects and/or defendants can be appointed counsel, how often is this mechanism used at the investigation stage? What is the appointment mechanism for appointing counsel prior to charges being filed in court? Must the suspect affirmatively request the assistance of counsel? How is the suspect able to demonstrate that he/she qualifies for state funded representation?
- B. What is the mechanism for appointment of counsel, if any, when a suspect is detained? Are detained suspects/charged defendants brought before the court for a detention hearing when required by law? Is counsel appointed at this time? If not, are counsel appointed at the time of arraignment? By the judge conducting the hearings? By the court? By a bar official who maintains a list of private counsel seeking appointments?
- C. Is there a screening process to determine who qualifies for state-funded representation? When is this conducted? In open court? Prior to the hearing? If there is an option for sliding scale or low cost representation for the working poor, what criteria are used to determine the fee to be paid by the defendant and his/her family? Is the balance paid via a state fund?
- D. How do appointments actually occur? Do counsel who are seeking appointments attend the detention or arraignment hearings in orders to be appointed by the judge? Do established criteria exist for judges to use in appointing counsel in such a manner? What measures, if any, are in place to ensure that qualified counsel are appointed? That appointments are made equitably and fairly, rather than to a favoured few? Is there a sense in the legal community that the zealotness of defence lawyers in representing their clients is tempered by the need to maintain their standing with the judges who appoint counsel?
- E. Are appointments made instead on a rotational basis from a list of qualified counsel? Who maintains the list? What are the criteria/qualifications required to be placed on the list? Are they fair, non-discriminatory, and transparent? How are lawyers notified that they have been appointed? Do they receive enough notice to be able to attend the initial hearing? If not, is the hearing rescheduled so their clients can receive the benefit of the assistance of counsel? Do counsel routinely request a hearing to address custody status where the initial hearing was conducted without the benefit of counsel? Do such hearings result in defendants being released into the community pending trial on a regular basis?
- F. Is there any indication that the prosecution service influences the appointment of defence counsel? This may be particularly true in countries emerging from systems where the Procuracy was the most powerful arm of the justice system and had a monitoring authority over the other institutions

of government. What is the impact upon the defence mounted on behalf of criminal defendants? Has the bar or a legal NGO challenges such practices?

- G. How are the services of appointed counsel compensated? Does the court receive petitions for payment and rule upon whether to pay all or a portion of them? Do lawyers need to certify that they have provided legal representation in accordance with the standards required by the code of professional responsibility? Is there a set fee paid per case? Is there a schedule of fees depending on the complexity of the case? Are the fees sufficient to cover the costs of representation? Is there separate compensation available for investigative expenses, forensic analysis, expert witnesses, including psychiatric experts, or are lawyers expected to pay this out of the fees they will receive? If so, how often are such resources utilized by counsel?
- H. Are sufficient numbers of lawyers available who speak minority languages to be able to appoint counsel who speaks the same language as the client? If not, where lawyers are appointed to represent clients who need interpretation services to communicate with counsel, how are interpreters provided? Is the lawyer expected to hire an independent interpreter? Are communications restricted to when a family member is present or at court where a court interpreter may be available? What is the impact on the confidentiality of lawyer client communications? What is the impact on the lawyer's ability to develop a defence for his/her client?
- I. Can a lawyer make a living by accepting appointments as the main source of his/her caseload? If the fees are nominal, is it common for s to accept too many appointments to provide the representation required under the code of professional responsibility? Are there indications that clients are being neglected as a result? Does the appointing authority limit the number of appointments that may be carried by a single lawyer at a time?
- J. Is there any evidence that lawyers who have accepted court appointments and their compensation scheme are demanding additional payment from the clients or their clients' families? Is the appointing authority aware of such cases? How has the system responded to such abuses, if at all? Are such lawyers charged with disciplinary violations? Are they barred from receiving further appointments?
- K. What are the greatest challenges associated with the appointment system? Does the current system consistently provide access to effective and competent representation to criminal defendants? Is the legal community satisfied with the current system? What would it change?

4.3 CONTRACTUAL LAWYERS

- A. Does the government provide state-funded legal representation to indigent and otherwise entitled criminal defendants by obtaining contractual legal services via its procurement system? What agency is in charge of administering the procurement of legal services for criminal defendants? Who develops the terms of reference for such contracts? Do the terms require compliance with standards of representation provided for in the code of professional responsibility or other standards or performance? Who monitors, if anyone, performance and compliance with contractual requirements? Does the contract administrator have a background in law and understand the ethical and practical requirements of criminal defence work? How does the contracting authority balance the need to monitor contractual performance with the need for lawyer client confidentiality? Have performance indicators been designed to measure compliance in ways that do not impinge on the lawyer client relationship?
- B. How are the contracts awarded? Are awards based on a competitive bidding process or a qualifications process in which law firms, NGOs and individuals who demonstrate that

they have the qualifications, experience and capacity to provide criminal defence work are granted the criminal defence work in a geographic area or for certain types of criminal cases at specific court levels? In either case, is the process publicized, transparent and fair? Are bids/proposals reviewed by a committee using a predetermined set of criteria? From where are members of the review committee drawn? Are members of the committee made aware of their ethical obligations in awarding contracts and do they certify that their deliberations have been conducted with integrity?

- C. Upon what basis are legal contractors paid for their services? Do they receive a flat rate fee per client or is the fee predicated on certification of the services provided in accordance with the standards of performance? Is there a separate budget for investigative services, forensic analysis, and expert witnesses, including psychiatric experts, interpreters? If not, does the fee paid per client/case reflect the potential need for such resources?
- D. Are sufficient numbers of lawyers who speak minority languages under contract to be able to meet the representation needs of clients whose primary language is not the official language of the justice system? Are such lawyers/law firms/NGOs/bar associations actively recruited in the contracting/bidding process? If not, are additional resources available/ higher fees paid when representing clients who need interpretation services so that the lawyer may hire an interpreter? Where none of these options is provided for, are communications restricted to when a family member is present who is able to interpret or at court where a court interpreter may be available? What is the impact on the confidentiality of lawyer client communications? What is the impact on the lawyer's ability to develop a defence for his/her client?
- E. How many legal services contractors provide criminal defence services? Are they individual lawyers? Law firms? NGOs? Bar associations? How is the criminal caseload apportioned among the contractors? What is the typical caseload carried per lawyer? Is the caseload of a size that allows the lawyer to fulfil the obligation of the rules of professional conduct and the obligations of the contract?
- F. Have the contracts of any legal services contractors been terminated? Why? Were the reasons due to failure to perform? Political or other non-meritorious bases?
- G. What are the greatest challenges associated with the contractual system? Does the current system consistently provide access to effective and competent representation to criminal defendants? Is the legal community satisfied with the current system? What would it change?

4.4 LEGAL AID / PUBLIC DEFENDER SERVICE

- A. Does the service provide legal services other than criminal defence and appeal? Does it handle associated civil claims that the criminal defendant may be subject to? Does it provide general legal services to non-defendants? If so, does the service segregate the criminal defence staff from other legal services divisions to minimize conflicts in representation?
- B. Does the service have the ability to hire on a per case basis outside counsel to represent co-defendants in cases who may have incompatible defences?
- C. Where the legislature has created an entity whose mandate is to provide legal services for the poor, in what branch of government does the entity reside? Is it considered to be an independent agency? To which ministry or department is it accountable? How does the entity maintain its independence?

- D. How is the leadership of the service established? Appointment by the executive, legislature, judiciary, an independent oversight commission? Is the head of the legal aid/public defender service a qualified legal practitioner?
- E. How is the service funded? Who controls the budget? What is the budgetary process under the law? Does the legal aid/public defender service 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? Who oversees spending? Is the budget sufficient for the legal aid/public defender service to fulfil its mandate?
- F. Does the legal aid/public defender service 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?
- G. Does the legal aid/public defender service have an organizational chart that describes the lines of authority and staffing scheme? How is the service organized geographically? Do local offices exist in addition to a central office?
- H. Does the service staff reflect the population? Is any group over- or under-represented? Is the service 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?
- I. What other types of staff are part of the legal aid/public defender service? Are there staff investigators? Social workers who are capable of assessing clients' treatment and social service needs? Interpreters? Legal assistants/paralegals who help prepare filings, gather information? Is staffing sufficient to meet the service's mandates throughout the country? If not, why not?
- J. Are staff lawyers assigned by complexity of crime or by the court in which a defendant is charged? What is the typical caseload carried by staff lawyers at each level of court or type of assignment. Does management believe that the caseload is appropriate? If management recognizes that the caseloads are excessive, what kinds of support are they able to provide the line lawyers, if any?
- K. Do staff lawyers have sufficient substantive and material resources including statutes, codes, regulations, supplies, access to forensic service, investigative resources to fulfil the duties and obligations to their clients? Do they have offices or conference rooms in which they can meet with their clients in private?
- L. Does the legal aid/public defender service hire experienced defence lawyers? Recent admittees to the bar? How does it train its legal staff? Does it include training on the ethical issues associated with the representation of criminal defendants? On client-lawyer privilege? Do senior lawyers mentor or otherwise supervise less experienced lawyers?
- M. How does the senior management ensure that staff lawyers are providing quality representation? How does senior management deal with lawyers who neglect their clients? Commit malpractice? Who participate in corrupt acts? Is there an internal disciplinary system? Are staff lawyers referred to the lawyer grievance/disciplinary system?
- N. How does the legal aid/public defender service deal with a client who wants to discharge his/her lawyer or be represented by a different staff lawyer? Are such requests honoured? More than once?
- O. Do legal aid/public defender service legal staff act as back up counsel to defendants charged with serious crimes who insist on representing themselves? How often? Does the service do this as a matter of policy or when ordered by the court?

- P. How is the quality of representation by the legal aid/public defender service regarded by the legal community? By the public? What are the key perceived issues confronting the service? From the perspective of the leadership structure of the service? From the perspective of the line lawyers? From the perspective of the legal community? The public? The service's clients?

4.5 LEGAL ASSISTANCE BY NON-LAWYERS

The American Bar Association has defined a paralegal as a "person, qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible." Reform initiatives involving paralegal assistance programs have been well received in countries with insufficient numbers of lawyers to meet the legal services needs of the population. While fulfilling a critical need, in the short-term, the long-term role of paralegals should be to augment legal representation by counsel in criminal cases rather than replacing it with services that are more limited. Please see Developing New Approaches to Legal Aid and the Lilongwe Declaration on Accessing Legal Aid in Africa (www.penalreform.org) for more information

- A. Are there paralegals working in the country being assessed? What are they allowed to do in terms of criminal law? What role do they play? What kind of practical skills and training do they receive in order to work as paralegals? In many cases, these may be a special university level course of study or someone who has completed the study of law but does not have the credentials that permit the practice of law. Who provides their practical and ethical training? Law schools, NGOs, local paralegal associations? Does their training include practical exercises? Do they receive continuing legal education to keep them up with changing law? May they also pass their knowledge to others, or educate people about the law? May they train others to become paralegals? What are their ethical obligations when working under the supervision of a lawyer?
- B. Do they interview clients, take statements from witnesses, or collect evidence? Do they visit prisons and educate detainees and prisoners on their legal rights? Do they attend at interviews in the police station? Do they provide advice to victims and witnesses on court proceedings?
- C. Is there an established paralegal aid scheme? How does the paralegal aid scheme liaise with the prosecution service, the courts, and the prison service? Is there an inter-agency coordination panel or committee? Has a memorandum of agreement been agreed with the paralegal aid service and the government? Has a code of conduct been agreed upon between the paralegal aid scheme, the prisons, police and the judiciary? Have the paralegal aid service agreed upon standard forms and procedures

4.6 ADEQUACY OF REPRESENTATION

- A. How conscientious and zealous are lawyers in the representation of their clients? When do most lawyers first meet their clients? Do lawyers meet with their clients before court appearances? Do they visit them in jail? Do they interview them about potential witnesses, defences they may have? Do they obtain information about their connections to the community that may convince the court to release a detained client pending trial? Do they advise their clients about what the legal options and strategies may be? Do they consult with their clients to determine their preferences and wishes? Do they appear to be prepared? Do they know the alleged facts of the case? Do they conduct their own investigations and legal research? (Do they have the resources to do so?) Have they obtained an interpreter where one is needed to work with their clients? Do defence counsel keep their clients apprised of the status of their case?

- B. Do defence counsel appear in court with their clients? Is it common for lawyers to skip court appearances? Do the judges proceed without them? Are there any consequences when they fail to appear or is this the normal practice?
- C. Do lawyers routinely waive the appearance of their clients at legal proceedings? Is this custom or is it connected to difficulties in transporting detained clients to court? Do lawyers obtain the consent of their clients in waiving their appearance?
- D. How vigorously do lawyers advocate on behalf of their clients? Do defence lawyers challenge or object to motions by the prosecution? Do they object to witness testimony or the introduction of evidence? Do they challenge the reliability of evidence proffered without a proper foundation establishing its relevance? Do they challenge the admissibility/voluntariness of statements made by their own clients? Do they waive proof of critical aspects of their clients' cases?
- E. Do defence lawyers, when they have a good faith basis, alert the court to coercion, abuse, or torture experienced by their clients at the hands of the authorities? If not, why not?
- F. Do defence lawyers who represent juveniles advocate for their diversion from the criminal justice system whenever possible? Do they make a clear record of the special needs of juveniles? Please see **CROSS-CUTTING ISSUES: JUVENILE JUSTICE** for additional information on the special needs of juveniles in conflict with the law.
- G. If plea agreements are possible, or when entering a plea of guilty and forgoing a trial (where possible, as some countries require a trial no matter what the plea), does the lawyer review with the client what rights the client is waiving, such as the right to a public trial, the right to examine witnesses, the right to present evidence, the right to call their own witnesses, the right to appeal the verdict, the right to appeal the admission of evidence that has been objected to, etc.? Is this waiver of rights done on the record in court?
- H. Do lawyers typically offer evidence of their clients' history, qualities, and special needs at sentencing hearings? Do they present testimony, i.e., character witnesses, psychological assessments? Do they rely on the pre-sentencing reports? Do they verify the accuracy of the pre-sentencing reports and challenge inaccuracies?
- I. Do lawyers typically pursue appeals on behalf of their clients? Move for reconsiderations of rulings or sentences? Do defence counsel assist in parole hearings?
- J. What are the differences in the advocacy of a privately retained defence lawyer in comparison to a publicly funded lawyer? How do judges or prosecutors treat privately retained counsel or their clients in comparison to publicly funded counsel and their clients?
- K. What mechanisms, if any, are available to replace defence counsel if it becomes clear to the court or the client that the defence counsel of record is not fulfilling even the most basic duties and obligations to his/her client? What are the consequences to that lawyer?

4.6.1 Challenges to Effective Representation

- A. Are the positions of judge, prosecutor, and defence lawyer career paths from university to retirement or is it possible for a lawyer to move from one role professionally to another? If movement is possible, does it occur with some regularity? What are the ramifications of this mobility or lack of it with regard to the status of defence lawyers?

- B. Is there general parity between lawyers from the legal aid office and prosecution with respect to resources and status? If not, what are the differences? Are the differences significant?
- C. What is the status of publicly compensated criminal defence lawyers? Is their remuneration consistent with their position? Is their salary reasonable when compared to the local cost and standards of living? How does it compare to that of judges, prosecutors, and lawyers in private practice?
- D. Do the prosecutor and defence counsel have “equality of arms” in presenting their cases/arguments? Is evidence/witnesses to be called appropriately shared? Is the presumption of innocence correctly applied? Is the lawyer-client privilege honoured?
- E. What is the interaction between the judge, the prosecutor, and the defence lawyers in court? Are communications mutually respectful? Does the judge defer to the prosecutor? Does the judge hear out or prematurely cut off the arguments of defence lawyers?
- F. Have defence lawyers or their families been subjected to threats or attacks? What was done to protect them? What was the source of the threat? Other criminal defendants? Political or governmental sources? Have threats against defence lawyers been systematic? Have lawyers left the country to protect themselves? Please see Principle 16, **UN Basic Principles on the Role of Lawyers**.

5. CRIMINAL DEFENCE LAWYERS

5.1 EDUCATION

Principle 9 of the **UN Basic Principles on the Role of Lawyers** requires that governments, professional associations of lawyers and educational institutions ensure that “lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.” **Principle 10** charges these same bodies with ensuring that entry and continued practice into the profession is open to everyone regardless of “race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.” (The latter may not be the basis for discrimination in some countries, including the United States.) **Principle 11** further urges that members of groups, communities or regions that have been discriminated against or have been underserved be given special opportunities to enter the profession and also to develop the skills appropriate to represent the needs of their groups/community. In some countries, barriers to the study of law may include the cost of such an education, the lack of accreditation of law schools (or other standards that assure the quality of the education provided), or demands for bribes by university officials.

- A. To become a lawyer in the country being assessed, what course of study must be pursued and what level of education must be attained in order to be a lawyer? University level? Post-graduate study? Can one fulfil the educational requirements by reading the law under the supervision of an experienced lawyer?
- B. Are law schools/universities subject to accreditation in the country being assessed? Are there any independently accredited institutions offering the study of law? How many?
- C. On what basis are students admitted to universities/ law schools? Scholastic record? Score on a standardized test? Ability to pay? Payment of a bribe to university officials?
- D. Are law school students representative of the demographics of the country being assessed? Is any group over- or under-represented? Are women proportionally represented? Have they been historically part of the legal profession? Are efforts being

made to attract candidates from under-represented or disadvantaged groups? If not, why not?

- E. What is the approach to teaching law? Is the basic approach based upon memorization or upon analysis? Are law students given the opportunity to participate in activities like moot court competitions or work on legal journals? Are students provided the opportunity to participate in law clinics or other intern- or externships in which they learn trial skills and how to work with clients? Law clinics associated with law schools/universities allow students to develop professional skills via a combination of theoretical classroom instruction, mock trial exercises, and by working on actual cases under the supervision of a faculty lawyer. In essence a teaching law firm staffed by the supervising professor and law students, law clinics typically provide legal services to the poor, the vulnerable and the disadvantaged. In the United States, state law or the court rules authorize students to represent clients and to appear in court under the supervision of a faculty lawyer in such programs. In other countries, NGOs and lawyers' associations may provide similar opportunities for law students.
- F. Does coursework or any clinical program focus specifically on criminal defence? Can students specialise in criminal defence?
- G. Have the universities that offer the study of law or the law schools been the subjects of reform initiatives in the last five years? Is reform of these institutions an issue in the country being assessed? What changes are being advocated and by whom?

5.2 ADMISSION TO THE PRACTICE OF LAW

In some countries, this process may be known as being admitted to the bar. In other countries, gaining the credentials to practice law may require being elected to a Collegium.

- A. In countries where lawyers must be certified or accredited to practice law, what does the certification/accreditation process require in addition to fulfilling basic educational requirements? Is the process fair and transparent? Do qualified candidates routinely receive these professional credentials, no matter what their age, gender, religion, race or ethnic background might be? Are the qualifying criteria made available to the public?
- B. Are candidates required to pass a lawyer's or bar examination? How often and where are such examinations held? What is the cost of the examination? Are either of these barriers to candidates who live in remote areas or who are impoverished or both?
- C. Who administers the examinations? Who grades them? What is the annual pass rate? Does the examination process demonstrate integrity? How many opportunities are candidates given to pass the examination? What are the career consequences of failing to pass?
After corruption scandals involving the sale of test questions undermined the integrity of the examination process in at least one country, officials decided publish all of the potential test questions in the newspaper prior to the examination.
- D. Does the examination include questions about ethics and professional responsibility among its subject areas? If not, is there a separate examination dealing with professional responsibility and ethics?
- E. Is there a background check or vetting of candidates? Under what circumstances, if any, may a candidate with a prior criminal record be admitted to the practice of law? Is it possible for someone who has been diagnosed with a mental illness to practice law?
- F. Is there a good character requirement for admission? Are the factors that may be used to determine good character defined? Have any of these factors been challenged?

- G. Is it possible to appeal a rejection or denial? On what grounds? Is there a procedural process for judicial review when a final appeal is lost? Have any such appeals been successful?
- H. Are there allegations that the bar/collegium/professional association is protecting established lawyers from competition by artificially limiting membership? Has the admission process become politicized? Are some candidates refused professional credentials because of their religious or political affiliations or lack thereof or on other discriminatory grounds? Have competing professional organizations emerged that certify/accredit lawyers?
- I. Does the bar/collegium/ professional association require the payment of an entrance fee to gain admission? If so, is this a nominal fee to cover administrative costs that can be waived upon application by a candidate of limited means or is it, in the context of the country's economy, a barrier to entering the profession? Do candidates go into debt to pay the fee? Is the level of debt so disproportional to the potential annual income that it may act as a driver to corrupt behaviour?
- J. How do lawyers develop a speciality in criminal defence work? May lawyers hold themselves out to the public as having special expertise in criminal defence work? In the representation of juveniles in conflict with the law? In the representation of vulnerable adults in criminal matters?

5.3 TRAINING

- A. Are lawyers required to complete additional or continuing legal education (CLE) or training to maintain their membership in the bar or collegium? How many hours must they complete annually? What is the source of the training? Bar associations? Law Schools? If yes, how often do they take CLE courses? How many hours or credits must they complete annually? Must this include coursework on ethical issues? What is the potential sanction for lawyers who do not complete their CLE requirements? Suspension from the practice of law until they fulfil the requirements? Fines? Are these requirements enforced?

6. PARTNERSHIPS AND COORDINATION

6.1 SYSTEM COORDINATION

- A. To what extent do the various bodies that are able to appoint or provide criminal defence services to the poor coordinate their efforts? How do they avoid wasting resources via redundant appointments? Is there a coordinating body of such entities? Do they work cooperatively? Have they been effective in developing responses to address gaps or other issues?
- B. 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 or who need to be brought on board in the future? Does the head of the legal aid/public defender service participate and contribute the perspective of the criminal defence bar and its clients' rights and needs to these efforts?
- C. Do user committees exist? Who sits on them? Do they include former defendants? Are members of the minority communities included? Have they been effective in contributing to the development of criminal justice initiatives?
- D. What partnerships with the legal community or the community at large (e.g. victim support, legal assistance, referral from or to traditional courts) exist?
- E. Do other civil society organizations provide support by monitoring what is happening at courts? Do some provide services that are used by criminal defendants?

6.2 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 (provision of criminal defence services to the indigent) discussed in individual donor country action plans/or strategy papers?
- C. Where direct budget support is supplied, identify how much has been earmarked for the justice sector?
- D. Where a Medium Term Expenditure Framework is in place, indicate what is set aside for justice in general and for criminal defence 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
- Basic Principles on the Role of Lawyers, 1990
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
- Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power 1985
- Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters 2002
- 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
- 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

- 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.

The electronic version of the Criminal Justice Assessment Toolkit will be updated upon the issuance of the finalised 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
- Bar Association/Collegium Policy/Procedure Manuals, handbooks, circulars, annual reports
- Legal Aid/Public Defender 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)
- Developing New Approaches to Legal Aid (www.penalreform.org)
- Lilongwe Declaration on Accessing Legal Aid in Africa (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 written sources and with whom:

	TOPIC	SOURCES	CONTACTS	COMPLETED
2.1	STATISTICAL DATA	<ul style="list-style-type: none"> ▪ Legal Aid/Public Defender Service Reports ▪ Performance Reports/Ministry of Procurement/Finance ▪ Court Annual reports ▪ Ministry of Justice reports ▪ Bar Association Reports ▪ Ministry of Interior/National Police Crime reports/Penal System reports ▪ Nongovernmental organisation reports on the criminal justice system 	<ul style="list-style-type: none"> ▪ Legal Aid/Public Defender Head ▪ Legal Services Contract Administrator ▪ Bar/Collegium ▪ Ministry of Justice ▪ Chief Judge ▪ Court Administrator ▪ Registrar/Court Manager ▪ NGOs working on criminal justice matters or providing legal services ▪ Donor organisations working on the criminal justice sector 	
3.1	LEGAL FRAMEWORK/RIGHT TO COUNSEL	<ul style="list-style-type: none"> ▪ The Constitution ▪ Acts of Parliament and regulations to those Acts, incl. Criminal Procedure Code, Legal Aid Act ▪ 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. 	<ul style="list-style-type: none"> ▪ Legislative offices ▪ Legal Aid/Public Defender Head ▪ Legal Services Contract Administrator ▪ Bar/Collegium ▪ 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 	
3.1.1	Legal Literacy/Public Awareness	See above	See above Plus Street Law program personnel	
3.1.2	Right to Counsel in Traditional / Customary Courts	See above	See 3.1 above PLUS leaders of ethnic, religious or tribal communities	
3.1.3	Legal Representation before Military Court / Special Tribunals	<ul style="list-style-type: none"> ▪ Military Code and Procedural Code ▪ Transitional Codes Post-Conflict 	<ul style="list-style-type: none"> ▪ Military Court and Tribunal Senior Personnel ▪ Military Legal Services ▪ Transitional Authority 	
3.2	LEGAL FRAMEWORK PRACTICE OF LAW	See 3.1 above <ul style="list-style-type: none"> ▪ PLUS BAR/ Collegium Rules/ Bylaws ▪ Codes of Professional Responsibility/Ethics/Conduct 	See 3.1 above	

	TOPIC	SOURCES	CONTACTS	COMPLETED
3.2.1	Professional Responsibility	<p>See 3.1 above PLUS</p> <ul style="list-style-type: none"> ▪ BAR/ Collegium Rules/ Bylaws ▪ Codes of Professional Responsibility/Ethics/Conduct/ Disciplinary System Rules and Procedure 	<p>See 3.1 above PLUS</p> <ul style="list-style-type: none"> ▪ Staff/head of the Lawyer Grievance/Disciplinary Board 	
4.1	PRIVATE REPRESENTATION	<p>See 3.1 above PLUS</p> <ul style="list-style-type: none"> ▪ BAR/Collegium Rules/ Bylaws ▪ Codes of Professional Responsibility/Ethics/Conduct/ ▪ SITE VISITS 	<p>See 3.1 above PLUS</p> <ul style="list-style-type: none"> ▪ Private Lawyers ▪ Former clients of private lawyers 	
4.2	APPOINTED (EX OFFICIO) REPRESENTATION	<p>See 3.1 above PLUS</p> <ul style="list-style-type: none"> ▪ BAR/Collegium Rules/ Bylaws ▪ Codes of Professional Responsibility/Ethics/Conduct/ ▪ SITE VISITS 	<p>See 3.1 above PLUS</p> <ul style="list-style-type: none"> ▪ Appointed Lawyers ▪ Former clients of appointed lawyers ▪ Official responsible for the appointment of lawyers, including Court Registrars/Administrators 	
4.3	CONTRACTUAL LAWYERS	<p>See 3.1 above PLUS BAR/Collegium Rules/ Bylaws</p> <ul style="list-style-type: none"> ▪ Codes of Professional Responsibility/Ethics/Conduct ▪ Procurement and bidding documents, contracts ▪ Procurement regulations and certifications ▪ SITE VISITS 	<p>See 3.1 above PLUS</p> <ul style="list-style-type: none"> ▪ Legal Services Contract Administrator Contractual lawyers/firms ▪ Former clients 	
4.4	LEGAL AID / PUBLIC DEFENDER SERVICE	<ul style="list-style-type: none"> ▪ See 3.1 above <p>PLUS BAR/Collegium Rules/ Bylaws</p> <ul style="list-style-type: none"> ▪ Codes of Professional Responsibility/Ethics/Conduct/ ▪ Handbooks, Manuals, Guides, Annual Reports ▪ Acts of legislature and regulations to those Acts establishing and funding the service ▪ Qualification guidelines <ul style="list-style-type: none"> ▪ SITE VISITS 	<p>See 3.1 above</p> <p>PLUS:</p> <ul style="list-style-type: none"> ▪ Head of Service, ▪ Staff Lawyers ▪ Former clients 	
4.5	LEGAL ASSISTANCE BY Non-LAWYERS	<ul style="list-style-type: none"> ▪ Constitution ▪ Acts of Parliament & regulations to those Acts ▪ Court Rules ▪ Procedure Manuals, handbooks, ▪ Government policy documents, "standing orders", circulars ▪ Accounting/Budget documents <ul style="list-style-type: none"> ▪ SITE VISITS 	<p>See 3.1 above</p> <p>Criminal Defence firms and lawyers who hire paralegals Paralegals Paralegal Professional Organizations, if any</p>	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.6	ADEQUACY OF REPRESENTATION	See 3.1 above PLUS BAR/Collegium Rules/ Bylaws <ul style="list-style-type: none"> ▪ Codes of Professional Responsibility/Ethics/Conduct Disciplinary System Rules and Procedure ▪ Reports of Court Monitoring Groups SITE VISITS 	See 3.1 above PLUS COURT MONITORING Groups	
4.6.1	Challenges to effective Representation	See 4.6 above	See 4.6 above	
5.1	CRIMINAL DEFENCE LAWYERS: EDUCATION	<ul style="list-style-type: none"> ▪ SEE 3.1 PLUS ▪ SITE VISITS 	SEE ABOVE Plus: <ul style="list-style-type: none"> ▪ Deans/professors of law schools ▪ Deans/professors Universities with law curricula ▪ Heads of Law Clinics ▪ Law Students/Student Leaders 	
5.2	ADMISSION TO THE PRACTICE OF LAW	See 3.1 above PLUS <ul style="list-style-type: none"> ▪ BAR/Collegium Rules/ Bylaws ▪ Codes of Professional Responsibility/Ethics/Conduct 	SEE 3.1 ABOVE PLUS LEADERS OF ANY COMPETING PROFESSIONAL ORGANIZATIONS	
5.3	TRAINING	<ul style="list-style-type: none"> ▪ BAR/Collegium Rules/ Bylaws ▪ Codes of Professional Responsibility/Ethics/Conduct ▪ Court Rules ▪ Court Policy/Procedure Manuals, handbooks, circular ▪ SITE VISITS 	<ul style="list-style-type: none"> ▪ Bar Associations/Lawyer's groups ▪ Legal assistance programs ▪ NGOs ▪ Public defence agency ▪ Prosecutor's Office ▪ Law Schools ▪ Donor organisations 	
6.1	SYSTEM COORDINATION	<ul style="list-style-type: none"> ▪ 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 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Head of Legal Aid/Public Defender Service ▪ Heads of other Criminal Justice entities: <ul style="list-style-type: none"> ○ Prosecutor ○ Director of Penal System ○ Police Chief ○ Chief judge ▪ Court Administrator ▪ Registrar/Court Manager ▪ Non-governmental organisations working on criminal justice matters ▪ Bar associations/Lawyers' associations ▪ Legal assistance programs ▪ Public defender agency staff ▪ Law Schools ▪ Donor organisations 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
6.2	DONOR COORDINATION	<ul style="list-style-type: none"> ▪ Donor Strategy papers ▪ Progress reports by donor organizations ▪ Independent studies conducted by universities/NGOs 	<ul style="list-style-type: none"> ▪ Donor organisations ▪ Head of Legal Aid/Public Defender Service ▪ Ministry of Justice ▪ Heads of other Criminal Justice entities: <ul style="list-style-type: none"> ○ Prosecutor ○ Director of Penal System ○ Police Chief ○ Chief judge ▪ Court Administrator ▪ Registrar/Court Manager ▪ Non-governmental organisations working on criminal justice matters ▪ Bar associations/Lawyers' associations ▪ Legal assistance programs ▪ Public defender agency ▪ Law Schools 	



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UNITED NATIONS
Office on Drugs and Crime



CUSTODIAL AND NON-CUSTODIAL MEASURES
The Prison System

Criminal justice
assessment
toolkit

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UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

CUSTODIAL AND NON-CUSTODIAL MEASURES

The Prison System

Criminal Justice Assessment Toolkit



UNITED NATIONS
New York, 2006

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This publication has not been formally edited.

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1. INTRODUCTION TO THE ISSUE

Imprisonment can be regarded as the final stage of the criminal justice process, which starts with the commission of offences, their investigation, the arrest of suspects, their detention, trial and sentence. How the criminal justice system deals with offenders determines the size of the prison population, which in turn has a significant impact on the way in which prisons are managed. The criminal justice system itself is on the other hand influenced by the government policies and political climate of the time - determined to a large extent by the public, which, in democratic countries, elect their governments. Thus, in assessing the prison system there needs to be awareness that efficient management and humane prison conditions are not dependent on the prison authorities alone. What happens in prisons is intrinsically linked to how the criminal justice system as a whole is managed, and what pressures that system is under from politicians and the public. Thus, attempts to reform the prison system need to be undertaken as part of a comprehensive programme that addresses challenges in the entire criminal justice system.

The extent to which the criminal justice system in general, and imprisonment in particular, is seen as the answer to resolving some of the most fundamental problems of society demonstrates the attitude of the public and politicians elected by them towards crime and its root causes. Where governments adopt a punitive approach to crime, failing to address the underlying factors that lead to criminal behaviour, prisons end up as places where members of the most disadvantaged and vulnerable groups of society gather in large numbers, alongside a much smaller number of dangerous and violent offenders. In recent years, sentencing trends in many countries have been affected to a significant degree by pressure of the public and/or politicians toward harsher penal policies¹. However, studies in some countries have shown that the rise in the prison population is not linked to any obvious increase in crime. Rather, judges are sending more offenders to prison and for longer periods.²

On the other hand, prison systems need to be accountable to the community. This is valid for all public services, but particularly for the prison system, which, to a large extent, is closed to public scrutiny, and where power can easily be abused. In democratic countries there is normally a line of accountability, with the prison department being answerable to the ministry of which it is part, and the ministry in turn, being accountable to parliament. However, the interference of politicians in prison management may not always lead to the increased efficiency of social reintegration initiatives in prisons. The public may regard resources being allocated to the health, social welfare, education and vocational training needs of prisoners as unfair, reducing the funds available for those who have not committed offences. Many might be in favour of keeping offenders behind bars, due to short-term security concerns. Guided by public pressure and concerns for the next election, the main priority of politicians may be to ensure that prisons are secure (i.e. that no escapes take place) which can result in pressure on prison managers to concentrate efforts on security measures, at the cost of reducing resources allocated to improving treatment and activities in prisons. Thus, it is vital that oversight of the prison system should be the responsibility of a number of agencies, independent of the ministry and government concerned. This can be achieved by giving different ministries responsibility for inspecting the management of different aspects of life in prisons (e.g. the Ministry of Health, the Ministry of Labour, the Ministry of Education), as well as having an independent lay monitoring system, made up of members of the public (specialists and others)³. It is also essential that reform programmes address the need to increase public awareness about the long-term consequences of harsh penal policies that do not help build safer societies.

Overcrowded prisons, housing a diverse mixture of people – some dangerous and violent, many in need of mental health care or treatment for addictions, rather than isolation from society, and a large number vulnerable for a range of social and economic reasons⁴, are not easy to manage – and moreover to manage in a manner that helps with resettlement. The task prison managers face in balancing the goals of security and the objective of social reintegration of a diverse range of people, while trying to respond adequately to the sometimes conflicting priorities of politicians and the public, is fraught with difficulty, especially when structures are old and resources, limited.

A policy statement on prisons issued by the current government may assist those charged with managing prisons. However in many countries, there may not be any such policy framework, or it may be found in a number of documents ranging from statements on justice as a whole or in the country's poverty reduction or other strategic plan. Some prison services have sought to work with their line ministry and development partners to develop a strategic plan for the prison service, complete with mission statement and statement of values to guide the operation of the service.

All prison services should be guided by and operate from a clear set of principles. These are to be found in the primary legislation governing the prisons service, i.e. the Prisons Act, or its equivalent. How these principles are applied in practice should be set down in secondary legislation such as the Prison Regulations that may then be refined in further detail in the Prison Standing Orders. Those prison services that have their origin in colonial rule may retain in whole or in part vestiges of 'colonial legislation'. Many of these provisions may be obsolete or irrelevant to the contemporary context. Most will have been drafted before the framework of international human rights standards governing detention and the treatment of prisoners came into effect.

In order for prison systems to be managed in a humane manner national policies and legislation must be guided by the numerous international standards developed to ensure that the human rights of prisoners are protected and that their treatment is aimed to ensure their social reintegration, as a priority. These standards include the **United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR); Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment; Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); Rules for the Protection of Juveniles Deprived of their Liberty and Code of Conduct for Law Enforcement Officials**, among many other international and regional documents. The assessment of whether a prison system is well managed will be based on the extent to which the standards set out in these documents are being put into practice. The ability of the prison management to implement these standards depends on the factors listed above, as well as many other details of management procedures, and most importantly on the careful recruitment and training of staff responsible for the daily administration of prisons.

This tool is based on the **UN Standard Minimum Rules (SMR)** with additional commentary from **'Making Standards Work'** (PRI: 2000); **'Human Rights and Prisons, A Manual on Human Rights Training for Prison Officials'** UN Office of the High Commissioner for Human Rights Geneva 2000; **'A Human Rights Approach to Prison Management'**, International Centre for Prison Studies, Andrew Coyle, 2002; and **'Managing Prisons in a Time of Change'**, International Centre for Prison Studies, Andrew Coyle 2002.

The tool covers all issues relating to the management of the prison system and treatment of prisoners. The focus of the tool is sentenced prisoners and the management of prisons housing them, within a formal prison system. The management of pre-trial detention facilities and the additional rights and rules relating to pre-trial detainees are covered in **CUSTODIAL AND NON-CUSTODIAL MEASURES: DETENTION PRIOR TO ADJUDICATION**. As discussed above, since an assessment and reform of a prison system cannot be undertaken without reference to the criminal justice system of which it is part, the assessor is urged to refer also to the **ACCESS TO JUSTICE TOOLS**.

Special considerations regarding visits to prisons

Prison visits lift the veil on life behind the walls but do not necessarily reveal the full picture. The full picture can only be obtained by extensive crosschecking of facts outside of prison (with NGOs, human rights institutions, medical personnel in hospitals, prison chaplains and other visiting groups, ex-prisoners and prison staff), in addition to research conducted inside the prison. However, an informed observer can identify signs that give an idea of the relations that exist within the prison and the approach of the authorities towards those in their charge. Therefore, prison visits are extremely useful to gain an understanding of the prison service's management style, even when opportunities to talk to prisoners do not exist or are limited (please see comments below regarding communications with prisoners).

If prisons visits are planned, it is recommended that:

- Preparations start well in advance of the mission and permission sought from relevant authorities for access to a representative sample of prisons, in different parts of the country and housing different categories of prisoners;
- Terms of reference for the visits be discussed with and agreed upon authorities in advance.
- A medical expert participates in visits, as relevant.

Both during the preparation period and during the mission, unnecessary insistence on access to certain prisons or parts of certain prisons may not be helpful, if the aims of the mission do not specifically necessitate such insistence (e.g. assessment of human rights violations). If the objective of the mission is to undertake an assessment for technical assistance interventions or programme development, it is vital to develop trust and mutual understanding from the outset. However, ascertaining whether the rights of prisoners are respected in law and practice should form an integral part of any comprehensive assessment mission. Therefore, laws, policies, and practices should be assessed to determine whether they are consistent with human rights standards.

Assessors inquiring into legislation and practices relating to imprisonment should be mindful of the sensitivity of the subject and endeavour **to do no harm** (to prisoners and their families) by their approach and nature of inquiries.

- It is recommended that assessors do not seek or hold private, individual interviews with prisoners, especially if no follow-up visit is planned. Private interviews generate expectations and some information given by a prisoner may put him or her at risk.
- Meetings with groups of prisoners, with or without the presence of staff, should not necessarily pose a risk, but assessors should be careful in the nature of the inquiry made also in such circumstances, taking care to avoid sensitive issues (e.g. questions regarding ill-treatment, fairness of disciplinary procedures etc).
- Information about matters such as treatment and application of safeguards in practice should be sought from alternative sources, such as the families of prisoners, ex-prisoners prison chaplains, human rights, and inspection bodies, bar associations and NGOs.

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

- Legislative reforms introducing and increasing the scope of alternatives to imprisonment, decriminalising certain acts and reducing sentences for selected offences in the penal statutes;
- Improving organizational design and management processes relating to the implementation of penal legislation;
- Legislative and structural reforms enabling the transfer of the prison service from the ministry responsible for investigating charges to a separate ministry responsible for the management of prisons (e.g. from the Ministry of Interior to the Ministry of Justice) and demilitarisation of the system;
- Improving mechanisms of coordination between criminal justice agencies, as well as between prison authorities and social welfare and/or probation services;
- Legislative reforms to improve legal safeguards for prisoners and training for relevant law enforcement agencies in the application of these safeguards;
- Developing training curricula for prison service staff and providing technical assistance to training;
- Developing constructive prisoner programmes/improved prison regime;
- Improving access to justice, particularly for the poor, by providing technical assistance to develop procedures and management of legal aid programmes and supporting NGOs and others providing paralegal advisory services;

- Strategies to combat TB and HIV/AIDS among prisoners effectively; development of TB and HIV management programmes; improvement of on-entry health screening measures and health services in prisons;
- Improving inspection procedures; training and technical capacity building for independent inspection bodies;
- Designing special projects aiming to increase and improve the support to special categories and vulnerable groups;
- Enhancing capacity to develop and manage planning, research and information management;
- Increasing public awareness about imprisonment and alternatives to prison; increasing community participation in the criminal justice process.

2. OVERVIEW: GENERAL AND STATISTICAL DATA

Please refer to the **CROSS-CUTTING ISSUES: CRIMINAL JUSTICE INFORMATION** for guidance on gathering the key criminal justice statistical data that will help provide an overview of the prison population and overall 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.

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

- Ministry of Justice or Ministry of Interior reports
- Penal System reports
- National Human Rights reports
- Reports by prison inspection bodies (national and international)
- Reports by Law Society or Bar Associations
- Non-governmental organisation (NGO) reports on the prison system
- Donor reports

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

- Ministry of Justice/ Ministry of Interior
- Senior prison service officers
- Judiciary (especially those who visit prisons)
- Human Rights Commission
- Prison inspection bodies (e.g. lay monitoring boards, human rights commission, Committee for the Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment (CPT), Special Rapporteur on Prisons and Conditions of Detention in Africa etc)
- Law Society or Bar Associations
- NGOs working on criminal justice matters
- Donor organisations working on the criminal justice sector

Accurate baseline data is an essential pre-requisite for policy formulation and designing effective intervention strategies. In many countries the data is neither accurate (i.e. objectively verifiable. For instance, the 'capacity' of an individual prison may be cited without reference to measurable space per person); nor available (due to civil unrest, poor data gathering, lack of resources, outdated sources etc). The importance of gathering data that is proven accurate (or indicated if not) cannot be over-emphasized. It is, therefore, essential to gather information from a variety of sources, and determine the methodology used for data collection and the geographical coverage of information provided.

The data assembled below will inform any recommendations for technical assistance interventions.

2.1 OVERVIEW OF COUNTRY AND PRISON SYSTEM

- A. What is the total population of the country?
- B. How many districts/provinces?
- C. How many prisons? How are they distributed geographically?
- D. How many pre-trial detention facilities? How are they distributed geographically?
- E. How many young offender institutions? How are they distributed geographically?
- F. How many prisons for female offenders? How are they distributed geographically?
- G. What types of prison exist at present, e.g. maximum/medium security; central/district prisons?
- H. Are there any open prisons? How many?
- I. Are there any privately run prisons? How many? Who runs them?

2.2 Prison population

- A. What is the total prison population?
- B. What is the prison population rate per 100,000 population? For example, if there are 10,000 prisoners in a population of 10 million, the rate is 100:100,000.
- C. What is the capacity of the prisons system? How is this capacity measured, i.e. m² per person?
- D. What are the maximum and minimum capacities of each type of prison and what is the actual population?
- E. What is the capacity of open prisons and what is the actual population?
- F. What is the capacity for youth offender institutions and what is the actual population?
- G. What is the capacity for women's prisons and what is the actual population?
- H. How many prisoners are in private prisons, if they exist?

2.3 PROFILE OF PRISON POPULATION

- A. What is the percentage of prisoners on remand/awaiting trial? (Figures for the last 3 years)
- B. What is the percentage of those sentenced to less than 2 years? (Figures for the last 3 years)
- C. What is the percentage of those sentenced to more than 10 years? (Figures for the last 3 years)
- D. What percentage of the prison population is serving a life sentence? (Figures for the last 3 years)
- E. What is the number of prisoners sentenced to death? How many of them are awaiting the results of their appeals?
- F. What is the percentage of sentenced women and women with accompanying children? (Figures for the last 3 years)
- G. What is the percentage of minors / juveniles (under 18)? (Figures for the last 3 years)
- H. What is the percentage of foreign nationals and members of minority groups? What are the figures for the last 3 years?
- I. What is the percentage of those convicted of drug related offences?
- J. What is the percentage of prisoners diagnosed as mentally ill?
- K. What percentage of the prison population is considered to be 'dangerous' (i.e. measured in terms of sentence and categorisation)?
- L. What percentage of the prison population was sentenced under a special "anti-terror act" or similar?

2.4 QUALITY OF DATA

- A. What methodology is used by the authorities to collect and process the information provided?
- B. When general information is given, what is the geographical coverage? Do the figures refer to the whole country or only to some regions?
- C. When was the information collected?

3. LEGAL AND REGULATORY FRAMEWORK: LAW AND PRACTICE

The following documents constitute the main sources from which to gain an understanding of the legal and regulatory framework governing the prison system. Check the following legislation and refer to the international and regional law framework to identify any disharmony and inconsistency.

The Constitution: The Constitution often includes a Human Rights Chapter and usually sets up watchdogs to ensure the rights set down in the Human Rights Chapter are adhered to. Some will include a mechanism for inspecting prisons.

Criminal/Penal Code and Criminal/Penal Procedure Code: The penal code will include information on types of offences and sentences for each offence. Sentences will normally include non-custodial sanctions, as well as imprisonment. The rules relating to the process – arrest, detention, trial, remand, imprisonment – are set out in the Penal Procedure Code

Prison Act, Criminal Executive Code, Penal Enforcement Code or similar, contains a set of principles by which prisons are governed.

The Prison Regulations constitute secondary legislation that guide prison officers on the application of the law set out in the above code or act (primary legislation).

In some prison systems, **prison standing orders** will refine further the details of the prison regulations.

The Probation Act, or similar, will include rules relating to community sanctions and measures and the responsibilities of probation services especially during the pre-trial period and in preparing prisoners for release.

Provisions governing juvenile justice are set down in Children and Young Persons' legislation such as a **Juvenile Court Act** or similar. The Prison Act and legislation governing young persons may also set out who is able to visit prisons and institutions for young offenders, such as elected members of parliament or congress and judicial officers; others admit accredited members of the legal establishment and civil society.

However, what is stated on paper is often not reflected in practice. In many countries, the observation can be made that the laws themselves are good but that the implementation of these laws is wanting. Having established what the national legislation provides for, the assessor should examine what the actual situation is, during site visits to a representative sample of prisons in different parts of the country and interviews with local prison staff, offenders (when appropriate), ex-offenders, their families, lawyers and NGOs.

Suggested questions are divided into themes and include questions on law and practice. They should be raised both at central and at local levels.

Before inquiring into the details of existing legislation and practice under each topic under **Section 4, Management**, the tool assists the assessor to gain an overview of legislation relating to imprisonment and determine what, if any, attempts were made to reform legislation in recent times.

3.1 LEGISLATION: OVERVIEW

- A. What are the minimum and maximum prison terms in the Criminal/Penal Code? Are there mandatory maximum penalties? How is the judge guided in determining the applicable penalties, e.g. the criminal procedure code, sentencing guidelines, precedent? Does the judge have discretion in whether to impose imprisonment or an alternative?
- B. Are there alternatives available? What is the upper limit of prison sentences to which they may or should be used as alternatives? What kinds of alternatives exist in legislation?
- C. What are the rules for the classification of prisoners? Do all prisoners undergo a risk assessment to determine the prisons to which they will be allocated, e.g. high security, medium security etc.?

- D. Does the death sentence exist? Which crimes carry the death sentence?
- E. Are death sentences being carried out or has a moratorium been imposed?
- F. Does the Prison Act/Criminal Executive Code/Penal Enforcement Code provide for temporary and early conditional release schemes from prisons? What are the rules? Is conditional release discretionary or mandatory?
- G. Who is placed in open prisons? Are some prisoners convicted of minor offences housed in open prisons? Which ones? What are the rules for transfer to open prisons from closed prisons?
- H. Is there any anti-terror legislation in force? When did it come into force and what offences does it cover?

3.2 LAW REFORM

- A. When were the Criminal/Penal and Criminal/Penal Procedure Codes last reviewed? Did the review include, for example:
 - A rationalization of sentencing, including decriminalization of certain offences and reducing sentences for others
 - Increasing possibilities for alternatives to prison.What changes were made, if any?
- B. When was the Prison Act/Criminal Executive Code/Penal Enforcement Code last reviewed? What changes were introduced, if any? For example, did the review increase prisoners' rights, improve measures addressing the social reintegration needs of offenders, increase possibilities for temporary and early release, transfers to open prisons?
- C. Is there a law commission or law review body that is considering the criminal/penal statutes? What laws are currently under review? What are the changes being considered?

4. PRISON MANAGEMENT

4.1 ADMISSION AND ASSESSMENT

Article 10 of the **Declaration on the Protection of All Persons from Enforced Disappearance** requires that in any place where a person is deprived of liberty an up-to-date register shall be kept. This requirement is repeated in **Rule 7 of the Standard Minimum Rules**, which also rules that “[n]o person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.” (SMR 7(2)).

Rule 35 of the Standard Minimum Rules states: “Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorised methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution. If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally”.

Principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment rules that a medical examination of every detainee and prisoner should be undertaken on admission and treatment for any medical conditions provided free of charge. This requirement is underlined also in Rule 24 of the **Standard Minimum Rules**. Please see **Section 4.3** for further guidance.

- A. Under the law, what are the obligatory procedures upon reception of a prisoner? Is there a legal obligation to maintain a register, where, on reception, each prisoner’s details are noted? In practice, is the registration procedure always adhered to? Is the practice consistent among the prisons visited?

The register should include:

- All details of the prisoner:
 - name
 - date of birth
 - gender
 - identifying features
 - address
 - nationality
 - language
- legal authority for imprisonment
- date of admission
- date of release
- details of next of kin
- a list of personal property (distinguishing between those which the person can keep in his/her possession and those which is stored by the authorities)
- signatures (of the member of staff who completed the forms and of the prisoner to confirm that he/she has been given details of his/her rights)
- a separate medical record.

See **Human Rights and Prisons, A Manual on Human Rights Training for Prison Officials, UN Office for the High Commissioner for Human Rights, Geneva 2000, Annex 1** for further details.

- B. Is the person presented with a clear set of rules and regulations? Do the regulations list conduct or acts that constitute disciplinary offences and the punishments that may be imposed?
- C. Is a prisoner’s next of kin, friend or legal representative informed when he or she is admitted to prison? How soon after admission does this typically happen?
- D. Are staff in the reception area specially trained to undertake the admission process? Are they trained to treat new prisoners with dignity? Are they trained to recognize prisoners who are most at risk of harming themselves or of being harmed by other prisoners?

- E. Do judges who pass sentences determine the security regime that applies to prisoners or is there a classification system at the beginning of each prisoner's sentence? The better practice is for the prison authorities to determine the security level after a professional assessment, rather than regime being determined by a judge, based on the crime committed.
- F. If there is a classification system, what procedures does it involve? Who is responsible for assessment and classification? Are they adequately trained for this purpose? Is a flexible classification system maintained, with regular reviews?
- G. Is a sentence plan formulated for each prisoner? Who is involved in the process? Is the prisoner consulted? Are psychologists, social workers and medical specialists involved? What are the components of a typical sentence plan? Is the plan kept under regular review?
- H. Is there an induction period for each prisoner? What activities does this period include? Is, for example, the relevant legislation, regulations, routine of daily life explained and prisoners given an opportunity to meet people who can help them, e.g. religious representatives, teachers, psychologist, social worker, medical officer and others?

In some systems, there are special prisons for newly admitted prisoners, where prisoners undergo an induction/training period before they are transferred to the prison where they will serve their sentence. In others, prisoners are held in a section of the prison for a fixed period (1 week to 2 weeks) where assessment takes place and they are introduced to the prison rules and regulations. (This may be called the "quarantine" section). However, in practice, conditions in such sections can be very poor and sometimes prisoners can be ill treated particularly during this period. Assessors should visit such areas/units to check conditions and talk to staff responsible for assessments to try to get an idea of the manner in which the induction period is utilized.

- I. To what extent are records kept about each prisoner throughout the time that he/she is kept in prison? Do any such records include, for example, results of medical examinations (in medical file), programmes they have participated in, prison leaves, transfers, date of eligibility for conditional release etc?
- J. In prisons visited, are all prisoners held under a valid order of the court? What happens when they expire? Is there a protocol or procedure in place to keep track of the expiration date of court orders? Who calculates the release date of a prisoner? Under what established protocols/procedures?

4.2 LIVING CONDITIONS

Living conditions in a prison are among the chief factors determining a prisoner's sense of self-esteem and dignity. The quality of accommodation, how sleeping is arranged, what and where prisoners eat, what they are allowed to wear, whether they have ready access to sanitary facilities all have a tremendous influence on a prisoner's feeling of wellbeing. Even where physical conditions are adequate, restrictive practices, such as having to ask a guard to gain access to the toilet, may have a very negative impact on prisoners' mental health.

Living conditions include the **prison climate**, which is determined by the management style and the nature of relations between staff and prisoners. The prison atmosphere can be felt and observed during a prison visit. For example:

- do prisoners appear to mingle easily with prison officers?
- do some prisoners appear to exercise authority over others (do some carry batons, look better dressed, occupy single cells when others occupy dormitories)?
- do they turn their faces away as you approach or stand at a distance to avoid contact?
- is your escort closed or relaxed - are you taken swiftly along or allowed to linger and talk to prisoners?
- do you feel any threat to your personal security?

Corruption: It is essential to bear in mind that prisoners almost always have different levels of access to facilities, based on their social status, strength, wealth and connections. Corruption among staff and prisoners is present in most, and widespread in many prisons (especially in low-income countries, but not only), affecting the extent to which prisoners can enjoy their rights and receive some of their most essential requirements, such as a bed, food, and medication. The assessor is advised to refer to **SECTION 6.6, CORRUPTION**, while considering the adequacy of living conditions in prisons, as well as healthcare facilities.

4.2.1 Accommodation

- A. In prisons visited, is the prison infrastructure in need of renovation and rehabilitation?
- B. Are sentenced prisoners separated from prisoners awaiting trial?
- C. What type of accommodation is provided? Are prisoners accommodated in individual cells, rooms for up to 6-12 people or larger dormitories? If individual cells, what is the size of each cell? If rooms or larger dormitories, how much individual space are prisoners entitled to by law and how much space do they have in practice? Are some dormitories less crowded than others? Do they belong to privileged prisoners?

The amount of **space** each detainee or prisoner should have is a question frequently asked. SMR do not prescribe a specific minimum size of space for each prisoner. It rules that "Accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation" (**SMR, Rule 10**). The **European Prison Rules** also do not recommend a specific amount of space (See **Rule 18.1**). However, commentary to Rule 18 indicates that **CPT** considers 4 square meters as a minimum requirement in shared accommodation and 6 square meters for a prison cell. These minima depend, however, on how much time prisoners actually spend in their cells, and should not be regarded as the norm. Although **CPT** has never laid down such a norm directly, indications are that it would consider 9 to 10 square meters as a desirable size for a cell for one prisoner. (See **Commentary to Rule 18 of the European Prison Rules (2006)**).

Dormitory housing brings about a whole range of concerns, not only related to the amount of space. High numbers of people with criminal and sometimes violent backgrounds living together in a closed environment can encourage violent behaviour and the singling out of vulnerable prisoners for abuse. Therefore, careful selection of prisoners to be housed together and the supervision of dormitories, particularly at night, are essential components of good prison management in such circumstances.

Although single cells for prisoners are the desired option, this should not imply a limit on association during the day. The benefit of privacy during the night needs to be balanced with the benefit of human contact at other times. Where adequate time for association and activities are not provided, placement in single cells may result in partial or complete prisoner isolation, with harmful effects on the mental wellbeing of the persons concerned.

- D. What is the official capacity for each cell or dormitory? How many people in each cell or dormitory in practice, i.e. in prisons visited, as well as information about other prisons, if available? Are there vast geographical variations? Examples.
- E. What kind of beds are prisoners provided with, e.g. mats, single beds, bunks – 2-tier, 3-tier? Are sheets and blankets provided? Do they look clean? In prisons visited, if possible, check the beds. In cells/dormitories visited, does each prisoner have a bed? If not, ask how they sleep at night. This is not a sensitive question, since the situation is obvious – but it is best to ask in the presence of staff.
- F. Do prisoners have anywhere to put their personal items, such as bedside tables, wardrobes etc? Is this the case for each prisoner or only some?
- G. Are there windows that can be opened by prisoners? Are they adequate? Are they open or closed at the time of visit? The assessor may want to ask prisoners and staff if they are

aware of the need for adequate ventilation to help prevent TB, and if so, whether they know the rules/protocols, and whether they apply them.

- H. Are there electric switches inside the cell/dormitory allowing prisoners to regulate their own lighting? Are they available in every cell or dormitory?
- I. Are there members of prison staff responsible for supervising dormitories at regular intervals at night? What does supervision entail? Do they go into the dormitories regularly to check on the wellbeing of the occupants? Are they stationed close enough to the dormitory to hear anything that may be occurring inside?

4.2.2 Hygiene

- A. Is there regular running water in prisons? If not, what arrangements have been made to supply prisoners with water? What, if any, precautions have been taken to ensure that the water is clean? If there is running water – how often can prisoners have access to hot water? How does the availability and quality of water vary geographically?
- B. Do toilets and washing space exist in or close to every dormitory/cell? What is the ratio of prisoners to toilets, hand-washing facilities? There is no internationally accepted minimum ratio. Adequacy of facilities will need to be assessed based on the ratio and level of access to the facilities – i.e. constant or limited. If the toilet is in the dormitory, is there any partition for privacy? If toilets are outside the cell/dormitory, where are they? Do prisoners have to get permission to use them? Please see **SMR, Rule 12**.
- C. If showers are located outside the dormitories, how often can prisoners gain access to them? Is there a regular day set aside each week for bathing in a communal bathing facility? How many times per month? Please see **SMR, Rule 13**.
- D. To what extent are prisoners provided with articles necessary for personal hygiene? Are they, for example, provided with soap, toothbrushes, toothpaste, and towels? Are these provided free or charge?

4.2.3 Clothing

Rule 17(l) of the **SMR** provides that “every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.” In fact, for many prisoners, wearing their own clothing is extremely important, as it gives them a sense of individuality and increases self-respect. In the **European Prison Rules (2006)**, the rule relating to clothing reflects this factor, by omitting the possibility of prisoners’ not being allowed to wear their own clothing: “Prisoners who do not have adequate clothing of their own shall be provided with clothing suitable for the climate”. (**EPR, Rule 20.1**)

- A. Are all or some prisoners allowed to wear their own clothing? If only some are allowed, what criteria apply? Do only privileged prisoners enjoy this right?
- B. If prisoners cannot afford their own clothing, is clothing provided by the prison administration? Is this a uniform, overall or civilian clothing? Is the clothing provided suitable for the climate? Is it dignified?
- C. What is the source of prison clothing or uniforms? Are they made at the prison?

During prison visits, the assessor should note the prisoners’ clothing: are they in prison uniform, or their own clothes; do the clothes suit the climate do they appear to be in good repair; do some appear better dressed than others?

4.2.4 Food

- A. Do prisoners have access to clean drinking water? To what extent? Is the tap water drinkable? Is drinking water provided by the administration on request? How much water is provided per prisoner, per day? Please see **SMR, 20.2**.
- B. Is the required nutritional value of prisoners' diet determined by national law reflected in prison regulations, standing order, etc.? Do these requirements reflect the needs of different groups of prisoners? To what extent are the requirements met? Please see **SMR, 20.1** and **EPR, 22.2**.
- C. How much money has been set aside in the prison budget for the daily nutrition of each prisoner? Has there been any increase or decrease in recent years? In what way has increase or decrease in budget affected the quality of food?

The assessor may observe whether the prisoners appear to be adequately nourished, in the prisons visited. Although a professional assessment will need the opinion of a medical specialist, much can be noted even by a non-specialist observer.

- D. How often do prisoners receive food each day?
- E. Where is food prepared? Does the prison have its own kitchen? Is it clean? Where is food stored? Are there cold storage facilities?
- F. Is food prepared elsewhere and delivered to the prison? How much time elapses between preparation and serving?
- G. Do prisoners rely on their families or other external sources for food? Are they allowed to receive food from outside prison? Are there any restrictions? What happens if a prisoner's family (or other source) is not able to provide food?
- H. Does the prison grow some of its own food? What does it grow? To what extent does food grown by the prison cover the needs of the prisoners? Does it have its own bakery? If so, is the bread produced sufficient for prisoners' daily requirement?
- I. Are prisoners given an opportunity to work in the kitchen? Which prisoners can work in the kitchen?

4.3 HEALTHCARE

Article 12 of the **International Covenant on Economic, Social and Cultural Rights** establishes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". Those who are imprisoned retain this fundamental right and their entitlement to a standard of medical care that is at least the equivalent of that provided in the wider community. (See **Basic Principles for the Treatment of Prisoners, Principle 9**). When a state deprives people of their liberty, it assumes responsibility for their healthcare. Ensuring that prisoners maintain good health is essential for success of public health policies, as disease in prisons is easily transferred to the public via staff and visitors, with almost all prisoners eventually returning to the community and potentially transmitting infections to others. Faced with the alarming increase of TB and HIV in prison worldwide, it is essential to recognise this reality, and take all necessary precautions to prevent the spread of transmissible diseases.

It is vital that all prisoners undergo a medical examination and health screen on entry, on an individual basis. (**Body of Principles for the Protection of All Persons Under any Form of Detention of Imprisonment, Principle 24**). This is important to ensure that the prisoner starts receiving proper treatment for any health conditions immediately, but it is also critical (a) to identify any signs of ill-treatment in previous detention/custody; and (b) to diagnose the presence of any transmissible disease such as TB. Ideally detainees and prisoners should also be encouraged to undergo voluntary testing for HIV, with pre- and if necessary post-counselling, but they should not be obliged to do so.

See UNODC/WHO/UNAIDS manual: HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings: A Framework for an Effective National Response (2006); Council of Europe, Committee of Ministers Recommendation No. R (93) 6, Concerning Prison and Criminological Aspects of the Control of Transmissible Diseases Including AIDS Related Health Problems in Prison, Rule 3 and CPT 3rd General Report.

Please see also Sections 5.2 and 5.3, for guidance on special medical needs of women and the mentally ill, respectively.

4.3.1 Access to Healthcare

- A. To what extent, if at all, is the health policy in prisons integrated into, and compatible with, national health policy? Does the Ministry of Health and civil healthcare services have any responsibility for the healthcare of prisoners? What does this entail? In practice do civil healthcare services provide medical services in prisons? Please see SMR, 22(1), EPT, 40.1 and 40.2.
- B. Is it a rule that a medical examination of each prisoner is undertaken on admission to a prison? Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 24. Is this rule applied in every prison? Is the examination undertaken on an individual basis? What does the examination comprise?
- C. Are medical examinations undertaken confidentially – i.e. out of hearing and out of sight of prison staff, unless the doctor concerned expressly requests otherwise in a particular case? If not, who is normally present during a medical examination?
- D. Are prisoners given in written form the prison rules relating to medical care? Is this standard practice? If not, how do prisoners learn about their rights relating to medical care?
- E. Are medical reports kept in the file of each person? What information do medical files include? If possible, ask to examine medical files in prisons visited. Who may see medical files? To what extent are they confidential? No staff within a prison, with the exception of the health care staff, should have access to a prisoner's medical records or medical information.
- F. Are reports of medical examinations undertaken in police custody and pre-trial detention transferred to prisons on a systematic basis or is there no such procedure? If they are, how efficient is the system? Do files get lost? How often?
- G. To what extent, if at all, are prisoners given information on transmissible diseases and prevention methods on entry to prison? Does it include information about TB and HIV transmission? Is the information written and is it sufficient?
- H. Does the medical examination include screening for TB? How is the screening undertaken? What measures are taken if a person is diagnosed with TB? Is there separation of TB cases according to medical categorisation? Are TB patients treated in hospital? Is DOTS (Directly Observed Therapy Short-Course) used for treatment? If not, how are patients treated?

Many questions need to be asked about quality of treatment, access to treatment, recording, reporting, policies and strategies for a proper assessment. These questions seek only to identify the basic situation and challenges, to be investigated further by a medical assessor if necessary.

- I. Are detainees tested for HIV? Is the testing voluntary or obligatory? Is pre- and post-test counselling provided? What happens if a person is found to be HIV positive? Are they isolated? How does practice vary geographically and from prison to prison?

CPT and other international bodies emphasize that there is no medical justification for the segregation of HIV positive prisoners solely on the grounds that they are HIV positive. (Council of Europe Rec R (98) 7, Rule 39; **CPT/Inf** (93) 12, para. 56.) However, sometimes prisoners themselves prefer to be accommodated with others who are HIV positive, due to fear of stigmatisation if accommodated with the general prisoner population.

Please refer also to the UNODC/WHO/UNAIDS manual: **HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings, A Framework for an Effective National Response.**

- J. Do all prisoners have access to medical treatment in practice? What is the process? Do prisoners have to request access to a medical officer in writing or does a doctor visit cells/dormitories on a regular basis? If access is based on application - how long does it normally take from the submission of a request to medical examination?
- K. To what extent are clinics/health facilities in each prison equipped for consultation and treatment? In prisons visited, do medical officers feel that they have sufficient equipment – what else do they need?
- L. What are the most common ailments? Is there an adequate supply of medicines in each prison for these ailments? It is important to note the inventory of drugs/medicine, noting particularly the expiry date on some sample jars/bottles.
- M. How are supplies regulated? Are they distributed centrally or is the system decentralised? Please see also **Section 6.3, Procurement**. Do medical officers in prisons visited feel that their supplies are adequate?
- N. Is there a plan or strategy to reduce the incidence of HIV transmission among prisoners? What strategies and procedures are employed?
- O. Are there facilities for physiotherapy? What treatment do they offer? Do all prisons have such facilities or only a few?
- P. Are there dentists? Are they adequately equipped? How many prisons have them?
- Q. Are special diets provided for those for whom they are medically necessary? How is the need and diet determined?
- R. What, if any, treatment is provided for drug addicts and other substance abusers? Is treatment available in all prisons or only a few? Does it combine medical treatment with therapy? Are drug addicts/substance abusers housed with the mentally ill or among other prisoners? In some countries substance addicted prisoners are inappropriately accommodated in the psychiatric section of penitentiary hospitals.
- S. Is self-mutilation a widespread problem? How does the management and medical service treat those who harm themselves? Do they receive psychological and/or psychiatric assistance? Are they punished? Are physical restraints used?
- T. What are the rules relating to the treatment of prisoners who are seriously ill? Are they transferred to hospitals? Who decides? How long does the procedure take? Are there delays? If so, what are the reasons for delays?
- U. Are early release mechanisms available for those who are terminally ill? What do they consist of and to what extent are they applied?
- V. How many deaths are recorded per year and from what causes? What are the rules relating to dealing with deaths in prison? Is there provision in legislation for an inquiry

into the death to be held by a judicial authority? What happens with the report of the inquiry? Can the family or any lawyer involved be informed of the results of the inquiry? In practice, to what extent are such rules applied? Please see **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 34.**

4.3.2 Healthcare Personnel

A basic requirement to ensure that prisoners have access to healthcare is to ensure that each prison has a fully qualified medical practitioner. In addition to a doctor (or more than one doctor in large prisons), there should be other qualified health care personnel reporting to the doctor, delivering medical assistance and care.

Please refer to **SMR, 22-26** and **Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

- A. How many medical staff are there in each prison and what are their qualifications? Does the number vary according to the prison population?
- B. How many qualified doctors are there in each prison? Does the number of doctors available vary according to the prison population? In the prisons visited are the positions of doctors vacant or occupied? If there is no full time doctor, are medical services provided by civil healthcare authorities? What are the procedures and how often does a medical specialist visit the prison?
- C. What training, if any, does medical staff receive in connection to providing medical services in the prison setting?
- D. To what extent are staff educated on the transmission of disease, especially TB and HIV, and forms of protection?
- E. Do the responsibilities of the doctor include the examination of all prisoners who are placed in disciplinary confinement, each day, and the provision of any treatment they need? Are they responsible for informing the prison director whenever he/she considers that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement? Please see **SMR, 25.2**; also **EPR, 43.3**.

If the prison doctor serves dual roles, functioning as both medical specialist and as adviser to the prison director, and at the same time is directly subordinated to the prison director rather than being part of a civil healthcare structure, he or she will have a very difficult and sensitive role to fulfil. In terms of medical ethics, doctors should never be involved in security or disciplinary matters of any kind, including determining whether to place someone in solitary confinement. (Please see **Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Principles 4 (b) and 5.**) The medical examination of prisoners in solitary confinement should not be involved in nor should it be considered to be part of the decision-making process in the determination of punishment.

- F. Do the medical officer's responsibilities include the monitoring of prison conditions to ensure that the environment in which the prisoners live is healthy, e.g. hygiene, access to fresh air, ventilation, quality of food etc.? Please see **SMR, 26.1**
- G. Is there a full time dentist in each prison? If not, what arrangements are in place to provide dental care for prisoners?

- H. Is there a full time psychologist in each prison? If not, what arrangements are in place to provide for psychological consultation for prisoners in need and especially for those who have mental problems? Please see **Section 5.3, The Mentally Ill**.

4.4 CONTACT WITH THE OUTSIDE WORLD

The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff in the task of social rehabilitation of prisoners. (**SMR, Rule 61**). "From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation." (**SMR, Rule 80**, also **EPR, 70.1**)

Ensuring that prisoners have sufficient contact with the world outside prison is essential to alleviate feelings of isolation and alienation, which hinder social reintegration. Enabling prisoners as much contact as possible with their families and relations will help sustain relationships, contributing to an easier transition from prison to civil society on release.

In some countries, where resources for prison activities are inadequate, continuing links with families and the community may be the main method available to reduce the harmful effects of imprisonment and help with reintegration.

All prisoners, pre-trial and sentenced, are entitled to legal advice, and the prison authorities are obliged to provide them with reasonable facilities for gaining access to such advice and facilities for consultation. (**UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 18**). Prisoners are entitled to consult on any legal matter with a legal adviser of their own choice. This may be either at their own expense or they may receive legal aid for free legal advice. Please see also **EPR, 23.1-23.6**.

- A. Does legislation and policy provide for housing prisoners close to their communities? How does this work in practice?
- B. Is sentenced prisoners' right to have access to legal counsel and legal aid, if necessary, provided in legislation? If so, is such access available in practice? In prisons visited how many prisoners are receiving legal aid? Are prisoners provided with contact points to access legal advice and assistance?
- C. How often are sentenced prisoners allowed to receive visits – for what duration? Are these visits closed/open (i.e. do they permit contact)?
- D. Are conjugal visits allowed – how often? Are family visits allowed (with children) – how often?
- E. Are prisoners allowed to phone their family/relatives/friends? How often? Are telephone facilities provided in prisons? Are they adequate?
- F. How often can prisoners send and receive letters?
- G. Do prisoners have access to newspapers, magazines and journals? Is television or radio available to all prisoners? Where are they placed?
- H. Is cooperation with civil society organizations provided for in legislation? To what extent are NGOs and other community groups active in prisons? Do prison authorities encourage such activity?
- I. Which civil agencies work inside prisons (social assistance, healthcare etc)? What kind of services do they provide?
- J. Are sporting events outside prisons promoted? Is there a calendar of sporting events?

4.5 PRISON REGIME

The term **regime** in this tool is used to encompass prison work, vocational training, education, library provision, offending behaviour programmes, counselling, group therapy, exercise, physical education, sport, religious or spiritual guidance, social and cultural activities, and preparation for release. The quality of regime underpins the success of the social reintegration of prisoners.

Providing a balanced range of activities that are associative, constructive and non-exploitative should encourage a law-abiding and self-supporting life on release. Gaining vocational skills, work experience and education, in particular, are essential to the successful reintegration of prisoners after release. It is very important also for the psychological well being of prisoners to spend most of their time out of their cells. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (**CPT**), for example, stresses that a satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners, with the goal being to ensure that prisoners spend 8 hours or more outside their cells, engaged in purposeful activity of a varied nature. (**CPT/Inf (92) 3**, para 47) This should apply to all prisoners (except for those in segregation units due to disciplinary offences).

Enabling prisoners to spend most of their day out of their cells, engaged in a range of activities, has implications on the way in which prisons are managed. There needs to be sufficient and adequately trained staff to ensure safety and order, and to supervise activities. Staff must also ensure that vulnerable prisoners, particularly, are protected during communal activities.

4.5.1 Individualization

Individualization is essential for the reintegration requirements of prisoners to be met effectively according to the needs of each individual. See **SMR, Rule 63**, also **67-69**.

- A. Does legislation provide for assistance according to individual needs by planning prisoners' personal development based on individual assessments? Is a sentence plan worked out for each prisoner at the beginning of his or her sentence? What does the plan include? Is the prisoner consulted?
- B. Is there an organized, structured daily programme for prisoners included in their sentence plans? What period in a day is set aside for these activities?
- C. Are transfers to lower security prisons/open prisons made on the basis of individual assessment?

4.5.2 Education

- A. Do prisoners have access to the national education curriculum? How does the system work? Does the prison administration work in cooperation with the Ministry of Education? What are the rules for taking exams?
- B. Are teachers employed by the prisons or encouraged to visit from outside? How many teachers are there in each prison by law and in practice?
- C. Are there provisions for distance education? Is there access to computers?
- D. Can prisoners receive nationally recognized diplomas/certificates on completion of their courses?
- E. Are prisoners with the requisite skills encouraged to teach others?
- F. Does each prison have a library? Are libraries adequately stocked with current affairs and reading materials in the language most commonly spoken? Are prisoners allowed to study in the library? Is there sufficient space and furniture for study?
- G. Are books and journals available in minority and foreign languages?

- H. To what extent are prisoners permitted temporary releases from prison for educational purposes? Upon what assessment criteria? What rules apply in closed prisons and in open prisons?
- I. In the prison visited, how many, if any prisoners are currently taking advantage of educational release?

4.5.3 Vocational Guidance and Training

- A. What skills are taught in prison? Can prisoners exercise personal choice in which training programme to join? Are vocational skills training programmes designed to help prisoners receive employment after release, e.g. do they correspond to the needs in the community into which the prisoners will be released?
- B. Are prisoners trained to a recognized national/regional standard? Do they receive recognized certificates?
- C. Who provides training? Is training provided by civil institutions/ businesses?
- D. Can prisoners attend vocational training courses outside prisons, e.g. from open or other prisons?

4.5.4 Work

Research shows that steady employment is one of the most important factors preventing re-offending.⁵ In principle work provided for prisoners should include vocational training and increase offenders' chances of employment after release, rather than being any kind of work available.

Care should be taken that prison labour is not exploited and the profit motive does not override the aim of increasing the earning capacity of prisoners after release. **(SMR, 71 (4), 72 (2))** The principle of normalization of prison life should underpin the working arrangements in prisons, with normal working hours, health and safety considerations, adequate remuneration and inclusion of prisoners in the national social security system, being components of the working conditions, so far as possible. **(SMR, 74-76; EPR, 26.10-26.17)**

- A. Is the opportunity for work provided to all sentenced prisoners? What work is available in the prisons? In the prisons visited, what percentage of the prisoners has work each day?
- B. Do prisons produce goods for the internal prison market, e.g. furniture, clothes, bed linen?
- C. Are items produced for schools, hospitals, public services, the public?
- D. Is the purpose of work to make a profit for the prisons or to ensure that the prisoners receive skills that will help them with employment after release? If the principle is said to be the latter, is this clearly stated in the Prison Act or similar? Is the principle put into practice? How is this evident?
- E. Can any of the work be described as 'afflictive' **SMR, 71**? Is such work necessary? How is that work assigned?
- F. Is the work remunerated? What are prisoners paid for their work inside prisons / outside prisons? What is the national minimum wage? How are the moneys earned banked? Are prisoners able to save any of their money?

- G. Where no remuneration is provided what rewards are earned? For example, do prisoners receive extra food or payment in kind?
- H. What is length of the average working day? Are rest days, holidays provided?
- I. Are prisoners appropriately dressed and protected? What safety procedures are in use?
- J. Are outside contractors allowed to provide work for prisoners in prisons? If so, what are the conditions? Do they provide vocational training? Is the remuneration comparable to that on the outside market? Do prisoners then receive an opportunity to continue working in the same business following release?
- K. Are prisoners permitted to work outside in the community from closed and open prisons? Upon what assessment criteria? How many are currently working in the community in practice?
- L. Is work and educational release granted during the later stages of imprisonment, to prepare prisoners for release, or is it an integral part of prison regime during the whole sentence period?

4.5.5 Counselling and Offending Behaviour Programmes

This section will not apply to many prison systems being assessed, although some support in this area may be provided by NGOs, if not by the prison service itself. The assessor should be mindful that, in low-income countries, the focus of prisoner reintegration should be ensuring contacts with the family and community, providing work, skills training and education, assisting with finding accommodation after release, rather than therapy programmes which are likely to be too costly.

The suitability of some programmes, which aim to influence individual behavioural patterns, in the context of communitarian cultures (e.g. sub-Saharan Africa) has been questioned, while ethical concerns have also been raised about the obligation for prisoners to undertake such programmes in some countries, when these were not originally part of their sentence.⁶

- A. Does the prison system run offending behaviour programmes or group therapy/counselling to address the offence related needs of prisoners? What are they? Are staff that deliver the programmes appropriately trained? Are they specialists from outside or NGOs? How many prisoners participate? What are the results? Have any evaluations been undertaken?
- B. To what extent are these programmes or courses of therapy integrated into an individualized assessment and sentence management system? Is attendance voluntary or obligatory?
- C. If the above does not exist, are there any initiatives to address the special needs of prisoners? What do they consist of? Who runs them?
- D. What are the areas in which prisoners most commonly need specialist assistance, e.g. substance abuse, self-harm, anger management, sexual offences etc.?

4.5.6 Recreation

- A. What recreational activities are provided for in legislation and practice? What are the rules and regulations relating to participating in recreational activities?
- B. Are visits encouraged from external arts organizations/groups?
- C. What sports facilities are available? What equipment do they have? In practice, how often do prisoners take part in sports activities?

- D. Are there theatres in prisons? How often are shows produced? Who organizes the shows?
- E. Are there musical facilities – are there a choir, a band, and orchestra? How many prisoners take part?

4.5.7 Religious / Spiritual Support and Assistance

- A. What are the major religions represented in the prisons? Are they provided for in terms of chaplaincy visits, places of worship and diet? Are there special places of worship for them?
- B. What minority religions are represented? Are they attended to in terms of chaplaincy visits, places of worship and diet? How often do chaplains visit? What other support services do they provide? Are they in contact with the prisoners' families?

4.5.8 Preparation for Release

The process of preparation for release and resettlement begins in prison and continues after release with a need for continuity of assistance spanning this period. This requires close liaison between social agencies and services, as well as relevant community organisations and prison administrations during sentence. In addition, there needs to be a programme of assistance to prepare for release close to the date of release (often starting one month prior to the release date), to ensure that the social, psychological and medical support needs of the offender are met and continue uninterrupted after prison. During this period probation services, if they exist, have an active role to play in assisting with prisoner' transition from prison to life outside.

Please see also **CUSTODIAL AND NON-CUSTODIAL MEASURES: SOCIAL REINTEGRATION, SECTION 6.5, Temporary Release Dispositions; SECTION 6.6, Open Prisons; and SECTION 6.7, Halfway Houses.**

- A. Does legislation put an obligation on prison authorities to prepare prisoners for release? To what extent is preparation for release integrated into the individualized assessment and sentence management system?
- B. When do preparations start? What does this assistance consist of? Does it include practical assistance with finding accommodation and employment? To what extent do prison authorities try to ensure that prisoners' documents are in order before they leave prison? Are prisoners given enough money on release to at least take them to their destination?
- C. What efforts are made to coordinate with social and health agencies of civil society during this period, to ensure that prisoners receive the necessary support on their release? Are their social and medical rights explained to prisoners before release?
- D. Do probation services assist with the preparation for release? Do probation officers come into prison and meet with offenders prior to release to determine their support needs?
- E. Are there NGOs working to assist with prisoners' preparation for release? Are prison administrations encouraged to cooperate with them? Examples?
- F. What special measures are taken to prepare for the release of long-term prisoners, whose support structures in the community may have broken down during their imprisonment? What kind of assistance is provided with their particular psychological and social needs? Are they given a chance to prepare gradually, with the help of temporary or conditional release measures and with adequate social and psychological support in the community?

4.6 SAFETY AND SECURITY

Security refers to the obligation of the prison service to prevent prisoners from escaping. **Safety** refers to the requirement to maintain good order and control in prison to prevent prisoners being disruptive and to protect the vulnerable. Safety measures in prisons should be supported by a **disciplinary system** that is fair and just.

Conventional means of security include walls, bars, locks, keys, gates, movement detectors, other technological devices and perimeter sterile areas.

Security and safety procedures include proper categorisation and assessment, searching and standing operation procedures.

The proper classification of prisoners based on risk assessment is one of the most important steps prison managers must take to ensure safety and security in their prisons. The security measures to which prisoners are subject should be the minimum necessary to achieve their secure custody.⁷ This will enable prison staff to supervise more efficiently the smaller number of prisoners who pose a real danger to others; it will ensure that the prison environment is as humane as possible and that finances are not allocated unnecessarily to ensure highly secure conditions for a large number of prisoners.

It is now generally acknowledged, that safety and security in prisons depend on creating a positive climate which encourages the cooperation of prisoners. External security (preventing escapes) and internal safety (preventing disorder) are best ensured by building positive relationships between prisoners and staff. This is the essence of what is referred to as “**dynamic security**”. (See ‘**Human Rights in Prisons, A Manual on Human Rights Training for Prison Officials, UN Office of the High Commissioner for Human Rights**, p. 53 and European Prison Rules (2006), 51.2)

Dynamic Security refers to the interaction between staff and prisoners, with staff developing a situational awareness enabling them to prevent escapes and disruption before they are attempted.

The concept of dynamic security includes:

- Developing positive relationships with prisoners
- Diverting prisoners’ energy into constructive work and activity
- Providing a decent and balanced regime with individualised programmes for prisoners

Good conduct and cooperation can also be encouraged with a system of privileges appropriate for different classes of prisoners.

4.6.1 Security Measures

- A. Is prison security considered to be adequate? How many escapes were recorded nationwide during the last 2 years?
- B. Are sentenced prisoners classified according to the risk they pose to society and others in prison? Is care taken that the security conditions imposed on prisoners are the minimum necessary? If so, is this principle included in regulations and/or standing orders, or are staff responsible for assessment and categorisation directed to act on this principle?
- C. Are security levels reviewed at regular intervals? How often? Does the review include those sentenced to life? Who is responsible for undertaking the review?
- D. What physical means of security are used, e.g. such as walls, bars, movement detectors, other technological devices? How do these measures vary according to the category of prison?
- E. Is the concept of dynamic security known to prison managers and staff? Is the subject of dynamic security included in the training curriculum of staff? If so, to what extent do they put it into practice, e.g. is a positive relationship between staff and prisoners evident? Are there adequate activities in prisons?

- F. How often and under what circumstances are searches of cells/dormitories and prisoners conducted? What do search procedures consist of?

Search procedures should set out the circumstances when searches should be carried out, methods and frequency. Procedures and circumstances when body searches can be undertaken should be explicit, as body searches can be experienced as degrading and can be used as a form of punishment. During personal body searches prisoners should not be humiliated; they should be searched by staff of the same gender and security staff should not carry out intimate searches. When body cavity searches have to be carried out, they should be undertaken by a physician other than the doctor who provides medical care for prisoners, as the physician's position should not be compromised by an obligation to participate in the prison's security system. See **Statement on Body Searches of Prisoners, World Medical Association, 1993.**

- G. Are visitors searched? How are they searched? Are they searched by security personnel of the same gender?
- H. Is mail censored? What does the procedure entail, i.e. is somebody or a committee responsible for reading all incoming and outgoing mail, or is only the mail of selected prisoners read?
- I. Are telephone calls monitored? What does monitoring entail? Do staff listen to all telephone conversations? Do they record all or some of them?
- J. Are any forms of restraints used in prison and if so, what are they and under what circumstances are they used? Who, if anyone, must authorise their use? What are the rules and what happens in practice? Please see SMR, 33 and 34.
- K. Is an informant system in place from among prisoners? Please see **SMR, 28 (1).**

Prisoners should not be used to pass on information on other prisoners to the prison administration. If an informant is discovered he or she can become the victim of violent reaction by other prisoners, further informants can give unreliable information due to personal disputes or to exercise control over other prisoners. The very existence of a system of informants will generate a climate of tension and violence. Thus the principles of dynamic security should never be confused with an informant system. The former is based on staff getting to know prisoners as individuals, which will lead to much more trustworthy assessments of security risks.

- L. Are some prisoners put in a position of authority over others? How are they chosen? What are their powers? Similarly, this practice is fraught with risks and dangers, but in some prison systems it is a method frequently used due to staff shortages.
- M. Are weapons carried by staff? Inside prison and outside prison? What are the standing orders governing their use?

Staff who work directly with prisoners may carry sticks or batons, for self-defence. It is not good practice, however, to carry these weapons in a visible manner. In some prison systems staff guarding the perimeter of the prison carry firearms. They should have clear instructions about the circumstances in which these weapons may be used, which must only be when there is immediate threat to someone's life. It is not acceptable to shoot a prisoner solely on the basis that he or she is escaping. (Please see **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 16.**)

- N. Have there been any serious incidents, riots, or hunger strikes over the past 3 years? How were they dealt with? What details were recorded about such incidents? Were investigative reports written? Did they make recommendations for changes to prevent future incidents?

These questions will give an indication of the level of dissatisfaction and unrest in the system, as well as the position of political prisoners, if incidents and hunger strikes involve them. It will also help assess the management style of the prison authorities.

In the event of a hunger strike, public authorities or professional organisations in some countries will require the doctor to intervene to prevent death as soon as the patient's consciousness becomes seriously impaired. In other countries, the rule is to leave clinical decisions to the doctor in charge, after he has sought advice and weighed up all the relevant facts. According to the **World Medical Association Guidelines**, the decision on intervention or non-intervention should be left with the individual doctor, without external interference. (**Declaration of Malta on Hunger Strikers, World Medical Association, 1991, 1992**)

4.6.2 Discipline and Punishment

- A. What are the standing orders for dealing with disruptive or difficult prisoners? How are such prisoners dealt with in practice?
- B. What are the punishments applied for the various types of offence? Is there statistical data giving the types and numbers of disciplinary punishments applied nationwide for the past 3 years? If so, have punishments increased or decreased over this period? If national statistics are not available, try to obtain this information from prisons visited. The trend in the usage of disciplinary measures and the types of punishments applied, will give an indication of the style of management and the way it may have changed over time.
- C. Are the rules of natural justice followed when a person is charged with a disciplinary proceeding, i.e. is the prisoner told in advance the nature of the charge and provided with time to prepare a defence; is the hearing heard before a 'competent authority'; is the prisoner present at the hearing? Is the prisoner able to question the staff member and present his or her side of the case? What procedures are in place to examine the case before a punishment is applied? **SMR, 30(2)**
- D. Can prisoners complain against disciplinary punishments to an independent authority? Please see also **Section 4.7, Complaints Procedures**.
- E. Are prisoners ever punished by being placed in dark cells? Is corporal punishment ever applied? **SMR, 31**
- F. How often are segregation units/punishment cells used? How does this compare with usage in the previous 2-3 years? This can be checked with the administration of prisons visited, which should have a record of all cases. The central prison administration may have a record of all cases nationwide.
- G. How are the conditions in segregation units/punishment cells? Do prisoners have access to natural and artificial light? Can the prisoner(s) regulate the artificial lighting? Do the cells contain a bed (or beds)? Are prisoners given a mattress and other bedding at night? Is there an alarm button inside the cell? Is there a window that can be opened from inside the cell? Are there sanitary facilities?
- H. Are prisoners who have been placed in segregation units allowed an hour of exercise each day? **SMR, 21(1)**. The right to one hour of outdoor exercise per day applies to all prisoners, including those in segregation units.
- I. What are the maximum periods that prisoners may spend in punishment cells? Are there different types of cells for different lengths of punishment?

In some systems, there are short- and long-term punishment cells, the former used for punishments of a few days (sometimes up to 15 days), the latter of up to a few months. Conditions in both, but particularly in long-term punishment cells, should be suitable for prolonged occupancy.
- J. Does a system of privileges exist? What provisions does it include? In what circumstances can these privileges be taken away?

4.7 COMPLAINTS PROCEDURES

Most prison legislation provide for a set of written procedures that allow prisoners to register any complaints they have regarding their treatment in prison. Prisoners should be given written information about the complaints procedure, prison rules and regulations, as part of an information pack on entry to prison (**SMR, 35 (1)**). These procedures should be clearly laid out in a way that can be understood both by prisoners and by the staff who deal directly with the prisoners.

There also needs to be a procedure by which prisoners can make confidential written complaints to a person or institution independent of the prison administration such as a prison ombudsman, a judge or magistrate, when they feel that the prison administration is failing to respond to their complaints or when they are complaining against a disciplinary decision (**SMR, 36 (3)**)

Establishing good decision making procedures is equally important, accompanied by effective processes for hearing appeals, complaints, allegations and grievances against the decisions made by the prison administration.

- A. Is there a working complaints mechanism in the prison, by which prisoners can make written complaints to the prison administration about their treatment? What does it consist of?
- B. What is the average time between a complaint being made and the matter being resolved? **SMR, 36 (4)**
- C. Are complaints mechanisms often used? Why not?
- D. Is there a perception by prisoners that those who use them are subsequently victimized by staff? Are there examples of such incidents?
- E. What are the most frequent prisoner complaints?
- F. Is there a complaints mechanism that ensures that prisoners can complain about their treatment and disciplinary procedures in prisons to an independent body? What are the procedures and who can prisoners complain to, e.g. a judge, a prosecutor, a prisons ombudsman, human rights commission etc.?
- G. Are complaints to independent authorities confidential by law? What happens in practice? What measures are taken to ensure that prisoners' letters to independent bodies are not censored?
- H. Do prisoners often complain to independent authorities? What do they complain about most frequently?

5. SPECIAL CATEGORIES

5.1 JUVENILES

While a child is a human being under the age of 18, internationally, the term juvenile is used for those children under the age of 18 over whom a court may assume criminal jurisdiction, although this age can differ under different national statutory schemes (**Convention on the Rights of the Child, Article 1, UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 11**). Children below a certain age, often ranging from 7 to 12, may also be excluded from juvenile criminal jurisdiction, though this is also not uniform in application. The **Model Criminal Code (MCC) (Draft, 31 March 2006) Article 1(5)** defines a juvenile as a child between the ages of 12 and 18.1

Due to the particularly harmful effects of detention and imprisonment on juveniles, numerous international instruments rule that they should be kept out of prison, and that offences committed by juveniles should be dealt with in the community, as far as possible. **The UN Convention on the Rights of the Child, Article 37 (b)** rules that “no child should be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”, a principle reflected also in Rule 19.1 of the **UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)**. Part 5, Rules 26.1-26.6 of the Beijing Rules set out the objectives of institutional treatment of juveniles. The first objective (Rule 26.1) is “to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society”. Rules 27.1 and 27.2 rule that **SMR** apply to juvenile offenders in institutions, and that these rules should be implemented “to the largest possible extent so as to meet the varying degrees of juveniles specific to their age, sex and personality”.

Many jurisdictions have special separate custodial institutions for juveniles and for young adults (age: 18-21 years), where semi-institutional arrangements may apply.

Please also see **CROSS-CUTTING ISSUES: JUVENILE JUSTICE** for guidance on special legal requirements for juveniles; **CUSTODIAL AND NON-CUSTODIAL MEASURES TOOLS: ALTERNATIVES TO INCARCERATION, Section 3.5.1** and **SOCIAL REINTEGRATION, Section 8.2** for a full coverage of appropriate ways of dealing with children in conflict with the law; and **CUSTODIAL AND NON-CUSTODIAL MEASURES: DETENTION PRIOR TO ADJUDICATION, Section 5.1**, for guidance relating to the treatment of juveniles in pre-trial detention facilities.

- A. What special provisions relate to this vulnerable category of offender – e.g.:
- Is there special legislation enacted in line with the UN Convention on the Rights of the Child that puts the best interests of the child first?
- Please see **MCC (DRAFT, 31 March 2006), Section 13**, and the **Model Code of Criminal Procedure (DRAFT, 30 May 2006), Chapter 15**, for a model of juvenile statutes and dispositions that integrate the standards of the **Convention on the Rights of the Child**.
- Are there special procedures that apply to young people (i.e. juvenile or children’s courts)?
 - Are those charged with implementing such procedures adequately trained?
 - Is there a special body in charge of monitoring juvenile justice?
- B. What is the age of criminal liability in the country assessed? What is the minimum age for imprisonment?
- C. How is age determined and who is responsible for determining age if the birth certificate of a young suspect is missing? Is this a common problem?
- D. Are there juvenile or children’s courts? Are juveniles always/sometimes/rarely tried at these courts? On what basis?
- E. Are juveniles housed in separate institutions to those of adult prisoners? If not, are they housed in separate wings of adult prisons, with separate staff? Are juveniles also separated according to age group? What are the age groups?

- F. Are there special prison facilities for juveniles? How do they differ from prisons holding adult prisoners? Are the rules less strict? For example, can juveniles leave the institution/prison for educational purposes?
- G. Are juveniles provided with special care in prison? What does this care consist of? Are there any psychologists and social workers in juvenile prisons visited? What are their responsibilities? Are there therapy or counselling programmes catering for the special needs of the age group?
- H. To what extent are their educational needs met? To what extent are they given access to the education curriculum available for their age group outside of prison/detention? Are they assisted by teachers in their education? Please see **Beijing Rules, 26.1 and 26.2.**
- I. Are juveniles given vocational training? What are the most common areas of training provided? How many juveniles in prisons visited benefit from vocational training courses?
- J. What are the rules governing visits from their family and/or guardians? Are the rules any different to those applied to adult prisoners? Are the visits open or closed?

Please see **Beijing Rules, 26.5.** Contact with the family is regarded as a key element in juveniles' rehabilitation. In some jurisdictions, regulations prohibit restricting contact with the family as a disciplinary punishment.

- K. How are female juveniles treated? Are they held separately? Do they enjoy all the rights that are granted to male juvenile detainees?
- L. Who is allowed to visit prison/young offender institutions in official and unofficial capacities? How often must they visit? How often do they visit in practice? Who do they report to? Please see also **Section 6.7.**
- M. Are records of juvenile offenders kept confidential? Who has access to their records? Please see **Beijing Rules, 21.1.**

5.2 WOMEN

The percentage of women in prison worldwide, including in pre-trial detention is very small (between 2% and 9%, exceptionally above 10%).⁸ Since the vast majority of prisoners are men, the special needs of women are usually not taken into account, which means in practice they are discriminated against. In the closed environment of the prison women are especially vulnerable to abuse from both staff and prisoners.

Due to limited prison facilities for women, they are often imprisoned far from home, which may limit the possibilities of visits from their families, sometimes causing severe problems for them and their families. Alternatively, they may be accommodated in an annex of a prison for male prisoners. This may pose an increased risk to their safety. Activities in prison may also be designed to meet the needs of the majority male prison population. Where prisons are overcrowded and limited staff available to supervise prisoners, women may have no or limited access to many facilities. Pregnant women and nursing mothers have particular problems relating to their condition and should not be imprisoned unless exceptional circumstances exist. Women also face particular problems after release, as they experience the stigmatization of imprisonment more acutely than men.

All rules in **SMR** apply to women. In addition, women have special needs that need to be addressed.

Please see also **CUSTODIAL AND NON-CUSTODIAL MEASURES: DETENTION PRIOR TO ADJUDICATION** for guidance on to pre-trial women prisoners; **CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION** for the use of community sanctions and measures for women.

- A. Are women separated from men? **SMR 8(a)**. Are women prisoners supervised exclusively by female staff – always/sometimes/rarely? **SMR 53(3)**. How does practice vary geographically?
- B. Do they have the same access as male detainees to all available activities? If not, what level of access do they have? What activities are they offered?
Often the type or work or vocational training offered to women may be discriminatory – e.g. women may only be offered work considered to be suitable for their gender, such as sewing.
- C. What are the visiting rules, especially by their family and children? Are the visits open or closed? What happens in practice?
- D. Are any efforts made to re-establish links with families where they have been lost?
- E. Are their particular medical needs catered for? What are the arrangements? To what extent do they have access to specialists in women’s healthcare? Do pregnant women receive adequate medical care? What are the arrangements? Are pregnant women transferred to hospital to give birth? **SMR, 23.1**; also **EPR, 28.1**
- F. Are women’s special hygienic needs met? Do they have access to sanitary towels and what are the arrangements for access? How often to pregnant women and women with infants have access to showers?
Dormitories and rooms used for accommodation of female prisoners must have facilities and materials required to meet women's special hygiene needs. Hot water should be available for the daily personal care of children and women, in particular women involved in cooking, those who are pregnant, breast feeding and menstruating. **CPT** considers ready access to sanitary and washing facilities, as well as provision of hygiene items, of particular importance. These should be available to women under conditions in which they do not need to be embarrassed asking for them, for example, either dispensed by other women or, better yet, accessible whenever needed. **CPT** considers that the failure to provide such basic necessities can amount to degrading treatment.
- G. Are women allowed to keep their babies/infants with them in prison? Up to what age? What facilities are provided for the infants? Are there nurseries, mother and baby units in prison? **SMR, 23.2**. Are infants given toys? What effort, if any, is made to ensure that the child’s environment is as close as possible to life outside?
- H. Are there provisions in legislation to provide special diets for pregnant and breastfeeding women, as well as infants in prison? What do the provisions consist of and are they applied in practice?

5.3 THE MENTALLY ILL

The number of prisoners in need of psychiatric care is rising in many countries. In fact, offenders who are mentally ill should not be detained in prisons, where they can rarely receive adequate treatment for their condition and where their mental health is likely to deteriorate. Instead, they should be given specialized care and treatment in the community. (**SMR, 82**). However, often psychiatric institutions and services in the community are overburdened with patients. Therefore, psychiatric patients who have committed offences may not be admitted.. In addition, many prisoners may develop mental and psychiatric conditions as a result of imprisonment itself and being cut off from their families. Mental problems arise and may become chronic in prisons with overcrowding and few activities, forcing prisoners to spend most of their time in their cells. If there is not a proper differentiation of prisoners according to risk levels, prisoner subcultures may have developed so that dominant hierarchies exist. This may affect the mental health of the vulnerable considerably, while increasing the risk of abuse mentally ill prisoners face from other prisoners. Measures must be taken by prison authorities to prevent such abuse, such as separation of the mentally ill from other prisoners and supervision.

International instruments stress the importance of prisoners’ access to psychiatric consultation and counselling. Staff members need to be alert to the symptoms of mental disturbance, and prison health services need to provide psychiatric assessments, psychiatric services and outpatient treatment. Please refer to **UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Healthcare, 1991**

- A. Are there large numbers of mentally ill prisoners in prisons visited? What percentage of the total prison population?
- B. On what basis have they been diagnosed as mentally ill? For example, does the initial medical examination on admission to prison include an assessment of prisoners' mental health? Is this standard practice? **SMR, 66.2**. Is there evidence/a medical diagnosis that some of them have developed mental illness during imprisonment? How many?
- C. To what extent does the prison medical service provide for the psychiatric treatment of prisoners? **SMR, 82 (4)**. Is such treatment provided by specialists from civil healthcare services or by a prison psychiatrist? What does treatment consist of?
- D. Are there specialised prisons or sections of prisons under medical supervision for the observation and treatment of prisoners suffering from mental disorder? **SMR, 82(4)** provides for observation by a medical doctor; **EPR, 47.1** recommends that specialised prisons or sections of prisons should also be available. Are there sufficient medical specialists to provide adequate care to persons held in such places? To what extent are the mentally ill isolated/left alone? How much care do they receive in practice?
- E. Are prisoners with serious psychiatric conditions transferred to appropriate civil healthcare facilities for treatment? How often does this happen in the prisons visited? Annually?
- F. If prison conditions and resources do not allow for 4 and 5 above, what measures are taken to protect the mentally ill from violence and abuse?
- G. What, if any, measures are taken to ensure the continuation of psychiatric treatment after release? **SMR, 83**.

5.4 OVERREPRESENTED GROUPS

In some countries ethnic, racial and indigenous minorities, as well as foreign nationals are significantly overrepresented in the criminal statistics and also in the prisons. For further discussion inquiry into the reasons of overrepresentation please see **CUSTODIAL AND NON-CUSTODIAL MEASURES: DETENTION PRIOR TO ADJUDICATION, SECTION 5.5; ALTERNATIVES TO INCARCERATION, SECTION 3.5.5**. This section guides assessors in their inquiries about the rights and treatment of overrepresented groups in prison.

All rights set out in **SMR** apply also to these groups. In addition they have specific needs relating to language, contact with families, consular and UNHCR representatives, as well as religion and diet, which need to be addressed from the outset of their imprisonment.

Foreign nationals and members of minority groups who do not speak the language commonly spoken in the prison will feel their isolation more acutely than other prisoners, and especially when this situation is accompanied by no or limited contact with families. It is essential, therefore, to provide such offenders with interpretation services whenever necessary and to ensure that they receive all rules and regulations relating to their imprisonment, in a language that they can understand. They must be informed, immediately, of their right to communicate with the diplomatic or consular representative of their state. If they are stateless persons or refugees, they should be allowed contact with the diplomatic representative of the state that takes charge of their interests or the national or international authority whose task it is to serve the interests of such persons, such as UNHCR. (**SMR 38 (1) and (2)**). Prisoners who are foreign nationals should be informed of the possibility of requesting that the execution of their sentence be transferred to another country. **EPR, 37.5**

Minority groups, even if they are overrepresented in the population, may feel isolated also due to different cultural and religious habits, in addition to possible discrimination against them.

In practice, despite legislation prohibiting discrimination in most countries, minority groups and foreign nationals are often discriminated against in the closed and coercive environment of prisons, which can lead to violence against such groups by other prisoners and their harsher treatment by prison staff. Therefore, it is important to provide careful supervision within the prison to prevent and remedy such behaviour; to separately house members of groups who are at risk in the general population; and to ensure that the training

of prison staff seeks to improve understanding of the difficulties and cultural backgrounds of foreign prisoners and minority groups, so as to prevent prejudiced attitudes from perpetuating.

Consultation with representatives of minority groups on a formal basis during the formulation of policies against racial or ethnic discrimination, and preparation of regulations reflecting such policies, may be useful to ensure that account is taken of the specific concerns and recommendations of minority groups in the prison environment.

See **CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION, SECTION 3.5.5** and **SOCIAL REINTEGRATION, SECTION 8.6** for guidance on the situation of overrepresented groups in the context of alternatives to prison and their special social reintegration needs.

- A. In prisons visited, what is the percentage of foreign nationals and members of minority groups? What are the most common offences of which they have been convicted?
- B. Are foreign nationals and minority groups given information about their rights, obligations, rules and regulations relating to their imprisonment in a language they understand as soon as they are admitted to prison? Is this standard practice? It would be useful to verify that samples of such written information exist in the prisons visited and to obtain a copy, if copies are available.
- C. Are foreigners informed of their right to request contact and allowed facilities to communicate with the diplomatic or consular representative of their state? What are the legislative provisions and what happens in practice? How often can foreign prisoners receive visits from consular officials of their state?
- D. Are prisoners who are nationals of states without diplomatic representation in the country, and refugees or stateless persons, allowed facilities to communicate with the diplomatic representative of the state that takes charge of their interests or the authority whose task it is to serve the interests of such persons, e.g. UNHCR? **SMR, 38 (2), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 16.2.** What does the legislation provide for and what happens in practice?
- E. Are prisoners who are foreign nationals informed of the possibility of requesting that the execution of their sentence be transferred to another country?
- F. In prisons visited what level of access do foreigners and minority groups have to the activities in the institution? Are they provided with reading material in a language that they understand? (Check the library). Do they have the same access as the other prisoners to education? Are they ever given work in the kitchen or library? These are valued jobs and the under-representation or exclusion of minority groups and foreign nationals from them will give an indication of any discrimination against them.
- G. To what extent, if at all, are they provided with an opportunity to learn the language most commonly spoken in the prison?
- H. Is effort made for members of such groups to work and spend their leisure time together, to alleviate feelings of isolation?
- I. Is any special provision made for contacts with their families, if their families are in another country? What are they? Are they for example allowed more telephone calls, due to lack of visits from their families? Are visiting times extended, when they can take place? Are restrictions on sending and receiving letters more flexible?
- J. Does the law provide for meeting the special cultural and religious needs of members of minority religious groups in prison? What opportunities are provided and what happens in practice? Can they meet with ministers of their religion? Are their special dietary needs catered for? If so, is this standards practice?

- K. In prisons visited, what is the percentage of disciplinary action taken against members of (a) minority groups and (b) foreign nationals? Overrepresentation of these groups in disciplinary actions may indicate discrimination by the prison administration, but should be further investigated.
- L. Compare the quality of housing of minority groups and foreign nationals to that of other prisoners. Is there a difference?

5.5 LIFE-SENTENCED AND LONG-TERM PRISONERS

The number of long-term prisoners is rising in many countries worldwide, for two reasons: a change in sentencing policies, with a trend towards harsher sentences, and the abolition of the death penalty in an increasing number of countries.

In countries that have abolished the death penalty, offenders who may previously have been sentenced to death receive a sentence of up to 25 years and in some countries, life sentences. In many countries at least part of this sentence is spent in solitary confinement and in most cases such prisoners are subjected to a particularly restricted regime for their whole prison term. Sometimes special prisons are established to house such prisoners. There is no justification for all life and long-term prisoners to be subjected to high security conditions, with restricted regimes, and especially to solitary confinement, which can have an extremely harmful effect on the prisoner. Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment, and all forms of solitary confinement should be as short as possible. The allocation of long-term and life-sentence prisoners should be based on a proper risk assessment at the beginning of their sentence and not on the crime that they have committed.

Long-term imprisonment can have a number of de-socialising effects upon prisoners. In addition to becoming institutionalised, long-term prisoners may experience a range of psychological problems (including loss of self-esteem and impairment of social skills) and have a tendency to become increasingly detached from society - to which almost all of them will eventually return. Regimes that are offered to prisoners serving long sentences should seek to compensate for these effects in a positive and proactive manner. The UN recommends that states should provide life sentence prisoners with "opportunities for communication and social interaction" and "opportunities for work with remuneration, study, and religious, cultural, sports, and other leisure activities". (**UN Recommendations on Life Imprisonment, 1994**).

- A. Is there a definition of a long-term prison sentence in the country assessed? Who is classified as a long-term prisoner? This definition can vary from country to country, with vast differences.
- B. Where are long-term prisoners held? Are they all held in high-security prisons? Are they held in medium security prisons, but separated according to regime (e.g. housed in "strict regime" conditions).
- C. Where are life-sentence prisoners held? The same follow-up questions as in B. above are appropriate here.
- D. Do life-sentence prisoners spend any of their sentences in solitary confinement? For how long?
- E. To what extent does the accommodation, treatment, and regime of long-term and life-sentence prisoners differ from others? Are they given the same access as other prisoners to activities in prison? Do they enjoy the same rights as others to contact their families and relatives? If not, how do their rights differ?
- F. Are regular reviews of sentences undertaken for both categories? How often?

The Council of Europe recommends that the cases of all prisoners (including long-term and life-sentenced prisoners) should be examined as early as possible to determine whether or not a conditional release can be granted and a review of life sentence should take place, "if not done before, after eight to fourteen years of detention and be repeated at regular intervals".⁹⁾
- G. Do long-term and life-sentence prisoners have access to psychologists and psychiatrists? To what extent?

- H. What arrangements are made for long-term prisoners who are about to be released, e.g. are they transferred to a semi-open establishment months prior to their release? Is there a special pre-release programme? What role do probation services play?

5.6 PRISONERS UNDER SENTENCE OF DEATH

An increasing number of countries are abolishing the death penalty or imposing moratoriums on executions, pending a decision on abolition. In countries that still retain the death penalty, prisoners sentenced to death may spend many years in prison, awaiting the result of their appeals. If a moratorium is in place, prisoners will be held in prison until a decision is taken on abolition, which may result in the commutation of all death sentences. In most countries, prisoners on death row are segregated from others and held in some form of solitary confinement, often in extremely inadequate conditions. As with long-term and life-sentence prisoners, there is no justification to detain death row prisoners in prolonged solitary confinement or to segregate them as a matter of routine. They should be assessed as all other prisoners and accommodated according to the risk they pose to others, with access to activities in prisons, in line with their classification. **The UN Economic and Social Council Resolution 1996/15** “[u]rges Member States in which the death penalty may be carried out to effectively apply the Standard Minimum Rules for the Treatment of Prisoners, in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering”. (**Article 7**).

For prisoners sentenced to death, immediate and regular access to legal counsel is a matter of high priority and urgency. They should have a right to mandatory appeal to seek pardon or commutation, and access to information necessary to facilitate such actions.

International instruments call for the abolition of the death penalty, e.g. **Second Optional Protocol to the International Covenant on Civil and Political Rights, Article 1**. However, where the death penalty still exists, they mandate that “capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences...” and that “[p]ersons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.”. (**UN Safeguards guaranteeing protection of the rights of those facing the death penalty, Articles 1 and 3**). Legal safeguards for those who have been sentenced to death are set out in the **UN Safeguards guaranteeing protection of the rights of those facing the death penalty**. See also **UN Economic and Social Council Resolution 1996/15, dated 23 July 1996**).

- A. Where and how are prisoners under sentence of death accommodated? To what extent are they segregated from others? Are they held in solitary confinement? Is a risk assessment undertaken to determine the conditions to which they will be allocated or are they routinely segregated?
- B. Do they have sufficient access to lawyers? Are they given the facilities necessary to prepare an appeal against sentence, as well as for petitions of clemency? If they cannot afford a lawyer, is legal aid provided? Are they given sufficient assistance to obtain legal aid?
- C. What access do they have to the facilities of the prison? What is their daily regime? Do they receive the same treatment as other prisoners, including the same standard of living conditions, access to healthcare, food, exercise, association with other prisoners?
- D. To what extent are they allowed contact with family and friends? What arrangements are made to notify the prisoner’s family of the date and time of execution and for final contact with their families?
- E. Are staff entrusted with the supervision of prisoners sentenced to death specially selected and trained? What does the training include?

6. MANAGEMENT SYSTEM

In democratic countries, prison administrations are generally public authorities, within the jurisdiction of a government ministry. In most European countries, the ministry responsible for prisons is the Ministry of Justice. In others, the Ministry of Interior may be responsible for the prison system or only for the administration of pre-trial detention facilities. Exceptionally there may be a separate department responsible for managing prisons. It is accepted good practice to have the prison administration, including pre-trial detention facilities, placed under the jurisdiction of the Ministry of Justice. The Council of Europe recommends to all accession states, that where this is not the case, a transfer of the prison service from the Ministry of Interior to the Ministry of Justice takes place. This step is important because, it reflects the principle of separating the authority of agencies that have responsibility for investigating charges and those that are responsible for the management of prisons. Secondly, in countries where the Ministry of Interior is a military authority (e.g. many post-communist states), it provides for the prison service to be under a civil rather than military authority.

Prison systems are organised in vastly varying ways. Some countries have a number of prison systems in operation, independent from one another to varying degrees, e.g. federal system, state prison system, county and district prisons systems. Most, however, have a prison system that is organised nationally, with the central prison administration having full authority over the regional and local administrative departments. The disadvantage of the former system is that it restricts possibilities for a clear mission statement, setting standards in prison management in the whole country, and introducing mechanisms to ensure that these standards are implemented nationwide. The strict hierarchy inherent in the latter reduces the opportunities for regional and local managers to use individual initiatives (which can include avoiding the risk of implementing new and innovative prison reform programmes). It has been suggested that the systems that organise themselves most successfully are those that have clear national policies that ensure that international and national standards will be adhered to nationwide, but which then allow regional or local management to implement the agreed standards in a flexible manner.¹⁰

This section seeks to provide guidance into the management system of the prison service, particularly in relation to the management of prison facilities housing sentenced prisoners. Assessors may wish also to refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES: DETENTION PRIOR TO ADJUDICATION, SECTION 6**, for an inquiry into the management of pre-trial detention facilities, which in some countries may be under a different management authority.

6.1 MANAGEMENT AUTHORITY AND STRUCTURE

- A. Which authority/ministry is responsible for the management of the prison service?
- B. Is it a military organisation, i.e. does staff have military ranks and matching privileges? Are prisons run by the police?
- C. If the service is within the Ministry of Interior and militarised, is consideration being given to transferring management to the jurisdiction of the Ministry of Justice and to demilitarise it? If so, at what stage is the transfer process? If not, is the Ministry of Interior/prison authority prepared to discuss transfer?
- D. What are the obstacles to transfer, e.g. lower status under the Ministry of Justice, lower salaries, loss of military privileges, smaller budget in general etc.? Are there any plans to resolve these issues? What are they?
- E. If an organizational chart of the prison department exists, it would be helpful to determine the different levels of departments/services within the prison system. What services exist and what do their responsibilities cover?
- F. Is the system centralised or decentralised? How much autonomy do the regional and local prison administrations have? What issues does this autonomy cover?
- G. Has there been any recent management changes/restructuring? What changes were introduced?

6.2 BUDGET

- A. How is the management of prisons funded? What is the budgetary process under the law?
- B. Who is involved in planning the initial budget? Who prepares and submits the operating budget? Are individual prison administrations involved in budget planning? To what extent?
- C. Under the law, who manages the budget? Who oversees its spending?
- D. Over the last 3 years, what was the budget requested by the relevant management authority/ministry from the government for the management of prisons? What was actually agreed? Has the budget increased over the past 3 years? To what extent?
- E. Did the prison service receive the funds allocated in its budget over the past 3 years? Are there normally delays, fiscal constraints or other obstacles to gaining access to these funds? Where are the funds held? Who authorizes their disbursement?
- F. How is the budget distributed geographically? Are there disparities in allocation of funds? If so, why?
- G. What expenditure does the budget cover? It would be helpful to see a recent financial report or budget – both a central one and for an individual prison. What percentage of the budget funds staff salaries? What percentage is the prison ration (food service)? What percentage is dedicated to healthcare? What percentage for improvement of living conditions?
- H. What industries are in place? What profits do they make in a financial year? What happens to the profits? Are prisons allowed to reinvest the profits from these industries?
- I. Is prison land available for agricultural purposes? How much is farmed?
 - Hectare/acreage?
 - Production figures?
 - Budget?
- J. What contribution does the land make to the ration (food service)? What happens to the profits?
- K. Who oversees the receiving and paying out of money? Are proper records kept? Is there an internal audit process? Who performs that function? Is there an independent audit process? Who undertakes it?
- L. Have there been any recent incidents of theft or fraud relating to such money? If so, how were they dealt with?
- M. Is corruption in the system perceived as a widespread problem? If so, what measures, if any, been taken to tackle the problem? What do the most common corrupt practices consist of? Please see also **Section 6.6**.

6.3 PROCUREMENT

- A. How is procurement organised? Who is responsible for procurement? Is it centralised or decentralised? Partly/wholly? How does the system work, especially for food and medication?
- B. Are there often delays in procurement? What are the reasons?
- C. If centralised, how is distribution organised? What does transport consist of? Are there problems with transport? Are there sufficient vehicles for transport? What are the main challenges?
- D. If decentralised, what kinds of problems, if any, does this lead to, e.g. geographical disparities, decreased accountability of regional and local authorities, corruption etc.? What kinds of advantages does it have, e.g. saves time on procurement and distribution, reduced transport costs, etc.?
- E. Is procurement formalised? Is it based on competitive bidding? Is the bidding process transparent? Is there integrity of process? Are there allegations of favouritism, profiteering, or corruption in the procurement of goods and services? Are there any plans to improve the procurement and distribution process? What are they?

6.4 PERSONNEL

Adequate and well-trained personnel are essential for the efficient management of any organisation. They are fundamental to good management in prisons. Prison management is about the management of people – from the very vulnerable to the very dangerous. Personnel responsible for the daily administration of prisons, and daily contact with a group of persons with diverse problems and requirements, need to have very special skills and training, to ensure that security and safety is provided, while prisoners are treated humanely and cared for according to their individual needs. (Please see **SMR, Rules 46-53; Code of Conduct for Law Enforcement Officials, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials** for guidance).

Unfortunately, however, the status of prison staff is very low in most countries. Little attention is given to their proper recruitment and training. A large majority will not have sought a career in the prison service in particular, e.g. they might be former military personnel, people who have been unable to find other employment, etc. Their salaries are normally quite inadequate, which contributes to dissatisfaction and corrupt practices. If the prison service is within the Ministry of Interior, however, and have military status, then they might have a range of additional privileges, as well as comparatively higher salaries. These are some of the key reasons for resistance to the transfer of the responsibility of the system from the Ministry of Interior to the Ministry of Justice. An assessor who is confronted with such a system might want to inquire into the details of staff salaries and privileges, to assess the obstacles standing in the way of a transfer to a civil authority and investigate how these obstacles may be overcome.

Looking at staff recruitment and training practices is likely to be an essential component of most assessment missions, seeking to develop prison reform programmes.

Please refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES: DETENTION PRIOR TO ADJUDICATION, SECTION 6.5** for guidance on special requirement relating to prison personnel of pre-trial detention facilities.

- A. Does the prison service have an organizational chart that describes the lines of authority and staffing scheme? How are functions coordinated?
- B. Are the duties, rights, and responsibilities of each member of staff clearly defined in their contract and relevant regulations?
- C. Are staff familiar with participatory management practices? Is the management structure a hierarchical system that has little staff involvement in policy and practice development?

- D. What is the number of staff positions in prisons? What is the actual number? What percentage are women? How does the situation vary geographically?
- E. What services exist in prisons? How many staff in each service – staff positions and actual numbers? Which positions are vacant, e.g. security personnel, medical staff, psychologists, social workers etc.? How does the situation vary geographically?
- F. Is there a union that represents prison staff? Are staff allowed or required to join unions?
- G. Is there a standard and proper recruitment procedure for prison staff? If there is, what does it consist of? Are positions advertised? Posted? Where?
- Are there minimum qualifications for positions?
 - Is there transparency in the hiring process, including the use of standard questions during the interview process, rating sheets, etc.?
 - Is there a policy of equal opportunity/non-discrimination? Is it posted?
 - Does the prison service 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?
- H. If there is no standard and transparent procedure, who is recruited and on what basis?
- I. 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? It would be useful to obtain salary/pay scales - from most junior to most senior - and compare with the national minimum wage, as well as with the salaries of other law enforcement officers, such as police officers.
- J. Where minority groups are represented in the country, are they similarly represented in the prison service?
- K. What training do prison staff receive? What subjects does the curriculum include and how long does the training take? Does the training include a human rights component? Is this a separate subject or incorporated into the way in which each topic is presented?
- L. Do prison staff receive in-service training to improve their qualifications? What does this training consist of? How often can/must staff take part in in-service training?
- M. Is there specialised staff dealing with juvenile prisoners? Do they receive special training? What does their training consist of? How many such staff are there in the system? How does their availability vary geographically?
- N. Is there special training provided for dealing with/caring for the mentally ill? What does the training consist of?
- O. Are staff responsible for the supervision of long-term, life-sentence and prisoners under sentence of death specially trained? How does their training differ from others, e.g. does their training ensure deeper understanding of problems encountered by these categories of prisoners?
- P. Where are staff trained? Are there adequate training centres? Are the training centres for prison staff located in a separate building with its own administration or is the training undertaken in a military academy, police academy etc?
- Q. Who trains prison staff? Are the trainers especially qualified or trained for this task? Or are they retired prison officers, military personnel, members of the police force, etc

- R. How is staff accountability ensured? Is there an explicit disciplinary procedure, including for the use of force and ill treatment? Is this procedure made clear in prison personnel contracts and regulations? Is it enforced? Are there examples?

It would be helpful to obtain statistics relating to disciplinary measures against staff from the individual prison administrations, over the past 2-3 years to determine numbers and trend. This information may not, however, be entirely reliable in terms of assessing the extent to which discipline is enforced.

6.5 RESEARCH, PLANNING, AND POLICY FORMULATION

In order to articulate a vision, plan and budget for the future, governments and their departments often frame their priorities for the coming period in a strategy document. Prisons need to look into the future and plan staffing ratios and training needs, new buildings, income generating activities, and so on. The minimum standards they need to satisfy are set out in the **UN SMR**, which act as a guide for both government and assessor. Mechanisms for regular research into the main challenges faced by the prison system and reliable statistical data are vital to ensure that plans and policies are based on accurate factual information.

- A. Is there a clear statement of principles to guide the management of the prisons, (i.e. statement of purpose, mission statement or value statement)? How recently was it formulated? It would be helpful to obtain a copy, if available.
- B. Is there a national development plan including the penal system? What is included in the latest plan for the development of the prison system?
- C. At headquarters level, does the prison service have a department, unit, committee, working group, or other body responsible specifically for planning? What is its capacity? How does it develop its plans? Who provides information? Does it coordinate with similar units at local level? What is included in the plans? Is there a recent strategic plan? It would be helpful to obtain a copy, if available.
- D. Does the prison service have a strategy document or plan to address the main challenges in prisons, such as overcrowding, health concerns, lack of prison activities, systematically? If so, what provisions does the strategy include?
- E. Do the relevant ministry and/or prison service have a strategic plan to tackle the problem of TB and HIV in the prison system? What measures does the plan include?
- F. Has research been conducted into the reasons for overrepresentation of certain groups in prisons, e.g. income, gender, nationality, ethnicity based? What are the results? What steps, if any, have been taken based on these results?
- G. Have mechanisms been built into the criminal justice system for the collection and analysis of data and statistics relating to the use of prisons? What do these mechanisms consist of?
- H. Are regular evaluations carried out with a view to improving prison management? Are there any copies of such evaluations available? What measures have been taken on the basis of such evaluations?

6.6 CORRUPTION

Corruption is widespread in prisons, especially in low-income countries, where prison staff receive low salaries, and control mechanisms are inadequate. In many countries, prisoners can only enjoy their most fundamental rights in exchange for bribes. The rights that must be purchased can include receiving daily necessities, gaining access to a doctor, to a lawyer, obtaining a transfer to another cell or establishment, among many others. In low-income countries, where staff salaries are delayed or not paid, these may be paid by wealthy prisoners in return for privileges. In some administrations, corruption may be systemised, constituting a chain starting from the lowest rank prison staff and extending to very high levels. If corruption is institutionalised, then the humane and fair administration of prisons is severely undermined. Stronger prisoners will enjoy better living conditions and special privileges, while the rights of the weak will be neglected.

Corrupt practices among prisoners themselves are also common, with prisoners having to pay leader prisoners for anything from access to particular areas in prison, to food and even to be allocated a bed. Prisoners who are unable to pay and who are not protected by a stronger prisoner, may be subjected to physical violence, including sexual abuse.

Information about corruption in the prison system may be obtained from independent reports produced by NGOs, bar associations, human rights and inspection bodies, ex-offenders, families of offenders and ombudsmen's reports. Working conditions, staff salaries and benefits will need to be reviewed to identify some possible reasons and solutions. **(Please see Section 6.4)** If corruption is institutionalised, it will need very clear policies to be adopted at the ministry level and mechanisms built into the system to monitor the enforcement of such policies, in parallel to measures to improve the working conditions of staff.

- A. Is there a general perception among the public, offenders' families and offenders that corruption is widespread in the prison system? What must prisoners pay for most often, e.g. access to medical care, to visits, to telephone calls, to food, etc.?
- B. Does the situation vary between rural and urban and in different parts of the country?
- C. If corruption is a problem, what is its extent? Has corruption been institutionalised? Have any steps been taken by state / prison authorities/special commissions to tackle corruption? What are they? Have any inspection mechanisms been put in place? What do they consist of?
- D. Are corrupt practices widespread among prisoners? Is there a prisoner hierarchy in prisons allowing stronger prisoners to extract money from the weaker in order to allow them access to essential needs? Have these practices led to violence among prisoners?
- E. Is the prison administration taking any measures to prevent such practices, e.g. the more careful separation of prisoners, especially those which are likely to be abused by the rest; strict separation of juveniles from adult prisoners; special training for staff to be alert to and deal with such incidents effectively?
- F. Is there a prison that may have implemented effective measures against corruption, either at the prisoner or staff level? What has worked for this prison? How transferable do these practices/policies appear to be to other prisons?

6.7 OVERSIGHT: INSPECTIONS

The nature of inspections carried out in prison varies from country to country, but with most systems making provision for both an **internal** as well as an **external** system. National external inspection bodies may include commissions or persons appointed by the government, presidential human rights commissions, inspection bodies appointed by parliament, such a human rights commission, and lay inspection bodies (sometimes referred to as monitoring boards). In some countries, there will be a special judge with responsibility for prison inspections, in others there are supervision boards at local level, often headed by a judge. Inspectors appointed by the ministry responsible might carry out internal inspections, as well as bodies responsible for administrative inspections.

Prison inspections may also be carried out by external bodies responsible for inspections in a variety of enterprises outside prisons. Such inspection may relate to sanitation, preparation of food, medical services, health and safety in prison industries, fire prevention etc. Such bodies will belong to ministries other than the ministry responsible for prisons, which helps ensure the independence and objectivity of reporting.¹¹

Inspections may also be carried out by international and regional bodies, such as the **Special Rapporteur on Torture of the UN, the Committee for the Prevention of Torture and Inhuman and Degrading Punishment of the Council of Europe (CPT), and International Committee of the Red Cross**.

Independent inspection and monitoring is a basic and essential element of ensuring human rights compliance in prison systems. External independent inspection highlights abuses, protects prison staff from unfounded criticism, strengthens the hand of staff that want to resist involvement in brutality and, if such reports are published, helps to keep the challenges of prison reform in the public eye.

For inspections to achieve their intended aim, they should be regular and frequent. In principle, reports should be published. The public should have access, at least, to parts of the inspection reports that do not involve prison security.

(See **SMR, 55, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 29**).

- A. What provisions relate to internal inspection procedures of prisons? If there is more than one inspection body – what are they and what are their different responsibilities? How often do they inspect? Can and do they inspect unannounced? To whom do they report? What are the outcomes? Are their reports published?
- B. Are there independent inspection bodies with responsibility for the external scrutiny of prisons (e.g. human rights commissions, parliamentary prison inspectors etc)? What rules and procedures apply to their inspections? How often do they visit prisons? If there are a number of bodies, what are their different roles? What happens with the inspection reports? Are they made public? Do referrals to other competent authorities lead to action?
- C. Is there a lay inspection body with responsibility to monitor conditions and treatment in prisons? What is the membership? How often do they visit? Who do they report to? What action is taken, if any, in response to their reports? Do they publish their reports? (Obtain copies of such reports, if possible. If there is no regular inspection, by independent civil bodies, there may have been projects carried out, involving inspection for a specific period – inquire with NGOs).
- D. Is there provision for any other external inspections, such as by bodies of the Ministry of Health, the Ministry of Labour or Social Welfare? What are the arrangements?
- E. Do international and/or regional bodies inspect detention facilities, e.g. UN Special Rapporteur on Torture, **CPT**, etc.? Are their reports published? What are their findings?

6.8 PUBLIC OPINION AND ACCOUNTABILITY

As referred to in **Section 1**, public opinion is extremely important in the context of prisons and penal reform. Public opinion can drive politicians to adopt harsher criminal justice legislation and measures, it can prevent them from undertaking necessary reforms to reduce overcrowding in prisons, it can push them to give law enforcement agencies more powers to arrest and detain. Therefore, programmes for reform should never underestimate the crucial role public opinion and political climate plays in success or failure. SMR express this in a narrower sense, within the context of the status and duties of prison personnel: "The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used." (**SMR, 46 (2)**). Other UN documents, such as the **Tokyo Rules**, stress the vital place of public support and cooperation in the success of the implementation of non-custodial measure and sanctions (**Rule 18**).

An assessor seeking to identify entry points for prison reform, needs to be aware of the political climate, the existence or lack of political will to reform, the openness or otherwise of the ministry responsible for prisons and the general director of the prison service.

- A. Does the government support reform? Is there political will to reform? How is this evident?
- B. What is the political climate like in the country where assessment is taking place? Are politicians introducing harsher penal legislation in an effort to "fight against crime"? If so, what is driving these policies?
- C. Are there any efforts by the ministries responsible for detention and prisons to change public opinion in favour or against harsher legislation and measures? What kind of activities are they undertaking? Does the prison service have someone responsible for informing the media for example? Do they organise conferences and seminars?
- D. Are there any efforts by civil society, NGOs to change public opinion? In what way? What do they do? Do they organise conferences, seminars, meetings? Do they utilise the media? How?
- E. Have any public opinion surveys been carried out to find out how the public views harsher criminal justice legislation? How were the questions formulated? What were the results?
- F. What, if any, steps are being taken to address prejudices and preconceptions with regard to foreigners and minority groups?

7. PARTNERSHIPS AND COORDINATION

Prisons are the end of the line in the criminal justice process. The number of people sent to prison will fundamentally influence the quality of prison management. But prison authorities have no power over decisions taken by the criminal justice agencies involved in the process prior to imprisonment. Taking the situation in a wider context, the criminal justice agencies themselves have no power to deal with the social and economic problems of society and lack of adequate services to address problems, before problems lead to crime. It is evident, therefore, that coordination between the various criminal justice agencies, as well as between prison services and social welfare and health services in the civil sector, should be encouraged, in order to address challenges in prison reform efforts. Assessors involved in the design of programmes aiming to reform the prison system, should investigate prisons as part of a comprehensive study of the criminal justice system (as relevant to their TOR).

Where pre-trial detention facilities are located under a separate ministry to that of the prison system for sentenced prisoners, coordination is essential between the two management authorities to ensure efficiency – for example, procedures for transfer of offenders from pre-trial detention facilities to prisons, transfer of files and information, coordination in healthcare (especially TB, where uninterrupted treatment is vital), among others.

Many governments rely on support of external donor / development assistance and increasingly look to forging partnerships with responsible NGOs and civil society groups. The 'resource crunch' faced by low income countries who have to determine how to allocate the scarce funds to meet a range of competing priorities places a priority on good co-ordination between these agencies and actors.

7.1 SYSTEM COORDINATION

- A. At what level do the criminal justice agencies co-ordinate their activities – national, regional, local? What form does this take, i.e. monthly meetings or otherwise? Which criminal justice agencies take part?
- B. Is there a policy and strategic plan, for a coordinated approach to tackling problems relating to imprisonment? Who was involved in formulating it? Did the police, prosecutors, the judiciary and prison authorities participate? What are the problems addressed? What is the strategy put forwards to resolve them?
- C. Do prisons have a mechanism for raising issues with local decision makers and national policy makers? What are these mechanisms?
- D. Is there a mechanism for cooperation between the administrations (and if under separate ministries, the ministries responsible) of pre-trial detention facilities and prisons? What does this mechanism consist of and what issues does it cover, e.g. the speedy transfer of sentenced pre-trial detainees to prison facilities; rules on the transfer of prisoner files to prison facilities? Are there special rules relating to medical files to ensure they do not get lost; provisions for uninterrupted treatment for TB and HIV particularly, as well as other medical conditions?
- E. What communication mechanisms, if any, are in place between different departments and services in the prison system – both vertically and horizontally? For example, are there regular meetings between different services in each prison? Are there meetings between local and regional prison directors and headquarters staff at regular intervals?
- F. What cooperation mechanisms are in place with social services or the probation service where it exists? Is there a service responsible for preparing prisoners for release? Are probation officers of social services staff allowed ready access prisons to meet with their clients?

- G. To what extent do prison authorities cooperate with civil health services? Is there a protocol or agreement at ministerial level between the two ministries? What does this agreement include and is it applied in practice? Can and do civil health services assist with the treatment of TB and HIV patients in prisons? Do they monitor treatment? Do they provide training for prison health staff?
- H. Does the prison service have a strategy for cooperation with NGOs? What does it consist of? Is there a person or unit responsible for managing such coordination? Are there any signed partnerships protocols with selected national or international NGOs? What areas do they cover? Which NGOs?
- I. Do any civil society organizations have access to places of detention, e.g. NGOs and community based organizations (list them and the type of activity).
- J. Do prison administrations encourage partnerships with external organizations in the private sector? For example, does the prison make use of community resources in inviting in teachers, dramatists, local cultural groups etc to work alongside prisoners?

7.2 DONOR COORDINATION

- A. Who are the principal donors in this sector? What annual value is placed on their programme? Where direct budget support is supplied, identify how much has been set aside for the justice sector in general and for prisons in particular.
- B. Is the approach targeted to the institution concerned, i.e. prisons, police, prosecutor, and judiciary, and divided between donors, or sector wide, i.e. taking the criminal justice as a whole?
- C. Is this subject discussed in individual donor country action plans/or strategy papers?
- D. Does the Ministry responsible for prisons have a strategy for partnerships with donors? Are any donor/development partners actively supported in prisons?
- E. Are prisons included in any Poverty Reduction Strategy Papers?

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
- Convention on the Rights of the Child 1989
- Declaration on the Protection of All Persons from Enforced Disappearance, 1992
- 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
- Basic Principles on the Role of Lawyers, 1990
- Guidelines on the Role of Prosecutors, 1990
- Code of Conduct for Law Enforcement Officials, 1979
- Basic Principles on the Independence of the Judiciary, 1985
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990
- Standard Minimum Rules for Non-Custodial Measures 1990 (Tokyo Rules)
- Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules)
- Rules for the Protection of Children Deprived of their Liberty 1990
- Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Healthcare 1991
- Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988
- Guiding Principles on Drug Demand Reduction of the General Assembly of the UN 1998
- International Convention on the Elimination of All Forms of Racial Discrimination, 1969
- Convention on the Elimination of All Forms of Discrimination Against Women, 1981
- Safeguards guaranteeing protection of the rights of those facing the death penalty
- Recommendations on Life Imprisonment, 1994

As well as:

- HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings: A Framework for an Effective Response, UNODC/WHO/UNAIDS, 2006
- Human Rights and Prisons, A Manual on Human Rights Training for Prison Officials, UNOHCHR, Geneva 2000
- Reports by the UN Special Rapporteur on Torture;
- Reports by the UN Working Group on Arbitrary Detention.

Draft

- Model Code of Criminal Procedure
- Model Criminal Code

PLEASE NOTE: *The Model Code of Criminal Procedure (MCCP) and the Model Criminal Code (MCC) are being cited as models of codes that fully integrate international standards and norms. At the time of publication, the MCCP and MCC were still in DRAFT form and were being finalised. Assessors wishing to cite the MCCP and MCC with accuracy should check the following websites to determine whether the finalised Codes have 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.

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 1986
- African Charter on the Rights and Welfare of the Child 1990
- American Convention on Human Rights 1978

- The European Convention on Human Rights and Fundamental Freedoms 1953
- European Convention for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment, 1989
- Council of Europe Committee of Ministers Recommendation Rec (2006) 2 on the European Prison Rules, 2006
- Council of Europe Committee of Ministers Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation, 1999
- Council of Europe Committee of Ministers Recommendation concerning the protection of the human rights and dignity of persons with mental disorder, Rec. (2004) 10.
- Council of Europe, Committee of Ministers Recommendation No. R (93) 6, Concerning Prison and Criminological Aspects of the Control of Transmissible Diseases Including AIDS Related Health Problems in Prison
- Council of Europe Committee of Ministers Resolution (76) 2 On the Treatment of Long-term Prisoners
- Council of Europe, Committee of Ministers Resolution R (84) 12 Concerning Foreign Prisoners

Other Useful Sources:

- Making Standards Work, Penal Reform International, March 2001
- Coyle, A., A Human Rights Approach to Prison Management, International Centre for Prison Studies, London, 2002, available on ICPS website.
- Coyle, A., Managing Prisons in a Time of Change, International Centre for Prison Studies, 2006, available on ICPS website.
- Reports by African Union Special Rapporteur on Conditions in Prison and Other Places of Detention;
- Reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)
- The Treatment of Offenders under International Law, Nigel S Rodley, Clarendon Press, Oxford, Second Edition, 1999
- Monitoring Places of Detention, A Practical Guide for NGOs. APT.
- Stern, V., A Sin Against the Future, Imprisonment in the World, 1998
- Amnesty International, Human Rights Watch, and US State Department human rights reports;

National:

- Constitution
- Criminal/Penal statutes and procedure codes
- Strategic plans for the criminal justice system, the judiciary, and the penal system
- Research and evaluation reports by independent bodies, NGOs, academicians

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	OVERVIEW: GENERAL STATISTICAL AND DATA	<ul style="list-style-type: none"> ▪ Ministry of Justice reports and/or Ministry of Interior reports ▪ Penal System Reports ▪ Reports by international and national prison inspection bodies ▪ Reports by Prisons Ombudsman ▪ Reports by Law Society or Bar Association ▪ NGO reports ▪ Donor reports ▪ Research reports by independent academic institutions 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Ministry of Interior ▪ Senior Prison Service Officers ▪ Prison inspectors, human rights commission, judiciary with responsibility of prison inspections, prosecutors, monitoring boards, UN Special Rapporteur, CPT, International Committee of the Red Cross, ▪ Prisons Ombudsman ▪ Law Society or Bar Association ▪ NGOs working on criminal justice matters ▪ Donor organisations working on the criminal justice sector ▪ Academicians working on criminal justice issues 	
3.	LEGAL AND REGULATORY FRAMEWORK: LAW AND PRACTICE	<ul style="list-style-type: none"> ▪ The Constitution ▪ Penal/Criminal Code ▪ Penal/Criminal Procedure Code ▪ Prison Act/Criminal Executive Code/ Penal Enforcement Code ▪ Probation Act or similar ▪ Regulations to these codes and acts ▪ Prison Standing Orders ▪ Court Annual Reports ▪ Judicial Practice Directions: Circulars and Sentencing Guidelines ▪ Government policy documents ▪ National Reform Programmes ▪ Independent reports made by non-governmental organisations. ▪ Legal text books or academic research papers. <p>SITE VISITS</p> <ul style="list-style-type: none"> • statistics and information at different administrative levels and in different parts of the country (urban, rural, rich, poor) <ul style="list-style-type: none"> ▪ case examples ▪ Interviews 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Ministry of Interior ▪ Senior and local prison service officers ▪ Senior and local probation service staff ▪ High Court Judges, other senior judges, local judges and magistrates ▪ Senior and local prosecutors ▪ Legislative offices ▪ NGOs working on criminal justice matters ▪ Bar Associations ▪ Academicians working on criminal justice issues 	
3.1	LEGISLATION: OVERVIEW	See 3 above	See 3 above	
3.2	LAW REFORM	See 2 and 3 above	See 2 and 3 above	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4	PRISON MANAGEMENT:	See 2 and 3 <ul style="list-style-type: none"> ▪ SITE VISITS 	See 2 and 3, plus: <ul style="list-style-type: none"> • Prison staff, including specialist staff • Prisoners, where there is no risk of harm • Families of prisoners • Lawyers of prisoners • Former prisoners • Probation staff or other body responsible for assisting with preparation for release 	
4.1	ADMISSION AND ASSESSMENT	See above	See above	
4.2	LIVING CONDITIONS	See above	See above	
4.3	HEALTHCARE	See above, plus: <ul style="list-style-type: none"> ▪ Health Act ▪ Regulations to the Health Act ▪ Prison Service Health Policy/Strategy Paper; ▪ Probation Service Health Policy/Strategy Paper ▪ Specific strategic plans relating to the management of TB and HIV; ▪ Specific reports, strategic plans dealing with substance addiction ▪ Medical Association reports 	See above, plus: <ul style="list-style-type: none"> • Ministry of Health • Head of Prison Health Department/Unit • Senior and local prison healthcare staff • Specialists responsible for treating substance dependent prisoners • Medical Association or similar 	
4.4	CONTACT WITH THE OUTSIDE WORLD	See 4, plus: <ul style="list-style-type: none"> ▪ Reports by NGOs and other community groups active in prisons 	See 4, plus: <ul style="list-style-type: none"> ▪ NGOs and community groups active in prisons 	
4.5	PRISON REGIME	See 4	See 4	
4.6	SAFETY AND SECURITY	See 4	See 4	
4.7	COMPLAINTS PROCEDURES	See 4 (See particularly reports by Prison Ombudsman and Inspection Reports)	See 4, plus: <ul style="list-style-type: none"> • Judge or prosecutor responsible for supervising prisons 	
5.1	JUVENILES	See 4, plus: <ul style="list-style-type: none"> ▪ Juvenile Court Act or similar ▪ Juvenile Probation Act ▪ Regulations to these acts 	See 2 and 3, plus <ul style="list-style-type: none"> • Juvenile courts • Prison staff in young offenders institutions • Juvenile probation staff • Former juvenile prisoners • Families of juvenile prisoners • NGOs and community groups running support programmes for juveniles in prison • Bar Associations and lawyers working on juvenile cases 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
5.2	WOMEN	See 4	See 4, plus: <ul style="list-style-type: none"> Prison staff of women's prisons Former prisoners NGOs and community groups running support programmes for female prisoners Bar Associations and Lawyers working on women's cases 	
5.3	THE MENTALLY ILL	See 4, plus: <ul style="list-style-type: none"> Health Act Regulations to the Health Act Prison Service Health Policy/Strategy Paper; Probation Service Health Policy/Strategy Paper Medical Association Reports Psychiatrists' Association Reports 	See 4, plus: <ul style="list-style-type: none"> Ministry of Health Head of Prison Health Department/Unit Health services involved in the treatment of mentally ill offenders Prison medical and psychiatric staff Families of Mentally ill prisoners NGOs Medical Associations Psychiatrists' Associations 	
5.4	OVERREPRESENTED GROUPS	See 4, plus: <ul style="list-style-type: none"> Any government policy or strategy paper against discrimination Any prison circulars on combating discrimination UNHCR reports on the country assessed Reports on minority groups by NGOs and others working on minority groups' rights 	See 4, plus: <ul style="list-style-type: none"> Ministry of Justice/Interior UNHCR staff Consular representatives and/or families of foreign prisoners Families of minority group prisoners Former prisoners from these groups NGOs working on minorities' rights 	
5.5	LIFE-SENTENCED PRISONERS	See 4	See 4	
5.6	PRISONERS UNDER SENTENCE OF DEATH	See 4, plus: <ul style="list-style-type: none"> Any prison circulars, standing orders relating to prisoners under sentence of death Any special reports on the death penalty 	See, 4 plus: <ul style="list-style-type: none"> Lawyers representing prisoners under sentence of death; NGOs and other groups working on the death penalty 	
6.1	MANAGEMENT AUTHORITY	<ul style="list-style-type: none"> Ministry of Justice reports Ministry of Interior reports Penal System Reports Penal Code and Penal Procedure Code Prison Act and regulations Reports by international and national prison inspection bodies Reports by Prisons Ombudsman Reports by Law Society or Bar Association NGO reports Research reports by independent academic institutions <p>SITE VISITS</p>	<ul style="list-style-type: none"> Ministry of Justice Ministry of Interior Headquarters, regional and local prison service officers Prison inspectors, human rights commission, judiciary with responsibility of prison inspections, prosecutors, monitoring boards, Prisons Ombudsman Law Society or Bar Association NGOs working on criminal justice matters Academicians working on criminal justice issues 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
6.2	BUDGET	See 6.1, plus: <ul style="list-style-type: none"> Government policy documents/National Reform programmes; Budget documents and financial reports of the prison service SITE visits to be used to gather information on the disbursement of funds 	See 6.1, plus: <ul style="list-style-type: none"> Ministry of Finance Headquarters, regional and local prison staff responsible for finances 	
6.3	PROCUREMENT	See above, plus: <ul style="list-style-type: none"> Strategic plans and reports on procurement and distribution 	See above, plus: <ul style="list-style-type: none"> Headquarters, regional and local prison staff responsible for procurement and distribution 	
6.4	PERSONNEL	See 6.1, plus: <ul style="list-style-type: none"> Samples of Recruitment/ Human resources/interview questions Training materials Staff terms of reference, contracts Staff ethics code Disciplinary board Policy/Procedures 	See 6.1, plus: <ul style="list-style-type: none"> Staff Training Centre Prison governors Other prison staff Prisoners' families, ex-prisoners Bar Associations and lawyers representing prisoners Prison inspection bodies NGOs working in prisons 	
6.5	RESEARCH AND PLANNING AND POLICY FORMULATION	<ul style="list-style-type: none"> Prison Service Mission Statement Government policy documents/National Development Plan, including the penal system Prison headquarters planning department reports/strategic plans Research reports relating to: overcrowding, TB, HIV/AIDS, vulnerable groups, use of alternatives etc). Reports/interviews: Judicial authorities Evaluations of the prison system Poverty Reduction Strategy Paper 	<ul style="list-style-type: none"> Ministry of Justice Ministry of Interior Prison Service Headquarters High Court and other senior judges NGOs working on criminal justice matters Academicians and legal specialists working on criminal justice matters 	
6.6	CORRUPTION	See 4, 6.3, 6.4 and 6.5 plus: <ul style="list-style-type: none"> Any internal audit reports, if available 	See 4, 6.3, 6.4 and 6.5, plus: <ul style="list-style-type: none"> Former prisoners and their families; 	
6.7	OVERSIGHT	<ul style="list-style-type: none"> Penal System Reports Reports by external, independent inspection bodies Reports by NGOs working on criminal justice matters Reports by independent academicians and researchers working on criminal justice Reports by regional and international inspection bodies 	<ul style="list-style-type: none"> Ministry of Interior or Justice Independent inspection bodies NGOs Academicians, researchers Websites of regional and international inspection bodies (UN Special Rapporteur, CPT etc). 	
6.8	PUBLIC OPINION AND ACCOUNTABILITY	<ul style="list-style-type: none"> Government policy documents/National Development Plan, including the penal system Ministry of Justice/Ministry of Interior reports Penal System Reports and policy documents Seminar/conference reports Press reports Reports by NGOs working on criminal justice issues Public surveys and research reports 	<ul style="list-style-type: none"> Ministry of Justice/Interior Senior Prison System officials Media representatives NGOs working on criminal justice issues Bar Associations and lawyers Ex-prisoners and their families 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
7.1	SYSTEM COORDINATION	<ul style="list-style-type: none"> ▪ Ministry of Justice reports ▪ Ministry of Interior reports ▪ Ministry of Health reports ▪ Penal System Reports ▪ National Police Crime reports ▪ Court Annual Reports ▪ NGO reports ▪ Donor reports ▪ The Constitution ▪ Criminal/Penal Code ▪ Criminal/Penal Procedure Code ▪ Prison Act/Penal Enforcement Code ▪ Probation Act and any other relevant acts of parliament ▪ Regulations to these codes and acts ▪ Judicial Sentencing Policy Document ▪ Judicial Practice Directions, Circulars and Sentencing Guidelines ▪ Government policy documents/ National Reform Programmes ▪ Independent reports made by non-governmental organisations. ▪ Legal textbooks or academic research papers. ▪ Juvenile Court Act ▪ Regulations to this act ▪ Health Act ▪ Act governing drug courts ▪ Regulations to Health Acts ▪ Probation Service Health Policy/Strategy Paper ▪ Medical Association Reports ▪ Psychiatrists' Association Reports • UNHCR reports on the country assessed; • Reports on minority groups by NGOs and others working on minority rights ▪ Reports/Minutes of coordinating meetings ▪ Reports on special joint initiatives ▪ Progress reports by donor organizations ▪ Independent studies conducted by universities/NGOs <p>SITE VISITS</p>	<ul style="list-style-type: none"> ▪ Ministry of Justice /Ministry of Interior ▪ Ministry of Health ▪ Senior Prison Service Officers ▪ Senior Probation Service Officers ▪ High Court Judges and other senior judges ▪ NGOs working on criminal justice matters ▪ Donor organisations working on the criminal justice sector ▪ Senior Probation Service Staff ▪ Senior Prison Service Staff ▪ Legislative offices ▪ Bar Associations ▪ Donor organisations working on the criminal justice sector ▪ Regional and local prison staff ▪ Regional and local police ▪ Regional and local judges and magistrates ▪ Local probation service offices or other bodies responsible for supervising and supporting offenders and prisoners ▪ Former prisoners and their families, ▪ Juvenile courts / Juvenile police ▪ Juvenile probation staff ▪ Health services providing treatment for mentally ill offenders ▪ Medical Association ▪ Psychiatrists' Association ▪ Drug courts ▪ Health services providing treatment for drug addicted offenders ▪ UNHCR staff; ▪ Consular representatives and/or families of foreign offenders ▪ Families of minority group detainees ▪ NGOs working on minority rights ▪ Donor organisations 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
7.2	DONOR COORDINATION	<ul style="list-style-type: none"> ▪ Donor Strategy papers ▪ Progress reports by donor organizations ▪ Independent studies conducted by universities/NGOs ▪ Ministry of Interior/Justice strategy papers relating to cooperation and coordination with donors ▪ Poverty Reduction Strategy Paper 	<ul style="list-style-type: none"> ▪ Donor organisations ▪ Ministry of Justice ▪ Universities and NGOs 	

¹ “This phenomenon is taking place in a global context in which a hardened security-based approach to conflict resolution has in turn provided both the political leverage and moral justification for the utilisation of criminal policy to deal with a widening array of social and economic issues including drug use and immigration...In Mexico, for instance, legislators, persuaded by public pressure, extended the list of crimes for which accused persons can be detained on remand and increased the number of offences for which imprisonment could be applied”. (‘Over-use of Imprisonment: Causes, Consequences & Responses’ Penal Reform International Newsletter No.55, July 2006, p. 5).

² For example, in England and Wales, where the size of the prison population had reached crisis levels by September 2006, homicide rates had fallen by 12% in 2005/2006, compared to the previous year (the third successive year that the homicide rate had decreased). According to the British Crime Survey (BCS) statistics, crime had fallen by 44% in the last 10 years. Compared to 12 months ago, overall crime levels remained stable with a 1% rise recorded by BCS and 1% fall recorded on separate police figures (Crime in England and Wales 2005/06, Home Office Statistical Bulletin 12/06). Similarly, in US and Australia where imprisonment rates have grown, the national crime rate has actually declined. (‘Over-use of Imprisonment: Causes, Consequences & Responses’, Penal Reform International Newsletter No. 55, July 2006, p.5). See also, Coyle, A., “Managing Prisons in a Time of Change”, International Centre for Prison Studies, 2002, p. 27.

³ See Coyle A., “Managing Prisons in a Time of Change”, International Centre for Prison Studies, 2002, pp. 49-51 for a discussion on striking the balance between accountability and political interference.

⁴ For example, according to research undertaken by the Bureau of Justice Statistics in 2002 and 2004, the results of which were announced on 6 September 2006, more than half of U.S. prisoners have symptoms of mental health problems, with fewer than one third of them receiving treatment in prison. According to a recent study conducted in the United Arab Emirates, by the Decision Making Support Centre for Dubai Police, drug related offences account for 63% of the total number of prisoners (Khaleej Times, 17/09/2006). In Romania, over 40% of those imprisoned were convicted of theft in 2003, according to a report by the Association for the Defence of Human Rights in Romania - The Helsinki Committee of Romania, “The Penitentiary System in Romania, 1995-2004”, published in 2005. These examples are not unique. Similar situations have been recorded in countries worldwide.

⁵ e.g. Sampson, R. and Laub, J (1993), *Crime in the Making: Pathways and Turning Points through Life*. Cambridge, MA: Harvard University Press, cited in Maruna, S. and Immerigeon R., (Ed), *After Crime and Punishment: Pathways to offender reintegration*, Devon, UK, 2004., p. 15

⁶ For a discussion, see Coyle, A., “Managing Change”, International Centre for Prison Studies, 2002, pp. 31, 47, 59-60.

⁷ See European Prison Rules (2006), 51.1

⁸ Walmsley, R., *World Female Imprisonment List 2006*, International Centre for Prison Studies, www.prisonstudies.org.

⁹ Council of Europe, Committee of Ministers Resolution (76) 2 On the Treatment of Long-term Prisoners, 9 and 12.

¹⁰ Coyle, A “A Human Rights Approach to Prison Management”, International Centre for Prison Studies, p. 55

¹¹ In the Netherlands, for example, “there are a variety of supervision mechanisms organised by different Ministries, often with the authority to control different aspects of prison and life in prison. ... In addition, each prison has a legally based local committee, which supervises prison conditions and deals with complaints from prisoners. ...The independent Court of Audit has legal authority to audit the performance of the State and its associated bodies and in 2000 audited “the design and operation of the integrity policy in prisons”. These inspection and audit bodies are all independent of the prisons system and can also act as a countervailing influence to any political attempt to introduce changes which might threaten the human treatment of prisoners. Other jurisdictions have a similar raft of checks and balances”. Coyle, A, in “Managing Prisons in a Time of Change”, International Centre for Prison Studies, 2002, p. 50.



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CUSTODIAL AND NON-CUSTODIAL MEASURES

**Detention Prior to
Adjudication**

Criminal justice
assessment
toolkit

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

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UNITED NATIONS
New York, 2006

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This publication has not been formally edited.

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1. INTRODUCTION TO THE ISSUE

This tool guides the assessment of detention during the period between arrest and sentence. It includes the time spent in the custody of police or other law enforcement agencies, as well as the period after which a court remands a suspect in custody until he or she is adjudicated, and where convicted, sentenced or released. Detention is a particularly sensitive area in the criminal justice process. It is the period most open to abuse, as documented in numerous reports by international inspection bodies. Recognizing the particular vulnerability of detainees prior to adjudication, international human rights instruments provide for a large number of very specific safeguards to ensure that the rights of detainees are not abused, that they are not ill-treated and their access to justice not hindered.

International human rights law prohibits the use of arbitrary arrest and detention (**Universal Declaration of Human Rights** (Article 9). Article 9(1) of the **International Covenant on Civil and Political Rights**, requires that an accused understands what he/she is charged with; Article 9(2) provides that the accused be brought “promptly” before a court; and Article 9(3) requires that the consideration of release pending trial “subject to guarantees” should be exercised in favour of the accused.

The thirty-nine clauses in the **Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment** underscore the legal protections surrounding the detainee.

The decision whether to remand an accused or suspect to prison before his or her trial is usually a matter for the discretion of a court of law. The decision will be influenced by the prosecution or police who may seek to argue that because of the serious nature of the offence; the strength of the evidence against the person accused of committing it; or the past behaviour or personal characteristics of the accused, he or she is likely to:

- Flee/fail to appear for trial
- Commit additional or further offences if not kept in custody
- Obstruct of justice or interfere with evidence or witnesses
- Endanger the community.

The **Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)** state that pre-trial detention “shall be” used as a means of “last resort in criminal proceedings” (6.1); that where the protection of society, prevention of crime, respect for law and rights of victims are not compromised, the police or prosecution “should be empowered to discharge the offender”.

In the case of young persons in conflict with the law, the **Convention on the Rights of the Child** states that the detention or imprisonment of a child shall be used “only as a measure of last resort and for the shortest period of time” (CRC 37(b)).

People in prison awaiting trial are to be housed separately and treated differently from those who have been convicted of an offence and sentenced. The reason is that, under international human rights law, which is reflected in the constitutions of many countries, they shall be presumed innocent until proven guilty (UDHR 11; ICCPR 14(2)).

The **Standard Minimum Rules for the Treatment of Prisoners** (Rules 84-93) dedicate a section to prisoners under arrest or awaiting trial. These provisions act as guidelines for the prison authorities governing the conditions of detention of pre-trial prisoners, the privileges to which they are entitled and access to legal advice and assistance.

The international framework governing those in pre-trial detention is clear and exacting. In any prison, those on remand should be a privileged category of prisoner able to dress in their own clothes, receive food from outside, have access to their own doctors, procure reading and writing materials, receive regular visits from their legal advisers and assistance in preparation for their trials.

The reality in many criminal justice systems is otherwise. The lack of resources and adequate training of police officers mean that many arrest first and ask questions later, causing both delays for those properly arrested and grave inconvenience, if not injury, to those wrongly suspected. The courts may not be in a position to hear the case due for a long time due to their own pending backlog of cases.

Often, due to acute overcrowding, pre-trial detainees are held in conditions inferior to those of sentenced prisoners. Where they are not, they may be mixed together with convicted prisoners. The lack of resources for prisons in many low-income countries means that people in prison do not have access to legal advice and assistance, with the result being that they may overstay on remand, further adding to the congestion of the institution and injustice to the prisoner.

In overcrowded and under-resourced places of detention the rapid spread of transmissible diseases, especially TB and HIV, is common and a major challenge for a large number of countries worldwide. This reality alone should constitute an important consideration when deciding whether to remand suspects in custody. Some people in detention will eventually be determined to have been innocent by the courts, but may have acquired a life threatening medical condition while awaiting the outcome of their trials or appeals. The state's responsibility to provide the necessary healthcare to an increasing number of patients with TB and HIV/AIDS puts additional pressure on scarce resources.

Over-reliance on pre-trial detention may cause an already fragile criminal justice system to grind to a halt by overwhelming the system with cases. The lack of other critical resources may further slow the criminal justice system's ability to reach cases in which the accused are detained in a timely manner.

Pre-trial detention should be a measure of last resort applied only to protect society or ensure that a serious offender attends trial at a future date. Time spent on remand should be kept to a minimum and should be applied against any sentence that may eventually be imposed. Further analysis is required to determine whether the decision to remand a person is applied judiciously and due weight is given to other options.

The size of the pre-trial population in prison is a measure of the efficiency of the criminal justice system as a whole. The use or abuse of detention is a measure of the quality of justice the system provides to the poorest section of the community.

Terminology

The term **detainee** in this tool is used to cover all persons detained prior to adjudication – i.e. in police custody, custody of other law enforcement agencies, prisons, and pre-trial detention facilities. The terms **pre-trial detainee** or **pre-trial prisoner** are used exclusively for those who have been remanded in custody by court order. When a distinction has to be made between the two, this is reflected in the suggested questions.

Similarly, the term **detention** is used to cover all forms of detention, prior to adjudication, while **pre-trial detention**, is used exclusively to cover detention ordered by a court, while the accused/defendant awaits trial.

A distinction is made between places of detention used by law enforcement agencies following arrest, such as **police cells**, **temporary isolators**, and those which are used by prison authorities following a decision to remand a person in custody – which are referred to as **pre-trial detention facilities**, **pre-trial detention centres** or **pre-trial prisons**.

Other specific terminology is explained under each relevant section.

Special considerations regarding visits to places of detention

Assessors may need to visit places of detention, depending on the particular aims of their mission. It is recommended that:

- Preparations start well in advance of the mission, including permission being sought from relevant authorities for access to detention facilities. It may be particularly difficult to receive access to custody cells in police stations and other places of temporary detention;
- Terms of reference for the visits should be discussed and agreed upon with the authorities in advance.

Both during the preparation period and during the mission, unnecessary insistence on access to certain places of detention or parts of certain places of detention may not be helpful, if the aims of the mission do not specifically necessitate such insistence (e.g. assessment of human rights violations). If the objective of the mission is to undertake an assessment for technical assistance interventions or programme development, it is vital to develop trust and mutual understanding from the outset. However, ascertaining whether the rights of detainees are being respected in law and practice should form an integral part of any comprehensive assessment mission. Therefore, laws, policies and practices should be assessed to determine whether they are consistent with human rights standards.

Assessors inquiring into legislation and practices relating to detention should be mindful of the sensitivity of this subject and endeavour **to do no harm** (to detainees and their families) by their approach and nature of inquiries.

- It is recommended that assessors do not seek or hold private and individual interviews with detainees, especially if no follow up visit is planned. Private interviews generate expectations and some information given by a detainee may put him/her at risk.
- Meetings with groups of detainees, with or without the presence of staff, should not necessarily pose a risk, but assessors should also be careful in how the inquiry is made under such circumstances, taking care to avoid sensitive questions, e.g. questions regarding ill treatment, fairness of disciplinary procedures, etc.
- Information about matters such as treatment and application of safeguards in practice should be sought from alternative sources, such as the families of detainees, ex-detainees, prison chaplains, human rights and inspection bodies, bar associations and NGOs.

This tool guides assessors in their inquiries into the most common forms of detention prior to sentence. The rights of detainees and their treatment at all stages are covered. However, in order for all factors relating to detention to be fully examined, assessors are urged to refer to the following tools: **Policing: Crime Investigation; Access To Justice: The Courts; The Prosecution Service; and The Independence, Impartiality And Integrity of the Judiciary.**

This tool inquires into all factors relating to the **management of pre-trial detainees** (or **remand prisoners**). Assessors wishing to examine management issues such as management policies, structure, staffing, recruitment and training relating to the police force should refer to **Policing: Public Safety and Police Service Delivery.**

What this tool does not cover

Although this tool does cover the most common arbitrary or illegal practices adopted by law enforcement agencies authorized to detain individuals, its scope does not extend to the specifics of all forms of arbitrary detention. This is so for several reasons:

- The subject itself and concerns relating to arbitrary detention are vast, while this tool is aimed primarily to guide assessors undertaking missions to develop programmes for reform or other technical interventions, mission which normally follow a request or

invitation from the country and ministry concerned, or from a donor organization, rather than to investigate, exclusively, violations of human rights;

- Access to detainees held in arbitrary detention and access to information about them, will not normally be available to assessors, unless they are persons or part of a team mandated specifically to investigate human rights violations, such as ill-treatment, torture and disappearances, in detention, e.g. the UN Special Rapporteur on Torture, UN Working Group on Arbitrary Detention, European Committee for the Prevention of Torture and Inhuman or Degrading Punishment, African Union Special Rapporteur on Conditions in Prison and Other Places of Detention, International Committee of the Red Cross). Guidance for these kinds of specialized missions, necessitating particular expertise, is beyond the scope of this tool.

In addition to developing an understanding of the strengths and weaknesses of a state's approach to detention prior to adjudication, the assessor should be able to identify opportunities for reform and development. Technical assistance in the area of detention and alternatives to incarceration in the context of a broader strategic framework may include work that will enhance the following:

- Legislative reforms aiming to introduce and widen the scope of alternatives to pre-trial detention in the penal statutes, as well as introducing custody time limits, among other possible measures;
- Legislative reforms to improve legal safeguards for detainees and training for relevant law enforcement agencies in the application of these safeguards;
- Improving organisational design and management processes relating to the implementation of legislation relating to all forms of detention;
- Improving mechanisms of coordination between criminal justice agencies responsible for the detention of those suspected of criminal offences, as well as between them and social welfare or probation services, responsible for providing reports (e.g. social enquiry reports) about the detainee, with a view to speeding up the process and improving efficiency;
- Legislative and structural reforms enabling the transfer of the management of pre-trial detention from the ministry responsible for investigating charges to a separate ministry responsible for the management of pre-trial prisoners (e.g. from the Ministry of Interior to the Ministry of Justice);
- Improving access to justice, particularly for the poor, by providing technical assistance to develop procedures and management of legal aid programmes and by supporting NGOs and others providing paralegal advisory services;
- Effective strategies to combat TB and HIV/AIDS among detainees effectively; development of TB and HIV management programmes; improvement of on-entry health screening measures and health services in detention facilities;
- Developing training curricula for the police, prosecutors, judges, magistrates and prison service staff responsible for pre-trial detainees;
- Improving inspection procedures; training and technical capacity building for independent inspection bodies;
- Designing special projects aiming to increase and improve the use of alternatives for special categories and vulnerable groups;
- Enhancing capacity to develop and manage planning, research and information management;
- Increasing public awareness about the rights of a detainee; as well as about alternatives to pre-trial detention and imprisonment; increasing community participation in the criminal justice process.

2. OVERVIEW: GENERAL AND 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 pre-trial and general prison population and overall 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.

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

- Ministry of Justice and Ministry of Interior reports
- National Police Reports
- Penal System reports
- Court Annual reports
- National Human Rights reports
- Reports by prison inspection bodies, if available
- Reports by Law Society or Bar Association
- Non-governmental organisation (NGO) reports on the prison system
- Donor reports

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

- Ministry of Justice/ Ministry of Interior
- Senior prison service officers
- Judiciary (especially those who visit prisons and those who are responsible for dealing with appeals and complaints from pre-trial prisoners)
- Human Rights Commission
- Prison Monitoring Boards or other prison inspection bodies
- Law Society or Bar Association
- NGOs working on criminal justice matters
- Donor organisations working on the criminal justice sector

A meaningful analysis of the detention and pre-trial population trends will help identify some of the main challenges and indicate some immediate measures that can be taken in the short term to reduce overcrowding of prisons and detention facilities and enable policy and decision makers to plot a course of measures over the medium and long terms. Such an analysis will, for example, provide some indication of whether detention is being used too often and unnecessarily; whether particular groups are overrepresented, e.g. minorities, low-income groups; whether any special provisions are made for juveniles and women; and whether custody time limits are adhered to and how often they are exceeded. Further inquiry into these areas of possible concern is made under separate headings under **Sections 3 and 4**, which seek to clarify the details of law and practice.

While gathering information on figures and trends, the assessor should bear in mind that the quality of this information is extremely important to the reliability of the assessment. Information provided by authorities, especially in developing countries, can be outdated or not sufficiently reliable due to resource or technical problems. So, it is essential to gather information from a variety of sources, and determine the methodology used for data collection and the geographical coverage of information provided.

2.1 DETENTION TRENDS AND PROFILE OF PROCESS

- A. What are the figures for custody in police stations over the past 5 years? Is there an increase or decrease?
- B. What percentage of those detained in police custody was later remanded in custody by court decision? What percentage was released? What percentage eventually received a prison sentence after trial?
- C. What is the percentage/number of people placed in administrative detention over the past 5 years? Is there an increase or decrease?
- D. Over the last five years, what number of and percentage of prisoners have been detainees? What percentage of the prison population consists of un-sentenced prisoners?

- E. Do the detainee figures covering the last five years show a downward, stable, or upward trend? How does this trend compare to the convicted prisoner figures? Is the trend similar or is there an increasing or decreasing volume of pre-trial prisoners?
- F. How does the figures compare with other countries in the same region?
- G. What are the figures for juvenile offenders and women in pre-trial detention over the past five years? Is there an increase or decrease? Where possible, indicate the ages and offences of the juveniles and the offences of the women in pre-trial detention.
- H. What is the backlog of remand cases according to time spent in custody and offence?

See example below, showing the number and category of cases still pending from the year originally charged, starting with the year for which any such cases are still pending. This information can be obtained from booking information register even when it is not collected for an official report.

Year	Offence	Number
1996	Homicide	5
1997	Robbery	3
	Homicide	6
1998 to		
Current Calendar Year		

- I. If possible, disaggregate the above data by year. If possible, disaggregate the number of prisoners on remand by age, gender, and offence. If possible, indicate by percentiles or figures how many have been on remand for a) < 1 month; b) 1-3 months; c) 3-6 months; d) 6-12 months; e) up to 2 years; f) up to 3 years; g) up to 4 years; h) over 4 years?
- J. Who has been on remand for the longest period and for what offence? When was he/she last before a court?
- K. Can the above data be obtained for youthful offender/juvenile institutions?
- L. What is the size of this backlog at national, regional and local levels? What are the backlog trends? Where backlogs are increasing or decreasing, can the trend be tied to the implementation of any new policy or law?

2.2 LEGAL REPRESENTATION

PLEASE SEE ALSO ACCESS TO JUSTICE: LEGAL DEFENCE AND LEGAL AID.

- A. What percentage of adult detainees in police custody has legal representation?
- B. What percentage of juvenile detainees in police custody has legal representation?
- C. What percentage of adult pre-trial prisoners has legal representation?
- D. What percentage of juvenile pre-trial prisoners has legal representation?
- E. How do these figures vary geographically – both in different parts of the country and between urban and rural? Ask for separate figures from different locations.
- F. What percentage of these detainees are being provided with free legal representation by the state authorities? How does this vary geographically?
- G. How many practicing lawyers are there in the country? Is there a criminal bar?

2.3 PROFILE OF DETAINEES

- A. If data exists, set out the approximate percentage of detainee by suspected offences, e.g.: violent offences; non-violent offences; property offences; offences relating to drugs, etc.? How do these figures vary geographically? **Police custody and pre-trial detention should be categorized separately.**
- B. What is the percentage of those suspected of drug related offences held in police custody and pre-trial detention? What percentage of them are women? What percentage are foreign nationals?
- C. What is the percentage of ethnic minority groups and foreigners in police custody and in pre-trial detention? How does this percentage vary geographically?
- D. Are illegal immigrants or asylum seekers detained alongside other detainees? Is this common practice? What is the number/percentage of such persons? How does practice vary geographically? Illegal immigrants or asylum seekers should not be treated as criminal suspects. **Please see Section 5.5 for further guidance.**
- E. Targeting 2-3 sample pre-trial prisons (and youthful offender institutions), consider asking the prison officials in these institutions their opinion as to how many prisoners constitute a threat to public safety. Do the officials walk around the facility with ease? How many officials were assaulted in the past 12 months by how many individuals?
- F. How many adult suspects have been granted provisional liberty (also known as bail) but could not meet the conditions set by the court and are therefore detained? If general data are not available, information can be gathered from a representative sample of prisons to get an approximate picture.
- G. How many juvenile suspects have been granted provisional liberty, but could not meet the conditions set by the court and are therefore detained?
- H. How many persons are in pre-trial detention due to their inability to raise the means to pay a fine?

2.4 KEY CHALLENGES: OVERCROWDING, TB, AND HIV

- A. What are the challenges facing detainees in police custody and pre-trial detention?
- B. What is the official capacity of the pre-trial detention facilities and what is the current pre-trial prison population? In which regions/cities are the most overcrowded pre-trial prisons located?

The official capacity might not reflect current capacity, since official capacity will have been determined at the time of construction, whereas actual capacity may have changed over time, due to building dilapidation, use of sections set aside for prisoners for other purposes etc. So the actual capacity of a few pre-trial detention facilities can only be seen during site visits to a representative sample of such facilities. However, even the official capacity figures will give the assessor some idea about the situation.

- C. What is the official capacity of police custody cells, temporary holding facilities for criminal suspects and any other detention facilities used to hold suspects, prior to being transferred to a pre-trial detention facility (prison)? What is the current number of detainees in these facilities?

- D. What are the main health challenges? Is there a particular concern about the incidence of HIV and/or TB? How many pre-trial detainees have been diagnosed with TB and how many are estimated to be HIV positive? How do these figures compare to those relating to the convicted prisoners?
- E. What procedures or mechanisms do the government and prisons employ to create more space in detention facilities?
 - o Wider use of non-custodial options (such as caution, diversion, community service etc)
 - o Relaxing bail conditions
 - o Improving communication, collaboration and co-ordination between criminal justice agencies in case management (at the local level)
 - o Speeding up the delivery of judgments
 - o Involving the community more in the criminal justice process
- F. What 'bursting' provisions, if any, exist to enable authorities (judicial or prison authorities) to take action to reduce congestion in their prisons?

2.5 QUALITY OF DATA

- A. What methodology is used by the authorities to collect and process the information provided?
- B. When general information is given, what is the geographical coverage? Do the figures refer to the whole country or only to some regions?
- C. When was the information collected?

3. LEGAL AND REGULATORY FRAMEWORK

The following documents constitute the main sources from which to gain an understanding of the legal and regulatory framework governing detention.

The Constitution: The Constitution often includes a Human Rights Chapter. Usually there is a section on arrest, detention, and trial. The Constitution may also set up watchdogs to ensure the rights set down in the Human Rights Chapter are adhered to. Some will include a mechanism for inspecting prisons and places of detention.

Criminal/Penal Code and Criminal/Penal Procedure Code: The penal code will include non-custodial measures and sanctions, possibly for certain categories of offences. The law governing pre-trial detention and matters of provisional release or bail are usually to be found in the Criminal/Penal Procedure Code, sometimes in the Criminal/Penal Code. The Criminal/Penal Procedure Code and regulations will also include the rules relating to arrest and police custody.

The Penal Enforcement Code, Prison Act, Criminal Executive Code or similar, contains a set of principles by which the prisons are governed.

The Prison Regulations constitute secondary legislation that guide prison officers on the application of the law set out in the above code or act (primary legislation). Many Prison Acts are old and outdated and pre-date the framework of UN Rules, Principles and guidelines enunciated since the 1950s. However some newer Acts and Regulations will contain provisions on the action prison officers can take when an individual prison or the entire system becomes overcrowded.

The Probation Act, or similar, will include rules relating to the responsibilities of probation services, if they exist, during the pre-trial detention period – such as the preparation of pre-sentence enquiry reports.

Provisions governing juvenile justice are set down in Children and Young Persons' legislation or statutes such as a Juvenile Court Act or in similar provisions. The Prison Act and legislation governing young persons may also set out who is able to visit prisons and institutions for young offenders, such as elected members of the legislature and judicial officers; others admit accredited members of the legal establishment and civil society.

However, what is stated on paper is often not reflected in practice. In many countries, while the laws themselves appear to be sound, but the implementation of these laws is wanting. Having established what the national legislation provides for, the assessor should examine what the actual situation is, during site visits to a representative sample of detention facilities in different parts of the country and in interviews with local police, local prison staff, offenders (when appropriate), ex-offenders, their families, lawyers and NGOs.

Suggested questions are divided into themes, in chronological order of process and include questions on law and practice. Questions should be raised at both central and local levels.

Before inquiring into existing legislation under each topic, the tool assists the assessor to determine what, if any, attempts were made to reform legislation in recent times.

3.1 LAW REFORM

- A. When were the criminal/penal and criminal/penal procedure codes last reviewed? What, if any, changes were made?
Did the review include, for example:
- A rationalization of sentencing, including decriminalization of certain offences;
 - Widening possibilities for alternatives to pre-trial detention;
 - Prohibiting pre-trial detention for less serious offences;
 - Setting stricter custody time limits;
 - Introducing new legal safeguards for pre-trial prisoners and detainees in police custody.
- B. Are there certain categories of offences in legislation for which pre-trial detention is never applied? Which ones are they? Have their numbers increased at all in any recent reforms?
- C. Is there a law commission or law review body that is considering the criminal/penal statutes, to include measures to reduce the pre-trial prison population and improve legal safeguards for pre-trial detainees? What are the changes being considered?
- D. What laws are currently under review that may affect pre-trial detention?

3.2 ARREST, DIVERSION AND POLICE CUSTODY

3.2.1 Diversion from Prosecution and Alternative Measures

Often it is the court that determines whether an accused is to be diverted from prosecution to an alternative measure, (such as an arbitrated settlement, a restorative justice process, a community service order or appropriate treatment), be released on bail or await his/her trial in detention.

However, often the police and prosecutors will have discretion to divert cases from the criminal justice process or to grant bail. Whether police and prosecutors use their discretion and how courts manage the caseload will directly have an impact upon the size of the prison population and conditions in detention.

Please see also **ACCESS TO JUSTICE: THE COURTS; THE INDEPENDENCE, IMPARTIALITY AND INTEGRITY OF THE JUDICIARY;** and **THE PROSECUTION SERVICE;** as well as **POLICING: CRIME INVESTIGATION; CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION (Sections 3.2 and 3.3);** and **SOCIAL REINTEGRATION (Section 4.1).**

- A. Who has authority to arrest people? Are there clear rules set out in legislation for arrest? What criteria apply? In practice, do police or other law enforcement agencies use their authority to arrest indiscriminately and arbitrarily? Are there any reports and case examples of frequent arbitrary arrest? Which groups are generally targeted?

- B. Are police ‘swoops’ conducted from time to time on for example, street children vagrants, commercial sex workers, illegal immigrants)?
- C. Who, if anyone, is allowed to divert people from the criminal justice process (whether by formal caution or diversion to a scheme operated by the social, probation, NGO services)? The police? The prosecutors? Judges?
- D. How often to the police and/or prosecutors, or other criminal justice agents divert cases away from the criminal justice system in practice? What diversion measures are used most frequently?
- E. What authority do the police, prosecutors or other criminal justice agents have to release a person who has been detained for questioning prior to the filing of charges? What are the rules and conditions governing bail before a court appearance? How often does this happen in practice?
- F. How often do courts grant bail or apply other alternatives to pre-trial detention?
- G. Is there a legal presumption in favour of bail or other alternatives to pre-trial detention, such as supervision/restrictions? What exceptions apply and in what circumstances?

It may be, for example, that in non-violent crimes such as simple theft, the presumption exists; but in cases involving homicide the presumption is exactly the opposite and special circumstances have to be offered in evidence by the defence to gain bail for someone so accused. Some countries have a formalised policy of presumption of bail for offences that carry a maximum sentence of imprisonment below 2-3 years. Typically, the criteria for ordering pre-trial detention are based on the accused’s likelihood of fleeing the jurisdiction, which involves assessing the accused’s ties to the community and the means and preparations he /she may have made to abscond, and whether the accused poses a threat to the safety of others.

3.2.2 Police Custody: Legal Process and Safeguards

This section inquires into the legislative framework and practice governing custody of a suspect in police custody cells and other places of temporary detention, which might be under the jurisdiction of the police or gendarmerie (or sometimes military authorities). These cells are designed for short-term occupancy, until a suspect is brought before a court –the period a suspect should spend in these cells should not normally exceed 48 hours.

Holding cells: In addition to police custody cells, there may be separate holding cells, where detainees are held for 10-12 hours – i.e. not for an overnight stay. This often happens at courthouses, for example, where the accused are held during trials or while awaiting an appearance before a judge. But more often the term “holding cell” is used for what is described above as police custody cells.

In some systems there may be temporary isolation facilities for criminal suspects or temporary detention isolators, which are used for detention prior to appearance at court (e.g. in the former Soviet Union). National legislation regarding maximum time limits in these cells varies – normally the maximum is 72 hours, with possibilities for extension, with the approval of a judge or a prosecutor.

Cells in police stations may also be used for the whole period of pre-trial detention (e.g. the period after a court has decided to remand a suspect in custody pending his/her trial). This may happen when the Ministry of Interior or the police are directly responsible for the management of pre-trial detention facilities or because of overcrowding in those facilities. In principle, police cells should not be used for prolonged periods of pre-trial detention, but when they are, measures must be taken to ensure that detainees in these cells enjoy the same rights and are provided with the same conditions and activities as those provided in pre-trial detention facilities. (Please see **Section 3.3** for guidance).

The laws of many countries recognize the vulnerability of the accused during the period immediately after arrest, by requiring police to produce a suspect before a court ‘promptly’ or at least within 48 hours. The understanding is that, once a decision has been made by the court, the suspect will either be released (discharged, diverted or released on bail) or transferred to a pre-trial detention facility designed for a longer-term stay. In practice, however, in many countries, the time a suspect is held in police custody may be extended either arbitrarily or by the prosecutor or judge for months or more.

There are serious concerns relating to detention in these facilities. They include lack of access to legal representation, risk of ill treatment or torture by the custody police or investigating police, health concerns, especially in countries where TB and HIV are prevalent and often extremely inadequate physical conditions.

In terms of protecting a person's legal rights and safeguarding against ill-treatment and torture, there are a number of fundamental safeguards that should apply from the outset of a person's detention:

- The right to inform a close relative or someone else of the detained person's choice of his/her situation immediately (**SMR 92, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 16**).
- The right of immediate access to a lawyer (**Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 17**).
- The right to a medical examination and the right of access to a doctor, ideally of the detainee's own choice, at all times, in addition to any official medical examination. (**See SMR 91, Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment, Principle 24, CPT 2nd General Report, 1992 and Council of Europe, Committee of Ministers Recommendation Rec (2001) 10 on the European Code of Police Ethics, Rule 57**).
- The right to be brought "promptly" before a judge for a determination of the legality of the detention and whether it may continue. **Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment, Principle 11**. While no precise definition for promptly exists, more than 72 hours is often considered excessive and is the maximum established by the **Model Code of Criminal Procedure (DRAFT, 30 May 2006) Article 125 bis**.
- The right to be informed immediately about the reasons for arrest and rights under the law, in a language they understand. (**Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principles 10, 13, and 14**).

In order to understand how the whole process works in a given country, from arrest to detention in pre-trial detention establishments, it is recommended that the assessor make inquiries into both the legislation and the actual practice relating to all forms of detention of suspects who have not been sentenced. The legislation governing the police will need to be reviewed, and depending on the objectives of the assessment mission, police custody cells, as well as any pre-trial detention cells in police stations should to be visited.

The assessor will also need to be mindful of the fact that in some countries persons apprehended by law enforcement agencies might be transferred a number of times between different locations before they reach the "official" place of detention. This process may take several days or even weeks, while the official date of arrest recorded might be the date on which the person arrived in the final place of detention. Some questions will need to be asked to ascertain if this is happening and how often. This information is likely to be available from monitoring/inspection bodies, NGOs and bar associations working on criminal justice issues, as well as ex-offenders and their families.

Please also refer to **POLICING: OVERSIGHT AND INTEGRITY OF THE POLICE**; and **CRIME INVESTIGATION**; as well as **ACCESS TO JUSTICE: THE COURTS; LEGAL DEFENCE AND LEGAL AID**; and **THE INDEPENDENCE, IMPARTIALITY, AND INTEGRITY OF THE JUDICIARY**.

- A. What provisions apply to detention in police/gendarmerie custody? How long can a suspect be held in police custody before being brought before a judge?
- B. Are there military detention facilities? What authority does the army have to detain civilians? What provisions apply?
- C. Who is responsible to order holding in custody? What are the rules for extending police custody? Who decides? Do police adhere to time limits in producing an accused before a court? Do people ever characterize a suspect as a witness to avoid such time limits?
- D. Where police exceed their jurisdiction in holding a suspect in police custody, what justification do they provide for doing so?
- E. Does legislation require that suspects be informed of their rights immediately upon arrest in a language that they understand? Are their rights given to them in written form? To what extent does this happen in practice?
- F. What are the rules governing access to legal representation? Is a suspect apprised of the right to contact a lawyer immediately on arrest and allowed to do so? Is the state/legal establishment obliged to provide legal aid to indigent defendants? Are meetings between a suspect and his/her lawyer confidential – i.e. out of hearing of a

police officer? **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 17 (1) and (2) and Basic Principles on the Role of Lawyers, Principle 8.**

- G. In practice, is the right to legal advice at the police station, in full confidentiality, a reality for all, some, very few? During interviews by police, is the accused assisted by legal counsel always, sometimes, rarely? Does the state/legal establishment always provide legal aid when requested?
- H. Is there an obligation to inform the family or relatives of a detainee? How soon after arrest must they be informed? In practice, are the family members or relatives informed – always, sometimes or rarely? How soon after arrest are they informed?
- I. Can a detainee, a member of his/her family or his/her legal representative appeal against detention? Who must they apply to and within what time frame? What are the rules? What percentage of requests for continued detention are declined/denied by the court? Do the courts order the release of the detainee when such a request is declined/denied?
- J. Do lawyers attend the lower courts always, sometimes, never? Are the unrepresented accused assisted in court or must they argue their cases themselves?
- K. Do the courts enforce custody time limits? What measures do they take? **Please see External Oversight, Section 6.8.2**
- L. Where custody time limits exist and the court releases a detainee on this basis or where the court discharges an accused person, do the police re-arrest the accused and re-charge him/her? How often? Does legislation explicitly prohibit re-arrest on the same charges?
- M. Are police obliged to keep custody registers for all suspects detained? Do they do so? Is it current? Complete? What information is included in custody registers?

The custody register should include information about all aspects of a person's custody and all action taken in connection with it, including:

- Full name of detained person
- Time and reason for arrest
- Time when the person was taken into police custody
- Time when detainee was informed of his/her rights
- Signs of injury or mental disorder
- Contact with family, lawyer, doctor, consular representative,
- Questioning
- Identity of the law enforcement officials concerned
- First appearance before a judicial or other authority
- Release
- Transfer, incl. to pre-trial detention facility.

(See **Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principle 12**; **UN Declaration on the Protection of all Persons from Enforced Disappearance, Articles 10 and 11**; **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)** reports and recommendations.)

- N. Are custody registers actually kept? What is the quality of the information recorded? Are there geographical variations in practice?
- O. Does the custody register give any information about any previous detention prior to arrival at the particular destination?
- P. Under what legal authority, if any, once a court orders that a suspect remain in custody on remand and he/she has been transferred to a pre-trial detention facility, may he/she

be brought back to police the police station for interrogation? How often does this happen in practice? How long are detainees held in police custody under such circumstances?

Police custody registers may be a source of determining whether this practice exists and whether it is common practice. Once pre-trial detention has been ordered and suspects have been placed in an institution under the jurisdiction of the prison authorities, they should not be brought back to the police station for questioning, as this carries a risk of ill treatment and abuse of legal rights. In addition, the conditions in facilities in police custody are not typically intended for, nor are they suitable for, long-term detention. Police interrogations should take place in the pre-trial facility, which, ideally, would be operated under the authority of a different ministry (normally Ministry of Justice, rather than Interior), though this is not always the case. (Please see also **Management Authority, Section 6**).

- Q. Does legislation provide for the medical examination of all detainees at the outset of the custody period? By law, do suspects in police custody have the right of access to a doctor at their own request, in addition to any medical examination carried out officially? Is there an obligation to record the facts of the medical examination? **Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principle, Principles 24 and 26 and CPT recommendations, as quoted in Council of Europe, Committee of Ministers Recommendation Rec (2001) 10 on the European Code of Police Ethics, Rule 57.** To what extent are the rules applied in practice? Are there geographical variations?
- R. What measures are taken, if any, if evidence of ill treatment is discovered? Does the doctor report the findings to a judicial authority – e.g. the prosecutor or judge? If not, what other measures, if any, does/can a doctor take? Are there examples of such cases?
- S. Is ‘confession-based’ evidence the practice, i.e., once the police have a confession from the accused, do they fail to seek any additional corroborating evidence?
- T. Are police cells used for long periods, due to lack of space in pre-trial detention (remand) prisons/or lack of remand prisons? Is this the rule or is it an exception? Does practice vary in different parts of the country? How many suspects are currently in pre-trial detention in police stations?
- U. What action is taken if a death in custody occurs? What are the procedures for investigation? Who is responsible for the investigation? Are the findings of investigation made available to the family and legal counsel of the detainee? Are there examples of such cases? What were the outcomes of investigation? Please see the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 34**, for guidance.

3.2.3 Detention Conditions

Minimum conditions of detention in police custody cells depend on the time a suspect is expected to stay in them. Cells which are meant for overnight stay – or for 2-3 nights – should be of reasonable size, with adequate lighting (i.e. sufficient to read by), preferably with natural light, adequate ventilation, a chair, table and bed. Detainees should be given a clean mattress and blankets at night. They should have ready access to sanitary facilities and drinking water, and should be provided with adequate food (including hot food) at regular intervals. People held in custody for more than 24 hours should be offered one hour of outdoor exercise each day. (See **Council of Europe, Committee of Ministers Recommendation Rec (2001)10 on the European Code of Police Ethics, Art. 56** and commentary thereto, and recommendations by CPT in a number of its reports).

Detainees should be held in single cells (**SMR 86**). However, where this is not possible, they should be separated according to the severity of the crime of which they are suspected and strictly according to gender and age. The amount of space each detainees or prisoner should have is a question frequently asked. SMR do not prescribe a specific minimum size of space each detainee. It rules that “Accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting,

heating and ventilation” (**SMR, Rule 10**). The European Prison Rules also do not recommend a specific amount of space (See **Rule 18.1**). As a measure to go by, for persons who are detained for more than 1-2

days, CPT has recommended an absolute minimum of 4 square meters per person in shared accommodation. Its comments, in its reports on conditions in particular countries, indicate that in individual cells 6 square meters is considered a minimum, but still “rather small”, and 8-9 square meters satisfactory.¹ This would apply to all pre-trial detainees and sentenced prisoners.

Prevalence of transmissible diseases, such as TB, in overcrowded detention and prison conditions is a reality in many countries. In countries where people are held in police custody cells for much longer than the intended 1-3 days, and particularly in countries where TB is widespread, health screenings should be undertaken on entry and on release or transfer and medical files transferred to the institution to which the person is being sent. (Please see also **Section 3.3.3**)

- A. Are detainees held in single cells? What size cells? Do they have sufficient natural and/or artificial lighting? Are they provided with a bed, mattress, sheets, and blankets? Do these appear to be clean?
- B. If they are not being held in single cells, are the cells overcrowded? Is there sufficient space for each person? How many people in each cell? What is the official capacity of each cell?
- C. Is there ventilation in the cells? Is it adequate?
- D. To what extent do detainees have access to sanitary facilities? How many toilets and washing facilities per how many detainees? Are they located in or adjacent to the cell? If not, what rules apply to gain access? Are detainees allowed to use them at night?
- E. Are detainees given food and water (that is potable)? How often? What does the food consist of? Does it appear adequate and nutritional? How does it compare to food available outside prisons or detention facilities?
- F. Are detainees allowed to have any reading materials or board games? Are there any reading materials or games in the cells visited?
- G. How much outdoor exercise are they allowed per day? Is their right reflected in practice? Where do they exercise? Is the yard open on top and sufficiently large to walk around in? Detainees being held for more than 24 hours, pre-trial detainees and prisoners should be allowed at least one hour of outdoor exercise per day.

3.3 PRE-TRIAL DETENTION

If a court decides that a suspect must be held in detention until his/her trial and sentence, then he/she should be transferred from police custody (or other temporary place of detention) to a pre-trial detention facility (or remand prison), normally managed by the prison service, rather than the police.

People should only be detained before trial where there is reasonable suspicion that they have committed an offence AND substantial reasons for believing that, if released, they would either abscond or commit a serious offence or interfere with the course of justice. Pre-trial detention should only be used where there is no possibility of using alternative measures to address the concerns that justify the use of such detention. Using pre-trial detention as a preliminary form of punishment is never acceptable. **The International Covenant on Civil and Political Rights, Article 9.3**, states this principle clearly: “It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.” (See also **Tokyo Rules, Rule 6.1**).

The two most important aspects of the situation of remand prisoners are that they must be presumed innocent, until and if they are convicted, and that they have special needs and rights relating to their legal status and access to their lawyers. The regimes of remand prisoners also differ from those of other prisoners in certain respects, with fewer obligations and more rights with regard to the practical aspects of

prison life. Pre-trial prisoners are a special category of prisoner who should be kept separate from convicted prisoners (SMR 85 (1)).

Please refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM** for general guidelines applying to prisoners of all categories. The questions below inquire into the particular rights of pre-trial detainees and practice, as well as into the most common challenges in pre-trial detention: overcrowding, long periods spent awaiting trial and health concerns (TB and HIV in particular).

Questions about practice should be asked in individual prisons – in different parts of the country and representing different sections of the population (rural/urban, high/low income). The assessor must be aware that there may be immense geographical variations in the level of overcrowding (as well as between different prisons) – the national average is not an adequate indicator to rely upon.

Questions are meant to be directed to prison staff, ex-offenders, and families of offenders. Questions that do not place the detainee at risk – e.g. those relating to legal aid or whether they are in detention because they could not afford bail – can also be directed to the detainees themselves, in the presence of prison staff.

3.3.1 Admission and Legal Proceedings

All detainees (and prisoners) being admitted to any detention facility (or prison) should be registered. (See Article 10 of the Declaration on the Protection of All Persons from Enforced Disappearance and Rule 7 of the Standard Minimum Rules). Prison officials should be aware of the need for the legal authority to provide a legally valid document that stipulates the reason for detention and the conditions of detention.

Pre-trial prisoners must have ready access to legal counsel and the opportunity to meet with their lawyers regularly and on a confidential basis. (See **SMR 93; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principles 17 and 18, and Basic Principles on the Role of Lawyers, Principle 8**).

- A. What are the legal requirements associated with a pre-trial prisoner's reception procedure? Is there an obligation for the maintenance of a register, where, on reception, each prisoner's details are noted? In practice, is the registration procedure always adhered to? Is the practice consistent among pre-trial prisons?

The register should include:

- All details of the detainee (name, date of birth, gender, identifying features, address, nationality, language)
- Legal authority for detention
- Dates of admission, next appearance before a court or other competent legal authority
- Details of next of kin
- A list of personal property (distinguishing between those which the person can keep in his/her possession and those which is stored by the authorities)
- Signatures (of the member of staff who completed the forms and of the detainee to confirm that he/she has been given details of his/her rights).

There should be a separate medical record.

See **Human Rights and Prisons, A Manual on Human Rights Training for Prison Officials, UN Office for the High Commissioner for Human Rights, Geneva 2000, Annex 1** for further details.

- B. Under the law, do pre-trial prisoners have the right to immediate and regular access to their legal representatives? How often can they meet with their lawyer? Are the meetings confidential – i.e. outside the hearing of a prison officer? To what extent are these rules applied in practice?
- C. Is correspondence between a suspect and his/her lawyer confidential? Can pre-trial detainees exchange written correspondence with their lawyers without being subjected to censorship? Are there limits on the frequency or length of correspondence? How does practice compare among the different pre-trial detention facilities visited?

- D. How many of the pre-trial detainees in the prison visited have legal representatives? How many have received legal aid? What percentage is this of the total pre-trial prisoner population in the prison visited?
- E. Can a detained person, his/her relatives or his/her lawyer appeal against pre-trial detention? What are the procedures? Who must he/she apply to? How speedy is the process? Are there examples of such appeals and the outcomes? Please see **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 32**.
- F. Is there a probation service or other social service responsible for preparing pre-sentencing reports? What access are they given to pre-trial detainees? Are there delays or lack of cooperation between the prison and probation services? Please see also **System Coordination, Section 7.1**. To what extent do their reports influence the sentence?
- G. How are prisoners transported to court? Who is responsible for security during transfers? In practice, are detainees sometimes unable to attend court hearings due to the lack of transport?
- H. During transfer, are detainees open to public view? Are they handcuffed or otherwise restrained on the way? Are there any reports of abuse during transfer?
- I. How often are they produced at court? Are they always produced before the court or will they wait in court holding cells without being produced?
- J. Does each court have a registry? Are files kept securely? Are files ordered? Please see also **ACCESS TO JUSTICE: THE COURTS**.
- K. How much time is set aside each day or week for bail applications? Does staff or an NGO or legal advocate assist detainees with their bail applications? Are they specially trained for this purpose?
- L. Is there provision for habeas corpus (called amparo in some jurisdictions) applications – i.e., which make the state accountable for the continued detention of a person?

A writ of habeas corpus or amparo is a judicial order to a prison official ordering that an inmate be brought to the court so it can be determined whether or not that person is imprisoned lawfully and whether or not he should be released from custody. A habeas corpus petition is a petition filed with a court by a person who objects to his own or another's detention or imprisonment. The petition must show that the court ordering the detention or imprisonment made a legal or factual error. Habeas corpus petitions are usually filed by or on behalf of persons serving prison sentences.²

- M. What procedures or mechanisms do the government/the judiciary employ to assist offenders to enter a plea at the earliest opportunity on an informed basis, e.g.:
- early disclosure of the prosecution's evidence
 - advice on plea
 - making provision for the taking of early pleas
 - giving credit for an early plea
 - speeding up trials by encouraging closer communication between police and the prosecution at an early stage of the criminal process
 - involving an investigating judge (e.g. in the civil law system) at an early stage

Suggested questions below seek to identify procedures and challenges relating to adherence to detention periods. Please also refer to the tools: **ACCESS TO JUSTICE: THE COURTS; THE INDEPENDENCE, IMPARTIALITY AND INTEGRITY OF THE JUDICIARY**; and **THE PROSECUTION SERVICE**.

- N. What is the average time a case takes from first appearance at court to disposal?
- O. Are time limits for detention in pre-trial prisons set down in legislation? What are they? Can these time limits be extended? Who decides and on what basis? (In some countries these limits can be months or years, depending on the offence).
- P. Are these time limits adhered to? If not, how often are detainees held beyond the limit set by law? Cite case examples where time limits have been exceeded.
- Q. To what extent does the pre-trial facility administration keep a record of each detainee's appearance at court and the scheduled date for his/her next hearing? Does it track the time since the last court hearing, check whether a new date has been set, and if not, alert the court? Is this practice standard, applied only in some pre-trial facilities, or is it exceptional?
- R. In the particular pre-trial prison visited, how many of the detainees' period of detention has exceeded any time limits set down by law? To what extent? Weeks, months, years?
- S. If there are no time limits, what are the lengths of time detainees have spent in the prison? Are any of these periods in excess of the length of imprisonment the person concerned might be expected to serve, if he/she were to be sentenced?
- T. What are the reasons for exceeding time limits? Backlog of cases at court? Inefficiency of the court system? Long periods pending appeal? Lack of transport for defendants to be taken to court? Awaiting evidence from witnesses? Delays can also be caused when forensic evidence must be sent to another country for analysis under a Mutual Legal Assistance agreement. Inquire into this possibility too and check if this legislation may be generating delay.
- U. In the pre-trial detention facility visited, what percentage/how many are awaiting the result of their appeal? How long have they waited?
- V. Who has the authority to release a defendant/suspect from pre-trial detention if a time limit is exceeded? Does this happen in practice? Regularly? Please see also **Section 6.8**.
- W. What procedures or mechanisms may the government/judiciary/prisons employ to move cases through the system, e.g.:
 - Cost orders for unnecessary adjournments
 - Discharge of cases that take too long at the investigative stage
 - Pre-trial hearings to monitor progress in the case
 - Prison visits by judicial officers to screen remand cases
 - Local meetings of case management agencies (police, judiciary and prisons) Please see also **Section 7.1**
- X. Are pre-trial populations in some prisons lower than the national average – if so, why? Investigate whether initiatives have been implemented in these prisons, or by the investigating and judicial authorities in these regions, which have been adopted elsewhere. Are there any actions that can be used as an example of good practice for other parts of the country?

3.3.2 Accommodation

Untried prisoners must be held separate from convicted prisoners (**SMR 85 (1), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 8**). Young untried prisoners should be kept separate from adults and wherever possible held in separate institutions (**SMR 85 (2)**). Untried prisoners should have single rooms (**SMR 86**), but if this is not possible, then they should be separated according to the severity of the crime with which they are charged.

- A. Does legislation provide for pre-trial prisoners to be separated from convicted prisoners? Does this happen in practice? Is this the case in prisons visited? How does practice vary geographically?
- B. Do pre-trial prisoners stay in single cells or dormitories? How much space are they supposed to have according to national legislation? How does this compare to internationally recommended standards? Please see **Section 3.2.3** above for guidance on space. How much space do they have in practice?
- C. If they are held in dormitories, are they separated according to the category of crime for which they are being tried?
- D. What is the capacity of pre-trial facilities visited? What is the actual number of prisoners on the day of assessment? How was the capacity calculated? Is it still accurate? Are there sections of the prison that are not being used according to original plan?
- E. Are adults separated from juveniles? Are women separated from men? Please see also **Special Categories, Sections 5.1 and 5.2** below.
- F. In practice, do prisoners who have received sentences continue to stay in pre-trial detention? What are the reasons? Lack of space in prisons? Long procedures relating to permission of transfer? This may occur particularly if the ministry responsible for pre-trial is different than the one responsible for prisons. Lack of transport vehicles for transfer?

3.3.3 Healthcare

It is essential that pre-trial prisoners undergo, on an individual basis, a medical examination and health screening on entry. (**Body of Principles for the Protection of All Persons Under any Form of Detention of Imprisonment, Principle 24**). This is important to ensure that the person starts receiving proper treatment for any health conditions immediately, but it is essential particularly (a) to identify any signs of ill treatment in previous detention/custody; and (b) to diagnose the presence of any transmissible disease such as TB. Ideally detainees and prisoners should also be encouraged to undergo voluntary testing for HIV, with pre- and post-test counselling, but they should not be obliged to do so. (See **Council of Europe, Committee of Ministers Recommendation No. R (93) 6, Concerning Prison and Criminological Aspects of the Control of Transmissible Diseases Including AIDS Related Health Problems in Prison, Rule 3 and CPT 3rd General Report³**).

Treatment for TB and HIV should begin in pre-trial detention and continue uninterrupted after release or in the prison that the person is transferred to if sentenced. Due to severe overcrowding and unhealthy conditions in pre-trial facilities in many low-income countries worldwide, it is essential to ensure that treatment starts immediately, with separation of those with TB from other detainees and separation of TB patients according to medical categorisation. Information should be made available to pre-trial prisoners on transmission of HIV and means of prevention. Treatment for drug addiction should also start in pre-trial detention.

- A. Is there a legal requirement that the appropriate law enforcement agencies transfer the medical files/reports of detainees from police or other custody to pre-trial detention facilities, once the detainee is remanded in custody by a court decision? In practice, does this system work – are medical files transferred without delay? How often are they lost or misplaced? Are they transferred at all?
- B. Does legislation provide for the medical examination of each detainee on admission to a pre-trial detention facility? Are medical reports kept in the file of each person? Who can see medical files? To what extent are they confidential? If there is evidence of ill treatment or torture, to whom must the medical officer refer the case? Does this

happen in practice? It would be helpful to look through sample medical files in the prisons visited, having first obtained any requisite permission.

- C. Are medical examinations undertaken confidentially – i.e. out of hearing and out of sight of prison staff (unless the doctor concerned expressly requests otherwise in a particular case)? If not, who is normally present during a medical examination?
- D. Do all detainees have access to medical treatment in practice? What is the process? Do detainees have to request access to a medical officer in writing or does a doctor visit cells/dormitories on a regular basis? If access is based on application - how long does it normally take from submitting a request to medical examination? See also **Corruption, 6.7**, below.
- E. Does the medical examination include screening for TB? How is the screening done? What measures are taken if a person is diagnosed with TB? Is there separation of TB cases according to medical categorisation? Is DOTS (Directly Observed Therapy Short-Course) used for treatment? If not, how are patients treated?

Many questions need to be asked about quality of treatment, access to treatment, recording, reporting, policies and strategies for a proper assessment. These questions aim only to identify the basic situation and challenges, to be investigated further by a medical assessor if necessary.

- F. Are detainees tested for HIV? Is the testing voluntary or obligatory? Is pre- and post-test counselling provided? What happens if a person is found to be HIV positive? Are they isolated? How does practice vary geographically and from prison to prison?

CPT and other international instruments emphasize that there is no medical justification for the segregation of HIV positive prisoners solely on the grounds that they are HIV positive.⁴ However, sometimes prisoners themselves prefer to be accommodated with others who are HIV positive, due to fear of stigmatisation if accommodated with the general prisoner population.

- G. Does legislation allow for pre-trial detainees to be visited by their own doctor or dentist if they are able to pay for this service themselves? **SMR 91**. In practice, do people ever ask to be examined by their own doctor and if so, are they allowed?

3.3.4 Regime and Special Rights

The term regime in this tool is used to encompass all the rules and regulations governing the daily life of pre-trial prisoners, including their access to prison work, education, library provision, counselling, spiritual guidance, exercise and sport. In many countries the term regime has a narrow meaning – covering mainly measures that ensure order and security in prison, contradicting the modern understanding of the aim of prison and international standards relating to imprisonment.

- A. Is an untried prisoner allowed to wear his/her own clothing, but given prison clothing if he/she so requests? Is the clothing given to him/her different to that of convicted prisoners? **SMR 88**. What are the rules in legislation and what happens in practice?
- B. May untried prisoners be provided with the opportunity to work? Do they have the right to refuse? If they do work, are they remunerated fairly? **SMR 89**. In practice, how many untried prisoners have prison jobs – nationwide and in prisons visited? What kind of work are they offered? Are they paid? How does their remuneration compare to the national minimum wage?

- C. Do pre-trial detainees have access to reading and writing material? Are they allowed to procure these at their own expense? Does this happen as a rule in practice? Do prisoners in the pre-trial detention facilities visited have reading or writing materials in their cells/dormitories?
- D. What are the visiting rules for pre-trial detainees? How often can they see their family and friends? **SMR 92**. Can they receive more visits from their families, in comparison to sentenced prisoners, if no specific judicially imposed restrictions apply? **European Prison Rules, Rule 99 (b)**. Are the visits closed or open?
- E. Are visiting rights of pre-trial prisoners often not exercised because they are housed far from their homes? If so, what are the reasons for the distant detention? Not enough pre-trial detention facilities? Not enough facilities close to courts? Is adequate consideration given to detaining persons close to home? If this is the case, in the pre-trial facilities visited, does the administration use its discretion to allow such prisoners more telephone calls or have longer visits when their families are able to make the journey? If not, a recommendation can be made on the spot.
- F. Are pre-trial detainees offered access to activities provided to sentenced prisoners, as much as this is possible (especially when long periods of pre-trial detention is the norm)? Which activities are included? See **European Prison Rules, Rule 101**. How does practice vary geographically?

3.3.5 Profile of pre-trial detainees

In order to verify statistical and general information requested under Section 2, the assessor may wish to inquire further into the profile of pre-trial detainees, in the pre-trial detention facilities visited.

- A. What percentage/how many of pre-trial prisoners are in detention, because they could not afford bail?
- B. What percentage/how many of pre-trial prisoners are in detention because they could not afford the fine imposed?
- C. What percentage/how many are first time offenders? What are their suspected offences/what are they charged with?
- D. What percentage/how many are juveniles or women? What are their suspected offences/what are they charged with? What are the ages of the juveniles concerned?
- E. What percentage/how many are foreigners or members of ethnic or racial minority groups? What are their suspected offences/what are they charged with?
- F. If possible, determine income groups – what percentage is from a low-income group?

4. OTHER FORMS OF DETENTION

4.1 ADMINISTRATIVE DETENTION

The term administrative detention can describe a number of circumstances, with relevant legislation being found in the Administrative Code or Code of Administrative Offences, Administration Punishment Law or similar code.

Normally, administrative detention is meant to describe a short (a few hours) of detention period in police custody, imposed on people who are suspected of having committed an administrative violation (e.g. non payment of debt, insulting a public official, hooliganism, minor traffic violations, in some countries for disrupting public order, organising meetings and demonstrations etc) until a person is taken to court. If the person is found guilty (or “administratively liable”), in some countries, he/she can be sentenced to administrative arrest/detention by the court of first instance for a period of 15 – 30 days, which is normally served in temporary detention centres.⁵ The appeal process can be unclear in legislation: the detainee may appeal his/her detention to a higher authority, but a provision for the suspension of the sentence, pending the final decision of the appeal may not be provided, unless the prosecutor lodges the appeal.⁶ Sometimes the decision of the court of first instance is final.⁷

In practice, administrative detention (both the initial period of a few hours and the sentence imposed) is sometimes abused to provide police/law enforcement agencies with an opportunity to question persons who are suspected of committing criminal offences. If the administrative violations/offences are not clearly defined in legislation and the judiciary is not sufficiently independent, then administrative detention may be easily abused.

In some countries the police itself have authority to order administrative detention for extended periods. In at least one country, some forms of administrative detention, imposed by the police may be up to 4 years.⁸ The detainee may appeal, but the hearing of the appeal is also conducted within the public security system (the police), the same authority that imposed the sentence in the first place. Detainees have no right to engage a lawyer at any stage of the process.⁹

Amnesty International has expressed concern at the practice of bypassing the courts by creating offences punishable with imprisonment and empowering a non-judicial body to mete out such punishment. It has called for the elimination of all punitive administrative detention and for the bringing of all sanctions that may result in deprivation of liberty within the scope of the Criminal Law and Criminal Procedure Law, in order for proper safeguards for detainees to be applied.¹⁰

Thus, there are concerns when a practice of punitive administrative detention runs in parallel to a formal criminal justice system, but fails to uphold the basic human rights safeguards that should apply to criminal trials under international law.

All legal safeguards described under **3.2.2** should apply and questions suggested under that section may guide the assessor in his/her inquiry.

Detention conditions of those who are actually sentenced to administrative arrest or detention should be suitable for accommodation for an extended period. The treatment of people thus detained shall not be less favourable than that of untried prisoners, with the reservation that they may possibly be required to work. (See **SMR 94** on the treatment of civil prisoners. Please refer also to **SMR Rule 95**). The requirement to work can be abused in some systems, however.

Assessors are advised to look into legislation governing administrative detention and practice, especially in countries where this measure is used often, for whatever reason, to determine the issues it presents for the success of penal reform programmes, strategies to reduce overcrowding or to tackle problems such as HIV/TB in detention facilities, among others.

4.1.1 Legal Safeguards

- A. Are offences for which administrative detention can be imposed clearly defined in law? What are they? When were the number and types of offences that carry a possible imposition of administrative detention last reviewed? What changes were made?

- B. What are the provisions in legislation that govern the use of administrative detention by the police?
- C. What are the provisions that govern administrative detention based on a court decision? Does the accused appear before the court? Is he/she given access to information relating to the charges against him/her? Does he/she have access to legal counsel?
- D. Does the accused have a right to appeal? Is imposition of detention stayed until a competent court rules on the appeal? What are the procedures in law and practice?
- E. What are the maximum periods prescribed by law for administrative detention before trial and after sentence?
- F. What happens in practice? Are the initial time limits, before trial adhered to? Is it common practice that they are exceeded? What is the procedure for extensions of time limits? Who decides?
- G. Are periods of detention imposed by a court order adhered to? Are they exceeded? How often and to what extent?
- H. Is there a public perception or reports by independent bodies that the use of administrative detention is being abused by law enforcement agencies, to use such detention as a basis to investigate suspected criminal offences or to force confessions for criminal offences? Does this happen often? Are there case examples and/or reports?

4.1.2 Detention Conditions

Adequate detention conditions are important for those who are being held in prolonged administrative detention. Please refer to Section 3.2.3 above. Additional questions are suggested below.

- A. How often do detainees receive food from the authorities? Do administrative detainees have to rely on, and allowed, food received from their families?
- B. What kind of activities, if any, do they have access to? Are they given books, do they have access to TV?
- C. Are there any reports of particular health problems in administrative detention facilities, such as TB and HIV? If so, how widespread is the problem?
- D. Are screenings for TB in particular, but also for the diagnosis of any other health conditions, performed on entry to administrative detention? Is this obligatory by law? Does it happen in practice?
- E. Do detainees have access to medical care? What does it consist of? Do civil healthcare specialists provide healthcare? Is treatment for TB provided in administrative detention facilities? What kind of treatment?
- F. Are detainees required to work? What kind of work do they undertake? How many hours per day? Do they receive payment? How does their remuneration compare with the minimum wage?

4.2 PSYCHIATRIC DETENTION

In many countries legislation will provide for the involuntary hospitalisation of persons who are deemed to pose a danger to society due to their mental illness. Relevant articles may be found in the Civil Code, Health Act or similar.

In some countries the law or procedure code allows for persons under investigation for a criminal activity to be held in medical institutions for a certain period (e.g. up to a month) to determine their mental condition. Such a provision may put the detainee at risk of ill treatment and torture to extract information or confessions. Provisions for mental commitment of criminal defendants to determine competency or sanity/criminal responsibility may be found the Criminal Procedure Code.

The **UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care** provide that “where a person needs treatment in a mental health facility, every effort shall be made to avoid involuntary admission.” (**Principle 15.1**). They explain that a person may be admitted involuntarily to a mental health facility or be retained as an involuntary patient in the mental health facility “...only if a qualified mental health practitioner authorized by law for that purpose determines, in accordance with **Principle 4**, that person has a mental illness and considers:

- That, because of that mental illness, there is a serious likelihood of immediate or imminent harm to that person or to other persons; or
- That, in the case of a person whose mental illness is severe and whose judgment is impaired, failure to admit or retain that person is likely to lead to a serious deterioration in his or her condition or will prevent the giving of appropriate treatment that can only be given by admission to a mental health facility in accordance with the principle of the least restrictive alternative.

In the case referred to in subparagraph (b), a second such mental health practitioner, independent of the first, should be consulted where possible. If such consultation takes place, the involuntary admission or retention may not take place unless the second mental health practitioner concurs.” (**Principle 16.1**)

The principles further require that involuntary admission or retention shall initially be for a short period for observation and preliminary treatment pending review of the admission or retention by an independent (judicial or other) review body. Rules relating to the review body are set out under **Principle 17**, and procedural safeguards under **Principle 18**.

Article 20 of the **Council of Europe Committee of Ministers Recommendation Concerning the Protection of the Human Rights and Dignity of Persons With Mental Disorder, Rec. (2004) 10** requires that “the decision to subject a person to involuntary placement should be taken by a court or another competent body...” An assessment of the use of psychiatric detention would aim to establish whether this form of detention is being used for its intended purpose and only in exceptional circumstances, or whether it is being abused, in order for example, to punish political opponents, to force confessions or to extract information. Legislation relating to involuntary placement in a mental facility, the decision making process, legal safeguards and the review process relating to the continuation of hospitalization will need to be examined.

4.2.1 Legal Safeguards

- A. Is there legislation governing the detention of mentally ill persons, who are deemed to present a danger to society, in psychiatric institutions? Is there a clear definition of what a danger to the public constitutes and under what circumstances a person may be involuntarily hospitalised? Who is responsible for ruling on a petition to commit someone on an involuntary basis? A court? Upon what information does the judge rely? Is a medical report by a specialist doctor obligatory? Do courts ever rule on such petitions without having seen a medical report?
- B. In practice, are such persons ever, sometimes or often placed in psychiatric establishments, without a court order?
- C. Do such persons have the right to obtain an independent second medical opinion? If they do, to what extent is this right reflected in practice?

- D. Are such persons' detention subjected to an automatic review procedure on a regular basis to check whether the detention/placement continues to be necessary? What does the procedure consist of? How does this work in practice?
- E. Do such persons have the right to complain about their treatment or detention? Who can they complain to and what is the procedure? How often does this happen in practice? What were the outcomes of any such complaints?
- F. Is there an independent inspection body that has responsibility to visit psychiatric establishments to examine the treatment received by patients and with authority to have confidential discussions with them? Is the body made up of specialists? How often does it visit such institutions? Are there any reports produced by such bodies and are they available to the public?
- G. Are there perceptions or reports that legislation is used to detain persons who are not mentally ill and who do not pose any danger to the public? How often does this happen? Are there any reports by independent human rights bodies or NGOs available?
- H. Does the criminal/penal procedure code include any article that gives authorities the right to involuntarily detain persons in psychiatric institutions to determine their mental condition? In what circumstances is this kind of detention allowed? How often does this happen in practice? What are the offences that such persons are normally suspected to have committed? See **Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, Principle 4.2.**

4.2.2.1 Conditions

Principle 1.2 of the UN Principles for the Protection of Persons with Mental Illness provides that "all persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person". Principle 9 sets out the rules that must be applied during the treatment of patients and **Principle 13** describes the conditions in mental health facilities. **Principle 13.2**, in particular, states:

The environment and living conditions in mental health facilities shall be as close as possible to those of the normal life of persons of similar age and in particular shall include:

- Facilities for recreational and leisure activities;
- Facilities for education;
- Facilities to purchase or receive items for daily living, recreation and communication;
- Facilities, and encouragement to use such facilities, for a patient's engagement in active occupation suited to his or her social and cultural background, and for appropriate vocational rehabilitation measures to promote reintegration in the community

These measures should include vocational guidance, vocational training and placement services to enable patients to secure or retain employment in the community.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) elaborated standards in 1998 for conditions and treatment in psychiatric institutions which require the provision of:

- the necessities of life, including adequate food, heating, clothing and appropriate medication;
- a positive therapeutic environment, including visual stimulation and lockable space for each patient;
- material conditions conducive to the treatment and welfare of patients, including maintenance of the building and meeting hospital hygiene requirements;
- psychiatric treatment to involve rehabilitative and therapeutic activities;
- access to suitably equipped recreation rooms and outdoor exercise.

An assessment of the conditions of detention would need to form part of any comprehensive assessment of psychiatric detention. Psychiatric health facilities can often have extremely poor living conditions and inadequately trained staff, while mentally ill patients are a vulnerable group susceptible to abuse, which might include being subjected to Electroconvulsive Therapy (ECT) in its unmodified form, which is unacceptable in modern psychiatric practice, causing immense pain, risking bone fractures and being degrading to the patient concerned.

It is recommended that a mental health professional accompany the assessor on any visit to a mental health facility if an assessment of the conditions in psychiatric treatment facilities is being undertaken. The mental health expert should guide the assessment of conditions.

5. SPECIAL CATEGORIES

5.1 JUVENILES

While a child is a human being under the age of 18, internationally, the term juvenile is used for those children under the age of 18 over whom a court may assume criminal jurisdiction, although this age can differ under different national statutory schemes (**Convention on the Rights of the Child, Article 1, UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 11**). Children below a certain age, often ranging from 7 to 12, may also be excluded from juvenile criminal jurisdiction, though this is also not uniform in application. The **Model Criminal Code (MCC) (Draft, 31 March 2006) Article 1(5)** defines a juvenile as a child between the ages of 12 and 18.

Due to the particularly harmful effects of detention and imprisonment on juveniles, numerous international instruments hold that they should be kept out of prison, and that offences committed by juveniles should be dealt with in the community, as far as possible. The **UN Convention on the Rights of the Child, Article 37 (b)** holds that “no child should be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”. **UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)**, rule that consideration be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial and that detention pending trial should be used only as a measure of last resort and for the shortest period of time. (**Rules 11.1 and 13.1**). Rules **13.3-13.5** of the **Beijing Rules** provide guidance on the treatment of juveniles in pre-trial detention. Juveniles should enjoy all rights provided to adults, as set out in SMR, as well as being entitled to additional rights, care and protection, due to their special status.

Please also see **CROSS-CUTTING ISSUES: JUVENILE JUSTICE** for guidance on special legal requirements for children under the age of 18; **CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION** and **SOCIAL REINTEGRATION** for a full coverage of appropriate ways of dealing with children in conflict with the law.

- A. What special provisions relate to this vulnerable category of offender – e.g.:
- Is legislation consistent with the UN Convention on the Rights of the Child that puts the best interests of the child first?
 - Are there special procedures that apply to young people (i.e. juvenile or children’s courts)?
 - Are those charged with implementing such procedures adequately trained?
 - Is there a special body in charge of monitoring juvenile justice?

Please see **MCC (DRAFT, 31 March 2006), Section 13**, and the **Model Code of Criminal Procedure (DRAFT, 30 May 2006), Chapter 15**, for a model of juvenile statutes and dispositions that integrate the standards of the **Convention on the Rights of the Child**.

- B. What is the age of criminal liability in the country assessed? What is the minimum age for imprisonment?
- C. How is age determined and who is responsible for determining age if the birth certificate of a young suspect is missing or does not exist? Is this a common problem? How many such children are in the pre-trial detention facilities visited and what are the figures nationwide, if available?
- D. How long does it normally take for the parents or guardian of the juvenile to be informed of his/her arrest in practice? Is the juvenile brought before a judicial authority without delay? How long does it normally take for a juvenile to be produced at court from the time of arrest?
- E. Under what circumstances may a young person be committed to pre-trial detention? Are alternatives to pre-trial detention, including bail or diversion, applied more frequently in juvenile cases when compared to those of adults? What are the rates?

- F. If a code of conduct for lawyers exists, does it have any relevant provision governing representation of accused juveniles in criminal matters? Is there a duty on the part of the legal establishment to provide free legal aid to all juveniles? What happens in practice? Please see also **Access to Justice: Legal Aid and Legal Defence**.
- G. In detention, are juveniles accommodated in separate institutions to those of adult detainees? If not, are they accommodated in separated wings of adult pre-trial detention facilities, with separate staff? Are juveniles also separated according to age group? What are the age groups?
- H. In detention, are juveniles provided with special care? What does this care consist of? In pre-trial detention do they have the possibility to take part in educational and vocational activities? To what extent are they given access to the educational curriculum available for their age group outside of detention? Are they assisted by teachers in their education? Are they given special psychological support? What do these programmes consist of? See **Beijing Rules, 26.1 and 26.12**
- Often, activities provided for pre-trial prisoners in general and juvenile pre-trial prisoners in particular are extremely inadequate. This is based on the assumption that they will not spend a long time in these institutions and therefore investment in education or vocational training is wasted. But, in reality in many countries, juveniles (as well as adults) spend months, sometimes years, in pre-trial detention. It is vital, therefore, to ensure that all the special needs of young prisoners, including especially education, vocational training, and recreational facilities should be provided during this period. If they have particular psychological problems or addictions, treatment should start in pre-trial detention, since such problems will get worse with imprisonment, if not addressed as early as possible after detention.
- I. What are the rules governing visits from their family and/or guardians? Are the rules any different to those applied to adult prisoners? **Beijing Rules, 26.5**. Are the visits open or closed?
- J. How are female juveniles treated? Are they held separately? Do they enjoy all the rights that are granted to male juvenile detainees?
- K. Who is allowed to visit prison/young offender institutions in an official capacity? Who is allowed to visit prison/young offender institutions in an unofficial capacity? How often must they visit? How often do they visit in practice? Who do they report to? Please see also **Section 6.8**.

5.2 WOMEN

Pre-trial detention should be used as an exception rather than a rule for all persons who are suspected of having committed an offence. In the case of women, special consideration should be given to the use of alternatives to pre-trial detention (and to imprisonment), due to the particularly harmful effects deprivation of liberty can have on them, their families and children. In addition, the large majority of offences for which women are detained are non-violent (e.g. drug and property offences). When they are violent, it is likely that they have been victims of domestic violence or sexual abuse, and the crime committed will be against a person close to them. Thus, the women concerned often do not pose a particular threat to society. Pregnant women and women with infants should not be remanded in custody unless there are exceptional circumstances

If women are detained, then they must be held separately from male prisoners and their special needs are addressed.

Normally, the percentage of women in prison as a whole, including in pre-trial detention is very small (between 2% and 9% worldwide, exceptionally above 10%).¹¹ If, in the country assessed, the figure/percentage appears to be high, it is suggested that the assessor inquiries into the reasons – which is likely to be found in the national legislation (e.g. harsh sentences for drug offences, including for transporting drugs, for which women are often used; or in countries where discrimination against women is reflected in penal legislation, there could be harsh sentences for acts such as adultery, prostitution, rape (where the victim is penalised¹²), breaching the dress code, etc. – some of which may result in a period of police custody, some trial, and imprisonment).

See **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM** for guidance on all rules that apply to women prisoners, **CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION** for the use of community sanctions and measures for women.

- A. Is there particular legislation that may increase the imprisonment of women? Which offences would relate more often or specifically to women? How often are these articles in penal legislation applied in practice? What are the figures for detention on their basis, over the past 2-3 years?
- B. What percentage of women in police custody and pre-trial detention is suspected of having committed violent offences?
- C. What percentage of women in police custody and pre-trial detention are suspected of having committed drug related offences?
- D. What percentage of the overall female prison population do pre-trial women prisoners comprise? What are the most common offences with which they are charged?
- E. Are there provisions in the penal statutes discouraging or prohibiting pre-trial detention for pregnant women or women with small children? To what extent are these rules reflected in practice? For special provisions that apply to pregnant women and women with infants in prisons/detention see **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM**.
- F. In detention, are women separated from men? **SMR 8(a)**. Are women prisoners supervised exclusively by female staff? Always/sometimes/rarely? **SMR 53(3)**. How does practice vary geographically?
- G. Do they have the same access as male detainees to all available activities? If not, what level of access do they have? What activities are they offered? Are they allowed to work, if they wish to? Are they paid? How does their remuneration compare to the national minimum wage?
- H. What are the visiting rules, especially by their family and children? Are the visits open or closed? How are these visits carried out in practice?
- I. Are their particular hygienic and medical needs catered for? What are the arrangements? See **CUSTODIAL AND NON-CUSTODIAL MEASURES TOOL: THE PRISON SYSTEM** for further guidance.

5.3 THE MENTALLY ILL

In general, mentally ill persons are better treated outside prison. Ideally they should be in the community in which they live, a principle recognised by the United Nations Principles for the Protection of Persons with Mental Illness¹³ Please refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES TOOL: ALTERNATIVES TO INCARCERATION**, for all special considerations relating to alternatives for the mentally ill.

If detained, mentally ill prisoners can often become the victims of other prisoners. They are vulnerable to assault, sexual abuse, exploitation, and extortion. In institutions where mentally ill persons are detained it is essential to have adequately trained staff to monitor, supervise, and protect them.

In comparison with the general population, there is a high incidence of mental illness among prisoners. Therefore, specialised health professionals should be available in pre-trial detention facilities and prisons, or there should be ready access to such specialists working in the civil healthcare service.

Please refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM** for guidance on all rules relating to mentally ill prisoners.

- A. Is the definition of insanity broad enough in the penal legislation to ensure that those who are not criminally responsible for their actions are not subjected to criminal law?
- B. Do the police and prosecuting authorities have the authority to divert persons who are mentally ill from the criminal justice system, provided that they do not pose a threat to society? What criteria apply? How often does this happen in practice?
- C. Does legislation allow courts to intervene on behalf of pre-trial prisoners suspected of having a mental illness, and acting on the basis of independent medical advice, to order that such persons be admitted to a mental health facility? Please see the **UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, Principle 20.3**. How often does this happen in practice?
- D. Does legislation provide for special consideration to be given to impose non-custodial measures on mentally ill suspects at pre-trial stage? In practice, on what percentage of/how many mentally ill suspects were alternative measures imposed, over the past 2-3 years?
- E. Are mentally ill pre-trial detainees placed under the special supervision of a medical doctor? Are they housed with other detainees or in a special unit? Are they placed in single cells?

Mentally ill offenders should not be placed in single cells, except for very short periods when absolutely necessary and under medical supervision. **UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, Principles 11.11 and 20.4**

- F. What kind of special psychiatric care do they have access to, if at all?
- G. Are there reports of abuse or violence against mentally ill detainees by other prisoners? If so, what measures do prison administrators take to prevent such abuse? These may include more careful separation of prisoners, stricter supervision by security staff and medical staff, training for staff to deal with such circumstances effectively.

5.4 DRUG RELATED OFFENCES

In most countries offenders who are imprisoned for drug related offences make up a large proportion of the prison population. In part this is explicable as a result of national and international efforts to combat the trafficking in illicit drugs. However, not all these offenders are major actors in the drugs trade. Often their crimes are committed because of their own addiction to drugs. Many of them could be dealt with more effectively by alternatives to imprisonment targeted specifically at the drug problem. The major international instruments, including the **1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances**¹⁴ and the **Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations**¹⁵ recognise this paradox. While their primary focus is combating drug trafficking, they call on governments to take multidisciplinary initiatives.¹⁶ Alternatives to imprisonment are a key part of these. In some countries, such as the USA and Australia, diversion from the criminal justice system, for illicit drug users, is formalised through drug treatment courts.

An assessor examining the pre-trial imprisonment of people charged with drug offences may wish to focus particularly on three areas: reasons for high numbers (if such is the case), by checking relevant legislation in the criminal statutes, as well as practice; treatment of drug users in pre-trial detention and prisons, e.g. whether they receive treatment for their condition, and issue of drug use in the context of HIV/AIDS, e.g. whether the drug users are IDUs (injecting/intravenous drug users) and whether all detainees have access to information on prevention methods.

Please also refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION** and **SOCIAL REINTEGRATION**.

- A. What sentences apply to illicit drug use in the penal code? Is there a differentiation between the use of different types of drugs, with lesser sentences being provided for drugs such as cannabis?
- B. What are the sentences for drug trafficking? In passing sentences do courts take into account the circumstances of the offence and the person suspected of committing the offence? Examples, e.g. women who have been used as “mules” to transport small amounts of drugs across border? Are such persons always, sometimes or rarely held in detention prior to trial?
- C. Have there been any recent attempts to decriminalise the use of certain drugs or to lift the obligation of pre-trial detention for certain drug related offences? What was the outcome? Has this reduced the rate of pre-trial detention for drug-related offences?
- D. Do police and prosecutors use discretion not to arrest suspected drug users, for example, on condition that they enter a drug educational or therapy programme? What criteria apply? How often is such discretion used in practice?
- E. Are alternative measures or sanctions provided in legislation for the use of illicit drugs? What are they and for which kind of drug offences do they relate to? How often are they used? (Figures or percentages for the past 2-3 years).
- F. Are there drug treatment courts available? Which offenders are targeted? How many were tried by drug courts in the recent 2-3 years? How does this compare to those detained for drug offences, but tried in other courts?
- G. Are persons being detained for illegal drug use provided with an opportunity to enter a treatment programme for drug addiction during pre-trial detention? Who is the programme run by and what does it consist of?
- H. Are persons being admitted to a pre-trial detention facility provided with information on the prevention of transmission of HIV/AIDS? Are guidelines for prevention also provided? If there are any such measures being taken, how does practice vary geographically?

5.5 OVERREPRESENTED GROUPS

In many countries certain ethnic or racial minority groups and/or foreign nationals form a disproportionately large part of the pre-trial and prison populations. This situation may be associated with a variety of factors. Overrepresented groups may not be considered for alternative measures or sanctions, due to prejudiced perceptions about the level of danger they pose to society. Again due to prejudice, the police may take members of ethnic, racial and national minority groups into custody without hesitation, when they are investigating certain offences or in periods when harsh criminal justice policies are being implemented. Such groups normally have a disadvantaged economic and social position in society, therefore members of such groups may be lacking in education, employment, vocational skills, which may have contributed to offending behaviour.

All rights enjoyed by un-sentenced detainees apply also to minority groups and foreign nationals. In addition these groups have specific needs relating to language, contact with families, consular representatives, UNHCR representatives, as well as religion and diet, which need to be addressed from the outset of their detention period. Of particular importance is their right to receive immediately on arrest written and oral information about their rights in a language they understand (**Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 14**) and to be given access to their consular representatives (or UNHCR representative) if they request (**Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 16.2; SMR 38; European Prison Rules (2006), 37.1 and 37.2**). They should, in particular, be informed of their rights concerning legal representation (**Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 14; European Prison Rules, 37.4**) and be provided with interpreting services

during interrogation and meetings with lawyers (**Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 14; European Prison Rules, 38.3**).

Immigration detention refers to the detention of foreign nationals/asylum seekers under aliens legislation, such as an Immigration Act, or similar. The detainees may be persons refused entry to the country concerned; persons who have entered the country illegally and have subsequently been identified by the authorities; persons whose permit to stay in the country has expired or asylum-seekers whose detention is considered necessary by the authorities. In some countries, such persons are held in police stations for prolonged periods (for weeks or months), subject to inadequate material conditions of detention, and are sometimes obliged to share cells with criminal suspects. Treating immigrants as criminal suspects violates international law. If immigrants are detained, they must be accommodated in centres specifically designed for that purpose.

See **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM** and **ALTERNATIVES TO INCARCERATION** for further guidance on alternative measures and sanctions for overrepresented groups.

- A. For which criminal offences have the majority of minority groups and foreign nationals been detained in police custody for the past 2-3 years? For which offences were they held in pre-trial detention over the past 2-3 years? How many/what percentage of them received a sentence?
- B. For what number/percentage of offences for which such groups were detained would an alternative pre-trial measure have been possible?
- C. On how many/what percentage of such groups who were detained in police custody did the court impose an alternative to pre-trial (bail or other) and how many/what percentage did it decide to place in custody on remand?
- D. What are the provisions governing the detention of illegal immigrants and asylum seekers? Are there special immigration detention centres, where illegal immigrants and asylum seekers are held? Are they held in detention alongside criminal suspects? Is this a common practice? How many such persons are in detention, together with detainees suspected of criminal offences at the time of assessment? For how long are they normally held? Weeks, months, years?
- E. How many/what percentage of minority groups and foreign nationals in pre-trial detention are first time offenders?
- F. According to legislation must foreign nationals be given written information about the reasons for their arrest and their rights in a language that they understand in police custody immediately on arrest? What does this information include? What happens in practice? Do they have the right to be provided with interpreting services? In practice, is this applied?
- G. Are detainees who are foreign nationals informed of their right to request contact and allowed facilities to communicate with the diplomatic or consular representative of their state, immediately after arrest? What are the legislative provisions and what happens in practice? How often can detainees have visits from consular officials of their state? Are these rights applied in practice? To what extent?
- H. Are prisoners who are nationals of states without diplomatic or consular representation in the country, and refugees or stateless persons, allowed similar facilities to communicate with the diplomatic representative of the state which takes charge of their interests or the national or international authority whose task it is to serve the interests of such persons, e.g. UNHCR? **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 16.2**. What does the legislation provide for and what happens in practice?
- I. Are foreign nationals and minority groups given information about their rights, obligations, rules and regulations relating to pre-trial detention in a language they

understand immediately on entering a pre-trial detention facility? Is this standard practice? Check if samples of such written information exist in the pre-trial detention centres visited. Ask for copies, if possible.

- J. In pre-trial detention what level of access do foreign nationals have to the activities in the institution? Are they provided with reading material in a language that they understand? Visit the library, if one exists.
- K. Is any special provision made for contacts with the families of foreign nationals, if their families are in another country? What provisions are in fact made? Are they for example allowed more telephone calls, due to lack of visits from their families? These kinds of discretionary provisions will need to be inquired about in individual prisons and from individual ex-offenders, since it is unlikely that they will be included in any regulations.
- L. Does the law provide for meeting the special needs of members of minority religious groups in pre-trial detention? What opportunities are provided and what happens in practice? Can they meet with ministers of their religion? Are any special dietary needs of minority groups or foreign nationals catered for?

6. MANAGEMENT

The management of agencies responsible for detention will often be under the jurisdiction of more than one ministry. The police or gendarmerie is most likely to be under the Ministry of Interior. Pre-trial detention facilities may be managed by the Ministry of Interior, sometimes directly by the police force, or the Ministry of Justice. Exceptionally there may be a separate department responsible for the management of prisons, including pre-trial detention facilities. In addition, the Ministry responsible for pre-trial detention facilities may not be the same as the one responsible for managing prisons for sentenced prisoners even when these two types of prisoners are co-housed in the same facility. (The latter is more likely to be under the Ministry of Justice).

It is accepted as good practice to have the prison administration, including pre-trial detention facilities, placed under the jurisdiction of the Ministry of Justice. The Council of Europe recommends to all accession states, that where this is not the case, a transfer of the prison service from the Ministry of Interior to the Ministry of Justice should be take place. This step is important because it reflects the principle of separating the power of agencies that have responsibility for investigating charges and those which are responsible for the management of detention. Secondly, in countries where the Ministry of Interior is a military authority, it provides for the prison service to be under a civilian rather than military authority.

The law enforcement agencies with responsibility to prevent and detect crime, identify and apprehend suspects are normally under pressure to resolve cases speedily, sometimes at the cost of other considerations. Thus, overcrowding in detention facilities and respect for the rule of law may be low on the list of priorities of police or gendarmerie staff, especially if there is no clear policy, training and support provided to ensure that abuse of power is an exception rather than the rule during the custody and interrogation period. When pre-trial detention establishments are within the jurisdiction of the Ministry of Interior (and even sometimes located within police custody premises) it can be difficult to protect some of the most fundamental rights of detainees. Pressure may be placed upon detainees to confess to crimes, using conditions of detention, access to lawyers, contacts and services, among many others, as means of reaching this aim. When remand prisoners are placed in institutions under the jurisdiction of another authority, this kind of pressure is less likely, but is still possible, and there needs to be a clear policy and training of prison staff to ensure that investigating authorities do not influence the treatment of pre-trial detainees. This is perhaps one of the most important aspect of the management of pre-trial detention facilities in comparison to prisons that accommodate sentenced offenders, and it stems from the principle that, prisoners awaiting trial should be presumed to be innocent and should be treated as such. (As in the **Universal Declaration of Human Rights, Art. 11; SMR Rule 84 (2)**, among many others). In terms of the development of penal reform programmes, Ministries of Interior are more likely to resist reform.

This section of the tool seeks to guide assessors in their inquiries into the management of the prison service, in relation to its role in managing the pre-trial detention system specifically. The management of the prison service as a whole is covered in the tool **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM**. The assessor should refer to both tools as necessary.

The assessor should refer to **POLICING: THE INTEGRITY AND ACCOUNTABILITY OF THE POLICE** and **CRIME INVESTIGATION**, for guidance on all management aspects relating to the police service. Focus should be on the code of conduct for police staff, if it exists, training received by custody staff in police

stations and police responsible for interrogation, number, remuneration and working conditions of this category of personnel, which, if inadequate may drive corrupt behaviour. The assessor should also be guided by the **Code of Conduct for Law Enforcement Officials** and **Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials**.

6.1 MANAGEMENT AUTHORITY

- A. Which authority/ministry is responsible for the management of the prison service? Which authority/ministry is responsible for the management of pre-trial detention?
- B. If the prison service, including pre-trial detention facilities, is under one management authority/one ministry: Is it a military organisation (i.e. does staff have military ranks and matching privileges?)
- C. If pre-trial detention facilities are under a separate jurisdiction – e.g. the Ministry of Interior rather than the Ministry of Justice, or a separate department entirely – is the administration of pre-trial detention facilities military or civil?
- D. If the service is within the Ministry of Interior and militarised, is consideration being given to transferring the management of pre-trial detention facilities to the jurisdiction of the Ministry of Justice and to demilitarise it? If so, at what stage is the transfer process? If not, are the Ministry of Interior/prison authorities prepared to discuss transfer?
- E. What are the obstacles to transfer? (e.g. lower status under the Ministry of Justice, lower salaries, loss of military privileges, smaller budget in general etc). Are there any plans to resolve these issues? How?
- F. Have there been any recent management changes/restructuring?
- G. At the headquarters level, does the prison service have a unit, committee, working group or other body responsible specifically for policy formulation and strategic planning for the management of pre-trial prisons? If so, are there policy documents and/or strategic plan? If so, it would be helpful to obtain copies.
- H. Does the prison service have a strategy document or plan to address the main challenges in pre-trial prisons, such as overcrowding or health concerns, systematically? If so, what provisions does the strategy include?
- I. Do the relevant ministry and/or prison service have a strategic plan to tackle the problem of TB and HIV in the prison system generally and in pre-trial detention facilities particularly? What measures does the plan include?
- J. Has government/the prisons service set targets for reducing overcrowding in prisons in general; and pre-trial detention in particular?

6.2 STRUCTURE

- A. If the same ministry is responsible for both pre-trial prison establishments and prisons for sentenced prisoners, obtain an organisational chart of the prison department and determine the different levels of departments/services within the prison system, which are responsible for the management of pre-trial detention facilities. Are there different levels of administration at central, regional and other local levels?

- B. Is the system centralised or decentralised? How much autonomy do the regional and local prison administrations have? What issues does this autonomy cover?
- C. If pre-trial detention facilities are within the jurisdiction of a separate ministry, then obtain the organisational chart of that ministry and the place of the management of pre-trial detention facilities within it, and seek answers to the questions suggested above. See in addition questions under **System Coordination, 7.1**.
- D. In the pre-trial facilities are there units responsible for cooperating with investigating authorities to establish a detainee's guilt, e.g. in some countries of the former Soviet Union "operativniki" responsible for working alongside police investigators?

6.3 BUDGET

- A. How is the management of pre-trial detention facilities funded? Is the budget part of the prison system budget or is it separate, e.g. especially if the two are under separate jurisdictions.
- B. What is the budgetary process under the law? Who is involved in planning the initial budget? Who prepares and submits the operating budget? Are individual pre-trial detention facility administrations involved in budget planning? To what extent?
- C. Under the law, who manages the budget? Who oversees its spending?
- D. Over the last 3 years, what was the budget requested by the relevant management authority/ministry from the government for the management of pre-trial detention facilities? What was actually agreed? What percentage of the requested budget does the actual budget constitute?
- E. Has the budget increased over the past 3 years? To what extent?
- F. Did the management authority responsible for pre-trial detention facilities actually receive the funds allocated in its budget over the past 3 years? Are there normally delays, fiscal constraints or other obstacles to gaining access to these funds? Where are the funds held? Who authorizes their disbursement?
- G. How is the budget distributed geographically? Are there disparities in allocation of funds? If so, why?
- H. What expenditure does the budget cover? Try to see a recent financial report or budget for an individual prison. What percentage for food? What percentage for healthcare? What percentage for renovation of buildings, and what does this include, e.g. does it include improvement of facilities for pre-trial detainees to meet with their lawyers? Improvement of visiting facilities? Are interpreting services covered for foreign nationals and minority groups?
- I. Who oversees the receiving and paying out of money? Are proper records kept? Is there an internal audit process? Who performs that function? Is there an independent audit process? By whom?
- J. Have there been any recent incidents of theft or fraud relating to such money? If so, how were they dealt with?
- K. Is corruption in the system perceived as a widespread problem? If so have any measures been taken to tackle the problem? What do the most common corrupt practices consist of? Please see also **Section 6.7**.

6.4 PROCUREMENT

- A. How is procurement organised? Who is responsible for procurement? Is it centralised or decentralised? Partly/wholly? How exactly does the system work? How does the system dealing with the procurement of food, particularly, work?
- B. Are there often delays in procurement? What are the reasons?
- C. If centralised, how is distribution organised? What does transport consist of? Are there problems with transport? Are there sufficient vehicles for transport? What are the main challenges?
- D. What kinds of advantages does decentralisation have, e.g. saves time on procurement and distribution, reduced transport costs, etc.? What kinds of problems, if any, have arisen as a result of decentralisation, e.g. geographical disparities, decreased accountability of regional and local authorities, corruption etc.?
- E. If pre-trial detention facilities and prisons are under separate jurisdictions, such as the Ministry of Interior and the Ministry of Justice, are there two separate systems operating for procurement and distribution of goods? If so, does this influence efficiency in any way? What financial implications does it have? Does it cost the state more? To what extent? Do pre-trial and sentenced prisoners receive disparate treatment as a result of this system? How is this evident?
- F. Are there any plans to improve the procurement and distribution process? What are they?

6.5 PERSONNEL

Adequate and well-trained personnel are essential for the efficient management of any organisation. They are fundamental to good management in prisons. Prison management is about the management of people – from the very vulnerable to the very dangerous. Personnel responsible for the daily administration of prisons, and daily contact with a group of persons with diverse problems and requirements, need to have very special skills and training, to ensure that security and safety is provided, while prisoners are treated humanely and cared for according to their individual needs. (See **SMR, Rules 46-53; Code of Conduct for Law Enforcement Officials, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials** for guidance).

Unfortunately, however, the status of prison staff is very low in most countries. Little attention is given to their proper recruitment and training. A large majority will not have selected a career in the prison service in particular—e.g. they might be former military personnel, people who have been unable to find other employment etc. Their salaries are normally very inadequate, which contributes to dissatisfaction and corrupt practices. If pre-trial detention facilities are under the jurisdiction of the Ministry of Interior, however, the budget and staff conditions may be better – especially if prisons are managed by the police force. If staff under the Ministry of Interior have military status, then they might have a range of additional privileges, as well as comparatively higher salaries. These are some of the key reasons for resistance to the transfer of the responsibility of the system from the Ministry of Interior to the Ministry of Justice, as mentioned earlier. An assessor who is confronted with such a pre-trial system might want to inquire into the details of staff salaries and privileges, to assess the obstacles standing in the way of a transfer to a civil authority and investigate how these obstacles may be overcome.

Please refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM** for guidance on prison personnel in general. The following section focuses on the specific requirements relating to the personnel of pre-trial detention facilities.

- A. Does the prison service have an organizational chart that describes the lines of authority and staffing scheme, including pre-trial detention facilities? How are functions coordinated?

- B. Are the duties, rights and responsibilities of each member of staff clearly defined in their contract and relevant regulations?
- C. What is the number of staff positions in pre-trial detention facilities? What is the actual number? How does the situation vary geographically? From facility to facility?
- D. What services exist in pre-trial detention facilities? How many staff in each service – staff positions and actual numbers? Which positions are vacant, e.g. security personnel, medical staff, psychologists, social workers etc.? How does the situation vary geographically?
- E. Is there a standard, formal recruitment procedure for staff in pre-trial detention facilities? If so, what does it consist of? Are positions advertised? Posted? Where?
 - o Are there minimum qualifications for positions?
 - o Is there transparency in the hiring process, including the use of standard questions during the interview process, rating sheets, etc.?
 - o Is there a policy of equal opportunity/non-discrimination? Is it posted?
 - o Does the prison service have an employee manual that explains policies, procedures and responsibilities?
 - o How are employees evaluated? Promoted? Disciplined? Demoted? Terminated? Is there a written procedure for each?
- F. 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. If the pre-trial detention facilities are administered by the police force or special department within a militarised Ministry of Interior, while prisons for sentenced prisoners are administered by a civil authority, how do the salaries and benefits received by pre-trial staff compare to staff of prisons for sentenced prisoners? Is there a large disparity? What is the staff attitude about working under a civil authority?
- H. What particular training do pre-trial detention staff receive in connection with their responsibilities? Does their training curriculum or mission statement make it clear that they are dealing with persons who are un-convicted, and that they should therefore be treated as innocent?
- I. Does their training curriculum include the principle that staff should not use prison conditions or the provision of certain services as a means to assist with investigation? Are they made to understand that staff responsible for detaining suspected persons should not take part in the investigation? How is this expressed, if at all?
- J. If pre-trial detention facilities are managed by the Ministry of Interior, and especially if they are located within police stations, is separate training provided for those who are responsible for the supervision of pre-trial detainees? What does this training consist of?
- K. Are staff especially trained to help prisoners understand their rights and legal situation in general? How many such staff are there in the system? How does their availability vary geographically?
- L. Are there any specially trained staff to examine the cases of each prisoner in order to detect grounds for release on bail and prepare reports for the courts? How many such staff are there in the system? How does their availability vary geographically?

- M. Are there specialised staff dealing with juvenile detainees? Do they receive special training? What does their training consist of? How many such staff are there in the system? How does their availability vary geographically?
- N. Is there special training provided for dealing with/caring for the mentally ill? What does the training consist of?
- O. Do pre-trial prison staff receive in-service training to improve their qualifications? What does this training consist of? How often can/must staff take part in in-service training?
- P. Where is staff trained? Are there adequate training centres? Are the training centres for prison staff (including pre-trial prison staff) located in a separate building with its own administration or is the training of pre-trial staff undertaken in a military academy, police academy etc?
- Q. Who is pre-trial prison staff trained by? Are the trainers especially qualified and trained for this task? Are they simply retired prison officers, military personnel, members of the police force etc?
- R. How is staff accountability ensured? Is there an explicit disciplinary procedure, including for the use of force and ill treatment? Is this procedure made clear in prison personnel contracts and regulations? Is it enforced? Are there examples? Ask for figures relating to disciplinary measures against staff from the individual prison administrations, over the past 2-3 years to determine numbers and trend. This information may not, however, be reliable in terms of assessing the extent to which discipline is enforced.

6.6 RESEARCH AND PLANNING

- A. Is there a national development plan including the penal system? What is included in this plan in relation to pre-trial detention facilities?
- B. Is there a department responsible for planning at headquarters level? What is its capacity? How does it develop its plans? Who provides information? Does it coordinate with similar units at local level? What is included in the plans, e.g. do they include a mission statement, improvement of policy and practice? On which areas do they focus?
- C. Has research been carried out on the problems encountered in pre-trial detention facilities and their reasons? If so, what were the outcomes, and what steps were taken to address these problems?
- D. Has research been conducted into the reasons for overrepresentation of certain groups in pre-trial detention facilities, e.g. income, gender, nationality, ethnicity based? What are the results? Have any steps been taken based on these results? What are they?
- E. Have mechanisms been built into the criminal justice system for the collection and analysis of data and statistics relating to the use of detention prior to trial? What do these mechanisms consist of?
- F. Are regular evaluations carried out, with a view to improving the implementation of non-custodial alternatives to pre-trial detention? Are there any copies of such evaluations available? What measures have been taken on the basis of such evaluations?

6.7 CORRUPTION

Corruption can be widespread in pre-trial detention and prisons, especially in low-income countries, where police and especially prison staff receive low salaries. Often people detained in police custody and in pre-trial detention facilities may exercise their most fundamental rights only in exchange for bribes. The rights that must be purchased can include receiving daily necessities, gaining access to a doctor, to a lawyer, obtaining a transfer to another cell or establishment, among many others. In many countries corruption might extend to “buying” a judge. If corruption is widespread in the criminal justice system, then the administration of justice will be undermined or even come to a standstill, with the poor being the victims.

Corrupt practices among prisoners themselves may also be widespread, with prisoners having to pay leader prisoners for anything from access to particular areas in prison, to food and even to be allocated a bed. Prisoners who are unable to pay and who are not protected by a stronger prisoner may be subjected to physical violence, including sexual abuse. Under such a system, it will be the poor and weak who suffer.

Information about corruption in the prison system in general and during pre-trial detention specifically may be obtained from independent reports produced by NGOs, bar associations, other human rights and inspection commissions bodies, ex-offenders, families of offenders and ombudsmen’s reports. Working conditions, staff salaries and benefits will need to be reviewed to identify some possible reasons and solutions. (Please see **Section 6.5**)

- A. Is there a general perception among the public, offenders’ families and offenders that corruption is widespread during the period of police custody and pre-trial detention? What must detainees pay for most often, e.g. access to legal counsel, to medical care, to visits, to telephone calls, to food etc.?
- B. Does the situation vary between rural and urban areas and in different parts of the country? From facility to facility?
- C. Is there a perception that detainees with money receive better conditions and more respect for their rights? Is there evidence that time limits of the pre-trial periods of high-income groups are adhered to, while low-income groups have to wait for months or years for their cases to come to court? Are there case examples?
- D. If corruption is a problem, to what extent? Has corruption been “institutionalised”? What are the main reasons? Have any steps been taken by state /police/prison authorities/special commissions to tackle corruption? What are they?
- E. Are corrupt practices widespread among prisoners? Is there a prisoner hierarchy in pre-trial detention facilities allowing stronger prisoners to extract money from the weaker in order to allow them access to essential needs? Have these practices led to violence among prisoners? Is the prison administration taking any measures to prevent such practices? (e.g. the more careful separation of detainees, especially those which are likely to be abused by the rest; strict separation of juveniles from adult detainees; special training for staff to be alert to and deal with such incidents effectively).

6.8 OVERSIGHT

Inspections of detention facilities are an important safeguard against malpractice and abuse in prisons, as recognised by international standards (e.g. **SMR Rule 55, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 29**, among others). Independent inspections are also in the interest of prison managements and staff, as a means of protection against unfair accusations or reports. They are also useful for central prison authorities to receive information about aspects of practice of which they may have been unaware. Authorities responsible for the management of pre-trial detention facilities have a duty to cooperate with inspection bodies.

Regular inspections are vital to safeguard detainees against abuse of legal rights, and physical abuse or ill treatment, as well as to monitor the quality of living conditions, and regime in pre-trial detention institutions.

The external oversight of places of detention is a particularly important safeguard against improper practices. National independent inspection bodies may include commissions or persons appointed by the government, presidential human rights commissions, inspection bodies appointed by parliament, such a human rights

commissions, the judiciary, or lay inspection bodies (sometimes referred to as monitoring boards).

In most systems there will be a body responsible for internal oversight, which might be inspectors appointed by the ministry responsible, as well as bodies responsible for administrative inspections.

Ideally there should be a combination of internal and external inspections to ensure maximum oversight.

Inspections may also be carried out by international and regional bodies such as the Special Rapporteur on Torture of the UN and the Committee for the Prevention of Torture and Inhuman and Degrading Punishment of the Council of Europe.

(Please see **SMR 55, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 29**).

6.8.1 Internal Oversight

- A. What provisions relate to internal inspection procedures of temporary places of detention, police custody etc? If there is more than one inspection body – what are they and what are their different responsibilities? How often do they inspect? Can they and do they inspect unannounced? Who do they report to? What are the outcomes?
- B. Is there a system of internal inspection for pre-trial detention facilities? Who is responsible? How often does the body/person visit? What are its responsibilities? Who does it report to? What are the outcomes?

6.8.2 External Oversight

- A. What provisions govern the inspection of places of detention by judicial officers? What do they do? Do they check the legality of detention, possibilities for bail? Do they release people who have exceeded time limits?

In Bihar, India, judicial officials periodically visit prisons to review cases and dispense rulings on the spot. These 'camp courts' only handle matters involving minor offenders. The courts are seen as a useful way to reduce overcrowding, speed up justice delivery, and restore the 'hope' factor in the life of prisoners.¹⁷

- B. How often do other independent inspection bodies--human rights commissions, parliamentary prison inspectors, etc.--visit temporary detention or pre-trial detention facilities? What are their roles? Can they and do they inspect unannounced? What happens with the inspection reports? Are they made public? Do referrals to other competent authorities lead to action?
- C. Does a lay inspection body have access to police custody cells and other temporary detention facilities? What is the membership? How often do they visit? Who do they report to? What action is taken, if any, in response to their reports? Do inspection bodies publish their reports? It would be helpful to obtain copies of such reports, if possible. If there is no regular inspection by independent civil bodies, there may have been projects carried out, involving inspection for a specific period – inquiring among the NGOs may provide access to reports of such projects.
- D. Does a lay inspection body visit pre-trial detention facilities? Same follow up questions and comments as C. above.
- E. If a referral mechanism exists, to whom does the body refer matters and with what outcome, e.g. referring specific cases to judicial authorities, to the Ombudsman?

- F. Do international and/or regional bodies inspect detention facilities, e.g. UN Special Rapporteur on Torture, CPT, etc.? Are their reports published? What are their findings?

6.9 PUBLIC OPINION AND ACCOUNTABILITY

Public opinion is extremely important in the context of prisons and penal reform. Public opinion can drive politicians to adopt harsher criminal justice legislation and measures, it can prevent them from undertaking necessary reforms to reduce overcrowding in pre-trial detention and prisons, it can push them to give law enforcement agencies more powers to arrest and detain, to restrict legal safeguards for detainees, among others. Therefore, programmes for reform should never underestimate the crucial role public opinion and political climate plays in success or failure. SMR express this in a narrower sense, within the context of the status and duties of prison personnel: "The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used." (**SMR, 46 (2)**). Other UN documents, such as the Tokyo Rules, stress the vital place of public support and cooperation in the success of the implementation of non-custodial measure and sanctions (**Rule 18**). Indeed, increasing possibilities for alternatives to pre-trial detention must have public support to ensure success.

In addition, the public must understand the concept of bail for example, among other measures, in order to utilise this right and be aware of their other legal rights at the stage of detention, in order to safeguard themselves against abuse and gain access to justice.

An assessor seeking to identify entry points for prison reform, must be aware that the political climate, the existence or lack of political will to reform, the openness or otherwise of the ministry responsible for prisons and the general director of the prison service are important aspects of his/her inquiry.

- A. Does the government support reform? Is there political will to reform? How is this evident?
- B. What is the political climate like in the country where assessment is taking place? Are politicians introducing harsher penal legislation in an effort to "fight against crime"? If so, what is driving these policies?
- C. Are there any efforts by the ministries responsible for detention and prisons to change public opinion in favour or against harsher legislation and measures? What kind of activities are they undertaking? Does the police or prison service have someone responsible for informing the media for example? Do they organise conferences and seminars?
- D. Are there any efforts by civil society NGOs to change public opinion? In what way? What do they do? Do they organise conferences, seminars, and meetings? Do they utilise the media? How?
- E. Have any public opinion surveys been carried out to find out what the public thinks about harsher criminal justice legislation? How were the questions formulated? What were the results?
- F. What, if any, steps are being taken to sensitize the public on the meaning of bail?
- G. What, if any, steps are being taken to address prejudices and preconceptions with regard to foreigners and minority groups?
- H. What, if any steps are being taken to inform the public about their legal rights with regard to detention, access to legal counsel and appeal procedures?

7. PARTNERSHIPS AND COORDINATION

Co-ordination between criminal justice agencies involved in the detention, investigation and trial of persons suspected of having committed an offence is essential to tackle the problems relating to detention before trial. It would be impossible to achieve a reduction in the pre-trial prison population, for example, without coordination between decision makers, law enforcement agencies, prosecuting/investigating authorities, judicial authorities and authorities responsible for detaining suspects. In order to overcome obstacles, there needs to be a coordinated strategy and mechanisms for implementing that strategy at the senior level. Much can also be done at the local level to improve communication, co-operation and co-ordination between the various criminal justice actors so that scarce resources can be applied more effectively.

Where pre-trial detention facilities are located under a separate ministry to that of the prison system for sentenced prisoners, coordination is essential between the two management authorities to ensure efficiency – for example, procedures for transfer of offenders from pre-trial detention facilities to prisons, transfer of files and information, coordination in healthcare (especially TB, where uninterrupted treatment is vital), among others.

Many governments rely on support of external donor/development assistance and increasingly look to forging partnerships with responsible NGOs and civil society groups. The 'resource crunch' faced by low income countries who have to determine how to allocate the scarce funds to meet a range of competing priorities places a priority on good co-ordination between these agencies and actors.

7.1 SYSTEM COORDINATION

- A. At what level do the criminal justice agencies co-ordinate their activities – national, regional, local? What form does this take (i.e. monthly meetings or otherwise)? Which criminal justice agencies take part?
- B. Is there a policy and strategic plan, for a coordinated approach to tackling problems relating to the detention of persons awaiting trial? Who was involved in formulating it? Did the police, prosecutors, the judiciary and authorities responsible for pre-trial detention participate? What are the problems addressed? What is the strategy put forwards to resolve them?

The Caseflow Management Committees, in a project implemented in Malawi, Kenya, Uganda and Tanzania operate at the local, regional/provincial and national levels to identify problems and come up with local solutions. They meet regularly at the local level (monthly), quarterly at the regional/provincial level and annually at the national level. They have proved effective in improving communication, co-ordination and communication between criminal justice agencies and settling local crises¹⁸

- C. Do courts meet with the police, prosecutor and prison officials at the local level on a regular basis to discuss case management and other issues?
- D. Do prison officials have a mechanism for raising issues with local decision makers and national policy makers? What are these mechanisms?
- E. Is there a legal aid scheme in operation with lawyers or qualified non-lawyers in police and prisons? Who provides the service?

In Kenya in January 2004, the Kenya Prison Paralegal Project cut the remand population in Thyika women's prison from 80 to 20 prisoners following a case-by-case review of the prisoners¹⁹

- F. If pre-trial detention facilities and prisons are under separate jurisdictions/ministries especially, but even if they are under the same authority, is there a mechanism for

cooperation between the two authorities/administrations? What does this mechanism consist of and what issues does it cover? Are the responsibilities of each party clear? Does it include, for example, issues relating to the speedy transfer of sentenced pre-trial detainees to prison facilities? Does it include clear rules on the transfer of prisoner files to prison facilities? Are there special rules relating to medical files to ensure they do not get lost? Are there provisions for uninterrupted treatment for TB and HIV particularly, as well as other medical conditions?

- G. What cooperation mechanisms are in place with social services or the probation service where it exists? Is there a service responsible for preparing pre-sentence enquiry reports? Are probation officers or social services staff allowed easy access to pre-trial facilities to meet with their clients? Are there frequent delays throughout the process? What are the reasons for delay, e.g. inadequate exchange of information or poor cooperation/coordination?
- H. To what extent do authorities responsible for pre-trial detention cooperate with civil health services? Is there a protocol or agreement at ministerial level between the two ministries? What does this agreement include and is it applied in practice? Can and do civil health services assist with the treatment of TB and HIV patients in pre-trial detention? Do they monitor treatment? Do they provide training for prison health staff?
- I. Does the authority responsible for pre-trial detention facilities have a strategy for cooperation with NGOs? What does it consist of? Is there a person or unit responsible for managing such coordination? Are there any signed partnerships protocols with selected national or international NGOs? What areas do they cover? Which NGOs?
- J. Do any civil society organizations have access to places of detention, e.g. NGOs and community based organizations? It may be helpful to list them and the type of activity.

7.2 DONOR COORDINATION

- A. Who are the principal donors in this sector? What annual value is placed on their programme? Where direct budget support is supplied, identify how much has been set aside for the justice sector in general and for prisons in particular.
- B. Is the approach targeted to the institution concerned, i.e. prisons, police, judiciary, and divided between donors, or sector wide, i.e. taking the criminal justice as a whole?
- C. Is this subject discussed in individual donor country action plans/or strategy papers?
- D. Is there a policy of coordination between different donors to ensure program coherence? What mechanisms exist to co-ordinate donor support? Which agency leads this co-ordination?
- E. What program support has been provided by donors in the last 5 years? What were the outcomes of these programmes?
- F. Does the government or ministry/ministries responsible for detention and pre-trial detention facilities have a cooperation strategy with donors working in this sector? What period does it cover? What does it consist of?

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- ¹ Coyle, A., *Managing Prisons in a Time of Change*, International Centre for Prison Studies, 2002, p. 27
- ² Lectric Law Library website: www.LectLaw.com
- ³ CPT/Inf (93) 12, para. 55
- ⁴ Council of Europe Rec R (98) 7, Rule 39; CPT/Inf (93) 12, para. 56
- ⁵ For a discussion of these forms of administrative detention see, for example, "Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 17 October 2002", pp. 18, 32; "Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 November 2003 and from 7 to 14 May 2004", p. 27 and "An Imitation of Law: The Use of Administrative Detention in the 2003 Armenian Presidential Election", Human Rights Watch Briefing Paper, May 23, 2003.
- ⁶ See, for example, "An Imitation of Law: The Use of Administrative Detention in the 2003 Armenian Presidential Election", Human Rights Watch Briefing Paper, May 23, 2003, p. 4
- ⁷ See "The System of Administrative Justice in Armenia", Helsinki Committee of Armenia, p. 2, where it is stated that: "In case of dispensation of administrative justice, the final decision-making power rests with the court of first instance, its judgment is final. The person subjected to administrative justice does not have recourse either to the court of appeal or to the Court of Cassation".
- ⁸ e.g. "Re-education through Labour", which is a form of administrative detention used in China. At the time of writing this form of detention was under review, with "Illegal Behaviour Correction Law" being drafted to replace "Re-education through Labour". Reports indicated that, under the new law, the maximum term of detention imposed would be reduced to 18 months. See "People's Republic of China Abolishing 'Re-education through Labour' and other forms of punitive administrative detention: An opportunity to bring the law into line with the International Covenant on Civil and Political Rights. Memorandum to the State Council and the Legislative Committee of the National People's Congress of the People's Republic of China". Amnesty International, AI Index: ASA 17/016/2006, 12/05/2006, p.7
- ⁹ Ibid., p. 6
- ¹⁰ Ibid., p. 3,4
- ¹¹ Walmsley, R., *World Female Imprisonment List 2006*, International Centre for Prison Studies, www.prisonstudies.org.
- ¹² In Pakistan, for example, a large percentage of women are in prison or in pre-trial detention, under Islamic legislation which penalises rape victims.
- ¹³ Principle 7.1 of the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. G A Res 46/119 of 17 December 1991.
- ¹⁴ UN Doc. E/CONF.82.15.
- ¹⁵ A/RES/S-20/3 of 8 September 1998.
- ¹⁶ See Neil Boister, *Penal Aspects of the UN Drug Conventions*, Kluwer, The Hague 2001.
- ¹⁷ Index of good practices in reducing pre-trial detention, Penal Reform International, November 2004
- ¹⁸ Index of good practices in reducing pre-trial detention, Penal Reform International, November 2004
- ¹⁹ Ibid.

ANNEX A. KEY DOCUMENTS

United Nations

- Universal Declaration of Human Rights 1948
- International Covenant on Civil and Political Rights 1966
- Geneva Convention relating to the Status of Refugees 1951
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
- Convention on the Rights of the Child 1989
- Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988
- Declaration on the Protection of All Persons from Enforced Disappearance, 1992
- 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
- Basic Principles on the Role of Lawyers, 1990
- Guidelines on the Role of Prosecutors, 1990
- Code of Conduct for Law Enforcement Officials, 1979
- Basic Principles on the Independence of the Judiciary, 1985
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990
- Standard Minimum Rules for Non-Custodial Measures 1990 (Tokyo Rules)
- Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules)
- Rules for the Protection of Children Deprived of their Liberty 1990
- Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Healthcare 1991
- Guiding Principles on Drug Demand Reduction of the General Assembly of the UN 1998
- International Convention on the Elimination of All Forms of Racial Discrimination, 1969
- Convention on the Elimination of All Forms of Discrimination Against Women 1981
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- UNHCR Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum-seekers

As well as:

- Reports by the UN Special Rapporteur on Torture;
- Reports by the UN Working Group on Arbitrary Detention.

Draft

- Model Code of Criminal Procedure
- Model Criminal Code

PLEASE NOTE: *The Model Code of Criminal Procedure (MCCP) and the Model Criminal Code (MCC) are being cited as models of codes that fully integrate international standards and norms. At the time of publication, the MCCP and MCC were still in DRAFT form and were being finalised. Assessors wishing to cite the MCCP and MCC with accuracy should check the following websites to determine whether the finalised Codes have 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.

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 1986
- African Charter on the Rights and Welfare of the Child 1990
- American Convention on Human Rights 1978
- The European Convention on Human Rights and Fundamental Freedoms, 1953

- European Convention for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment, 1989
- Council of Europe Committee of Ministers Recommendation Rec (2006) 2 on the European Prison Rules, 2006
- Council of Europe, Committee of Ministers Recommendation No. R (92) 16 on the European Rules on Community Sanctions and Measures, 1992
- Council of Europe Committee of Ministers Recommendation No. R (2000) 22 on improving the implementation of the European rules on community sanctions and measures, 2000
- Council of Europe Committee of Ministers Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation, 1999
- Council of Europe Committee of Ministers Recommendation No. R (2001) 10 on the European Code of Police Ethics, 2001
- Council of Europe Committee of Ministers Recommendation concerning the protection of the human rights and dignity of persons with mental disorder, Rec. (2004) 10.
- Council of Europe, Committee of Ministers Recommendation No. R (93) 6, Concerning Prison and Criminological Aspects of the Control of Transmissible Diseases Including AIDS Related Health Problems in Prison

Other Useful Sources

- Making Standards Work, Penal Reform International, March 2001
- Reports by African Union Special Rapporteur on Conditions in Prison and Other Places of Detention;
- Reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)
- The Treatment of Offenders under International Law, Nigel S Rodley, Clarendon Press, Oxford, Second Edition, 1999
- Monitoring Places of Detention, A Practical Guide for NGOs. APT.
- Index of Good Practices in Reducing Pre-Trial Detention. PRI. 2006
- 10 Point Plan for Reducing the Use of Imprisonment. PRI, on PRI website: www.penalreform.org
- Guidance Note 5, Pre-trial Detention, International Centre for Prison Studies, King's College London, ICPS website: www.prisonstudies.org
- Coyle, A., A Human Rights Approach to Prison Management, International Centre for Prison Studies, London, 2002, available on ICPS website.
- Coyle, A., Managing Prisons in a Time of Change, International Centre for Prison Studies, 2006, available on ICPS website.
- Amnesty International, Human Rights Watch, and US State Department human rights reports;

National

- Constitution
- Criminal/Penal statutes and procedure codes
- Strategic plans for the criminal justice system, the judiciary, and the penal system
- Research and evaluation reports by independent bodies, NGOs, academicians

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.	OVERVIEW: GENERAL STATISTICAL AND DATA	<ul style="list-style-type: none"> ▪ Ministry of Justice reports ▪ Ministry of Interior reports ▪ Penal System Reports ▪ National Police Crime reports ▪ Court Annual Reports ▪ Reports by international and national prison inspection bodies ▪ Reports by Prisons Ombudsman ▪ Reports by Law Society or Bar Association ▪ NGO reports ▪ Donor reports ▪ Research reports by independent academic institutions 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Ministry of Interior ▪ Senior Prison Service Officers ▪ Senior Police Service Officers ▪ High Court Judges and other senior judges ▪ Prison inspectors, human rights commission, judiciary with responsibility of prison inspections, prosecutors, monitoring boards, UN Special Rapporteur, CPT, UN Working Group on Arbitrary Detention. ▪ Prisons Ombudsman ▪ Law Society or Bar Association ▪ NGOs working on criminal justice matters ▪ Donor organisations working on the criminal justice sector ▪ Academicians working on criminal justice issues 	
3.	LEGAL AND REGULATORY FRAMEWORK: LAW AND PRACTICE	<ul style="list-style-type: none"> ▪ The Constitution ▪ Penal/Criminal Code ▪ Penal/Criminal Procedure Code ▪ Penal Enforcement Code/Prison Act ▪ Probation Act or similar ▪ Regulations to these codes and acts ▪ Court Annual Reports ▪ Judicial Practice Directions: Circulars and Sentencing Guidelines ▪ Government policy documents/ National Reform Programmes ▪ Independent reports made by non-governmental organisations. ▪ Legal textbooks or academic research papers. ▪ SITE VISITS ▪ Statistics and information at different administrative levels and in different parts of the country (urban, rural, rich, poor) ▪ Case examples 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Ministry of Interior ▪ Senior and local prison service officers ▪ Senior and local probation service staff ▪ Senior and local prosecutors ▪ Senior and local police officers ▪ High Court Judges, other senior judges, local judges and magistrates ▪ Senior and local prosecutors ▪ Legislative offices ▪ NGOs working on criminal justice matters ▪ Bar Associations ▪ Academicians working on criminal justice issues 	
3.1	LAW REFORM	See 2 and 3 above	See 2 and 3 above	

	TOPIC	SOURCES	CONTACTS	COMPLETED
3.2.1	ARREST, DIVERSION AND POLICE CUSTODY	See 2 and 3 above	See 2 and 3 above	
3.2.2	POLICE CUSTODY: LEGAL PROCESS AND SAFEGUARDS	See 2 and 3, plus: SITE VISITS <ul style="list-style-type: none"> ▪ To police custody cells/ temporary detention facilities 	See 2 and 3, plus: <ul style="list-style-type: none"> ▪ Former detainees ▪ Families of detainees and former detainees ▪ Lawyers representing or who have represented detainees ▪ Bar Associations and others providing legal aid. 	
3.2.3	DETENTION CONDITIONS	See above	See above, plus: <ul style="list-style-type: none"> ▪ Doctors involved in the medical examination of detainees 	
3.3	PRE-TRIAL DETENTION	See 2 and 3, plus: SITE VISITS <ul style="list-style-type: none"> ▪ Pre-trial detention facilities 	See 2 and 3, plus: <ul style="list-style-type: none"> ▪ Staff of pre-trial detention facilities ▪ Families of pre-trial detainees ▪ Lawyers of pre-trial detainees ▪ Former prisoners/pre-trial detainees ▪ Probation staff or other body responsible for preparing social enquiry reports 	
3.3.1	ADMISSION AND LEGAL PROCEEDINGS	See above	See above, plus: <ul style="list-style-type: none"> ▪ Interviews should include Senior and Local Prosecutors; Senior and Local Judges; Senior and local prison staff as a priority 	
3.3.2	ACCOMMODATION	See above	See above	
3.3.3	HEALTHCARE	See above, plus: <ul style="list-style-type: none"> ▪ Prison healthcare policy documents and strategy papers; ▪ Specific strategic plans relating to the management of TB and HIV; ▪ Medical Association reports 	See above, plus: <ul style="list-style-type: none"> ▪ Senior and local prison healthcare staff (responsible for pre-trial detention facilities) ▪ Any independent doctor involved in the treatment of detainees ▪ Medical Association or similar 	
3.3.4	REGIME AND OTHER RIGHTS	See above	See 3.3	
3.3.5	PROFILE OF PRE-TRIAL DETAINEES	See above	See 3.3	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.1	ADMINISTRATIVE DETENTION	<p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> ▪ Administrative Code/Code of Administrative Violations/Administration of Punishment Law or similar <p>SITE VISITS: To administrative detention centres</p>	<p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> ▪ Former detainees ▪ Families of detainees and former detainees ▪ Lawyers representing or who have represented detainees ▪ Bar Associations and/or other bodies providing Legal Aid to detainees. 	
4.2	PSYCHIATRIC DETENTION	<p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> ▪ Civil Code or similar ▪ Health Act ▪ Ministry of Health Reports ▪ Reports by Association of Psychiatrists ▪ Reports by international human rights/medical rights organisations <p>SITE VISITS</p> <ul style="list-style-type: none"> ▪ Mental health facilities/psychiatric hospitals where persons forcefully hospitalised 	<p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> ▪ Senior Ministry of Health Officials ▪ Mental health facility doctors and other staff; ▪ Families of detainees ▪ Ex-detainees ▪ NGOs working on human rights and medical rights (e.g. national NGOs, plus Amnesty International, Mental Disability Rights International) 	
5.1	JUVENILES	<p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> ▪ Juvenile Court Act or similar ▪ Juvenile Probation Act ▪ Regulations to these acts 	<p>See 2 and 3, plus</p> <ul style="list-style-type: none"> ▪ Juvenile police ▪ Juvenile courts ▪ Police/prison staff where juveniles detainees are held ▪ Juvenile probation staff ▪ Former juvenile detainees ▪ Families of juvenile detainees ▪ NGOs and community groups running support programmes for juveniles in detention ▪ Bar Associations and lawyers working on juvenile cases 	
5.2	WOMEN	See 2 and 3	<p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> ▪ Police/prison staff where women pre-trial detainees are held ▪ Former prisoners/detainees ▪ NGOs and community groups running support programmes for female detainees/prisoners ▪ Bar Associations and Lawyers working on women's cases 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
5.3	THE MENTALLY ILL	<p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> ▪ Health Act ▪ Regulations to the health act ▪ Prison Service Health Policy/Strategy Paper; ▪ Probation Service Health Policy/Strategy Paper ▪ Medical Association Reports ▪ Psychiatrists' Association Reports 	<p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> ▪ Ministry of Health ▪ Head of Prison Health Department/Unit ▪ Health services involved in the treatment of mentally ill offenders ▪ Prison medical and psychiatric staff ▪ Families of Mentally ill detainees ▪ NGOs ▪ Medical Associations ▪ Psychiatrists' Associations 	
5.4	DRUG RELATED OFFENCES	<p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> ▪ Health Act and regulations ▪ Act governing Drug Courts ▪ Regulations to this act ▪ Prison Service Health Policy/Strategy Paper; ▪ Probation Service Health Policy/Strategy Paper ▪ Medical Association Reports 	<p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> ▪ Drug courts ▪ Families of detainees charged with drug related offences ▪ Prison medical staff ▪ Medical Associations 	
5.5	OVERREPRESENTED GROUPS	<p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> ▪ UNHCR reports on the country assessed ▪ Reports on minority groups by NGOs and others working on minority groups' and asylum seekers' rights 	<p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> ▪ UNHCR staff ▪ Consular representatives and/or families of foreign prisoners ▪ Families of minority group pre-trial detainees ▪ Former detainees/prisoners from these groups ▪ NGOs working on minorities' and asylum seekers' rights 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
6.1	MANAGEMENT AUTHORITY	<ul style="list-style-type: none"> ▪ Ministry of Justice reports ▪ Ministry of Interior reports ▪ Penal System Reports ▪ Criminal/Penal Code and Penal Enforcement Code ▪ Penal Enforcement Code and regulations ▪ Reports by international and national prison inspection bodies ▪ Reports by Prisons Ombudsman ▪ Reports by Law Society or Bar Association ▪ NGO reports ▪ Research reports by independent academic institutions <p>SITE VISITS</p>	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Ministry of Interior ▪ Headquarters, regional and local prison service officers ▪ Prison inspectors, human rights commission, judiciary with responsibility of prison inspections, prosecutors, monitoring boards, ▪ Prisons Ombudsman ▪ Law Society or Bar Association ▪ NGOs working on criminal justice matters ▪ Academicians working on criminal justice issues 	
6.2	STRUCTURE	See above	See above	
6.3	BUDGET	<p>See 6.1, plus:</p> <ul style="list-style-type: none"> ▪ Government policy documents/National Reform programmes; ▪ Budget documents and financial reports of the prison service ▪ SITE visits to be used to gather information on the disbursement of funds 	<p>See 6.1, plus:</p> <ul style="list-style-type: none"> ▪ Headquarters, regional and local prison staff responsible for finances 	
6.4	PROCUREMENT	<p>See above, plus:</p> <ul style="list-style-type: none"> ▪ Strategic plans and reports on procurement and distribution 	<p>See above, plus:</p> <ul style="list-style-type: none"> ▪ Headquarters, regional and local prison staff responsible for procurement and distribution 	
6.5	PERSONNEL	<p>See 6.1, plus:</p> <ul style="list-style-type: none"> ▪ Samples of Recruitment/ Human resources/interview questions ▪ Training materials ▪ Staff terms of reference, contracts ▪ Staff ethics code ▪ Disciplinary board Policy/Procedures 	<p>See 6.1, plus:</p> <ul style="list-style-type: none"> ▪ Staff Training Centre ▪ Pre-trial prison governors ▪ Other prison staff (security staff, those involved in assisting with legal problems, health staff) ▪ Detainees, as appropriate, their families, ex-detainees ▪ Bar Associations and lawyers working with pre-trial prisoners ▪ Prison inspection bodies ▪ NGOs 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
6.6	RESEARCH AND PLANNING	<ul style="list-style-type: none"> ▪ Government policy documents/National Development Plan, including the penal system ▪ Prison headquarters planning department reports/strategic plans ▪ Research reports relating to pre-trial detention: On overcrowding, TB, HIV/AIDS, overrepresentation of certain groups, use of alternatives etc). ▪ Reports/interviews: Judicial authorities ▪ Evaluations of alternatives to pre-trial detention. 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Ministry of Interior ▪ Prison Service Headquarters ▪ NGOs working on criminal justice matters ▪ Academicians and legal specialists working on criminal justice matters ▪ High court judges and other senior level judicial authority staff 	
6.7	CORRUPTION	<p>See 2, 6.3, 6.4 and 6.5 plus:</p> <ul style="list-style-type: none"> ▪ Any internal audit reports, if available 	<p>See 2, 6.3, 6.4 and 6.5, plus:</p> <ul style="list-style-type: none"> ▪ Ex-detainees and their families 	
6.8	OVERSIGHT	<ul style="list-style-type: none"> ▪ Penal System Reports ▪ Reports by external, independent inspection bodies ▪ Reports by NGOs working on criminal justice matters ▪ Reports by independent academicians and researchers working on criminal justice ▪ Reports by regional and international inspection bodies (UN Rapporteur, CPT etc). 	<ul style="list-style-type: none"> ▪ Ministry of Interior or Justice ▪ Independent inspection bodies ▪ NGOs ▪ Academicians, researchers ▪ Websites of regional and international inspection bodies 	
6.9	PUBLIC OPINION AND ACCOUNTABILITY	<ul style="list-style-type: none"> ▪ Government policy documents/National Development Plan, including the penal system ▪ Ministry of Justice/Ministry of Interior reports ▪ Penal System Reports and policy documents ▪ Press reports ▪ Reports by NGOs working on criminal justice issues ▪ Public surveys and research reports 	<ul style="list-style-type: none"> ▪ Ministry of Justice/Interior ▪ Senior Prison System officials ▪ Media representatives ▪ NGOs working on criminal justice issues ▪ Bar Associations and lawyers ▪ Ex-detainees, ex-prisoners, families of detainees and prisoners 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
7.1	SYSTEM COORDINATION	<ul style="list-style-type: none"> ▪ Ministry of Justice reports ▪ Ministry of Interior reports ▪ Ministry of Health reports ▪ Penal System Reports (Pre-trial, prison and probation services) ▪ National Police Crime reports ▪ Court Annual Reports ▪ NGO reports: penal system, including pre-trial facilities ▪ Donor reports ▪ The Constitution ▪ Criminal/Penal Code ▪ Criminal/Penal Procedure Code ▪ Penal Enforcement Code ▪ Probation Act and any other relevant acts of parliament ▪ Regulations to these codes and acts ▪ Judicial Sentencing Policy Document ▪ Judicial Practice Directions, Circulars and Sentencing Guidelines ▪ Government policy documents/ National Reform Programmes ▪ Independent reports made by non-governmental organisations. ▪ Legal textbooks or academic research papers. ▪ Juvenile Court Act ▪ Regulations to this act ▪ Health Act ▪ Act governing drug courts ▪ Regulations to Health Acts ▪ Probation Service Health Policy/Strategy Paper ▪ Medical Association Reports ▪ Psychiatrists' Association Reports ▪ UNHCR reports on the country assessed; ▪ Reports on minority groups by NGOs and others working on minority rights ▪ Reports/Minutes of coordinating meetings ▪ Reports on special joint initiatives ▪ Progress reports by donor organizations ▪ Independent studies conducted by universities/NGOs <p>SITE VISITS</p>	<ul style="list-style-type: none"> ▪ Ministry of Justice /Ministry of Interior ▪ Ministry of Health ▪ Senior Prison Service Officers ▪ Senior Probation Service Officers ▪ High Court Judges and other senior judges ▪ NGOs working on criminal justice matters ▪ Donor organisations working on the criminal justice sector ▪ Senior Probation Service Staff ▪ Senior Prison Service Staff ▪ Legislative offices ▪ Bar Associations ▪ Donor organisations working on the criminal justice sector ▪ Regional and local prison staff ▪ Regional and local police staff ▪ Regional and local judges and magistrates ▪ Local probation service offices or other bodies responsible for preparing social enquiry reports and for supervising those who received alternatives to pre-trial detention ▪ Former detainees/prisoners, and their families, ▪ Juvenile courts /Juvenile police ▪ Juvenile probation staff ▪ Health services providing treatment for mentally ill offenders ▪ Medical Association ▪ Psychiatrists' Association ▪ Drug courts ▪ Health services providing treatment for drug addicted offenders ▪ Offenders on treatment for drug addiction and their families ▪ UNHCR staff; ▪ Consular representatives and/or families of foreign offenders ▪ Families of minority group detainees ▪ NGOs working on minority rights ▪ Donor organisations 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
7.2	DONOR COORDINATION	<ul style="list-style-type: none"> ▪ Donor Strategy papers ▪ Progress reports by donor organizations ▪ Independent studies conducted by universities/NGOs ▪ Ministry of Interior/Justice strategy papers relating to cooperation and coordination with donors 	<ul style="list-style-type: none"> ▪ Donor organisations ▪ Ministry of Justice ▪ Universities and NGOs 	



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CUSTODIAL AND NON-CUSTODIAL MEASURES

Alternatives to Incarceration

Criminal justice
assessment
toolkit

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UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

CUSTODIAL AND NON-CUSTODIAL MEASURES

Alternatives to Incarceration

Criminal Justice Assessment Toolkit



UNITED NATIONS
New York, 2006

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This publication has not been formally edited.

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1. INTRODUCTION TO THE ISSUE

Prison populations around the world are increasing, placing enormous financial burdens on governments. In the meantime, there is growing recognition that imprisonment does not achieve some of its most important stated objectives, as well as being harmful – to offenders, to their families and in the long-term, to the community.

Imprisonment has several objectives. It keeps persons suspected of having committed a crime under secure control before their guilt or innocence is determined by a court. It punishes offenders by depriving them of their liberty after they have been convicted of an offence. It keeps them from committing further crimes while they are in prison and, in theory, allows them to be rehabilitated during their period of imprisonment. The goal of rehabilitation is to address the underlying factors that led to criminal behaviour and by so doing, reducing the likelihood of re-offending. However, it is precisely this objective that is generally not being met by imprisonment. On the contrary, evidence shows that prisons not only rarely rehabilitate, but they tend to further criminalise individuals, leading to re-offending and a cycle of release and imprisonment, which does nothing to reduce overcrowding in prisons or to build safer communities.

The majority of prisoners worldwide come from economically and socially disadvantaged backgrounds. Poverty, unemployment, lack of housing, broken families, histories of psychological problems and mental illness, drug and alcohol abuse, domestic violence are realities that are likely to be found in most offenders' lives. Many are in prison for non-violent or minor offences. By using prison as an answer to all offences committed by such individuals, not only is the issue of safety in the community not addressed in any sustainable manner, the cycle of impoverishment, loss of jobs, weakening of employment chances, damage to relationships, worsening of psychological and mental illnesses and continued or increased drug use is perpetuated. There are also many health risks associated with overcrowded prisons, including the spread of infectious disease, such as tuberculosis and HIV. In many countries violence is a common element of prison life, especially where there is overcrowding.

Overcrowding can be decreased either by building new prisons or by reducing the number of people staying in them. Practice shows that trying to overcome the harmful effects of prison overcrowding through the construction of new prisons does not provide a sustainable solution. Indeed, a number of European countries have embarked on extensive programmes of prison building, only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates. In addition, building new prisons and maintaining them is expensive, putting pressure on valuable resources. Instead, numerous international instruments recommend a rationalization in sentencing policy, including the wider use of alternatives to prison, seeking to reduce the number of people being isolated from society for long periods.

In this context it is important to emphasize that alternatives on their own will have relatively little effect on the size of the prison population. In order to meet the objective of reducing the number of prisoners, comprehensive reform of criminal legislation needs to be undertaken and sentencing practices need to be changed. Measures that can be introduced include decriminalizing certain acts, providing shorter terms of imprisonment for selected offences, in addition to introducing a wide range of non-custodial sentences as an alternative to prison and widening possibilities for parole (conditional release).

However, the goal of introducing alternatives to prison is not only to address the problem of overcrowding in prisons. The wider use of alternatives reflects a fundamental change in the approach to crime, offenders and their place in society, changing the focus of penitentiary measures from punishment and isolation, to restorative justice and reintegration. When accompanied by adequate support for offenders, it assists some of the most vulnerable members of society to lead a life without having to relapse back into criminal behaviour patterns. Thus, the implementation of penal sanctions within the community, rather than through a process of isolation from it, offers in the long-term better protection for society.

There are also economic arguments in favour of alternatives. In western societies, the supervision of offenders within a probation system is normally much less costly than the upkeep of a prisoner.¹

On the other hand, western style probation services may not be practical options for many countries, where resources are too scarce to set up and maintain a probation system with adequate staff and finances. In these circumstances, the development of existing structures and the use of existing staff (e.g. staff of magistrate's courts, municipal authorities, social agencies, administration staff of institutions where community service is implemented) and volunteers for the supervision of non-custodial sentences may be more viable and effective options. (Successful examples include Zimbabwe, Latvia and Russia). In Zimbabwe, for example, where a community service scheme was developed on this basis in the early 90s, the monthly cost of supervising an offender on community service was estimated to be about one third of that of keeping a person in prison.²

There are certain pitfalls associated with the introduction of alternatives, which need to be borne in mind. In undertaking legislative reforms, care needs to be taken, for example, to ensure that the changes lead to a reduction of imprisonment, with alternatives being used instead of prison sentences, rather than leading to an increase in the overall volume of sanctions. Often when alternatives have been introduced in legislation, they have been used as an alternative to another alternative or alternative sentences are passed, when previously no sentence would have been passed at all.

In order to ensure effective implementation, the role of the judiciary must be well understood. In many countries, the reason alternatives are not used, despite their availability in legislation, is due to the lack of confidence of judges and magistrates in the implementation of community sanctions and measures. Cooperation with senior judges must be ensured from the very early stages of criminal justice reform and their input sought in formulating policy and implementation strategies. The organizational aspects of the implementation of alternatives, such as community service, in particular, must be taken seriously and adequate human and financial resources allocated to the proper management and administration of community sanctions. As the significant feature of alternative sanctions is that they are served in the community, the support of the public must be ensured.

Finally, the human rights of offenders need to be protected. A number of international instruments prescribe the ethical, legal, and executive framework in which non-custodial sanctions can be applied. An underlying principle with sanctions that oblige offenders to perform certain acts is that they require the offender's consent. This is particularly relevant in the case of community service sanctions. (See the **United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)**, 3.4 and the **Council of Europe Committee of Ministers Recommendation**, No. R (92) 16, Rule 35). Since human rights abuses can occur in the implementation of sanctions such as community service that require a person to perform certain acts under supervision, it is vital that offenders have recourse to a formal complaints system, set out clearly in legislation. See **Tokyo Rules**, 3.6 and 3.7.)

In view of the above, an assessment of a system of alternatives to incarceration may seek the answers to all or some of the questions below:³

1. Does the system effectively contribute to a reduction of the prison population?
2. Does it enable the offence-related needs of the offender to be met?
3. Is it cost-effective?
4. Does it contribute to the reduction of crime in the community?
5. Are there legal safeguards in place protecting the human rights of the offender?

This tool guides the assessment of systems of alternatives to imprisonment, including their legal basis, management, effectiveness, and opportunities for improvement. In conducting assessments of the role community sanctions and measures play in the reintegration of offenders and ex-offenders, the assessor should use this tool in conjunction with **Custodial and Non-Custodial Measures: Social Reintegration**.

This assessment tool is based primarily on the **UN Standard Minimum Rules for Non-Custodial Measures**, 1990, also known as the **Tokyo Rules**. These Rules ‘provide a set of basic principles to promote the use of non-custodial measures’ (1.1) and are intended to ‘promote greater community involvement in the management of criminal justice’ (1.2), taking into account the socio-economic and political conditions in each country (1.3), balancing the rights of offender and victim (1.4) which will reduce the use of imprisonment (1.5). Reliance is also placed on the **UNODC Manuals on Alternatives to Imprisonment and Restorative Justice**. Sentencing options are not the only alternatives available, however. This tool considers also the role in many countries of non-State justice systems at the village level applying customary or traditional laws. In the formal State justice system, there is increasing recognition of the useful role of alternative dispute resolution and growing acceptance of restorative justice as an alternative to a more punitive approach to criminal justice.

Probation services and other systems of supervision of non-custodial sanctions are covered by this tool, with focus on the organizational and administrative aspects. The role probation systems play in the social integration of offenders is discussed in **Custodial and Non-Custodial Measures: Social Reintegration**. Assessors should seek guidance from both tools, as appropriate, with regard to the assessment that they are conducting.

Parole, which is considered, when correctly targeted, to be one of the most effective ways in reducing overcrowding is not covered in this tool as an alternative, but can be found in the **Custodial and Non-Custodial Measures Tool: Social Reintegration**, due to its important place in assisting offenders’ gradual return to normal life in society.

Amnesties, though effective short-term measures in reducing the prison population, have a number of drawbacks and are not considered to be alternatives. They are therefore not covered specifically by this tool, except where the information may be relevant to the assessment.

Assessors may want to conduct research on models and good practices in the field of alternatives to imprisonment worldwide before going on mission. It is inevitable that they will be asked for such information during meetings and interviews. It is always helpful to be able to provide some guidance on the spot, as this can lead to discussions, testing the openness of authorities to various types of alternatives, as well as helping build trust and good relations.

In addition to developing an understanding of the strengths and weaknesses of a state’s approach to the provision of alternatives to incarceration, the assessor should be able to identify opportunities for reform and development. Technical assistance in the area of alternatives to incarceration in the context of a broader strategic framework may include work that will enhance the following:

- Legislative reforms seeking to introduce and widen the scope of alternatives to imprisonment in the penal statutes;
- Improving organisational design and management processes relating to the implementation of legislation on non-custodial sanctions and measures;
- Developing training curricula for judges, magistrates, probation service staff and others involved in the administration of alternative sanctions and measures;
- Improving allocation of resources through sound budgeting and financial management;
- Enhancing capacity to develop and manage planning, research and information management;
- Enhancing both human and technical resource capacity of probation services or other supervision/monitoring systems of non-custodial sanctions and measures;
- Ensuring good communication and co-operation between all parties involved in the administration of non-custodial sanctions and measures;
- Setting up and testing pilot projects introducing new types of community sanctions and measures;
- Designing special projects seeking to increase and improve the use of alternatives for special categories and vulnerable groups;
- Raising public awareness about alternatives to imprisonment and increasing community participation in the implementation of alternative sanctions and measures.

2. OVERVIEW: GENERAL AND 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 prison population, the number of offenders sentenced to non-custodial sanctions, and overall 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.

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

- Ministry of Justice reports
- Penal System reports (including the prison and probation systems)
- Ministry of Interior/National Police Crime reports
- Court Annual reports
- Prosecution Service's Annual reports
- Non-governmental organisation (NGO) reports on the prison system and administration of alternatives.
- Donor reports

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

- Ministry of Justice
- Senior prison service officers
- Senior probation service officers, where a probation service exists
- Senior Prosecutor
- Ministry of Interior
- High Court Judges and other senior judges
- NGOs working on criminal justice matters
- Donor organisations working on the criminal justice sector

Normally statistics relating to the use of imprisonment and alternative measures are not very difficult to obtain, though it may be that the details will not be sufficient for the purposes of the assessment. Information received from central authorities may give an overall picture, but not regional information, while the situation may vary vastly in different parts of the country. So it is important that the assessor tries to gather statistical information both at headquarters and during site visits at different levels in different parts of the country visited.

In cases where statistical data is found to be limited due to lack of capacity and resources, technical assistance interventions to develop this capacity may be appropriate, bearing in mind the importance of such data for research, planning, policy formulation and evaluation, which are essential elements of a successful programme of alternatives. (See **Tokyo Rules, Section VIII**).

Answers to the suggested questions below will give the assessor an overall picture of the prison/offender population, sentencing practice and trends, thereby helping to identify areas where alternatives may be introduced or the use of alternatives increased.

A. Are the following statistics available? On an annual basis?

- Prison population: pre-trial, convicted
- The number of juveniles in prison
- The number of women in prison
- The number of prisoners sentenced for drug related offences.
- The percentages of indigenous, ethnic and racial minority groups and foreign nationals in prisons.

- Statistics showing sentencing trends over the last 3-5 years:
- How many were sentenced to imprisonment?
- How many were sentenced to non-custodial sanctions?
- Percentage of re-offending among former prisoners covering last 3-5 years.
- If a non-State justice system exists, what is the percentage of cases dealt with by the non-State justice system (as a result of diversion by police, prosecutors or the courts) and what is the success rate of reconciliation/arbitration in the non-State justice settings?

B. What is the profile of sentenced people in prison?

This section seeks, primarily, to determine the percentage of prisoners, who may have been eligible for alternatives, if they had existed; if they were being applied or if the rules were less restrictive. Please see also targeting under Section 3.4, Question L.

- What percentage of the prison population is serving less than 1 year?
- What percentage of the prison population is serving less than 2 years?
- What percentage of the prison population is serving a term of imprisonment in lieu of payment of a fine?
- What percentage of the prison population is serving time for a first conviction?
- What is the ratio of violent vs. non-violent offenders?
- What percentage of the prison population is drug dependent or addicted?
- For which offences are juveniles most commonly sentenced to prison?
- For which offences are women most commonly sentenced to prison?
- What percentage of overrepresented groups have been imprisoned for non-violent offences?
- What percentage of these groups are serving less than 1 and 2 years?

C. What is the profile of the unconvicted people in prison?

- What percentage is eligible for bail?
- What percentage is estimated to have been granted bail but cannot meet the terms set by the court?
- What percentage is represented by legal counsel?
- What is the average time that a suspect spends in pre-trial detention before acquittal or conviction? (Exact figures and percentages, where available). Is there a legal time limit and is this limit respected?

D. What is the profile of the offender sentenced to community sanctions and measures / probationer?

- What percentage is a first time offender?
- Percentage of offences by type among offenders serving non-custodial sentences.
- What percentage would have received a prison sentence if an alternative had not been available, and what would the length of that prison sentence have been?

This information can normally be found in the Penal Code, which will give the upper limit of prison sentences or categories of offences, to which alternatives are available. Possible prison terms for each category of offence will be indicated in the Penal Code. The aim of the question is to find out whether alternatives sanctions are being used mainly instead of prison sentences, instead of other alternatives or whether the offender would not have received a sanction at all had alternatives not been introduced into penal legislation.

- Percentage of women, juveniles, ethnic and racial minorities, and foreign nationals.
- What is the percentage of drug or alcohol abusers? Does the community sanction imposed on them include treatment for their addiction?
- What percentage re-offended and of that group, what percentage received a prison sentence as a result of re-offending, over the past 3-5 years?
- What percentage received a prison sentence as a result of breaching the rules of the community sanction over the past 3-5 years?

The distinction between re-offending and technical violation of community sanction rules is very important. If many offenders are being sent to prison because they are breaching the rules, rather than re-offending, then it is evident that the rules need reconsideration. They may be too strict or too complicated for many offenders. See **CUSTODIAL AND NON-CUSTODIAL MEASURES: SOCIAL REINTEGRATION, SECTION 7.1** for further commentary with respect to parole, where similar considerations apply.

- E. Amnesties (information on amnesties may help to understand the prisoner population trends)
- Information on amnesties within the last 3-5 years, the numbers released.
 - Percentage of those who re-offended after release and were re-sentenced.

3. LEGAL AND REGULATORY FRAMEWORK: LAW AND PRACTICE

The following documents constitute the main sources from which to gain an understanding of the legal and regulatory framework for the availability of alternatives to prison at different stages of the criminal justice process.

- The **Criminal/Penal** and **Criminal/Penal Procedure Codes** will provide information about the alternatives available at pre-trial, trial and sentencing stage.
- The **Prison Act, Criminal Executive Code, Penal Enforcement Code** or similar will provide the legal framework for alternative sanctions, important especially if a separate probation act does not exist.
- The **Probation Act** or any other similar act will provide the legal framework for the administration of non-custodial sanctions and measures.
- The **Juvenile Court Act** will outline specific provisions relating to juveniles.

Where semi-formal justice systems exist, there may be particular acts governing their actions.

For other useful documents, please see Annex A. Key Documents and Annex B. Assessor's Guide/Checklist.

Often the main problem with alternative sanctions and measures arises at the implementation stage. When designing technical assistance programmes, sometimes there is no need to make any changes to legislation, but rather, to ensure that the mechanisms and resources for the implementation of existing legislation are put in place.

The questions below seek to establish what legislation is in place and to what extent existing legislation is being implemented and when not, to identify the reasons why it is not being put into practice. They also seek to find out what measures are being taken at central and local levels to improve practice.

In order to get a full picture of what is actually happening, the assessor should gather information about practice both at central level (Ministry of Justice, Ministry of Interior, central police authorities, prison authorities, probation service headquarters, high court judges and other senior judges), and from a variety of sources, at different levels of the system and in different parts of the country. The gathering of information from a wide range of sources is essential to understand the reasons why certain legislation is not being implemented, the geographic variations in practice, the variations of problems encountered in different parts of the country and by different levels of criminal justice authorities, and the level of community involvement in different settings. The sources could include local police stations, local courts, judges and magistrates, local branches of probation services or other bodies responsible for supervising non-custodial sanctions, individual prison administrations, offenders, ex-offenders and their families and NGOs working on criminal justice issues. Numerical data and case examples should be gathered, as relevant.

This information will help the assessor to identify the obstacles to implementation in practice, the geographical differences, including between urban and rural, to identify good practices that may be expanded, and to decide the priority areas upon which technical assistance should focus.

3.1 LAW REFORM

- A. When was penal legislation last reviewed and did the review increase the number of non-custodial sanctions in the Criminal/Penal Code?
- B. Is there a law commission or law review body that is considering the penal statutes with a view to rationalizing sentencing, including introducing alternatives to imprisonment / widening their scope?

C. What laws are currently under review?

3.2 DIVERSION FROM PROSECUTION

The number of complaints received by the police and prosecutors would overload the criminal justice system if they were all prosecuted in the courts. The police, prosecutors, and courts have an array of options available to them to divert offenders from prosecution. These are to be found in the penal statutes, and may include:

- Absolute or conditional discharge
- Verbal sanctions
- An arbitrated settlement
- Restitution to the victim or a compensation order
- Community service order
- Victim offender mediation
- Family group conference
- Another restorative process

Restorative process means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.

Restorative justice programme means any programme that uses restorative processes and seeks to achieve restorative outcomes.

Restorative outcome means an agreement reached as a result of a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.⁴

Restorative justice programmes may be used at any stage of the criminal justice system, subject to national law. When used before a case comes to trial or during the trial process, they can lead to the diversion of the case from criminal procedure, provided that an agreement is reached between victim and offender.

Restorative justice processes can be adapted to various cultural contexts and the needs of different communities.

Restorative justice has its roots in **informal dispute resolution** processes that still play an important role in a number of countries in Africa, South Asia and Latin America. Informal dispute resolution takes place in **non-State justice settings/institutions**, ranging from largely visible intra-family negotiations to quasi-state bodies that apply customary norms to resolve disputes. Non-State justice systems are more affordable and accessible to the poor, and allow for conflicts to be resolved without having to go through a long formal criminal justice process. They also have their drawbacks, such as lack of adequate accountability, discrimination based on social status, gender and wealth, as well as lack of human rights safeguards.

For the role of restorative justice in the rehabilitation of offenders, please see **Custodial and Non-Custodial Measures: Social Reintegration**.

A. What discretion do police or prosecutors have to divert cases from the criminal justice system? In practice, are they encouraged to do so?

Please see **ACCESS TO JUSTICE: THE PROSECUTION SERVICE**, SECTIONS 3.3.1, Prosecutorial Discretion, and 3.3.2 Alternatives to Prosecution

B. Is there a set of established criteria to take the decision of discharge **Tokyo Rules 5.1**? What are they?

C. In practice, what diversion measures are used most frequently?

D. What discretion do police or prosecutors have to issue a formal caution or warning to offenders? What authority do they have to grant bail? What are the rules and conditions governing bail at this stage?

E. Can cases be referred to restorative justice programmes by the police and prosecutors with the goal of settlement by mediation between victim and offender? If so, who are the restorative justice programmes run by? How often does this happen in practice?

F. If the above are not being applied, what are the reasons?

3.3 PRE-TRIAL DETENTION

The general rule is that a person must be afforded his or her personal liberty and not be held in detention pending trial. Principle 36(2) of the **Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment** forbids any restrictions that are not strictly required for the purpose of the detention or to prevent interference or obstruction of the investigation or the administration of justice. **The Tokyo Rules** state that “[p]re-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.” (Rule 6.1)

According to Principle 39 of the **Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment**, ‘except in special cases provided by law’, a person is entitled to release pending trial subject to conditions that may be imposed in accordance with the law’.

It is important that the authority that must decide whether to impose or continue pre-trial detention has a wide range of alternatives at its disposal. Rule 6.2 of the **Tokyo Rules** emphasise the need for alternatives to pre-trial detention to be employed at as early a stage as possible. Such possible alternatives include releasing an accused person and ordering such a person to do one or more of the following:

- to appear in court on a specified day;
- **not to:**
 - engage in particular conduct,
 - leave or enter specified places or districts, or
 - meet specified persons;
- to remain at a specific address;
- to report on a daily or periodic basis to a court, the police or other authority;
- to surrender passports or other identification papers;
- to accept supervision by an agency appointed by the court;
- to submit to electronic monitoring; or

to provide or secure financial or other forms of security as to attendance at trial or conduct pending trial. The alternative that is most commonly used is bail.

Bail is typically cash or securities or real property that is temporarily placed in the possession of the court (or other entity granting bail) as a guarantee that the suspect or accused will appear in court as ordered for the duration of a case. The assets are subject to forfeiture if the suspect or accused absconds. Bail is typically posted either by the suspect or accused or a family member, though this is not necessarily a requirement.

The **Model Code of Criminal Procedure (MCCP), (DRAFT, 30 May 2006, Chapter 9, Section 3, Article NUMBER PENDING, page 110)** provides an example of the basis for the setting of bail:

- (a) there is a reasonable suspicion that he or she has committed a criminal offence;
- (b) the only basis for the detention of the person is a fear that the person may flee; and
- (c) the person has promised that he or she will not go into hiding or leave his or her place of current residence without permission.

Possible other alternatives include releasing an accused person, following the imposition of certain restrictive measures by the competent authority (e.g. prosecutor or judge). The measures suggested by the **MCCP, (DRAFT, 30 May 2006), Article 128** include:

- (a) house detention of the suspect or the accused, alone or under the custody of another person;
- (b) the submission of the suspect or he accused to the care or supervision of a person or an institution;
- (c) a regime of periodical visits of the suspect to an agency or authority designated by the competent judge;
- (d) the prohibition of the suspect from leaving a particular area designated by the competent judge;
- (e) the prohibition of the suspect from appearing at identified places or meeting a named individual(s);
- (f) the confiscation of the passport of the suspect or the accused; or
- (g) the prohibition of the suspect from staying in the family home, if the person is suspected of domestic violence under Article 105 of the **Mode Criminal Code (Draft, 31 March 2006)**

A. What types of alternative measures are available in the penal code at pre-trial stage?

B. What provisions govern the granting of bail? Is the exercise of bail from the courts of first instance restricted or presumptive? For what types of crimes? In practice, what are the most common conditions for granting bail by the court?

- C. What is the most common measure in the courts of first instance? Are the accused released on bail? Discharged? Diverted to a restorative justice process?
- D. What steps are being taken to train the lower judiciary on the application of bail?
- E. Are restorative justice strategies recognized by the courts/legal establishment?
- F. Can courts refer or divert cases out of the criminal justice system for settlement other than by adjudication?
- G. What steps are being taken to enable the trial judge to divert the case at any stage of the trial proceedings prior to an adjudication, in favour of:
 - a mediated agreement
 - an arbitrated settlement
 - community service order
 - family group conferencing
 - another restorative process
- H. Can cases be referred from the formal State courts to non-State settings (often in the village) for informal settlement? If so what does the non-State justice system consist of and who runs it? (e.g. customary justice forums, neighbourhood dispute resolution forums, NGO run reconciliation programmes, village courts etc)? Are courts in any way bound to uphold these agreements?
- I. In practice, how often are cases referred to non-State settings for informal settlement?

3.4 SENTENCING

Rule 8.1 of the Tokyo Rules provides that the judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

The Tokyo Rules (**Rule 8.2**) list a wide range of dispositions other than imprisonment that can be imposed at the sentencing stage and which, if clearly defined and properly implemented, have an acceptable punitive element. These are:

- (a) Verbal sanctions, such as admonition, reprimand and warning;
- (b) Conditional discharge;
- (c) Status penalties;
- (d) Economic sanctions and monetary penalties, such as fines and day fines;
- (e) Confiscation or an expropriation order;
- (f) Restitution to the victim or a compensation order;
- (g) Suspended or deferred sentence;
- (h) Probation and judicial supervision;
- (i) A community service order;
- (j) Referral to an attendance centre;
- (k) House arrest;
- (l) Any other mode of non-institutional treatment;
- (m) Some combination of the measures listed above.

Alternative Sanctions Defined:

Fines: Used widely. It has the disadvantage that many people cannot afford the fines prescribed and may therefore be imprisoned.

Compensation. In some countries instead of a fine the court obliges the convicted offender to pay a certain amount of money to the victim as compensation.

Probation or judicial supervision. The arrangement for the convicted offender to continue to live in the community under the supervision of a judicial authority, probation service, or other similar body. It can involve requiring the offender to attend certain courses, therapy or treatment programmes.

Suspended sentences, (with or without supervision): A sentence is passed and recorded, but suspended for a specific length of time, during which the convicted person must not commit any further offences. In many countries a suspended sentence is combined with supervision by a probation service or other similar body.

Deferred sentence: A decision is taken not to pass sentence on condition that the offender undertakes some action, such as undergoing treatment for alcoholism, drug addiction or receiving psychological counsel. Depending on the result, the offender may not receive a sentence.

Removal of certain rights: Restrictions are placed on certain rights, such as the right to take up certain types of employment, to occupy specific positions in government or to travel to certain places.

House Arrest/ Limitation of freedom: The offender is obliged live in a certain place (normally his or her place of residence) under the supervision of a specialized agency. The offender cannot change place of residence, work or education, without permission of the supervising body.

Referral to an attendance centre: The court can direct the offender to spend a set period of hours each day in an attendance centre for a certain period of time. The attendance centre is meant to offer a structured programme for offenders to address their offending behaviour in a group environment.

Community service: Community service is work done without compensation, usually for an agency or organization for the benefit of the community. The judge may order community service in lieu of a term of imprisonment.

A sanction that is widely used in the former Soviet Union but not common elsewhere:

Correctional work: The offender continues to work in his/her existing place of employment, but is obliged to pay a certain percentage of his/her salary to the state, somewhere between 5% and 25%.

- A. What alternative sanctions and measures are available in the penal code at sentencing stage? Are alternative sanctions obligatory for some offences? Which ones? What would have been the length of prison sentence to which they are an alternative? This information can normally be found in the Penal Code.
- B. Are alternative sanctions an option for some offences? Which ones? What is the length of prison sentence to which they could be an alternative?
- C. Does the wording and commentary in legislation encourage the use of alternatives, instead of imprisonment?
- D. What criteria have been established with respect to the nature and gravity of the offence; the personality and background of the offender; the purposes of sentencing; and the rights of the victim in selecting whether a non-custodial measure is appropriate? Tokyo Rules, 3.2.
- E. What supporting evidence/documentation can the sentencing judge rely on in determining a sentence – e.g. social inquiry report? Are social inquiry reports mandatory or are they based on requests from the judge, the prosecutor, or defence counsel?
- F. How else do courts obtain background information on a defendant?
- G. Do probation officers or social services attend court? Do they testify?
- H. In practice, are alternatives to imprisonment used frequently, sometimes, rarely? If, sometimes or rarely, what are the reasons? Which alternatives are used? Why are others not used?
- I. What are the views of judges, prosecutors, and magistrates on alternative sanctions? (Enquire at different levels).
- J. What training do judges and magistrates receive on sentencing principles and practice?

- K. What guidelines are issued to the lower judiciary on sentencing principle and practice? Are judges and magistrates encouraged to impose alternative sentences when these are available as an option? For example, are they required to explain why they have imposed a prison sentence, if an alternative was available for the offence for which the sentence was imposed?
- L. Does the failure of a non-custodial measure automatically lead to the imposition of a custodial measure? Does failure normally consist of non-compliance with community sanction rules or re-offending?
- M. If failure rates are high, has research been conducted on the reasons? What were the findings?

Reasons may include incorrect targeting or excessively strict or complicated rules relating to the supervision and implementation of community sanctions. In the Czech Republic, for example, following an initial success in reducing the prison population in 2002, after the introduction of non-custodial measures, a rise was noted. This was deemed to be the result of incorrect targeting, leading to failures in completing community sanctions or to re-offending. The lack of coordination between judges and the Czech Probation and Mediation Service to ensure correct targeting was identified as the main reason for this situation.⁵

Targeting refers to the careful selection of offenders eligible for non-custodial measures. First, an analysis needs to be carried out of those who are currently receiving short prison sentences, together with their offences (please see **Section 2.2**). Based on that information, an assessment can be made as to the profile of the offender who could be eligible for alternatives, though currently is not. The type of offences and upper limit of prison sentences to which alternatives can be introduced must then be determined. (If the upper limit is too high, it may lead to failure, if too low, it may have little impact on the prison population. These considerations will need to be balanced). Other factors should also be taken into account: repeat offenders are not typically suitable, as demonstrated by the experiences in some countries, including the Czech Republic. The alternative imposed on offenders must be selected with care too. For example, community service for a person who has committed a drug related offence may be unsuitable, if the person, in fact, needs treatment for his or her addiction.⁶

3.5 SPECIAL CATEGORIES

3.5.1 Juveniles

The **United Nations Convention on the Rights of the Child** underlines the urgency for finding alternatives to the imprisonment of children by providing that: "The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time." (Art 37 (b)).

As the Commentary to **Article 76** of the **Model Criminal Code (DRAFT, 31 March 2006)** states:

The need to prioritize the rehabilitation and re-integration of a juvenile convicted person is highlighted in Article 40(1) of the **Convention on the Rights of the Child**. **The African Charter on the Rights and Welfare of the Child** states that "the essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation" (Article 17(3)). **The International Covenant on Civil and Political Rights** (Article 14(4)) also emphasizes the desirability of promoting the rehabilitation of juveniles in conflict with the law, as does the **United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules")**. The **Beijing Rules** discuss this issue in the commentary to Principle 17 "Guiding Principles in Adjudication and Disposition". The Rules do not set out a particular purpose of juvenile dispositions given the difficulties inherent in this but the commentary specifies that "strictly punitive approaches are not appropriate". It also states that "whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should be outweighed by the interest of safeguarding the well-being and the future of the young person". It is certainly true that making a juvenile responsible for his or her conduct is also of paramount importance, however, these considerations will apply not in preference to

the rehabilitative aim but in conjunction with it.

Commentary to **Article 78** of the **Model Criminal Code (DRAFT, 31 March 2006)** adds:

Principle 18 of the Beijing Rules provides that a large variety of dispositions should be available to courts when dealing with juvenile convicted persons. It gives a variety of examples, many of which have been integrated into the **Model Criminal Code (MCC)**. The focus on the Rules is on avoiding institutional measures, which in Principle 19 are said to be "a disposition of last resort". The MCC and international standards on the rights of juveniles aim to keep juveniles as far away as possible from any kind of institutionalization as possible.

A list of non-institutional dispositions suitable for juveniles is set out in Rule 18.1 of the **Beijing Rules**. Please see also **Article 78** of the **MCC**, which lists the applicable juvenile dispositions, including institutional measures and **CROSS-CUTTING ISSUES: JUVENILE JUSTICE** for guidance on special legal requirements for children under the age of 18.

- A. Is appropriate scope for discretion allowed at all stages of criminal proceedings and at the different levels of juvenile justice administration, to direct juveniles away from the criminal justice process when it would be in their interest to do so? **Beijing Rules, 6.1**. How is this worded in legislation?
- B. If so, are those who have the authority to exercise discretion specially qualified or trained? **Beijing Rules, 6.3**. Who has this authority and what training do they receive? Are there police specially assigned to investigate juvenile offences? Are there juvenile courts? Prosecutors specially assigned to handle cases in the juvenile court?
- C. Are criteria established in legislation that empower the police, prosecution or other agencies dealing with juvenile cases to dispose of such cases at their discretion, without having to resort to formal hearings? **Beijing Rules, 11.2**. What are the criteria? In practice how often do the police and prosecuting authorities use their discretion to divert juvenile offenders?
- D. Is the consent of the juvenile offender, his/her parents or guardian required for any diversion involving referral to community or other services? **Beijing Rules, 11.3**.
- E. Are there sufficient and special alternatives to pre-trial detention for children provided for in legislation, such as close supervision, placement with a family, in an educational setting or a home? **Beijing Rules, 13.2**. What are they? How often are they used in practice?
- F. Are social inquiry reports available to the courts about the child before a sentence is passed? Who is responsible for preparing the reports? Social services? Probation officers? **Beijing Rules, 16.1**. Are the reports timely? Is this a source of delay? Accurate? Complete?
- G. Are suitable, social welfare-oriented alternatives to imprisonment available for children, in penal legislation, in addition to those that are available for adults? What are they? These could include, for example, care, guidance and supervision orders, foster care, living communities or other educational settings, as set out in the **Beijing Rules, 18.1**. How often are they used in practice?
- H. In practice what alternative options are applied most frequently in the case of juveniles, at pre-trial and sentencing stage? Is imprisonment used 'strictly' as a sentence of last resort?
- I. If alternatives are not being utilized, what are the reasons? What steps are being taken to ensure that alternative options are more widely utilized in the case of juveniles, both at pre-trial and at sentencing stage?

3.5.2 Women

The disproportionately severe effects of women's imprisonment, both on themselves and on their children and other family members, require additional efforts to be made to find alternatives to imprisonment for them at all stages of the criminal justice process. In most cases alternatives can be applied more easily to women, as a high percentage are detained for non-violent offences.

- A. Does the law grant the police, prosecution or other agencies dealing with the cases of women have discretion to dispose of certain types of cases, without having to resort to formal hearings? What are the criteria?
- B. Does penal legislation make special provisions for women, pregnant women or women with young children, expanding the possibilities of alternative sentences? What are these provisions?
- C. Does the commentary of the legislation encourage the use of alternatives measures and sanctions in the cases of women charged with non-violent offences and to take into account the particular circumstances of the woman, e.g. victim of domestic violence, sexual abuse or other forms of gender based intimidation? Is this applied in practice? This may be discerned from the examples given in the commentary to explain the provisions of certain articles which reduce sentences, thereby rendering the offender eligible for an alternative measure or sanction.
- D. If not, what steps are being taken to encourage/enable the use of alternatives in the cases of women charged with non-violent and minor offences?
- E. Where non-State justice institutions recognised by the formal courts exist, what safeguards, if any, have been put in place to prevent discrimination against women in dispute resolution processes?

3.5.3 The Mentally Ill

In general, mentally ill persons are better treated outside prison. Ideally they should be in the community in which they live, a principle recognised by the **United Nations Principles for the Protection of Persons with Mental Illness**.⁷ If they need to be treated in a mental health facility, then the facility should be close to home as possible. However, prisons are not acceptable substitutes for mental health facilities.⁸ Mentally ill persons do sometimes commit criminal acts. If no legal procedures exist to commit mentally ill offenders who continue to pose a threat to others to secure mental health facilities, such persons end up in prisons, which are not designed to care for them.

- A. Is the definition of insanity broad enough in the penal legislation to ensure that those who are not criminally responsible for their actions are not subjected to criminal law?
- B. Do the police and prosecuting authorities have the authority to divert persons who are mentally ill from the criminal justice system, provided that they do not pose a threat to society? What criteria apply? How often does this happen in practice?
- C. Does legislation allow courts to intervene on behalf of pre-trial or sentenced prisoners suspected of having a mental illness, and acting on the basis of independent medical advice, to order that such persons be admitted to a mental health facility? Please see **Principle 20.3 of the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care**. How often does this happen in practice? Must defence counsel raise the issue?
- D. Does legislation provide for special consideration to be given to the imposition of non-custodial measures and sanctions on mentally ill offenders, both at pre-trial and at

sentencing stage? For example, are community sentences with a treatment element for the offender's mental illness provided for? How often does this happen in practice? Do community treatment options exist that the court may access?

- E. If the above are not taking place, are there any steps being taken to introduce or widen the capacity for the mentally ill to be diverted from the criminal justice system in order to receive appropriate treatment or otherwise increase the alternative sanctions options that may be imposed on mentally ill offenders?

3.5.4 Drug and Related Offences

In most countries offenders who are imprisoned for drug-related offences make up a large proportion of the prison population. In part this is a result of national and international efforts to combat the trafficking in illicit drugs. However, not all these offenders are major players in the drugs trade. Their criminal offences are often an outgrowth of their own addiction. Often their crimes are committed because of their own addiction to drugs. Many such offenders could be dealt with more effectively by alternatives to imprisonment targeted specifically at the drug problem. The major international instruments, including the 1988 **United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances** and the **Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations** recognise this paradox. While their primary focus is combating drug trafficking, they call on governments to take multidisciplinary initiatives,⁹ of which alternatives to imprisonment are a key part. In some countries, diversion from the criminal justice system for illicit drug users is formalised through drug education and treatment programs for first time offenders.

For those offenders whose addiction and record of criminal behaviour are more entrenched, drug treatment courts, in use in United States and Australia, offer an intensive therapeutic approach to addressing addiction and associated criminal activity as an alternative to imprisonment. Drug treatment courts provide close monitoring by the judge and drug treatment court multidisciplinary team, a treatment plan, and provides reinforcement and reward, including reduction of time in the program for compliance, and sanctions including short jail stays for non-compliance. Successful completion usually requires a specific term in which the participant remains drug free and completion of the goals set in of the treatment plan.

- A. What sentences apply to illicit drug use in the penal code? Is there a differentiation between the use of different types of drugs, with lesser sentences being provided for drugs such as cannabis?
- B. Is the difference between illicit drug use and drug trafficking clearly defined, with differentiated possible sentences? If not, do sentencing guidelines or other criteria exist to guide the imposition of consistent and proportional sentences for drug offences?
- C. Have there been any recent initiatives to decriminalise the use of certain drugs, such as cannabis, or to decrease the length of prison sentences for its use? What was the outcome?
- D. Can, and do, police and prosecutors use their discretion not to charge suspected drug users, for example, on condition that they enter or complete a drug educational or therapy programme? What criteria apply? How often does this occur? Are records kept of how many drug users actually complete the programs? What happens to those who do not?
- E. Are alternatives to criminal prosecution provided in legislation for the use of illicit drugs? What are they? Do the alternatives seek to address the drug addiction problem of the offender? How often are they used?
- F. Are there drug treatment courts available? Which offenders are targeted? Obtain statistics relating to the drug treatment courts, with information on how many offenders are screened for diversion to drug treatment court, how many are accepted, how many complete the program successfully and how many are returned for

traditional sentencing after being terminated from the drug treatment court for committing new offences or chronic non-compliance.

- G. If the above are not being applied, are there any steps being taken to introduce or increase the options of alternatives measures and sanctions available for drug dependent offenders, with appropriate treatment for their addiction?

3.5.5 Overrepresented Groups

The overrepresentation of certain groups in prisons raises the question about whether special emphasis should be paid to provide access to alternatives for them. Examples of such groups, which are overrepresented in some systems, are indigenous minorities, ethnic, religious, or racial minorities and foreign nationals.

The right to non-discrimination is found in the **Universal Declaration of Human Rights (Article 10)**, the **International Covenant on Civil and Political Rights, (Article 26)**, the **American Convention on Human Rights (Articles 1 and 24)**, the **Arab Charter on Human Rights, (Article 2)**, and the **Universal Islamic Declaration of Human Rights, Article III**. There are also a number of treaties dedicated to the treatment of non-discrimination, such as the Convention on the Elimination of All Forms of Racial Discrimination and the Convention. **The Human Rights Committee in General Comment No. 18** on Non-Discrimination has termed the right to non-discrimination as 'a basic and general principle relating to the protection of human rights' (Paragraph 1). The **Human Rights Committee** recognizes that distinctions can be made among people, however, so long as the distinction is 'based on reasonable and objective criteria' and its goal is to achieve a purpose that is legitimate under the Covenant (Paragraph 18).

In some countries minority group are significantly overrepresented in the criminal statistics and also in the prisons. This situation may be due to a biased perception that members of such groups represent a greater risk to public safety, and therefore alternatives may not be considered appropriate. However, legislation in most countries makes discrimination illegal. Even where law enforcement policy and practices may not have been developed to be deliberately discriminatory or biased, the impact of those policies and practices upon minority groups may be disproportionate. This may be due, for example, to increased police presence in urban areas with higher crime rates where minority groups may be concentrated, creating a greater likelihood of detection. In other cases, the criteria for eligibility for alternatives to imprisonment may not reflect factors that would allow participation by members of an overrepresented minority group. The concept of equal protection under the law requires the ongoing examination of policy and practices to determine whether the same public safety goals can be achieved with different strategies that have a less detrimental impact upon minority communities and the implementation of such strategies.

Foreign nationals make up a large percentage of the prison population of several countries. For various reasons it is sometimes erroneously presumed that alternatives to imprisonment are not applicable to them. For example, there may be an assumption that all foreign prisoners present an escape risk and therefore that none of them can ever be granted conditional release. In other cases the criteria for eligibility for alternatives to imprisonment may not reflect factors that would allow participation by members of an overrepresented minority group.

Technical assistance in this area may include: public awareness campaigns to reduce bias in the community; the inclusion of issues associated with the overrepresentation of minority groups in the criminal justice system and particularly prisons in the basic training curricula of the police, judges and prosecutors; and the development of a criminal justice system-wide initiative to develop strategies that reduce overrepresentation.

- A. Does criminal legislation relating to alternative measures make it clear that all provisions should be applied without any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin property, birth or other status? [Tokyo Rules 2.2.](#)
- B. Is there recognition by key officials that particular minority group may be overrepresented? Are any initiatives being undertaken by key stakeholders to reduce this problem? Is it unilateral or collaborative? Are diversion or alternatives to imprisonment part of the initiative? Has it been successful? If not, what are the impediments?
- C. Are there legal provisions related to consideration of particular alternative measures for certain minority groups that make use of traditional punishments in these communities? If so, have legal safeguards been put in place? How often is this alternative used? Is it effective?

- D. Is training included in the curricula of police, prosecutors and judges specifically relating to non-discrimination against ethnic, racial, indigenous minorities and foreign nationals? On other factors relating to overrepresentation issues? For guidance on providing equal consideration for alternative measures and sanctions?

3.6 LEGAL SAFEGUARDS

- A. Does the law require offender consent for non-custodial measures imposed prior to or in lieu of formal proceedings or trial that place an obligation upon the offender? [Tokyo Rules 3.4](#). In practice how often is such consent obtained? Is it verbal? Written? Documented?
- B. Are the decisions on the imposition of non-custodial measures subject to review by a judicial or other competent independent authority, upon application by the offender? [Tokyo Rules 3.5](#). What rules and procedures apply? How often has this happened in practice? How many non-custodial sentences nationwide were appealed by the offender over the past 1-2 years? What were the outcomes?
- C. Is the offender entitled to make a request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights in the implementation of non-custodial measures? [Tokyo Rules 3.6](#). What rules and procedures apply? How often does this happen in practice? What were the outcomes?
- D. Can the prosecution appeal a sentence? Are there examples? What were the outcomes? How many non-custodial sentences were appealed by prosecutors nationwide over the past 1-2 years?
- E. Are there legal safeguards to ensure that the offender's rights are not restricted further than what was authorized by the competent authority that rendered the original decision? [Tokyo Rules 3.10](#). What are they?
- F. Are the appropriate procedures set down by law for the recourse and, if possible, redress of any grievance related to non-compliance with internationally recognized human rights standards? What are they? Have they been used?
- G. Is the offender's (and his or her family's) right to privacy respected in the application of non-custodial measures? [Tokyo Rules 3.11](#). How is confidentiality ensured? Are the offender's personal records kept strictly confidential and closed to third parties? Is access to such records limited to persons directly concerned with the disposition of the offender's case or to other duly authorized persons? [Tokyo Rules 3.12](#).
- H. If a non-State justice system recognized by the formal courts exists, do human rights safeguards apply, and how are they monitored? Is the exercise of street or mob justice part of the informal justice system? If so, what steps are being taken to address this problem?

Human rights concerns in non-State justice settings have arisen in the areas of gender-based discrimination, particularly in family relations; and in the types of punishments meted out to suspects by vigilante-style security networks. Due to these concerns, in East Africa, for example, many in the legal profession have called for the scrapping of quasi-judicial tribunals, criminalization of 'vigilante' activities, and 'benign neglect' of low-profile community-based forums.¹⁰

Where human rights or gender based concerns exist, it may be possible to address the problem with training. On Panay Island in the Philippines, for example, an NGO has undertaken training of local people about the law to increase the efficiency and legitimacy of the Baranguay justice system (local government linked dispute resolution tribunals based on traditional justice).¹¹

4. MANAGEMENT AND BUDGET

Clear strategy and management procedures, effective organisational and administrative arrangements, an adequate budget and supervision of expenditure are essential elements of ensuring the successful implementation of non-custodial measures. Although the Tokyo Rules make no explicit mention of management and financial resources, their importance is implicit in a number of rules set forth, such as those relating to staffing, public participation and ensuring cooperation with other agencies. **Rule 42 of the Council of Europe, Committee of Ministers Recommendation No. R (92) 16** on the European Rules on community sanctions and measures states that “the implementing authorities shall have adequate financial means provided from public funds. Third parties may make a financial or other contribution but implementing authorities should never be dependent on them”. (See also **Rule 43**). The proper supervision of how finances are dispersed is essential to avoid corruption.

4.1 MANAGEMENT AUTHORITY

- A. Which ministry is responsible for the management of the probation or similar supervision/monitoring system – at national and local levels? Is this a separate ministry from the one that is responsible for managing the prison system?
- B. Is there a probation service? If a probation service exists, does it have a clear mission statement? What does the statement consist of?
- C. Is there any other national body, e.g. National Committee, National Working Group responsible for policy formulation, planning, implementation, research and evaluation relating to alternatives to imprisonment? When was it formed? Who is represented? What are its duties and responsibilities?
- D. Is there a strategic plan for the management of the system of community sanctions and measures/probation system? When was it last formulated, who participated in its formulation? What period does the strategic plan cover? It would be helpful to obtain a copy, if possible.
- E. Have there been any recent management changes/restructuring?
- F. If none of the above exist or exist at very basic level – what structures are in place that could form the basis of a system to administer the implementation and supervision of community sanctions and measures?

For example, in many states of the former Soviet Union, a system of “criminal executive inspections” exists, which has a limited supervising role, but no rehabilitative responsibility. This system has been built upon to develop a probation-like service in countries such as Russia and Kazakhstan, with the assistance of international and national NGOs.¹²

- G. If no structure or system exists, could the courts, local authorities, or institutions where community sanctions may be carried out undertake the administration and supervision of probationers?

For example, under a model developed by Soros Foundation Latvia, the local municipalities were made responsible for the supervision of offenders sentenced to non-custodial sanctions and measures, where community service units were set up.¹³ In Zimbabwe, the community service scheme set up in the early 90s was initially administered by magistrates’ courts, using their existing staff and implemented by agencies in the community.¹⁴

4.2 STRUCTURE

- A. How is the implementation of community sanctions and measures supervised? Is the system centralised or decentralised?
- B. Obtain organisational chart of probation or other service responsible for the supervision of non-custodial sanctions and measures.
- C. Describe the levels of the probation or other supervising system.
- D. What is the make up of the teams operating at each level?

If there is no system or structure, please see **Section 4.1, Questions F and G.**

4.3 BUDGET

- A. How is the probation or other supervisory system funded? What is the budgetary process under the law? Does the probation system 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? Who oversees its spending? Is the budget sufficient?
- B. Does the probation service 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? 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?
- E. If there is no probation system or any other similar system, what possibilities are there for the allocation of resources to developing a system for the management of alternatives sentences? Are authorities committed to allocating resources? What amount of funds could be available? From which ministry? Could cuts be made, for example, in other programmes (such as prison construction) to reallocate to alternatives? Which other agencies / donor organisations could support this initiative?

Cost effectiveness must be taken into account – i.e. rather than planning for a western style probation system, existing structures, systems, institutions and staff should be used, maximizing coordination with community agencies planned.

4.4 RESEARCH, POLICY FORMULATION, AND PROGRAMME DEVELOPMENT

The **Tokyo Rules** place importance on research and planning, with the involvement of public and private bodies, as an essential element of implementing successful programmes of alternatives sanctions (**Rules 20, 21**). They encourage the systematic planning of programmes for non-custodial measures as an integral part of the criminal justice system within the national development process. They recommend that regular evaluations be carried out with a view to implementing non-custodial measures more effectively.

Achievements should be documented. The availability of research and evaluation data is important at times of crises, for example, when individual failures result in public reaction against non-custodial sanctions. In such situations, authorities will need to be able to demonstrate to the public of the overall benefit of alternatives to imprisonment in such situations.

- A. Has research been carried out on the problems that confront offenders, practitioners, the community and policy makers? If so, what were the outcomes, and what steps were taken to address these problems?
- B. Has research been conducted into the reasons for overrepresentation of certain groups in prisons? What are the results? Have any steps been taken based on these results? What are they?
- C. Have mechanisms been built into the criminal justice system for the collection and analysis of data and statistics on the implementation of non-custodial sanctions and measures? If not, what would it take for such data to be captured and analysed?
- D. Are regular evaluations carried out, with a view to improving the implementation of non-custodial sanctions and measures? Are there any copies of such evaluations available? What measures have been taken on the basis of such evaluations?
- E. Are any pilot projects in place to test the implementation of community sanctions, such as community service schemes?

4.5 PERSONNEL

Standard Minimum Rules relating to staff involved in the supervision of non-custodial sentences are set out in Sections VI of the Tokyo Rules. See also Chapter 5 of Council of Europe, Committee of Ministers Recommendation No. R (92) 16 on the European Prison Rules on Community Sanctions and Measures.

- A. Does the probation service have an organizational chart that describes the lines of authority and staffing scheme? How are functions coordinated?
- B. Are the duties, rights and responsibilities of each member of staff clearly defined in their contract and relevant regulations?
- C. What is the number of staff? How many probationers/offenders is one probation officer responsible for in the country and how does this vary from location to location?

The ratio of probation officer to offender/probationer varies vastly from country to country. A caseload of 35-45 is considered to be a manageable number. But even in some European Union countries this ratio is exceeded, while in countries with less adequate resources a probation officer may be responsible for the supervision of over 100 offenders.
- D. If there is no probation service, who is responsible for the supervision of non-custodial sentences?
- E. What is the recruitment and selection procedure for probation service staff/ other staff responsible for supervision of non-custodial sanctions?
- F. Are positions advertised? Posted? Where?
 - Are there minimum qualifications for positions?
 - Is there transparency in the hiring process, including the use of standard questions during the interview process, rating sheets, etc.
 - Is there a policy of equal opportunity/non-discrimination? Is it posted?
 - Does the probation service 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?

- G. Do probation service staff have civil service status or other such protections?
- H. 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?
- I. What, if any, initial training do probation service employees receive? What topics are covered? Are training programs geared towards addressing the specific social and psychological needs of offenders, including instruction on the nature of non-custodial measures, the purposes of supervision and the various modalities of the application of non-custodial measures? Are staff given an understanding of the need to coordinate activities with other agencies concerned?
- J. What ongoing training is available for probation service 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 probation service budget does it comprise?
- K. Probation service teams: Are they multidisciplinary? Do they include complementary professions?
- L. Do the probation service staff reflect the population? Is any group over- or under-represented? Is the probation service 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?

4.6 VOLUNTEERS AND NGOS

Please see **Section VII of the Tokyo Rules. Rule 17.1** of the Tokyo Rules: “[P]ublic participation should be encouraged as it is a major resource and one of the most important ties between offenders undergoing non-custodial measures and the family and community. It should complement the efforts of the criminal justice administration”.

Volunteer contribution to the administration and supervision of community sanctions and measures is of additional value where resources are insufficient to employ adequate numbers of paid staff. NGOs also have a lot to offer in developing alternatives to the formal criminal justice process, e.g. informal dispute resolution, or in improving existing alternatives, by increasing civil society involvement.

- A. Are volunteers involved? How are they selected and what training do they receive? What percentage of the supervisory staff is made up of volunteers?
- B. Do volunteers have access to support and counselling from and the opportunity to consult with the competent authority (e.g. the probation service)?
- C. Are NGOs involved in the implementation of community sanctions and measures? What is their role? Do they, for example, provide training for probation officers or others responsible for supervising non-custodial sanctions and measures? Do they help provide useful work for community service schemes? Do they assist with reintegration programmes for offenders? **More on this aspect of NGO cooperation is covered in Custodial and Non-Custodial Measures: Social Reintegration.**
- D. Are NGOs involved in other forms of alternative criminal justice processes, such as running informal dispute resolution/mediation services recognized by the formal courts? What are they and what is their success rate?

In Bangladesh, for example, community based informal dispute resolution services run by NGOs are considered to be the most reliable, consistent and impartial form among existing informal dispute resolution (shalish) forums, which also include traditional tribunals and government administered village courts.¹⁵

4.7 PROBATION SERVICE: FACILITIES / EQUIPMENT / INFORMATION MANAGEMENT

Adequate office space and technical equipment are essential for the efficient work of probation officers, who are often overloaded with cases and require computers to write reports, internet access for gathering information, photocopies, telephones and faxes to communicate and coordinate with a wide range of actors involved in the administration of community sanctions and measures, resource and reference books to assist them with their daily work. The reality is that, in many countries financial resources are utterly insufficient to ensure adequate working conditions for probation staff. If probation services have their own offices, these may be located in police stations (which may confuse offenders as to their function), in court buildings or other offices of local authorities, with very inadequate shared facilities. Many do not have access to computers, photocopiers, transport for home visits and so on. The lack of such resources to support basic duties places a great burden on probation staff. (For example, in Kazakhstan, this was one of the main obstacles stated by probation officers in 2005, to carrying out their work efficiently).

- A. What kind of office facilities does the probation service use, at headquarters, regional and local levels? Where are their offices located?
- B. Do offices have adequate space and technical equipment, e.g. computers, telephones, faxes, photocopiers? Is there adequate space to interview and consult probationers?
- C. Do staff have adequate means of transport for home visits, especially in cases where their responsibility may cover a large geographical area? Do they have adequate transport facilities and budget, to visit courts, pre-trial detention centres, prisons, social welfare agencies, treatment centres and others?
- D. Do staff have adequate technical facilities for information retrieval and management? Do they have access to the Internet? Is there a network system linking probation offices with headquarters and with each other?
- E. Are there files for each offender/probationer sentenced to community sanction or measure? Where are these files held? Is there an effective filing system? Are files kept up-to-date? Are files computerised?
- F. Are files kept confidential, with access being limited to persons directly concerned with the offender's case or other duly authorised persons? [Tokyo Rules 3.12](#).

4.8 PUBLIC ACCOUNTABILITY

Successful community service schemes have all involved gaining maximum possible public support and community participation. Raising public awareness and keeping the public informed and involved are aspects of community sanctions and measures that are often overlooked, which can lead to failure.

- A. Does the Ministry responsible for the management of alternative sentences have a declared public relations policy?
- B. Are conferences, seminars and other activities organised regularly to stimulate awareness of the need for public participation in the application of on-custodial measures? (e.g. by government authorities and NGOs).
- C. Is the mass media utilised to help create a constructive public attitude?
- D. What public surveys have been conducted? What are the findings? Are there indications that the public is open alternative sanctions? How does the public feel

about having offenders carry out their sentences in the community? Do they understand the objective and do they support such measures?

- E. How does the public regard probation service staff? How do offenders and their families regard probation service staff? Do they see their role as helpful and supportive or purely supervisory, as agents of the state?
- F. Have public awareness campaigns been undertaken to change prejudicial perceptions about overrepresented groups, in order for them to be able to serve their sentences in the community without fear and with adequate support?

5. PARTNERSHIPS AND COORDINATION

Coordination between criminal justice agencies at all levels is an essential condition for the successful and effective implementation of alternative sanctions.

Successful programmes of alternatives have included the setting up of a national body, where all levels of the criminal justice system and non-governmental organisations were represented, with responsibility for strategic planning and coordination in the field of alternatives, e.g. Zimbabwe, Kazakhstan.

The involvement of the judiciary in reforming legislation and in the development of policies and systems relating to the supervision of non-custodial sanctions has been key in the success of alternatives programmes. Taking this consideration into account, **Rule 7 of the Council of Europe, Committee of Ministers Recommendation Rec. (2000) 22** on improving the implementation of the European Rules on community sanctions and measures, states "judicial authorities should be involved in the process of devising and revising policies on the use of community sanctions and measures, and should be informed about their results, with a view to ensuring widespread understanding in the judicial community of their nature.

This tool covers only briefly the key area of coordination between criminal justice agencies and the community, including civil healthcare providers, social assistance and employment agencies, non-governmental organisations providing services to offenders and ex-offenders and other community groups. Coordination with these agencies of civil society is covered in detail in **Custodial and Non-Custodial Measures: Social Reintegration**. Assessors should refer to that tool as necessary.

5.1 SYSTEM COORDINATION

- A. At what level do the criminal justice agencies co-ordinate their activities – national, regional, local? What form does this take (i.e. monthly meetings or otherwise)?
- B. What involvement do judges have in the process of law reform and policy formulation relating to the implementation of community sanctions and measures?
- C. Are there any or are there plans for coordinated approaches to alternative sanctions like drug treatment courts or expedited review/settlement programs? Who are the key players driving these initiatives? The collaboration of which key players is still needed for such initiatives?
- D. What are the mechanisms for coordination among the police, the probation service and the courts? Is the probation service responsible for providing social inquiry reports to the courts before trial? It would be helpful to request statistics, including social inquiry reports requested by/provided to courts and results.
- E. If a probation service does not exist, are there others, such as social services responsible for providing social inquiry reports to courts, especially in the cases of juvenile offenders?

- F. Can the probation service provide information to institutions other than the courts? In some jurisdictions, the probation service is attached only to the courts and cannot provide service to the police and prosecutors.
- G. What are the mechanisms for coordination among the police, the probation service and the prison service?
- H. What is the procedure for transferring records from one criminal justice agency to another? From prisons to the probation service? Between probation services at different levels or locations? Is case information computerised? How is confidentiality protected?
- I. Are there any partnerships with the community to implement/ monitor/ supervise non-custodial measures – for instance community service orders? Between whom? What are the coordination mechanisms?
- J. Does the probation service or other service responsible for the supervision of offenders sentenced to non-custodial sanctions coordinate its activities with healthcare, social welfare and employment agencies as relevant?
- K. If a non-State justice system exists, what coordination and cooperation, if any, takes place between it and the formal justice system? What steps are being taken to ensure better coordination between the formal justice institutions and those of the non-State justice system?
- L. What is being done to encourage the establishment and recognition by the state of community dispute resolution structures, to provide training for those involved in the non-State justice system and to improve accountability and safeguards against discrimination and human rights violations in the non-State Justice system?

5.2 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. Which donor/development partners are active in the justice sector?
- B. Are there donor strategy papers for the justice sector? How much money set aside in support of developing the criminal justice system?
- 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 the development of alternative sanctions and measures in particular?
- E. What projects relating to the development of alternatives sanctions and measures have donors supported in the past? What projects are now underway? What lessons can be derived from those projects? What further coordination is required?
- F. Does the ministry responsible for the management of alternative sanctions and measures have a strategy for coordination and cooperation with donors? Is there a strategy paper?

¹ For example, the daily average cost per prisoner in Sweden in 2003, was EUR 200 (closed prison), compared to the cost of a probationer at EUR 17. In Finland the cost of a probationer in 2004 was EUR 2,800 per year, compared to the cost of a prisoner at EUR 44,600. (Lindholm, Margareta, Sweden, "Legal Basis and Organisation of Probation Services", Paper presented at the Council of Europe/Ministry of Justice, Turkey Conference on Probation and Aftercare, 14-16 November 2005, Istanbul, p.5) In Estonia the cost of supervising each probationer is about ten times less than the cost of maintaining a prisoner and in Romania about eleven times less. (Kalmthouht, A.M. Van, Netherlands, "Interventions under the Four Working Sessions", Paper presented at the Council of Europe/Ministry of Justice, Turkey Conference on Probation and Aftercare, 14-16 November 2005, Istanbul, p. 11)

2 Stern, V., Alternatives to prison in developing countries, International Centre for Prison Studies, King's College London and Penal Reform International, London 1999, p. 42.

3 See Rule 90, Council of Europe Committee of Ministers Recommendation No R (92) 16

4 Definitions as in "UN Basic Principles on the use of Restorative Justice Programmes in Criminal Matters", E/2002/INF/2/Add.2.

5 Stern, Pavel, Czech Republic "Recruitment, Selection and Training of Probation Staff" Paper presented at the Conference on Probation and Aftercare, 14-16 November 2005, Istanbul, p.4.

6 For a very useful discussion on targeting and an example of how it was done in Finland, see Stern, V., Developing Alternatives to Prison in East and Central Europe and Central Asia, A Guidance Handbook, International Centre for Prison Studies, King's College, University of London, May 2002, pp. 23-24 (electronic version).

7 Principle 7.1 of the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. G A Res 46/119 of 17 December 1991.

8 Ibid. Principle 7.2.

9 See Neil Boister, Penal Aspects of the UN Drug Conventions, Kluwer, The Hague 2001.

10 Nyamu-Musembi, C, Review of Experience in Engaging with 'non-State' Justice Systems in East Africa, Commissioned by Governance Division, DFID (UK), February 2003, p. 4

11 Scharf, W., The Challenges Facing Non-State Justice Systems in Southern Africa: How do, and How Should Governments Respond, Paper presented at the conference "Criminal Justice: A New Decade", 7-8 February 2005, p. 6

12 See Penal Reform International website (www.penalreform.org and annual reports).

13 Stern, V., Developing Alternatives to prison in East and Central Europe and Central Asia, A Guidance Handbook, International Centre for Prison Studies, King's College London (electronic version), p. 32

14 Stern, V., Alternatives to prison in developing countries, International Centre for Prison Studies, King's College, London, p. 30

15 Scharf, W., The Challenges Facing Non-State Justice Systems in Southern Africa: How do, and How Should Governments Respond, Paper presented at the conference "Criminal Justice: A New Decade", 7-8 February 2005, p. 6

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
- Convention on the Rights of the Child 1989
- Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988
- Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power
- Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment 1988
- Standard Minimum Rules for Non-Custodial Measures 1990 (Tokyo Rules)
- Standards Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules)
- Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters 2002
- Rules for the Protection of Children Deprived of their Liberty 1990
- Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Healthcare 1991
- Guiding Principles on Drug Demand Reduction of the General Assembly of the UN 1998
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- A Manual on Alternatives to Imprisonment, UNODC, 2006
- A Manual on Restorative Justice, UNODC, 2006

Draft

- Model Code of Criminal Procedure
- Model Criminal Code

PLEASE NOTE: The Model Code of Criminal Procedure (MCCP) and the Model Criminal Code (MCC) are being cited as models of codes that fully integrate international standards and norms. At the time of publication, the MCCP and MCC were still in DRAFT form and were being finalised. Assessors wishing to cite the MCCP and MCC with accuracy should check the following websites to determine whether the finalised Codes have 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.

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 1986
- African Charter on the Rights and Welfare of the Child 1990
- Bangkok Declaration 2005
- Kampala Declaration on Prisons in Africa 1996
- Kadoma Declaration on Community Service Orders in Africa 1997
- Council of Europe, Committee of Ministers Recommendation No. R (92) 16 on the European Rules on Community Sanctions and Measures, 1992
- Council of Europe Committee of Ministers Recommendation No. R (2000) 22 on improving the implementation of the European rules on community sanctions and measures, 2000
- Council of Europe Committee of Ministers Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation, 1999

Other Useful Sources

- Stern V., Alternatives to prison in developing countries, International Centre for Prison Studies, King's College London and Penal Reform International, London 1999

- Stern V., Developing Alternatives to prison in East and Central Europe and Central Asia, A Guidance Handbook, International Centre for Prison Studies, King's College, University of London, May 2002
- Nyamu-Musembi, C, Review of Experience in Engaging with 'non-State' Justice Systems in East Africa, Commissioned by Governance Division, DFID (UK), February 2003
- Faundez, J., Non-State Justice Systems In Latin America, Case Studies: Peru and Colombia, University Of Warwick, January 2003
- Golub, S., Non-State Justice Systems in Bangladesh and the Philippines, Draft Paper prepared for the UK Department for International Development, University of California at Berkeley, January 2003
- Penal Reform International (PRI) website (www.penalreform.org) and publications available from PRI, London office:
- Abuja Declaration on Alternatives to Imprisonment: The Abuja declaration results from a national conference on alternatives to imprisonment held in Abuja between 8 and 10 February 2000.
- Alternatives to Imprisonment in the Republic of Kazakhstan: Features the resolution and recommendations from the international conference on alternatives to imprisonment held in Almaty, Kazakhstan between 27 and 30 October 1999.
- A Guide on Community Service in Practice, 1998: The guide outlines the steps required for the introduction of community service as an alternative to custody. It stems from the experiences in Zimbabwe and Uganda.
- Access to Justice in Sub-Saharan Africa – the role of traditional and informal justice systems: The study is drawn from African experiences but another perspective is given through examples of good practice from South Asia.

National:

- Constitution
- Criminal/Penal statutes
- Strategic plans for the criminal justice system, the judiciary, and the penal system
- Research and evaluation reports by independent bodies, NGOs, academicians

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
2.0	OVERVIEW: GENERAL STATISTICAL AND DATA	<ul style="list-style-type: none"> ▪ Ministry of Justice reports ▪ Penal System Reports (Prison and Probation Services) ▪ Ministry of Interior reports ▪ National Police Crime reports ▪ Court Annual Reports ▪ NGO reports: penal system and administration of alternatives ▪ Donor reports 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Senior Prison Service Officers ▪ Senior Probation Service Officers ▪ Ministry of Interior ▪ High Court Judges and other senior judges ▪ NGOs working on criminal justice matters ▪ Donor organisations working on the criminal justice sector 	
3.0	LEGAL AND REGULATORY FRAMEWORK: LAW AND PRACTICE	<ul style="list-style-type: none"> ▪ The Constitution ▪ Penal Code ▪ Penal Procedure Code ▪ Penal Enforcement Code ▪ Probation Act and any other relevant acts of parliament ▪ Regulations to these codes and acts ▪ Acts governing semi-formal/informal justice systems ▪ Judicial Sentencing Policy Document ▪ Judicial Practice Directions, Circulars and Sentencing Guidelines ▪ Government policy documents/ National Reform Programmes ▪ Independent reports made by non-governmental organisations. ▪ Legal textbooks or academic research papers. ▪ SITE VISITS: ▪ Statistics and information at different administrative levels and in different parts of the country (urban, rural, rich, poor) ▪ Case examples 	<ul style="list-style-type: none"> ▪ Ministry of Justice/Ministry of Interior ▪ Senior Probation Service Staff ▪ Senior Prison Service Staff ▪ Legislative offices ▪ High Court Judge ▪ Senior Court personnel ▪ NGOs working on criminal justice matters ▪ Bar Associations ▪ Leaders of ethnic, tribal or religious communities ▪ Donor organisations working on the criminal justice sector ▪ Senior and local police staff ▪ Local courts ▪ Judges and magistrates ▪ Local probation service offices or other bodies responsible for supervising non-custodial sanctions ▪ Individual prison administrations ▪ Offenders, ex-offenders and their families, ▪ Treatment and attendance centres for offenders ▪ Institutions where community service schemes are carried out 	
3.1	LAW REFORM	See SECTIONS 2.0 and 3.0 ABOVE	See SECTIONS 2.0 and 3.0 ABOVE	
3.2	DIVERSION FROM PROSECUTION	See SECTIONS 2.0 and 3.0 ABOVE Plus: <ul style="list-style-type: none"> ▪ Probation Service or NGO reports on diversion from prosecution and restorative justice programmes; 	See SECTIONS 2.0 and 3.0 ABOVE Plus: <ul style="list-style-type: none"> ▪ NGOs running restorative justice programmes 	
3.3	PRE-TRIAL DETENTION	See SECTIONS 2.0 and 3.0 ABOVE	See SECTIONS 2.0 and 3.0 ABOVE	
3.4	SENTENCING	See SECTIONS 2.0 and 3.0 ABOVE	See SECTIONS 2.0 and 3.0 ABOVE	

	TOPIC	SOURCES	CONTACTS	COMPLETED
3.5.1	JUVENILES	See SECTIONS 2.0 and 3.0 ABOVE Plus: <ul style="list-style-type: none"> ▪ Juvenile Court Act ▪ Regulations to this act 	See SECTIONS 2.0 and 3.0 ABOVE Plus <ul style="list-style-type: none"> ▪ Juvenile courts / Juvenile police ▪ Juvenile probation staff ▪ Juvenile offenders on whom alternative measures or sanctions were imposed ▪ Families of juvenile offenders on whom alternative measures or sanctions have been imposed ▪ NGOs running special programmes for juvenile offenders 	
3.5.2	WOMEN	See SECTIONS 2.0 and 3.0 ABOVE Plus: SITE VISITS	See SECTIONS 2.0 and 3.0 ABOVE Plus: <ul style="list-style-type: none"> ▪ Female offenders on whom alternative measures or sanctions have been imposed ▪ NGOs running special programmes for female offenders 	
3.5.3	THE MENTALLY ILL	See SECTIONS 2.0 and 3.0 ABOVE Plus: <ul style="list-style-type: none"> ▪ Health Act ▪ Regulations to this act ▪ Probation Service Health Policy/Strategy Paper ▪ Medical Association Reports ▪ Psychiatrists' Association Reports 	See SECTIONS 2.0 and 3.0 ABOVE Plus: <ul style="list-style-type: none"> ▪ Mentally ill offenders and their families ▪ Health services providing treatment for mentally ill offenders ▪ Medical Association ▪ Psychiatrists' Association 	
3.5.4	DRUG RELATED OFFENCES	See SECTIONS 2.0 and 3.0 ABOVE Plus: <ul style="list-style-type: none"> ▪ Health Act ▪ Act governing drug courts ▪ Regulations to these acts ▪ Probation Service Health Policy/Strategy Paper 	See SECTIONS 2.0 and 3.0 ABOVE Plus: <ul style="list-style-type: none"> ▪ Drug courts ▪ Health services providing treatment for drug addicted offenders ▪ Offenders on treatment for drug addiction and their families 	
3.5.5	OVERREPRESENTED GROUPS	See SECTIONS 2.0 and 3.0 ABOVE Plus: <ul style="list-style-type: none"> ▪ UNHCR reports on the country assessed; ▪ Reports on minority groups by NGOs and others working on minority rights 	Ministry of Justice See SECTIONS 2.0 and 3.0 ABOVE Plus: <ul style="list-style-type: none"> ▪ UNHCR staff; ▪ Consular representatives and/or families of foreign offenders ▪ Foreign and minority group offenders on probation/serving alternative sanctions ▪ Families of minority group offenders ▪ NGOs working on minority rights 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
3.6	LEGAL SAFEGUARDS	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> ▪ Juvenile Court Act ▪ Regulations to this act ▪ Statistics and information at different administrative levels and in different parts of the country (urban, rural, rich, poor) ▪ Case examples ▪ Health Act ▪ Regulations to Health Acts ▪ Probation Service Health Policy/Strategy Paper ▪ Medical Association Reports ▪ Psychiatrists' Association Reports ▪ Act governing drug courts/Regulations ▪ UNHCR reports on the country assessed; ▪ Reports on minority groups by NGOs and others working on minority rights 	<p>SEE above</p> <p>Plus:</p> <ul style="list-style-type: none"> ▪ Juvenile courts / Juvenile police ▪ Juvenile probation staff ▪ Juvenile offenders on whom alternative measures or sanctions were imposed ▪ Families of juvenile offenders on whom alternative measures or sanctions have been imposed ▪ NGOs running special programmes for juvenile offenders ▪ Female offenders on whom alternative measures or sanctions have been imposed ▪ NGOs running special programmes for female offenders ▪ Mentally ill offenders and their families ▪ Health services providing treatment for mentally ill offenders ▪ Medical Association ▪ Psychiatrists' Association ▪ Drug courts ▪ Health services providing treatment for drug addicted offenders ▪ Offenders on treatment for drug addiction and their families UNHCR staff; ▪ Consular representatives and/or families of foreign offenders ▪ Foreign and minority group offenders on probation/serving alternative sanctions ▪ Families of minority group offenders ▪ NGOs working on minority rights 	
4.1	MANAGEMENT AUTHORITY	See SECTIONS 2.0 and 3.0 ABOVE	See SECTIONS 2.0 and 3.0 ABOVE	
4.2	STRUCTURE	See SECTIONS 2.0 and 3.0 ABOVE	See SECTIONS 2.0 and 3.0 ABOVE	
4.3	BUDGET	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> ▪ Budget documents and reports ▪ (SITE VISITS to be used to gather information on the disbursement of funds in practice) 	<p>Plus:</p> <ul style="list-style-type: none"> ▪ Probation Service staff responsible for budget/financial control 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.4	RESEARCH, POLICY FORMULATION, AND PROGRAMME DEVELOPMENT	<ul style="list-style-type: none"> ▪ Strategic plan for the administration of non-custodial sanctions and measures ▪ Government policy documents ▪ Penal system reports ▪ Probation service reports ▪ Reports/interviews: Judicial authorities ▪ Evaluations of probation and prison system ▪ Research reports 	<ul style="list-style-type: none"> ▪ Ministry of Justice / Ministry of Interior ▪ High court judges and other senior level judicial staff ▪ Prison Service Headquarters; Probation Service Headquarters; ▪ NGOs working on criminal justice matters 	
4.5	PERSONNEL	<ul style="list-style-type: none"> ▪ Ministry of Justice reports ▪ Penal System Reports (Prison and Probation Services) ▪ Ministry of Interior reports ▪ National Police Crime reports ▪ Court Annual Reports ▪ NGO reports: penal system and administration of alternatives ▪ Donor reports <p>Plus</p> <ul style="list-style-type: none"> ▪ Samples of Recruitment/ Human resources/interview questions ▪ Training materials ▪ Staff terms of reference, contracts ▪ Staff ethics code ▪ Disciplinary board Policy/Procedures <p>SITE VISITS</p>	<ul style="list-style-type: none"> ▪ Ministry of Justice/ Ministry of Interior ▪ Senior Prison Service Officers ▪ Senior Probation Service Officers ▪ High Court Judges and other senior judges ▪ NGOs working on criminal justice matters ▪ Donor organisations working on the criminal justice sector <p>Plus</p> <ul style="list-style-type: none"> ▪ Local probation service offices ▪ Other local bodies responsible for the supervision of non-custodial sanctions and measures ▪ Training centres for probation system staff ▪ Offenders (probationers) ▪ NGOs 	
4.6	VOLUNTEERS AND NGOs	<p>See above, plus: Reports by NGOs working in the criminal justice system/running mediation/information dispute resolution programmes</p>	<ul style="list-style-type: none"> ▪ Volunteers and NGOs involved in supervising the implementation of non-custodial sanctions or assisting in other ways (e.g. administrative) ▪ Senior Probation Service Staff ▪ Local probation service staff ▪ Local police, courts, social agencies, prison administrations ▪ Offenders (probationers) ▪ NGOs working in the criminal justice system 	
4.7	PROBATION SERVICE: FACILITIES/ EQUIPMENT/ INFORMATION MANAGEMENT	<p>Penal System reports Probation service reports SITE VISITS</p>	<ul style="list-style-type: none"> ▪ Ministry of Justice/Ministry of Interior ▪ Senior Penal system staff ▪ Senior Probation Service Staff ▪ Local probation service staff 	
4.8	PUBLIC ACCOUNTABILITY	<p>Ministry of Justice/Ministry of Interior reports Penal System Reports and policy documents Press reports Reports by NGOs working on criminal justice issues Public surveys and research reports</p>	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Senior Prison and Probation System officials ▪ Media representatives ▪ NGOs working on criminal justice issues ▪ Offenders, ex-offenders and their families 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
5.1	SYSTEM COORDINATION	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> ▪ Juvenile Court Act ▪ Regulations to this act ▪ Statistics and information at different administrative levels and in different parts of the country (urban, rural, rich, poor) ▪ Case examples ▪ Health Act ▪ Regulations to Health Acts ▪ Probation Service Health Policy/Strategy Paper ▪ Medical Association Reports ▪ Psychiatrists' Association Reports ▪ Act governing drug courts/Regulations ▪ UNHCR reports on the country assessed; ▪ Reports on minority groups by NGOs and others working on minority rights ▪ 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 ▪ Reports/interviews: social welfare agencies, employment agencies, housing agencies, civil healthcare authorities, attendance and treatment centres 	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> ▪ J Juvenile courts / Juvenile police ▪ Juvenile probation staff ▪ Juvenile offenders on whom alternative measures or sanctions were imposed ▪ Families of juvenile offenders on whom alternative measures or sanctions have been imposed ▪ NGOs running special programmes for juvenile offenders ▪ Female offenders on whom alternative measures or sanctions have been imposed ▪ NGOs running special programmes for female offenders ▪ Mentally ill offenders and their families ▪ Health services providing treatment for mentally ill offenders ▪ Medical Association ▪ Psychiatrists' Association ▪ Drug courts ▪ Health services providing treatment for drug addicted offenders ▪ Offenders on treatment for drug addiction and their families UNHCR staff; ▪ Consular representatives and/or families of foreign offenders ▪ Foreign and minority group offenders on probation/serving alternative sanctions ▪ Families of minority group offenders ▪ NGOs working on minority rights <p>Plus:</p> <ul style="list-style-type: none"> ▪ Donor organisations 	
5.2	DONOR COORDINATION	<ul style="list-style-type: none"> ▪ Donor Strategy papers ▪ Progress reports by donor organizations ▪ Independent studies conducted by universities/NGOs ▪ Ministry of Justice strategy papers relating to cooperation and coordination with donors 	<ul style="list-style-type: none"> ▪ Donor organisations ▪ Ministry of Justice ▪ Directors of Penal System and Probation System ▪ High Court Judges and other senior judges ▪ NGOs, universities 	



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CUSTODIAL AND NON-CUSTODIAL MEASURES
Social Reintegration

Criminal justice
assessment
toolkit

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

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UNITED NATIONS
New York, 2006

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This publication has not been formally edited.

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1. INTRODUCTION TO THE ISSUE

Social reintegration can be understood as the support given to offenders during re-entry into society following imprisonment. A broader definition, however, encompasses the period starting from prosecution to release and post-release support.

In this latter sense, social reintegration of offenders includes efforts undertaken following arrest, to divert them away from the criminal justice system to an alternative measure, including a restorative justice process or suitable treatment. It includes imposing alternative sanctions instead of imprisonment, where appropriate, and thereby facilitating the social reintegration of offenders within the community, rather than by subjecting them to the de-socializing and harmful effects of prison unnecessarily. In addition, some of the measures imposed may include a condition to undergo treatment for an addiction, while others may include referral to an educational or personal development centre, or oblige offenders to undertake unpaid work beneficial to the community, on the understanding that, as well as being penalized, they are acknowledging and repaying the damage they have caused to the community by committing an offence.

For those who are sentenced to imprisonment, it includes social rehabilitation in prison, which should start on the first day of sentence and continue into the post-release period. A range of rules included in international instruments relating to imprisonment is based on this understanding. The **International Covenant on Civil and Political Rights (ICCPR)** states that the essential principle of the treatment of prisoners shall be their reformation and social rehabilitation (Art 10, 3). **UN Standard Minimum Rules for the Treatment of Prisoners (SMR)** make it very clear that the purpose and justification of a sentence of imprisonment is ultimately to protect society against crime, and that this end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon returning to society the offender is not only willing but able to lead a law-abiding and self-supporting life (SMR, R.58). The guiding principles are set down in the second part of the SMR (R.56-64) and span the issues of security, classification, care and resettlement.

Social reintegration in the prison setting refers to assisting with the moral, vocational and educational development of the imprisoned individual via working practices, educational, cultural, and recreational activities available in prison. It includes addressing the special needs of offenders, with programmes covering a range of problems, such as substance addiction, mental or psychological conditions, anger and aggression, among others, which may have led to offending behaviour. Reintegration encompasses the prison environment, the degree to which staff engage with and seek the cooperation of individual prisoners, the measures taken to encourage and promote contact with family, friends and the community, to which almost all prisoners will one day return. It also refers to opportunities provided for prisoners' gradual re-entry into society, such as furloughs (home leave) and half-way houses.

Post release reintegration refers to conditional release (parole), which is a measure designed to enable offenders' planned and gradual transition from prison to life outside. It also includes all social, psychological and other support provided to former prisoners after release by various agencies and organizations.

Social reintegration is not an issue that can be resolved by legislation and institutions alone, however. The families of offenders, their immediate circle of friends, and the community have a fundamental role to play in assisting the offenders' return to society and supporting ex-offenders in rebuilding their lives. Research indicates that having strong family support is one of the most important factors contributing to successful rehabilitation, together with gaining steady employment. Successful treatment for drug addiction and desistance from returning to former drug circles is another key issue for many, and here family support is crucial.

Probation services, where they exist, or similar bodies, have a key function in all of these areas – helping ex-offenders rebuild their relationships with their families, with finding a job, encouraging professional treatment for problems such as drug addiction and in general enabling a positive life strategy. But success, to a large extent, depends on community support; and in countries where a

probation service does not exist (which will be in a majority of cases in developing countries) the role of other organizations of civil society is central.

Unfortunately, due to factors that include lack of resources, prison overcrowding, and inadequate attention given to the post-release needs of ex-offenders, the social reintegration needs of offenders are often a low priority in practice. In prisons, the resources that are available are typically used to improve security, safety and order, rather than investing in prison workshops, skills training, educational facilities, sports and recreation in the mistaken belief that security can be achieved by using more restrictions and disciplinary measures rather than by improving the prison environment, providing constructive occupation for prisoners, and encouraging positive relations between staff and prisoners.

Governments do not typically place a high priority on assisting prisoners with post-release care either. In fact, in some countries former prisoners confront new restrictions to employment and education due to their criminal record upon release, hindering the process of reintegration significantly and contributing to re-offending. Another problem often encountered is the lack of coordination between pre-release preparation in prisons with the services provided in the community. Finally, many countries lack an overall reintegration strategy adopted by relevant authorities (e.g. Ministry of Justice, Health, Employment, Social Services etc).

Lack of resources invested in the social reintegration of offenders leads to high rates of recidivism (re-offending), not only in countries where resources are scarce, but also in the West. For example, according to the Scottish Prison Service in 2002, 48 percent of those released were back in custody within two years. Of that 48 percent, 52 percent were back in custody within six months and 76% returned within one year. In the United States, 42 percent of offenders discharged from parole supervision were returned to incarceration in 2000.¹ The percentages are similar in many other countries worldwide, leading to the conclusion that efforts to build a safer society must include the allocation of adequate human and financial resources to the social reintegration of offenders and former prisoners.

This tool is based on:

- the **UN Standard Minimum Rules for the Treatment of Prisoners** and commentary thereto in **Making Standards Work** (PRI:2001);
- **UN Standard Minimum Rules for Non-Custodial Measures** 1990, also known as the '**Tokyo Rules**';
- **UN Standard Minimum Rules for the Administration of Juvenile Justice** 1985 (**Beijing Rules**).

Reliance is also placed on the **UNODC Manuals on Alternatives to Imprisonment and Restorative Justice** and regional documents, such as the recommendations of the Council of Europe, Committee of Ministers. As such, this assessment tool assumes social reintegration to be a guiding principle that underlies the whole criminal justice process, starting as early as possible, in order to increase chances of success. The tool focuses on the social reintegration aspect of all sanctions and measures – starting from diversion from prosecution to early-release dispositions, as well as post-release support. The use of non-custodial sanctions and measures may be among the most effective methods of encouraging social reintegration. Therefore, the assessor is urged throughout to refer also to **Custodial and Non-Custodial Measures: Alternatives to Incarceration**, although the directly rehabilitative elements of alternatives are covered by this tool.

Probation services and other bodies responsible for supervising offenders sentenced to non-custodial sanctions, and those on conditional release, are covered by this tool, with focus on the role they play in the social integration of offenders. Organizational and administrative aspects of probation services as a whole are covered in the **Custodial and Non-Custodial Measures: Alternatives to Incarceration**, while the specific administrative and organizational aspects relating to pre- and post-release care is covered by this tool. Assessors should refer to both tools as necessary.

The tool will help identify the measures planned and being taken to achieve the principles set out above in the criminal justice system and to gauge their effectiveness in order to develop and inform the recommendations for technical assistance interventions.

In addition to developing an understanding of the strengths and weaknesses of a state's approach to social reintegration, the assessor should be able to identify opportunities for reform and development. Technical assistance in the area of social reintegration in the context of a broader strategic framework may include work that will enhance the following:

- Legislative reforms aiming to introduce and widen the scope of support to offenders and ex-offenders to address their social reintegration needs (including in the area of criminal justice, as well as labour, education, social welfare);
- Developing a strategy and mechanism for cooperation among Ministries of Justice; Interior; Labour; Social Welfare; Health and police agencies. Improving organisational design and management processes relating to the social reintegration of offenders on this basis;
- Developing training curricula for prison staff (including, but not only, social workers and psychologists), probation service staff and others involved in the social reintegration of offenders and ex-offenders;
- Developing constructive prisoner programmes/improved prison regime;
- Enhancing both human and technical resource capacity of probation services or other supervision/monitoring systems of non-custodial sanctions and measures and social reintegration programmes;
- Designing special projects aiming to increase and improve the support to special categories and vulnerable groups;
- Improving allocation of resources through sound budgeting and financial management;
- Enhancing capacity to develop and manage planning, research and information management;
- Raising public awareness about the harmful effects of imprisonment, the social reintegration needs of offenders and ex-offenders, and increasing community participation in social reintegration programmes and initiatives.

Please refer also to the areas suggested in **CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION.**

2. OVERVIEW: GENERAL AND 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 prison population, the number of offenders sentenced to non-custodial sanctions and overall 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.

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

- Ministry of Justice reports
- Penal System reports (including the prison and probation systems)
- Ministry of Interior/National Police Crime reports
- Court annual reports
- Non-governmental organisation (NGO) reports
- Research reports by independent and academic institutions
- Donor reports

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

- Ministry of Justice
- Senior prison service officers
- Senior probation service officers, where a probation service exists
- Ministry of Interior
- High Court Judges and other senior judges
- NGOs working on criminal justice matters
- Independent institutions and academicians working on the criminal justice sector
- Donor organisations working on the criminal justice sector

Answers to the suggested questions below will give the assessor an overall picture of the prison/offender population, sentencing practice and trends, profile of offenders, and their support needs, statistics of those released on various early release schemes and their success rates in terms of preventing recidivism, as well as an overall picture of facilities provided in prisons for the rehabilitation of prisoners. The information will help identify, in general, problematic areas that need further investigation.

- A. Are the following statistics available?
 - The prison population for the past 5 years, including pre-trial and sentenced. Is the prison population increasing, remaining stable or decreasing?
 - The rate of overcrowding in prisons (a comparison of the capacity of prisons with the actual number of prisoners (average daily population).
 - The percentage/number of juveniles in prison
 - The percentage/number of women in prison
 - The percentage/number of prisoners sentenced for drug related offences.
 - The percentage/number of foreign nationals and minority groups in prison.
- B. What is the percentage of recidivist offenders (i.e. those who have re-offended) in the prison system?
- C. What are is the number/percentage of prisoners who have been released on temporary and early release schemes, over the past 3 years, with separate information on:
 - work or education release,
 - furloughs/home leave,
 - half-way houses,
 - remission, parole.
- D. What is the number/percentage of prisoners who have failed to return from work, education release or home leave, over the past 3 years?
- E. What is the number/percentage of prisoners who have re-offended on a temporary or early release scheme, over the past 3 years, with separate information on:
 - furloughs/home leave

- work or education release
 - halfway houses
 - remission, parole
- F. What is the number/percentage of offenders who have breached the rules of early conditional release (parole) over the past 3 years and were returned to prison as a result?
- G. What is the average length of stay in the community of those on conditional release?
- H. What is the number/percentage of prisoners who have absconded from open prisons?
- I. What is the profile of the sentenced prisoner?
- Statistics showing the education level of sentenced prisoners
 - Age at the time of offence
 - What percentage/number had employment at the time of offence?
 - What percentage/number is drug dependent?
 - What percentage/number is mentally ill?
- J. What is the profile of former prisoners on early release?
- What percentage has found a job? What percentage unemployed?
 - What percentage is undertaking an educational course or vocational training?
 - What percentage is drug dependent and receiving treatment for his/her addiction?
 - What percentage is mentally ill and receiving treatment for his/her condition?
 - What percentage has family or community support?
- K. What is the profile of the offender sentenced to community sanctions and measures / probationer?
- Percentage of offences by type among offenders serving non-custodial sentences and age at the time of offence.
 - What is the percentage of drug or alcohol abusers? Does the community sanction imposed on them include treatment for their addiction?
 - What percentage is mentally ill? Does the community sanction imposed on them include treatment for their condition?
 - What is the education level of offenders sentenced to community sanctions and measures? How many/what percentage is obliged to undertake an educational programme as part of their sentence?
 - What percentage/number is employed?
 - What percentage received a prison sentence as a result of re-offending, over the past 3-5 years?
 - What percentage received a prison sentence as a result of breaching the rules of the community sanction over the past 3-5 years?
- L. What rehabilitation facilities are there in prisons?
- What kind of work is available in prisons, how many prisoners are employed?
 - What are the type and number of vocational training facilities and how many prisoners are undertaking vocational training?
 - What are the type and number of schools/educational facilities and how many prisoners are undertaking education programmes?
 - How many prisons have sports facilities, what do they consist of?
 - How many prisons have libraries?
 - What sorts of aftercare services exist?

3. LEGAL AND REGULATORY FRAMEWORK

The following documents constitute the main sources from which to gain an understanding of the legal and regulatory framework for prisoners' access to educational, vocational, recreational and spiritual activities in prison; rules for transfer to open prisons, for the granting of early release, home leave, educational leave, and other measures aiming to assist offenders' social reintegration.

The Criminal Code and Criminal Procedure Code and regulations will provide information about the possibility of diverting an offender from prosecution, to a special treatment programme or a restorative justice process at various stages of the criminal justice process, with the aim of assisting offender rehabilitation;

The Penal Enforcement Code, (or Prison Act or similar) and regulations will provide information about the rules for transfer to open prisons, prison leave, remission and conditional release (parole), as well as rules governing activities in prisons;

The Probation Act or any other similar act will provide the legal framework for the administration of non-custodial sanctions and measures and the probation service's role in assisting with offenders' social reintegration;

Juvenile Court Act (or similar) will outline specific provisions relating to juveniles.

The Labour Act and regulations thereto, as well as civil service laws may provide information on any restrictions placed on the employment of former prisoners, or any special provisions made for their employment.

Social welfare legislation will provide information on any special rights former prisoners may rely on to access social welfare assistance

Privacy legislation or other legislation such as freedom of information legislation that regulates what and to whom personal offender information may be released and from whom it must be kept confidential absent a waiver.

Where semi-formal justice systems exist, there may be particular acts governing their actions.

For list of other useful documents, see **Annex A: Key Documents** and **Annex B: Assessor's Guide/Checklist**.

3.1 CRIMINAL LEGISLATION

- A. How is the question of social reintegration addressed in the criminal and criminal procedure codes? What is the legal and regulatory framework governing:
 - Diversion from prosecution,
 - Alternative sanctions and measures,
 - Probation system, if it exists. (There may also be a separate Probation Act),
 - Parole or conditional release.
- B. Does the commentary to legislation encourage the use of measures that keep offenders out of prisons to the extent possible, as well as providing opportunities to ease reintegration during imprisonment and after release? How is this expressed?
- C. Does the penal enforcement code/prison act provide for temporary and early conditional release schemes from prisons? What are the rules? Is conditional release discretionary or mandatory?
- D. Is the minimum period that prisoners must serve to become eligible for discretionary conditional release fixed by statute? Is it a specific time or is it a percentage of the original sentence?
- E. In the mandatory conditional release system, is the period that prisoners must serve in prison before qualifying for parole fixed by law? What is this period?

- F. What are the rules for transfer to open prisons from closed prisons? Normally these will be set out in the prison act/enforcement code, with proportion of sentence that must be served in a closed prison, and additional conditions such as good behaviour, that enable a prisoner to gain the right to be transferred to an open prison.
- G. To what extent does prison regime include activities that encourage social reintegration? Please see Prison Act/Penal Enforcement Code; e.g. education, work, contact with the outside world, treatment for drug and mental conditions etc.
- H. Does legislation allow and encourage the use of restorative justice in all stages of the criminal justice process, including in prisons, in order to assist with the rehabilitation of the offender? What are the rules?
- I. Do any of the penal enforcement/prison act statutes provide for post-release support? How?
- J. Is there a treaty or legislation relating to the transfer of foreign prisoners to their own countries.

3.2 OTHER LEGISLATION AND RULES

The assessor is advised to check laws and acts relating to employment, housing, education and social welfare to identify any rules that put ex-offenders at a disadvantage or provide them with the right to specific assistance in post-release reintegration. These rules can be extremely important in practical terms, preventing or helping ex-offenders in getting jobs, housing, and education, the absence of which are very closely associated with re-offending.

In at least one country, for example, the reasons for unusually high unemployment rates among ex-offenders is deemed to be not only their lack of skills, but laws, regulations and practices which prohibit a wide range of jobs to those with a criminal record. In some countries, universities use criminal records to reject student applications for admission.² These laws, in practice, undermine efforts invested in the social reintegration of offenders; preventing them to rebuild their lives and forcing them perhaps back into criminal behaviour patterns.

There are also positive examples, however, of what states can do to assist with the employment of ex-prisoners. In Turkey, for example, the Labour Law obliges companies that employ more than 50 staff to include a fixed percentage of ex-prisoners among their staff. If companies do not fulfil this obligation, then they must pay a fine to the Ministry of Labour and Social Security. The Employment Institution of the Ministry of Labour and Social Security has a mandate to help former prisoners with vocational training and appropriate rehabilitation programmes to enable them to find suitable employment and assist with their social reintegration. The Ministry uses the fines to fund vocational training programmes in prisons, the education of and training of probationers and prisoners, and post-release assistance, which have been designed by the Ministry of Justices' General Directorate of Prisons and Detention House. Further, companies with less than 50 employees are offered a financial incentive to employ former prisoners, whereby the employer's obligation to pay the social security of these former prisoner employees is halved with the other half being paid by the state treasury.

- A. Are there any articles in legislation (Labour, Social Welfare, Health, Privacy) that provide ex-prisoners with certain rights? Are employment, health and social welfare agencies obliged to assist former prisoners specifically in any way? How?
- B. Are there any legal restrictions that prevent offenders or ex-offenders from obtaining employment or undertaking education? What do these restrictions comprise?
- C. Even when there are no such restrictions in legislation, what happens in practice? Do educational institutions, for example, have their own rules that prohibit admission of individuals with a crime record? Do business companies in practice not employ those with a criminal record? Is the situation the same in the public sector?

3.3. LAW REFORM

- A. When were the criminal and criminal procedure codes last reviewed and did the review include the introduction of a range of non-custodial sanctions and measures to enable offender reintegration?
- B. When was the prison act/penal enforcement code last reviewed? Did the review increase prisoners' right to a balanced and wide range of activities in prisons; widen possibilities for transfer to open prisons, for home and educational leave, for early release? Did it increase prisoners' right to contact with the outside world? Did it introduce restorative justice in prison?
- C. Have there been any legislative reforms that give former prisoners certain rights to assist with their reintegration? If so, what do they consist of?
- D. Is there a law commission or law review body that is considering the penal statutes and/or other legislation with a view to undertaking changes to improve the social reintegration of offenders? What laws are currently under review?

4. MANAGEMENT

Since the reintegration of offenders spans the period from prosecution to post-release rehabilitation, the management of the reintegration of offenders comes under the responsibility of more than one jurisdiction. For reintegration efforts to be effective, cooperation between the various institutions involved is key.

As a first step an offender may be diverted from prosecution. The police, prosecutors, and courts would normally have the authority to divert cases.

If an offender is diverted from the criminal justice system to a restorative justice programme or for treatment, then management may become the responsibility of a state run, voluntary or non-State institution undertaking restorative justice programme or informal dispute resolution. A state run restorative justice programme would typically reside in a probation service, if it exists, with other institutions responsible for victim-offender mediation, including the courts and prosecution service. A non-State setting would have its own informal rules.

Rehabilitation in prison is the responsibility of the prison authorities, normally within the jurisdiction of the Ministry of Justice (but also possibly with the Ministry of Interior or more rarely, a separate Corrections or Penal system authority). Prison authorities must work in coordination with a probation service if it is available, as well as public social support agencies, particularly in preparation for release.

Social reintegration of those undertaking non-custodial sanctions and post-release reintegration, including of those on various forms of conditional release, is the responsibility of the probation service, where it exists. If there is no probation service, then there is rarely a unified institution with a clear mandate to provide support, assistance and supervision of offenders and ex-offenders. In this case, support is normally provided by various social assistance bodies, including housing, employment and health agencies, all of which come under the jurisdiction of different ministries. There may be provisions in legislation that oblige some or all of these institutions to assist former prisoners, but in practice it may be very difficult for former prisoners to receive assistance from such agencies, since their priority will normally be assistance to citizens without a criminal record. At the post release stage the assistance that can be provided by NGOs is therefore very important.

In terms of institutional support, this tool focuses on the management of the two institutions that have a clear responsibility to assist with offenders' social reintegration – the **prison service** and the **probation service** (or any other provider of community supervision). The role of NGOs and the community is covered under Section 4.4. Other institutions involved are covered under system coordination, Section 9.1.

This tool focuses only on the social reintegration element of prison and probation service management. Management, structure and budget arrangements of the prison and probation services as a whole are covered in **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM** and **CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION** respectively. Assessors should use these tools in conjunction, if they wish to undertake a full assessment of management arrangements.

4.1 DIVERSION FROM PROSECUTION

The Tokyo Rules say “consideration shall be given to dealing with offenders in the community avoiding as far as possible resort to formal proceedings or trial by court, in accordance with legal safeguards and the rule of law.” (Rule 2.5). They require that “member states shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment...” (Rule 1.5). The aim of reducing prison sentences is twofold: Firstly, to reduce overcrowding in prisons and secondly, to deal with the social reintegration of offenders in the community, rather than by isolation from it, which, in the majority of cases is a more effective way of meeting the offence related needs of the offender and preventing re-offending.

The police, prosecutors and courts have an array of options available to them to divert offenders from prosecution. These are to be found in the criminal code/penal statutes, and may include:

- Absolute or conditional discharge
- Verbal sanctions
- An arbitrated settlement
- Community service order
- Restitution to the victim or a compensation order
- Victim offender mediation
- Family group conference
- Another restorative process

Restorative justice programmes, have a significant role in the social reintegration of offenders, due to their principle of holding offenders responsible for their actions, and emphasizing relationship building, reconciliation and the development of agreements around a desired outcome between victims and offender. (Please see **Custodial and Non-Custodial Measures: Alternatives to Incarceration**, for a definition of the restorative process and restorative justice programmes.)

Restorative justice has its roots in **informal dispute resolution** processes that still play an important role in a number of countries in Africa, South Asia and Latin America. (Please see **Custodial and Non-Custodial Measures: Alternatives to Incarceration** for comments on informal dispute resolution.)

As emphasized in **UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters**, restorative justice programmes complement rather than replace the existing criminal justice system. A restorative intervention can be used at any stage of the criminal justice process, although in some instances amendments to existing laws may be required. Generally speaking, there are within a criminal justice system four main points at which a restorative justice process can be successfully initiated: 1) at the police level (pre-charge); 2) prosecution level (post-charge but usually before a trial), 3) at the court level (either at the pre-trial or sentencing stages; and, 4) corrections (as an alternative to incarceration, as part of or in addition to, a non-custodial sentence, during incarceration, or upon release from prison. In some countries, restorative interventions are possible in parallel to the prosecution.

A large proportion of restorative justice programmes are operated by public sector organizations. There are court-based programmes, police-based programmes, and programmes that are operated by NGOs in the community. While public sector agencies tend to utilize professionals, community-based programmes generally rely on trained volunteers from the community.

Diversion from prosecution, with an appropriate rehabilitative condition, is the first step criminal authorities can take to socially reintegrate offenders, without isolating them from society. It is therefore considered in this tool, with focus on its function in the social reintegration of offenders.

- A. What diversion options exist in legislation and practice? Who has authority to divert cases from prosecution? What discretion do police or prosecutors have to divert cases from the criminal justice system? If so, on what basis do they take their decisions? Are there criteria for eligibility? Who prepares them?

Please see **ACCESS TO JUSTICE: THE PROSECUTION SERVICE**, SECTIONS 3.3.1, Prosecutorial Discretion, and 3.3.2, Alternatives to Prosecution

- B. Can cases be referred to restorative justice programmes, by the police, prosecutors or the courts, with the goal of settlement by mediation between victim and offender? If

so, by whom are the restorative justice programmes run? The courts? The police? NGOs? The Probation Service? Another agency?

- C. Can cases be referred to medical treatment programmes, instead of prosecution? Who manages the treatment programmes, e.g. public or private health/specialized drug addiction therapy services, mental health facilities etc.? Can cases be referred from the formal State courts to non-State settings (often in the village) for informal settlement?
- D. Is diversion, accompanied by restorative justice programmes or appropriate treatment, integrated into the criminal justice system in a sustainable way? Are such resources/services available throughout the country being assessed? If not, where are they offered and who decides where they are offered?
- E. What is the budgetary process under the law? Which ministry/ministries are responsible for financing restorative justice programmes and treatment for those diverted from prosecution?
- F. Which institutions receive a budget for restorative justice programmes? How is this budget distributed?
- G. Do health services receive funds for treatment programmes? Do the police, the prosecution service or the courts have a specified budget for restorative justice programmes? Does the probation service receive a separate budget for restorative justice programmes?
- H. In each case, who is involved in planning the initial budget? Who prepares and submits the operating budget? Under the law, who manages the budget? Who oversees its spending? Is the budget sufficient?
- I. When NGOs run the programmes, is this undertaken on a contract basis, with financial expenses covered by the state or do NGOs rely on their own funding?

4.2 PRISON SERVICE

4.2.1 Management and Structure

- A. Which Ministry is responsible for the management of the prison service?
- B. Obtain an organisational chart of the prison service and determine the different levels of departments/services within the prison system, which are responsible for aspects of the social reintegration of prisoners. What units exist at headquarters? Education? Health? Regime? [Please see SECTION 6.3. Social Assistance?](#)
- C. At headquarters level, does the prison service have a unit, committee, working group or other body responsible specifically for policy formulation and strategic planning for the social reintegration of prisoners within its care? If so, is there a policy document and/or strategic plan? If so, obtain a copy.
- D. If not, has a system of coordination been developed among the different services and units (e.g. social services, health, education, regime etc) to allow comprehensive social reintegration of each prisoner in accordance with individual assessments and sentence plans? How does this coordination work in practice?
- E. Is there a unit at headquarters responsible for regime activities? Who heads the unit? Are the staff of the unit multidisciplinary? What exactly is its responsibility? Does it have a policy document or a strategic plan for developing constructive activities in prisons or the delivery of prisoner programmes? If so, obtain a copy.

- F. Is there a unit at headquarters responsible for the aftercare of released prisoners? What does its responsibilities consist of?
- G. Does each prison have a person responsible for the development and delivery of regime activities (e.g. a deputy governor)? If so what are the responsibilities of this person? Does he/she head a team? If so, who is assigned to the team?
- H. Are community agencies involved in the social reintegration of prisoners, such as social services, educational authorities, vocational training services, and health services? If so, who in the prison service is responsible for coordinating with them? What are the mechanisms of coordination? If not, why is there no involvement?
- I. Have there been any recent management changes/restructuring of the prison system? Have these changes led to increased focus on the social reintegration needs of prisoners? How?

4.2.2 Budget

- A. What proportion of the prison service budget is allocated to the following social reintegration activities: sentence planning and individualisation of prison regime; healthcare for mental conditions or drug addiction; education; vocational training; employment, recreation; sports; spiritual needs; preparation for release; and the administration of temporary and early release schemes? How does this compare to other elements of the budget?
- B. Has there been an increase in funds allocated to social reintegration activities over the past 3 years? If so, what is the percentage of increase? Was this increase part of an overall increase in the prison service budget or was it a result of a change in policy?
- C. Who is involved in planning the budget for these activities? Who oversees its spending? Is the budget for activities aiming to enhance the social reintegration of prisoners sufficient?
- D. Does the prison service actually receive the funds allocated in the budget for these activities? Are there delays, fiscal constraints or other obstacles to gaining access to these funds?
- E. Do the profits made by prison work undertaken by prisoners contribute to the budget? To what extent? What is the percentage? Are these profits used to improve prison conditions or social reintegration initiatives in prison? To what extent?

If the profit figure appears to be too high, inquire further about prisoners' wages and whether they receive these wages in practice. Although in many countries it will be impossible for prisoners to receive wages comparable to that on the market, the wages they receive should be so low that they are exploitative, especially in economically developed countries. Contributing profits made from prison work to improving prison conditions or the social reintegration initiatives in prison is a very positive step, especially in countries where resources are scarce and where this may be one of the only means to improve the situation in prisons. The assessor will need to assess whether the level of funding being raised and used in this manner is appropriate considering the individual circumstances of the country and prison system being assessed.

- F. Do the prison service and/or individual prison administrations receive funds from other bodies, such as charities, voluntary agencies, social support agencies, trade and business associations, business firms or others to improve the conditions enabling the social reintegration of prisoners? Which organisations provide this support and to what level? What activities do they support, e.g. do businesses support vocational training

and workshops in prisons? Are individual prison administrations encouraged to seek community support? How are donated funds accounted for within the budget?

4.2.3 Personnel

- A. Does the training curriculum for all prison staff, make it clear that social reintegration is the guiding principle of the prison service and is the curriculum itself based on this principle? To what extent does training include the development of skills and methods to establish positive relationships with prisoners and is this encouraged in practice - especially in the case of prison staff working in close contact with prisoners, e.g. uniformed staff? Is all staff encouraged to take an active part in the rehabilitation of prisoners, especially those responsible for regime?
- B. How many staff positions are there in the prison service for the following:
- Social or case workers
 - Psychologists and psychiatrists
 - Teachers
 - Doctors and other medical staff
 - Trainers (vocational training)
- C. How many of these positions are occupied in total and in each prison? If a significant proportion of these positions is (chronically) vacant, to what extent does the prison service make use of specialists from public agencies in delivering these services?
- D. Are medical staff part of the prison service or are they subordinated to the Ministry of Health? If part of the Health Ministry, do they have regularised access to prisoners? If medical staff are subordinated to the Ministry of Justice, do they receive access to the same opportunities to increase their skills, professionalism, qualifications and specialisations as their colleagues working for the Ministry of Health?
- E. Is there a recruitment procedure for staff? If so, what does the procedure consist of? Are positions advertised? Posted? Where?
- Are there minimum qualifications for positions?
 - Is there transparency in the hiring process, including the use of standard questions during the interview process, rating sheets, etc?
 - Is there a policy of equal opportunity/non-discrimination? Is it posted?
 - Does the prison service 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?
- F. Is their remuneration consistent with their position? Is their salary reasonable when compared to the local cost and standards of living? Are the salaries of specialist staff mentioned under 2 comparable to the salaries of specialists working in the civil sector? Do staff receive benefits other than salary as part of their compensation?
- G. What, if any, initial training do specialist staff referred to under Question B receive? What topics are covered? Do staff demonstrate an understanding of the need to coordinate activities with other services and social and health agencies outside prison?
- H. What ongoing training is available for these categories of prison service employees in the area of skills, policy, professionalism, changes in the law, procedure?
- I. Do staff working in prisons reflect the population? Is any group over- or under-represented? Is the prison service 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?

4.3 PROBATION SERVICE / PROVIDERS OF COMMUNITY SUPERVISION

4.3.1 Management and Structure

- A. If there is a probation or similar service, do its responsibilities include supervision of prisoners released on temporary release schemes and early conditional release schemes? What do these responsibilities consist of?
- B. Does the service have a policy document and/or strategic plan for the management of pre-release preparation and post-release support for prisoners? When was it formulated? Who participated in its formulation? If a strategic plan, what period does it cover?
- C. What are the responsibilities of the probation service in relation to assisting with the social reintegration of offenders, preparation for release and post-release support for prisoners and ex-prisoners? Do they assist with finding jobs, accommodation, suitable treatment programmes for addictions or mental conditions, rebuilding family links, organising victim-offender mediation? What else?
- D. What is the designated caseload per probation service staff? What is the actual caseload carried? Is substantive assistance possible given the caseload? How is assistance and supervision balanced? What is the proportion of time a probation officer will spend on supervision? What proportion on assistance? Are there minimum supervisions contact standards?
- E. Do probation service staff visit prisoners before their release date? Do they plan the prisoners' post-release programmes with them and with prison staff? How many times do they visit? What are elements that may be included in such programmes, e.g. conditions such as undertaking a treatment programme for drug or alcohol addiction, psychological support programme, vocational training, or simply assistance with accommodation and employment?
- F. How does the probation service divide the work between probationers and parolees (those undertaking community sanctions and measures and those on early conditional release)? Are there separate specialised teams?

In some districts of Sweden, separate teams work on conditional release, which ensures good release preparation with continuity from contact in prison to continued contact during the post-release period.³

- G. If a prisoner has been released at the end of his/her term or on remission, rather than parole, does the probation service provide any support services pre- or post-release?

4.3.2 Budget

- A. What percentage of the total budget is allocated to social reintegration activities and what percentage to fund supervision activities – if such a distinction can be made? How is this calculated?
- B. What percentage of the total budget is allocated to pre-release and post-release support for offenders? How is this calculated? Who was involved in the planning and initial budget for these responsibilities? Is there a separate unit that is responsible for the management of the pre- and post-release care of offenders? Is the budget sufficient?
- C. Does the probation service actually receive the funds allocated for pre- and post-release support 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?

4.3.3 Personnel

- A. What special training do probation staff receive on the social reintegration needs of probationers, pre- and post-release support and reintegration of offenders released on early release schemes and those released at the end of their terms? Does staff demonstrate an understanding of the need to coordinate closely with the prison service in preparation for release and with social agencies, such as housing, employment and health agencies after the release of prisoners?
- B. What in-service training do probation staff receive in the area of skills, policy, professionalism, changes in the law, procedure relating to pre- and post-release support for prisoners? What, if any, training are they given regarding the needs of special categories, including juveniles; the mentally ill; women; overrepresented groups; or profiles of offenders including: drug dependent offenders; sex offenders; other violent offenders; and former offenders?
- C. Does the probation service employ educators and specialists to deal with support and assistance to juvenile offenders after release? How many? What is the ratio in proportion the number of juveniles? Is it sufficient to meet the needs of the juveniles under supervision?

4.4 NGOs, THE COMMUNITY, AND VOLUNTEERS

4.4.1 NGOs and Volunteers

Organisations of civil society and the community play key roles in the social reintegration of offenders and ex-offenders – including those sentenced to alternative sanctions, those on early release schemes, and former prisoners. In the majority of countries being assessed there may be no probation service or other body responsible for supporting offenders and ex-offenders. In these countries, NGOs may be the only organisations offering support and assistance. In countries where a probation system exists, collaboration between NGOs and the probation system can be invaluable. Funding for post-release reintegration at the community level is limited in most countries, where volunteers work with little or no governmental support.

Please refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION** for guidance on the role of NGOs and volunteers in the administration of alternative sanctions.

- A. What NGOs exist that provide assistance to prisoners during their preparation for release and support after release? What do their activities consist of? To what extent do they coordinate with the prison and probation services to ensure complementary activities? Are any NGOs involved, for example, in the training of social workers and psychologists in prisons, in providing pre-release counselling for prisoners, assisting with their social and psychological needs after release, etc?
- B. Are there NGOs running victim-offender mediation schemes or other restorative justice programmes that provide service during imprisonment and after release with the objective of assisting social reintegration? Who is engaged for running the programmes? Are they specialists? How are they trained?
- C. Are volunteers involved in the supervision or support of ex-offenders in the community? To what extent? Do they receive appropriate training and counselling from the probation service, the social service, or another body to which they belong?

- D. Who funds the NGOs involved in the social reintegration of offenders? Which donors? Are there any contributions from the state to the funding of any such programmes? Do NGOs have difficulty gaining access to funds? Do they rely on volunteers?

4.4.2 Public Support

Community support is crucial to a successful social reintegration programme. To gain and maintain community support, efforts should be ongoing to increase the public's understanding of offenders and ex-offenders, to dispel prejudices and stereotypes, and to recognize the short- and long-term benefits associated with coordinated social reintegration, including initiatives such as temporary and early release schemes.

- A. What activities and efforts such as conferences, seminars, and public service announcements have been organised to increase awareness about the adverse effects of imprisonment on offenders and their families? About their need for support and care once they return to the community? Who organises them? Who participates? Have these efforts been effective?
- B. Is the mass media engaged to help foster a more supportive public attitude toward the wider use of measures such as parole? If so, who is responsible for generating media coverage, i.e. the prison service, probation service, NGOs or other agencies?
- C. Are private businesses encouraged by the government, relevant ministries or prison service to provide offenders and ex-offenders with employment – i.e. in workshops in prisons, for prisoners on work release, or those who can work outside (e.g. from open prisons), former prisoners and those who have received alternative sentences? How? Are there incentives or obligations in legislation e.g. quotas for the employment of prisoners and former prisoners, subsidies, tax benefits? Are there any measures in place to encourage or oblige the public sector to employ former prisoners or prisoners from open prisons?

5. REINTEGRATION IN THE COMMUNITY: DIVERSION AND ALTERNATIVES

One of the fundamental goals of non-custodial measures and sanctions is to enable the social reintegration of offenders in the community. Therefore their availability in legislation and their use should be considered as a priority in the context of offender social reintegration. Thus, please also refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION** and **ACCESS TO JUSTICE: THE PROSECUTION SERVICE** for guidance on all aspects relating to diversion and alternatives to prison.

The questions below seek to assess only the specific interventions that directly address the social reintegration needs of offenders during the implementation of an alternative measure or sanction.

5.1 DIVERSION

- A. If restorative justice programmes are used at the pre-charge and pre-trial stages, how many such cases were referred to a restorative justice programme over the past 3-5 years, by the police, and prosecutors? What were the outcomes? Is there any information on the rates of re-offending among those referred to restorative justice programmes? What are they?
- B. If cases can be referred to appropriate treatment (such as therapy for drug dependence, treatment for a mental condition), how many cases were referred to treatment in the past 3-5 years and what were the outcomes? Is there any information on the rates of re-offending among those referred to treatment programmes? What are they?

- C. Are there programmes that offer a pre-sentencing restorative process leading to sentencing recommendations? Are they used? How often? Is the outcome of the mediation brought back to the attention of the prosecution or the judge for consideration? What influence does the outcome have on sentence? Examples.
- D. In practice how many cases were referred to non-State informal settlement, over the past 3-5 years, and what were the outcomes? Is there any information on the rates of re-offending among those referred to non-State justice settings? What are they?

5.2 ALTERNATIVES

- A. To what extent do alternative measures and sanctions provided in legislation include appropriate treatment and measures to address the offence related needs of offenders, e.g. are there a range of options such as drug and alcohol treatment, obligation to attend anger management courses, education or vocational training, that can accompany supervision obligations or is the norm supervision, monitoring, and restrictions?
- B. What are the most frequent alternative measures or sanctions applied to address the social reintegration needs of offenders?
- C. How many offenders are taking part in special programmes to address their needs at the time of assessment? What proportion is this of the total number of offenders on whom alternative measures or sanctions have been imposed?

6. PRISON AND REINTEGRATION

Prisons are not well suited for the social reintegration of offenders, who might be isolated from society for long periods, in a closed environment, where they will be susceptible to all the harmful and de-socializing effects of imprisonment. However, if offenders are imprisoned, then the aim must be to ensure that the adverse effects of prison are minimized and support provided to prisoners to live law-abiding lives upon release.

The **UN Standard Minimum Rules for the Treatment of Prisoners** and other international instruments, such as the **European Prison Rules (2006)**⁴ are based on the understanding that social reintegration should start at the beginning of a prisoner's sentence. As such, almost everything that goes on in prisons should be assessed on the basis of its contribution to the social reintegration of offenders (in addition to ensuring safety and security). The prison atmosphere, the relationship between prisoners and staff, the openness of the prison to the outside world, the approach to security measures, healthcare, psychological support services, access to education, vocational training, work, recreational activities and sports are all factors that influence offenders' social reintegration. How prison administrations deal with these elements of prison life is at the same time a management issue. Thus, many of these topics are covered also by **Custodial and Non-Custodial Measures: The Prison System**. This tool focuses only on the elements of prison life that are most directly relevant to the social reintegration of offenders.

The questions below follow up on the overview of penal legislation under Section 3.1, seeking answers to the details and application of laws, rules and regulations that seek to address the rehabilitative needs of offenders. Questions will need to be directed to the prison authorities at all levels, and site visits to prisons will need to be conducted to assess practice.

6.1 HEALTHCARE

Adequate healthcare in prison is an extremely important aspect of prison life and one of the most fundamental human rights of prisoners. The topic, including questions relating to measures to prevent and treat TB and HIV, is covered in detail in the tools **Custodial and Non-Custodial Measures: The Prison System** and **Detention Prior to Adjudication**. The

current tool inquires only into those aspects of healthcare that are most directly relevant to the social reintegration of offenders is covered in detail in **Custodial and Non-Custodial Measures: Prison Management**. The current tool inquires only into those aspects of healthcare that are directly relevant to the social reintegration of offenders.

- A. Is the prison medical officer obliged to see and examine every prisoner as soon as possible after his or her admission and thereafter as necessary, to discover any physical or mental illness and to take all necessary measures? Does this include the noting of any physical or mental defects that might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work? Does this happen in practice? **SMR, Rule 24.**
- B. Is the prison health service linked to the public health system? To what extent? Do health professionals from the civil health service provide services in prisons?
- C. How many psychiatrists and psychologists are employed by the prison service? How many staff positions in each prison, according to legislation? How many are there in practice?
- D. What treatment is provided for the mentally ill? Are they transferred to specialist care in the civil health service? Are they accommodated in a special section allocated to them with adequate medical care? Are they accommodated with other prisoners or kept in isolation?
- E. Is treatment provided for drug or alcohol addiction? What does the treatment consist of? Does it combine medical treatment with therapy? Is treatment linked to public health services? Is drug addiction a widespread problem among offenders? How widespread is the problem?

6.2 CONTACT WITH THE OUTSIDE WORLD

The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff in the task of social rehabilitation of prisoners. (SMR, Rule 61). "From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation." (SMR, Rule 80).⁵

Ensuring that prisoners have sufficient contact with the world outside prison is essential to alleviate feelings of isolation and alienation, which hinder social reintegration. Enabling prisoners to have as much contact as possible with their families and relatives will help sustain relationships, contributing to an easier transition from prison to civil society on release.

In some countries, where resources for prison activities are inadequate, continuing links with families and the community may be the main method available to reduce the adverse effects of imprisonment and to help with reintegration.

- A. Does legislation and policy provide for housing prisoners close to their communities? How does this work in practice?
- B. How often are sentenced prisoners allowed to receive visits – for what duration? Are these visits closed/open, i.e. do they permit physical contact? Are family visits allowed (with children)? How often? Are conjugal visits allowed? How often?
- C. Are prisoners allowed to telephone their family/ relatives/friends? How often? Are telephone facilities provided in prisons? Are they adequate? Are call monitored?

- D. How often can prisoners send and receive letters? Are their letters subject to censorship?
- E. Do prisoners have access to newspapers, magazines and journals? Is television or radio available to all prisoners? Where are they placed?
- F. Is cooperation with civil society organizations provided for in legislation? To what extent is prisoners' continuing part in the community emphasized by encouraging the presence and activities of social services and community-based agencies inside the prison?
- G. In practice, which agencies work inside prisons? What kind of services do they provide?
- H. Are sporting events outside prisons promoted? Is there a calendar of sporting events?

6.3 PRISON REGIME

The term **regime** in this tool is used to encompass prison work, vocational training, education, library provision, offending behaviour programmes, counselling, group therapy, exercise, physical education, sport, social and cultural activities, and preparation for release. (In many countries the term regime has a very narrow meaning – covering mainly measures that ensure order and security in prison, reflecting a punitive approach to imprisonment. This contradicts the modern understanding of the aim of prison and international standards relating to imprisonment). The quality of regime underpins the success of the social reintegration of prisoners.

A law-abiding and self-supporting life on release should be encouraged by providing a balanced range of activities that are associative, constructive and non-exploitative. Gaining vocational skills, work experience and education, in particular, are essential to the successful reintegration of prisoners after release. Many prisoners are illiterate or have very basic education, which may have contributed to their offending behaviour. Many will have limited vocational skills and may have been unemployed at the time of their offence. By providing these individuals with new skills their social reintegration needs, in very practical terms, will have been addressed to some extent.

Essential to the psychological well being of prisoners is that the majority of time is spent outside of their cells. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), for example, stresses that a satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well being of prisoners. It considers that the goal should be to ensure that prisoners spend 8 hours or more outside their cells, engaged in purposeful activity of a varied nature.⁶ This should apply to all prisoners (except for those in segregation units due to disciplinary offences).

6.3.1 Individualization

Individualization is essential for the reintegration requirements of prisoners to be met effectively according to the needs of each individual. See SMR, Rule 63 and Rules 67-69.

- A. Do regulations or statutes require that assistance be provided according to individual needs by planning prisoners' personal development based on individual assessments? Is a sentence plan prepared for each prisoner at the beginning of his or her sentence? What does the plan include? Is the prisoner consulted? Who else may be consulted?
- B. Is a flexible classification system of prisoners maintained? Is the plan kept under regular review?
- C. Is there an organized, structured daily programme for prisoners included in their sentence plans? What period in the day is set aside for these activities?
- D. Are transfers to lower security prisons/open prisons made on the basis of individual assessment? If not, what are they based upon?

If there is no individual assessment system and few or no activities--which will be the case in many developing countries--then the assessor may wish to seek to identify priorities among activities listed below that might be most suitable for the particular circumstances of the system/country being assessed and that perhaps could then be built upon with additional resources.

6.3.2 Education

See also **Section 5.5.2**, Work and Educational Release.

- A. Do prisoners have access to the national education curriculum? How does the system work? Does the prison administration work in close cooperation with the Ministry of Education? What are the rules for taking exams?
- B. Are teachers employed by the prisons or encouraged to visit from outside? How many teachers are required to teach in each prison by law and in practice?
- C. Are there provisions for distance education? Is there access to computers? Who decides who may have access to the computers?
- D. Can prisoners receive nationally recognized diplomas/certificates on completion of their courses? Do certificates note that they were received in prison? **It is important that they should not.**
- E. Are prisoners with the requisite skills encouraged to teach others? For example, do prisoners who can read and write well tutor prisoners who are not literate? Do they receive recognition or credit for this activity?
- F. Does each prison have a library? Are libraries adequately stocked with current affairs and reading materials in the language most commonly spoken? Are prisoners allowed to study in the library? Is there sufficient space and furniture for study? Are books and journals available in minority and foreign languages?

6.3.3 Vocational guidance and training

See also **Section 5.5.2**, Work and Educational Release.

- A. What skills are taught in prison? Can prisoners exercise personal choice in which training programme to join? Are vocational skills training programmes designed to help prisoners receive employment after release, e.g. do they correspond to the needs in the community into which the prisoners will be released?
- B. Are prisoners trained to a recognized national standard? Do they receive recognized certificates? Do the certificates note that they were received in prison? **It is important that they should not.**
- C. Who provides training? Do civil institutions or businesses provide training?

6.3.4 Work

Research shows that steady employment is one of the most important factors preventing re-offending.⁷ In principle work provided for prisoners should include vocational training and increase offenders' chances of employment after release, rather than being any kind of work available. Please see also **Section 5.5.2**, Work and Educational Release.

- A. Aside from keeping the prison clean, is the opportunity for work provided to all sentenced prisoners? What work is available in the prisons?
- B. Do prisons produce goods for the internal prison market, e.g. furniture, clothes, bed linen?
- C. Are items produced for schools, hospitals, public services, the public?
- D. Is the primary purpose of work to generate income for the prisons or to ensure that the prisoners spend their time constructively and receive skills that will help them with employment after release? If the principle is said to be the latter, is this clearly stated in the penal enforcement code? Is the principle put into practice? How is this evident?
- E. Is the opportunity for work offered to un-sentenced prisoners? What type of work is offered?
- F. Is the work remunerated? What are prisoners paid for their work inside prisons/outside prisons? How does this compare to the national minimum wage? How are the wages earned banked? Are prisoners able to save any of their money?
- G. Where no remuneration is provided what rewards are earned? For example, do prisoners receive extra food or payment in kind?
- H. How long is the typical working day and workweek? Are holidays provided?
- I. Are prisoners appropriately dressed and protected for their work activities? What safety procedures are in place?
- J. Are outside contractors allowed to provide work for prisoners in prisons? If so, what are the conditions? Do they provide vocational training? Is the remuneration comparable to that on the outside market? Do prisoners then receive an opportunity to continue working in the same business following release?

In some countries of Europe prison work is contracted out to private firms. For example, in France, prison industries are nearly all contracted out, with private concerns providing the prisoners with jobs and vocational training and with wages comparable to those on the open jobs market. In return, outside contractors are provided with free workspace.

6.3.5 Counselling and Offending Behaviour Programmes

This section will not apply to many prison systems being assessed, although some support in this area may be provided by NGOs, if not by the prison service itself. The assessor should be mindful that, in developing countries with scarce resources (and even in some others), prisoner reintegration resources would be best focused upon ensuring contacts with the family and community, providing work, skills training and education, assisting with finding accommodation after release, rather than upon therapy programmes, which, given their cost, may consume too great a proportion of available resources.

The suitability of some programmes, which seek to influence individual behavioural patterns in the context of communitarian cultures (e.g. sub-Saharan Africa), has been questioned. In addition, ethical concerns have been raised about the obligation for prisoners to undertake such programmes in some countries when these were not originally part of their sentence.⁸

- A. Does the prison system run offending behaviour programmes or group therapy/counselling to address the offence related needs of prisoners? What are they? Are the staff that deliver the programmes appropriately trained? Are they specialists from outside or NGOs? How many prisoners participate? What are the results? Have any evaluations been undertaken?

- B. Are these programmes or courses of therapy fully integrated into an individualized assessment and sentence management system?
- C. If the above does not exist, are there any initiatives to address the special needs of prisoners? What do they consist of? Who runs them?
- D. What are the areas in which prisoners most commonly need specialist assistance (e.g. substance abuse, self-harm, anger management, sexual offences etc)?

6.3.6 Recreation

- A. What recreational activities are provided for in legislation and practice? What are the rules and regulations relating to participating in recreational activities?
- B. Are visits encouraged from external arts organizations/groups? Do they occur? On a regular basis?
- C. What sports facilities are available? What equipment do they have? In practice, how often do prisoners take part in sports activities?
- D. Are there theatres in prisons? How often are shows produced? Who organizes the shows? Who attends the performances?
- E. Are there musical facilities – is there a choir, a band, and orchestra? How many prisoners take part? Do the musical groups perform? Who attends the performances?

6.3.7 Religious / Spiritual Support and Assistance

- A. What are the major religions represented in the prisons? Are they provided for in terms of chaplaincy visits, places of worship and diet? Are there special places of worship for them?
- B. What minority religions are represented? Are they provided for in terms of chaplaincy visits, places of worship and diet? How often do chaplains visit?
- C. If chaplains are available, are they staff members, on contract, or volunteers?
- D. Do chaplains also maintain contact with the offenders' families?
- E. What other supportive activities are provided by the chaplains?

6.3.8 Preparation for Release

The process of preparation for release and resettlement begins in prison and continues after release. There is a need for continuity of assistance spanning this entire period. This requires close liaison between social agencies and services, as well as relevant community organisations and prison administrations during sentence. In addition, there needs to be a programme of assistance to prepare for release close to the date of release (often starting one month prior to the release date), to ensure that the social, psychological and medical support needs of the offender are met and continue uninterrupted after prison. During this period probation services, if they exist, have an active role to play in assisting with prisoner' transition from prison to life in the community.

- A. Does legislation put an obligation on prison authorities to prepare prisoners for release? To what extent is preparation for release integrated into the individualized assessment and sentence management system?

- B. When do preparations start? What does this assistance consist of? Does it include practical assistance with finding accommodation and employment? To what extent do prison authorities try to ensure that prisoners' documents are in order before they leave prison? Are prisoners given enough money on release to at least take them to his destination?
- C. What efforts are made to coordinate with social and health agencies of civil society during this period, to ensure that prisoners receive the necessary support on their release? Are their social and medical rights explained to prisoners before release?
- D. Do probation services assist with the preparation for release? Do probation officers come into prison and meet with offenders prior to release to determine their support needs?
- E. Are there NGOs working to assist with prisoners' preparation for release? Are prison administrations encouraged to cooperate with them? Examples?
- F. What special measures are taken to prepare for the release of long-term prisoners, whose support structures in the community may have broken down during their imprisonment? What kind of assistance is provided with their particular psychological and social needs? Are they given a chance to prepare gradually, with the help of temporary or conditional release measures listed below? Do they receive adequate social and psychological support in the community?

6.4 RESTORATIVE JUSTICE IN PRISON

The **UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters** encourages the use of restorative justice programmes at any stage of the criminal justice system (Art 6). This includes victim-offender mediation in prisons, the aim of which is to assist with the social reintegration of the prisoner, rather than reaching an agreement that will affect the prisoners' sentence. Prisoners who consent to do so may be involved in a programme of restorative justice and in making reparation for their offences.⁹

- A. If legislation provides for the opportunity, are restorative justice programmes implemented in prisons in practice? How many prisoners have taken part in such a programme over the past 1-2 years?
- B. If so, who is responsible for organising the restorative process – the probation service? NGOs? Social services? The prison authorities? Another body?
- C. If such programmes have been implemented, what are the results? Is there any evidence that they have assisted with the social reintegration of offenders?

6.5 TEMPORARY RELEASE DISPOSITIONS

Temporary release schemes, which include home leave (furlough), work and education release (see post-sentencing dispositions in Tokyo Rules, 9. 2) aim to assist with prisoners' gradual transition from prison to the community.

Home leave comprises short periods of leave from prison in the course of imprisonment, to assist prisoners to re-establish links with family and other community support structures. Prisoners may be temporarily allowed out of prison to work or for educational purposes, especially close to the date of actual release. These are described as **work** and **educational release** in the Tokyo Rules 9.2. The whole system of release from prison, for whatever purpose, can be referred to as **prison leave** (e.g. in the European Prison Rules). The European Prison Rules consider prison leave to be an integral part of prison regime - that is, not only a measure to prepare prisoners for release during the later stages of imprisonment. (Rule 103.6).

6.5.1 Home Leave (Furlough)

- A. To what extent is the granting of home leave encouraged in practice on medical, educational, occupational, family and other social grounds?¹⁰ How soon following imprisonment and how frequently is home leave considered for a prisoner? Do such decisions take into account factors, length of sentence; his or her risk to society; his or her family and social situation; the purpose of the leave; its duration; and terms and conditions?¹¹ Is home leaves granted to prisoners in closed as well as open prisons?
- B. What are the rules for granting home leave? Are they followed?
- C. What is the normal duration of home leaves, in law and practice?
- D. Is home leave granted to foreigners, under well-defined conditions, even when their families do not live in the country? What conditions apply?¹²
- E. What measures are taken to ensure prison leave can be granted to homeless persons and offenders with difficult family backgrounds?¹³ Is the assistance of social services agencies sought? What kind of assistance is provided?
- F. Is home leave supervised and, if so, by whom or what agency?
- G. If the terms or conditions are not adhered to by the prisoner, what action is taken?

6.5.2 Work and Educational Release

In England and Wales, for example, where some statistics have quoted rates of recidivism of 58% for adult prisoners, within two years after release, an energy company has been interviewing and selecting likely employees from prisons, training them, giving them work on day release while they are in prison, and providing them with jobs after release. The company is recording a re-offending rate of just 7% among its former prisoner employees.¹⁴

- A. Are prisoners permitted to work outside of prison in the community? Upon what assessment criteria? How many are currently working in the community in practice? Is work and educational release granted during the later stages of imprisonment, to prepare prisoners for release, or is it an integral part of prison regime during the whole sentence period?
- B. What type of work do prisoners normally undertake?
- C. What checks are in place to ensure their work is non-exploitative? What inspections are carried out by prisons?
- D. To what extent are prisoners permitted temporary release from prison for educational purposes? Upon what assessment criteria? What rules apply in closed prisons and in open prisons? How many prisoners are currently taking advantage of educational release?

6.6 OPEN PRISONS

The main purpose of open prisons is either to prepare prisoners who have served long sentences for their return to the community or to house offenders who are unlikely to escape and for whom such an environment may be conducive for their rehabilitation. Open prisons may also be useful to house prisoners who have been convicted of relatively minor offences and are required to stay in prison for only short periods of time. Open prisons therefore constitute an important intermediate measure between types of prisons with higher forms of security and community-based and other non-custodial sentences. Open prison regimes can also be used in conjunction with community based sentences, with prisoners returning at night after engaging in various work or community activities during the day

- A. Do open prisons exist? How many are there? What is the capacity of each prison? Who decides which prisoners will be housed in open prisons? Is there an established protocol for eligibility? What types of prisoners are currently housed in the open prisons? Long-term prisoners nearing release? Non-violent prisoners? Prisoners with short sentences?
- B. How many prisoners are accommodated in these institutions? What proportion of the prison population does this constitute?
- C. What are the rules in the open prisons? For what periods are prisoners allowed to leave the prison for work and education? What access do they have to their families and the local community? May their families stay or live with them on a day-to-day basis? For shorter periods?
- D. How many prisoners who are accommodated in open prisons are working or undertaking an educational course or both?

6.7 HALFWAY HOUSES

Halfway houses are usually group residences in the community for prisoners close to release or those newly released that provide a structured base from which the offender may make the transition from prison to society. Certain disciplinary rules apply. See **Tokyo Rules, 9.2, Post-sentencing dispositions**.

In assessing halfway houses, information should be gathered about the details of the arrangements, obligations of the offenders and the support they receive. Although halfway houses are an effective measure that allows a gradual return to society, it is important to examine whether the rules for residents support or undermine their social reintegration. For example, research conducted in one country revealed that offenders in a halfway house/work release centre were under constant pressure from staff to work in order for money to be deducted from their pay cheques to pay for mandatory rent and restitution. Faced with difficulties in finding employment or having to work for a minimum wage, most prisoners quickly fell into debt to the work-release centre, dampening their interest in legitimate employment. If a prisoner was unable to find employment and failed to pay the halfway house rent or monthly restitution payments, he was returned to prison.¹⁵

- A. Is there a system of halfway houses? What are the criteria for release into halfway houses? What are the rules and obligations in halfway houses? Who oversees their development? Who monitors how halfway houses are run?
- B. Do offenders have to pay rent? What else do they have to pay for? Are they expected to help care for the common areas and chores of the household?
- C. Are offenders in halfway houses assisted by a probation service or social services to find employment and with any other psychological, social or medical needs? Do staff members also live in the residence?

7. POST-RELEASE REINTEGRATION

"The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation" (**SMR, Rule 64**).

Ex-prisoners are particularly vulnerable during the 6 to 12 month period following release. During this time they will be trying perhaps to re-establish links with their families, to find accommodation, employment, to once again take responsibility for themselves, and to adjust to life outside prison. They will be under psychological and social pressure due to a range of reasons associated with their imprisonment and release. Post-release support is therefore vital to help prisoners re-build their lives in a constructive and positive manner. Probation services, where they exist, and community groups and other organisations of civil society can provide such support. It is also essential to raise public awareness to lessen the extent to which ex-prisoners are stigmatised.

7.1 EARLY-RELEASE SCHEMES: PAROLE AND REMISSION

Post sentencing dispositions listed under Rule 9.2 of the Tokyo Rules include the early release schemes – "**parole**" and "**remission**". Parole is considered to be one of the most effective ways of contributing to the social reintegration of prisoners by enabling a planned, gradual return to society. However, in order for parole to fulfil its goal of reintegration, it must be accompanied by adequate support by institutions responsible for the post-release care of ex-prisoners (e.g. a probation service), other social agencies, the family of the offender and the community.

"Parole" is not found in the terminology of all criminal justice systems. Therefore, it may be more appropriate to utilise "conditional release". **Conditional release** means the early release of sentenced prisoners under individualised post-release conditions. It can be **mandatory** when it takes place automatically after a minimum period or a fixed proportion of the sentence has been served, or it can be **discretionary** when a decision has to be made to release a prisoner conditionally, after a certain period of the sentence has been served. Conditional release or parole is always accompanied by a general condition that the prisoner should refrain from engaging in criminal activities. However, this is not the only condition imposed. A release can only be defined as "conditional" when it is possible to impose additional conditions on the prisoner, to the extent that these are appropriate and needed for his/her successful social reintegration.¹⁶

Remission of sentence is a form of unconditional release. **Remission** is usually awarded automatically after a fixed proportion of a sentence has been served, but it may also be a fixed period that is deducted from a sentence. Sometimes remission is made dependant on good behaviour in prison and can be limited or withdrawn if the prisoner does not behave appropriately or commits a disciplinary offence.

- A. If legislation provides for discretionary conditional release, what criteria apply to the granting of it? Are these criteria clear and explicit? Are they explained to each prisoner in a language that they can understand?
- B. Are the relevant authorities (normally the prison authorities) responsible for initiating the necessary procedure to enable a decision on conditional release to be taken as soon as a prisoner has served the minimum period? Does this happen in practice, or does the prisoner have to make a request?
- C. Who decides whether a prisoner is to be given discretionary conditional release? Does the prison administration decide? Is there an independent paroling authority, such as a parole board? Who sits on the parole board? How are they chosen? How and by whom are they trained?
- D. What information, reports does the decision making body refer to during this process, e.g. statements from prison staff, probation service or other persons knowledgeable about the prisoners personal circumstances? Is any statement by the victim(s) considered?

- E. What kind of individualized conditions can be imposed as part of a conditional release decision? These may include payment of compensation to the victim, entering a drug or alcohol abuse treatment programme, working or following some other occupational activity, such as vocational training, participation in personal development programmes, or prohibition to reside in or visit certain places.¹⁷ What are the conditions most frequently set?
- F. If there is a mandatory release system, is the date of mandatory release always made clear to prisoners?
- G. Is conditional release (discretionary or mandatory) accompanied by supervision consisting of assistance, as well as control measures? Who undertakes the supervision? A probation service or some other body?
- H. What are the lengths of parole supervision prescribed in legislation? Are these periods of time in proportion to the part of the prison sentence that has not been served? What is the length of supervision imposed most often, in practice?
- I. Are conditions and supervision ever imposed for an indeterminate period? In which circumstances can this happen?
- J. Is remission available? What time limits are imposed before remission is granted? Are there any conditions that apply for the granting of remission, such as good conduct in prison? What are the conditions?
- K. What happens where there is a breach of conditions of the scheme? Are minor breaches of conditions dealt with in the community by the supervising body (probation service or other), or are prisoners on parole frequently returned to prison for breaching of parole rules? How many have been returned to prison due to technical violation of parole conditions in the past 3-5 years?

Jurisdictions in the United States have experienced sharp increases in the number of parolees returned to prison, not because they have committed new criminal offences but because they have violated the conditions of parole. This has been attributed to the complicated and burdensome nature of conditions that often accompany conditional release in the United States.¹⁸ Similar issues have been identified in the United Kingdom.¹⁹

- L. What happens when a person on parole re-offends? Are they frequently returned to prison or are other alternative measures applied, provided that this is appropriate (i.e. the offender is not deemed to represent a threat to society, the offence committed was not violent etc)? How often do parolees re-offend? How many/what percentage has been returned to prison due to re-offending?
- M. If rates of violating parole rules or re-offending are high, has any research been carried out into the reasons? If so, what are the results? For example, is this due to a lack of adequate post-release support to offenders on parole, or because the rules oblige the offender to do too many things at once? It would be helpful to ask for a copy of any report or analysis performed, if available.

7.2 POST RELEASE SUPPORT BY NGOS, AND THE COMMUNITY

Please refer also to **SECTIONS 3.2** and **4.4** for guidance.

- A. Are there any NGOs that provide post-release support to ex-offenders? What do their activities consist of?

In some districts of Moldova, for example, NGOs have had an important role to play in contributing to the preparation for release of prisoners and their aftercare in society. A working group was established to assist with prisoners' preparation for release and to link prison preparation with social and health services outside prison. Training was provided to prison

psychologists and social workers by NGOs. A comprehensive mechanism was created, which addressed the medical and social needs of prisoners, with information flow to civilian structures and feedback, as well as community mobilization. This led to an increased success rate of uninterrupted post-release TB treatment, as well as better social support for prisoners after release. Two rehabilitation centres were set up, managed by NGOs, the staff of which conducts regular visits to penal institutions.²⁰

- B. Are there any informal community groups that assist with the social reintegration of former prisoners? Such as family groups, community groups in non-State justice settings, former prisoner groups? What kind of assistance do they provide?
- C. Are there any NGOs working specifically on juveniles' post-release support needs? What are their activities?
- D. Are there any NGOs working specifically in the area of support and assistance to female ex-offenders? What activities do they undertake?
- E. Do NGOs run post-release restorative justice programmes? How do these schemes work, how often are they used? Have any evaluations been carried out regarding their success rate?

8. SPECIAL CATEGORIES

This section covers the social reintegration needs of special categories of offenders at all stages of the criminal justice process. It should be used in conjunction with other relevant tools for full coverage of the topics. There is some repetition of points raised in **CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION**, due to the fact that alternatives for some of these vulnerable groups are the main method that should be considered for effective social reintegration.

8.1 PRE-TRIAL DETAINEES

Please refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES: DETENTION PRIOR TO ADJUDICATION** for guidance on other aspects relating to the detention of prisoners who are pending charge trial or sentencing.

- A. Are prisoners awaiting trial accommodated separately from the police jail or "lockup" ?
- B. Are prisoners awaiting trial accommodated separately from convicted prisoners?
- C. What are the rules governing contact with their family members? How often do they receive visits from them? Are the visits closed or open?
- D. Are they given an opportunity to work, but not required to do so? What kind of work do they undertake?
- E. How much access are they given to other regime activities, especially educational facilities? How many hours a day do they spend out of cell?

This is especially important in countries where prisoners are detained for long periods before trial, and particularly in the case of juvenile untried prisoners who have special educational and recreational needs.

- F. Who, if anyone, is responsible for preparing pre-sentence enquiry reports? Are these reports produced in practice? Do they cause delays in the system? Are the reports reliable? To what extent do these reports influence the sentence, and if a sentence of

imprisonment is passed, to what extent do they inform the prison category, prison location and regime of the offender?

8.2 JUVENILES

Juveniles are at particular risk of being affected by all the adverse effects of imprisonment, so the first rule is avoid imprisonment wherever other alternatives exist to prison (discussed in **CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION**). Alternative measures and sanctions imposed on juveniles must address their special social rehabilitation needs.

If juveniles are imprisoned, they must receive the maximum support possible for their social reintegration. "While in custody, juveniles shall receive care, protection and all necessary individual assistance – social, educational, vocational, psychological, medical and physical – that they may require in view of their age, sex and personality". (**Beijing Rules, 13.5**). For example, a well-designed juvenile prison will provide positive and personalised conditions of detention for young persons deprived of their liberty; regular contact with the outside world will be ensured, particularly contact with the family, which is regarded as a key element in juveniles' rehabilitation. Articles 28 and 29 of the **Convention on the Rights of the Child** formulate education and vocational training as basic children's rights - juveniles of compulsory school age have the right to education and to vocational training in prison.

Please see also: **CROSS-CUTTING ISSUES: JUVENILE JUSTICE** for guidance on special legal requirements for children under the age of 18; **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM**, for guidance on other conditions relating to juveniles in prison, and **CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION**, for a full coverage of alternative measures and sanctions in juvenile cases.

- A. Are there sufficient and special alternatives to pre-trial detention for children, provided for in legislation, such as close supervision, placement with a family, in an educational setting or a home? (Beijing Rules, 13.2). What are they? How often are they used in practice?
- B. Are suitable, welfare-oriented alternatives available to imprisonment for children, in penal legislation, in addition to those that are available for adults? What are they? These could include, for example, care, guidance and supervision orders, foster care, living communities or other educational settings, as set out in the Beijing Rules, 18.1. How often are they used in practice?
- C. In pre-trial detention and prisons, are juveniles accommodated in separate institutions to those of adult prisoners? If not, are they accommodated in totally separated wings of adult prisons, with separate staff? Are juveniles also separated according to age group? What are the age groups?
- D. What are the rules governing the personal items juveniles are allowed in prison? Are the rules less strict than those for adult prisoners? Are they allowed to personalise their accommodation area? Has any special effort been made to ensure that their accommodation has a positive climate, e.g. colourful walls, plants, pictures etc.?
- E. To what extent are juveniles given access to the education curriculum for their age group? Are they in need of special education assistance to deal with learning deficits? Do teachers in their education assist them? Are there classrooms, sufficient education materials, books, pens etc? Are there enough books in the library for all juvenile prisoners for study?
- F. To what extent are juveniles given access to vocational training of their own choice? What kind of training do they receive?
- G. To what extent are juveniles' special recreational needs provided for? What sports facilities do they have access to? What are the rules governing access to these facilities?

- H. What are the rules governing visits from their family and/or guardians? Do they have maximum possible contact with their families? Are the visits open or closed?
- I. Do female juvenile prisoners have the same access to all educational, vocational and recreational facilities granted to male juvenile prisoners? Often, in practice, female juvenile prisoners are disadvantaged in this respect due to their small numbers.
- J. What are the rules for juveniles to gain entitlement to temporary and early release schemes? Are they different to those of adults? What happens in practice? How many juveniles on temporary or early release schemes at the times of assessment?
- K. What special provisions are in place to address the particular post-release reintegration needs of juveniles? Is there a separate probation service responsible for the supervision of juveniles? Are there specially trained staff in the probation service responsible for juveniles?
- L. What provision, if any, have been made in laws and regulations relating to social support and education that give juveniles special rights for support after release from prison?
- M. Are there any statistics for re-offending among juveniles on parole or those undergoing alternatives measures or sanctions? What are they? If there is a high failure rate, has any research been conducted into the reasons? Obtain research results, if available.

8.3 WOMEN

Alternative measures and sanctions should be considered for women who have committed non-violent or minor offences, due to the particularly harmful effect of imprisonment on them and their families.

Due to the small percentage of women in prison worldwide, they often do not have the same access as men to all services and activities in prisons. Usually they are accommodated at a great distance from home, due to the limited number of prisons for women, so maintaining contact with their families is difficult.

Women should enjoy the same rights as men regarding access to all regime activities, including education, work and vocational training in particular - areas where they may have suffered from discrimination before imprisonment. Women are also likely to suffer particular discrimination after release from prison, due to social stereotypes. Their families might reject them and in some countries they may lose their parental rights. So often they will need particular psychological, social and legal assistance during imprisonment and after release.

Please refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM**, for guidance on all rules relating to women in prison, and **CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO IMPRISONMENT**, for special considerations in the case of alternatives for women.

- A. How are women separated from male prisoners? Are they in separate institutions or in wings of the same institution?
- B. Do women have the same opportunities as male prisoners to benefit from all regime activities, including work, vocational training, education, cultural and recreational activities, sports, offending behaviour and preparation for release programmes? If not, what regime activities do they not have access to? What type of work and vocational training are women engaged in? What number/ percentage is working?
- C. Are women provided with any special support pre- and post-release, by the probation service, if it exists? What support services are available?
- D. Do they receive any particular support during the serving of an alternative sentence? For example, if they have been victims of domestic violence, are there special

programmes available to which they can be directed, run by psycho-social support services, NGOs, women's group, etc.? How many are participating in such programmes at the time of assessment?

- E. Are there any special services or unit provided for pregnant woman and women with infants? Please refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM**, Section 5.2.

8.4 THE MENTALLY ILL

In general, mentally ill persons should be treated outside prison. Ideally they should be in the community in which they live, a principle recognised by the **United Nations Principles for the Protection of Persons with Mental Illness**.²¹ Please refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION**, for all special considerations relating to alternatives for the mentally ill.

Psychiatric conditions are prevalent in prison settings and prison health services need to provide psychiatric assessments, psychiatric services and outpatient treatment. International instruments stress the importance of prisoners' access to psychiatric consultation and counselling.

Mentally ill prisoners are at risk of abuse from other prisoners. Measures must be taken by prison authorities to prevent such abuse, such as separation of the mentally ill from other prisoners and supervision.

Please refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES: PRISON MANAGEMENT**, for guidance on all rules relating to mentally ill prisoners.

- A. Does legislation grant courts the authority to intervene on behalf of pre-trial or sentenced prisoners suspected of having a mental illness, and acting on the basis of independent medical advice or evaluation, to order that such persons be admitted to a mental health facility? UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, Principle 20.3. How often does this happen in practice?
- B. Does legislation provide for special consideration to be given to impose non-custodial measures and sanctions on mentally ill offenders, both at pre-trial and at sentencing stage? For example, are community sentences with a treatment element for the offender's mental illness provided for? How often does this happen in practice?
- C. Are the mentally ill sentenced to imprisonment treated in a specialized hospital or in prison? If they are treated in prisons, what facilities and treatment are provided for them? See SMR 82.
- D. Are mentally ill prisoners placed under the special supervision of a medical doctor? Are they accommodated with other prisoners or a special unit? Are they in single cells? Mentally ill offenders should not be placed in single cells, except for very short periods when absolutely necessary.
- E. What kind of special psychiatric care do they have access to? Are specialists from the civil healthcare service engaged in the care of mentally ill persons in prison?
- F. Do they have access to all suitable regime activities? Which ones? Is there recognition that the mentally ill may also suffer from problems like drug addiction and require treatment for those issues in addition to mental health treatment?
- G. What kind of special support do mentally ill offenders receive in preparation for release and post-release? Is their care coordinated with civil healthcare services, so that they can continue any necessary psychiatric treatment after release?
- H. Does the probation service provide any special support for the mentally ill? What does this consist of?

- I. Do social welfare services provide the mentally ill with any special support after release? What does this consist of?
- J. Are the rates of re-offending among mentally ill offenders, who have been diverted from the criminal justice process, received alternative sanctions and who have been imprisoned, available? What are they? How do they compare?

8.5 DRUG DEPENDENT OFFENDERS

Drug addiction is not only a widespread reason for committing offences (mainly to be able to finance the drug needs), but it is also one of the main obstacles that a large number of offenders have to encounter in their social reintegration. If drug addicts are not treated effectively for their problem, and do not receive all the support necessary from their family, friends and organisations of civil society, then it is very likely that they will re-offend.

Sadly, the number of former prisoners who may need treatment for drug addiction is not limited only to those who were imprisoned for drug related offences. Drugs are widely available in prisons worldwide, despite the efforts of authorities to prevent their entrance to prison, contributing to HIV epidemics in the prison setting. Many prisoners acquire their addictions in prison.

Please refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES TOOL: ALTERNATIVES TO INCARCERATION**, for all special considerations relating to alternatives for drug related offences.

- A. Do police and prosecutors use their discretion not to arrest suspected drug users, for example, on condition that they enter a drug educational or therapy programme? What criteria apply?
- B. Are alternatives provided in legislation for the use of illicit drugs? What are they? Do the alternatives aim to address the drug addiction problem of the offender? How often are they used?
- C. Are there drug courts available? Which offenders are targeted? Obtain statistics relating to the drug courts, with information on how many offenders tried, successful treatment, and re-offending rates.
- D. Can imprisoned drug addicts benefit from any treatment programmes for their addiction? Are drug addicts screened for underlying mental illness for which they may also need treatment? What do the programmes consist of? Who runs them – specialists from civil health agencies or medical specialists in prisons? How widely available are they? How many prisoners are participating? Can prisoners participate in programmes outside the prison for certain periods? What are the rules?

In Sweden, for example, the prison act provides that prisoners may be allowed at any time and for any suitable period to reside away from the prison in order to take part in any special programme that is likely to reduce relapse into crime. It is used mainly for drug or alcohol abusers. The probation service helps identify a suitable therapeutic community or foster family for this purpose.²²

- E. Does the probation service or health services provide former prisoners with a drug addiction any assistance to identify suitable treatment programmes, to register and attend them? Who is responsible for paying for this treatment? Does the probation service need to negotiate payment with the social or health services? Is there some other arrangement? How easy or difficult is it in practice to receive access to financial support for treatment purposes?
- F. Has any evaluation been carried out relating to the success rate of drug treatment programmes for prisoners and those who have received alternative sanctions? What is

the rate of re-offending among those who have undertaken treatment programmes?
Obtain copies of any evaluation or research papers.

8.6 OVERREPRESENTED GROUPS

Please refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM**, for guidance on rules relating to foreign nationals and minority groups in prison, and **CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION**, for all special considerations in the case of alternatives for overrepresented groups.

- A. Are prisoners who are foreign nationals informed of their right to request contact and allowed facilities to communicate with the diplomatic or consular representative of their state? Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 16.2, SMR, R 38(1). How often can they have visits from consular officials of their state?
- B. Are prisoners who are nationals of states without diplomatic or consular representation in the country, and refugees or stateless persons, allowed similar facilities to communicate with the diplomatic representative of the state which takes charge of their interests or the national or international authority whose task it is to serve the interests of such persons, e.g. UNHCR? See also the **Vienna Convention on Consular Rights**, Article 36; the **Declaration on the Human Right of Individuals who are not Nationals of the Country in Which They Live**; the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**, Principle 16.2; and SMR, R 38(2).
- C. Are prisoners who are foreign nationals informed of the possibility of requesting that the execution of their sentence be transferred to another country? Does this happen often? How often is permission granted?
- D. Are foreign nationals given written information on all prison rules and regulations and their rights and obligations in a language that they understand?
- E. If a foreign national's family is not in the country, is special discretion used allowing him or her to have more telephone contact with his or her family than the usual norm? Are visiting times extended, when they can take place? Are restrictions on sending and receiving letters more flexible?²³ What are the rules? What happens in practice?
- F. Do foreign nationals and minority groups have equal access to all regime activities, as other prisoners? Are foreign nationals and minority groups provided with an opportunity to learn the language of the country in which they are imprisoned – especially if they have been sentenced to long-term imprisonment? **SMR, R 6(2) and 41.**
- G. Do prison libraries have books and periodicals in languages that the foreign prisoners and minority groups can understand?
- H. Are the religious and cultural customs of foreign nationals and minority groups respected? Do they, for example, have access to ministers of their particular faith or religion? Are they provided with an area for religious group or prayer meetings?
- I. Do foreign nationals receive special guidance and support pre-and post-release? What does this consist of? Are consular representatives of their own country informed, if the prisoner so wishes, for assistance with any special needs?
- K. Does the probation service provide special assistance to foreign nationals and minority groups pre- and post-release or during the implementation of any alternative sanctions? What does this assistance consist of?

In the Czech Republic, for example, a programme has been developed by the Probation and Mediation authorities to ensure that the Roma minority receives equal access to services during the implementation of alternative sentences. Another special programme focuses on the needs of juvenile members of the Roma minority, who have received non-custodial sanctions.²⁴

9. COORDINATION, PARTNERSHIPS, AND POLICY FORMULATION

9.1 SYSTEM COORDINATION

Ensuring the coordination of all key stakeholders, informing and consulting them to ensure an interdisciplinary dialogue in the area of social reintegration of offenders is of fundamental importance, given the diversity of agencies and jurisdictions involved. Mechanisms for coordination must be built into the system between the prison service, probation service, other agencies involved in the supervision and care of offenders and ex-offenders, as well as other agencies and organizations involved in their social reintegration, such as NGOs, social welfare, housing, employment, health agencies, centres providing treatment for addictions and mental conditions.

For system coordination within the prison service, see **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM**; for system coordination within the probation service and between the probation service and the prison service, see **CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION**, in addition to questions below.

- A. Is there a policy and strategy for cooperation between the different ministries involved in the social reintegration of offenders, e.g. Ministry of Justice, Labour, Social Welfare, Health? If so, what does this strategy consist of and what are the mechanisms? It would be helpful to obtain written copies of policy and strategy papers, if possible. If not, have there been any attempts to ensure better coordination between such ministries and agencies in recent times – what have these involved?
- B. What are the mechanisms for coordination between the probation service and the prison service in the preparation for release of prisoners? Does the probation service staff visit prisoners before release and have adequate opportunity to discuss with them their needs and provide them information about their rights?

In the Czech Republic, for example, a Parole Working Group was established in 2003, made up of staff from the Probation and Mediation Service and the Prison Service, which enabled steps to be taken for parole procedure and supervision to be more effective.²⁵

- C. To what extent do the prison and probation services ensure ongoing coordination with the social welfare agencies, dealing with social benefits, housing, employment and health? What does this coordination consist of?
- D. To what extent do the prison and probation services ensure ongoing coordination with the police, both for the purpose of support and control?
- E. What coordination is provided for between prison and civil healthcare authorities in legislation and how is this ensured in practice, e.g. can mentally ill offenders receive continued appropriate treatment after release?
- F. Are resources allocated by relevant ministries to other community agencies, local authorities, social support services, employment and housing agencies and health services to assist specifically with the social reintegration of former prisoners? How much money is allocated? What is this in proportion to the total budget of these bodies? Are these funds actually used for this purpose? Try to obtain figures.
- G. Are there any partnerships with the community to assist with the reintegration of offenders and ex-offenders? For example, any working groups or committees established at local level, with representation from social assistance agencies, private businesses, NGOs, member of the community, coordinating activities to address the problem ex-offenders and offenders face?

- H. If a non-State justice system exists, what coordination and cooperation, if any, takes place between it and the formal justice system in the social reintegration of ex-offenders?

9.1.1 Research, Evaluation, and Policy Formulation

It is essential that the criminal justice system conduct, on a collaborative, system-wide basis, research and evaluation of the implementation of temporary and early release schemes, successes and failures and reasons for them, as well as rates of re-offending among prisoners released at the end of their terms. The reasons for failures should be investigated and problems addressed. Achievements must be documented as one of the means of gaining public support for early release schemes and harnessing the support of the community in offender reintegration. Policies should be constantly reviewed and revised in light of new research.

- A. What mechanisms, if any, have been built into the criminal justice system for the collection and analysis of data and statistics on the implementation of temporary and early release schemes?
- B. Has any research been carried out on the most common reasons for re-offending among former prisoners? What were the findings?
- C. Has research been carried out on the problems that confront offenders, practitioners, the community and policy makers regarding the social reintegration of offenders in general and the implementation and results of temporary and early release schemes in particular? If so, what were the outcomes?
- D. Have any evaluations been carried out of programmes and activities in prisons aiming to ensure the social reintegration of prisoners? What were the outcomes? Were any steps taken to improve prison regime as a result of any such evaluations?
- E. Are regular evaluations carried out, with a view to improving the implementation of temporary and early release schemes? Are there any copies of such evaluations available? What measures have been taken on the basis of such evaluations?
- F. Has any research been carried out into the rates of re-offending among offenders on whom alternative measures or sanctions were imposed? What, if any research has been conducted in relation those who agreed to participate in a restorative justice programme, were obliged to undertake treatment, or attend an educational or vocational course? What were the findings?
- G. Are there mechanisms in place, if any, to ensure that information on research and evaluation results are made available to all actors involved in the social reintegration of offenders – including the prison service, probation service, any other agencies responsible for the supervision and aftercare of offenders, such as social welfare, employment, housing and health agencies?

9.2 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. Which donor/development partners are active in the justice sector?

- B. Identify the donor strategy papers for the justice sector and amount of money set aside in support.
- 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 social reintegration in particular?
- E. What projects relating to social reintegration of offenders have donors supported in the past? What projects are now underway? What lessons can be derived from those projects? What further coordination is required?
- F. Do the ministries responsible for the social reintegration of offenders, particularly the ministry responsible for the prison and probation services, have a strategy for coordination and cooperation with donors? Is there a strategy paper ?

¹ Bureau of Justice Statistics 2001, cited in Maruna S., Immarigeon R. and LeBel T.P., “Ex-offender reintegration: theory and practice”, in Maruna S. and Immarigeon R (ed), *After Crime and Punishment: Pathways to offender reintegration*, Devon, UK 2004, p. 6

2 Richards, S. C. and Jones R. S., “Beating the perpetual incarceration machine: overcoming structural impediments to re-entry”, in Maruna S. and Immarigeon (Ed), *After Crime and Punishment, Pathways to offender reintegration*, Devon, UK, 2004, pp. 206-7.

3 Lindholm, M., Sweden, “Recruitment, Selection and Training of Probation Staff”, Paper presented at the Council of Europe/Ministry of Justice Conference on Probation and Aftercare, 14-16 November 2005, Istanbul, p. 3.

4 Council of Europe, Committee of Ministers Recommendation Rec (2006) 2, on the European Prison Rules, adopted by the Committee of Ministers on 11 January 2006.

5 See also Rule 70.1 of the European Prison Rules (2006)

6 CPT/Inf (92) 3, para 47

7 e.g. Sampson, R. and Laub, J (1993), *Crime in the Making: Pathways and Turning Points through Life*. Cambridge, MA: Harvard University Press, cited in Maruna, S. and Immarigeon R., (Ed), *After Crime and Punishment: Pathways to offender reintegration*, Devon, UK, 2004, p. 15

8 For a discussion, see Coyle, A., “Managing Change”, *International Centre for Prison Studies*, 2002, pp. 31, 47, 59-60.

9 Council of Europe Committee of Ministers Recommendation Rec (2006) 2 on the European Prison Rules, adopted on 11 January 2006, Rule 103.7.

10 Council of Europe, Committee of Ministers Recommendation No. R (82) 16 on prison leave, adopted on 24 September 1982, Rule 1

11 *ibid.*, Rule 3

12 *ibid.*, Rule 5

13 *ibid.*, Rule 6

14 *Education Guardian*, 31 July 2006.

15 Richards, S.C. and Jones, R.S., “Beating the perpetual incarceration machine: overcoming structural impediments to re-entry”, in Maruna, S. and Immarigeon R., (Ed), *After Crime and Punishment: Pathways to offender reintegration*, Devon, UK, 2004, pp. 215-216

16 Council of Europe, Committee of Ministers Recommendation Rec (2003) 22 on conditional release (parole), comments to the appendix to the recommendations, I, paragraphs 2 and 3.

17 *Ibid.*, Rule 8

18 Canton, R., “From Pre-Sentencing Reports to Post-Prison Assistance: Tasks and Responsibilities of Probation Services”, Paper presented at Council of Europe/Ministry of Justice, Turkey Conference on Probation and Aftercare, 14-16 November 2005, Istanbul, p. 4.

19 In “Successful Transition and Reentry for Safer Communities: A Call to Action for Parole” the authors note: “Slightly less than half of those who are returned to prison have been convicted of new crimes. More than half of those who are returned are recommitted because they have violated technical conditions of their release. In 2001, 37% of ALL admissions to prison nationwide were the result of parole revocations—not the result of new convictions. That’s up from 17% in 1980 and 30% in 1990 and probably significantly understates the current rate. This is an enormous and largely wasted expense. Processing admissions of parole violators takes as much time and costs as much money as processing admissions of new convictions, thus entailing nearly a fifth of the prison system’s admission and classification costs—and for offenders who mostly will be in prison only for a few months.

20 Project implemented by Penal Reform International and Royal Netherlands Tuberculosis Association, in partnership with Institute for Penal Reform and Caritas Luxembourg in Moldova, 2003-2006

21 Principle 7.1 of the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. G A Res 46/119 of 17 December 1991.

22 Lindholm, M., "From Pre-Sentence Enquiry to Post-Prison Supervision", Paper presented at the Council of Europe/Ministry of Justice, Turkey Conference on Probation and Aftercare, 14-16 November, Istanbul, p. 3.

23 Council of Europe, Committee of Ministers Recommendation, No. R (84) 12, Concerning Foreign Prisoners, Rule 22

24 Stern, P., "Recent Development of the Czech Probation and Mediation Service", Paper presented to the Council of Europe/Ministry of Justice Turkey Conference on Probation and Aftercare, 14-16 November, Istanbul, p. 2.

25 Stern, P., "From Pre-sentence Enquiry to Post-prison Supervision", paper presented at the Council of Europe/Ministry of Justice Turkey Conference on Probation and Aftercare, Istanbul, 14-16 November 2005.

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
- Convention on the Rights of the Child 1989
- Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988
- Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power
- 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
- Standard Minimum Rules for Non-Custodial Measures 1990 (Tokyo Rules)
- Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules)
- Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 2002
- Rules for the Protection of Children Deprived of their Liberty 1990
- Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Healthcare 1991
- Guiding Principles on Drug Demand Reduction of the General Assembly of the UN 1998

- A Manual on Alternatives to Imprisonment, UNODC, 2006
- A Manual on Restorative Justice, UNODC, 2006

Regional

- African Charter on Human and Peoples' Rights 1981
- African Charter on the Rights and Welfare of the Child 1990
- American Convention on Human Rights 1978
- European Convention for the Protection of Human Rights and Fundamental Freedoms 1950
- Council of Europe, Committee of Ministers Recommendation No. R (92) 16 on the European Rules on Community Sanctions and Measures, 1992
- Council of Europe Committee of Ministers Recommendation No. R (2000) 22 on improving the implementation of the European rules on community sanctions and measures, 2000
- Council of Europe Committee of Ministers Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation, 1999
- Council of Europe Committee of Ministers Recommendation Rec (2006) 2 on the European Prison Rules, 2006
- Council of Europe Committee of Ministers Recommendation, No. R (2003) 22 on conditional release (parole), 2003
- Council of Europe Committee of Ministers Recommendation No. R (82) 16 on prison leave, 1982

National

- Constitution
- Criminal and Criminal Procedure Codes
- Penal Enforcement Statutes—including Probation Act
- Research and evaluation reports by independent bodies, NGOs, academicians

Other Useful Sources

- Bryans, S., Martin C. and Walker R., (Eds.), Prisons and the Voluntary Sector, A Bridge to the Community, Waterside Press, Winchester, 2002
- Burke, P., Tonry, M., Successful Transition and Re-entry for Safer Communities: A Call to Action for Parole, Copyright 2006, Center for Effective Public Policy 8403 Colesville Road, Suite 720 Silver Spring, MD 20910. Available at: www.appa-net.org/publications%20and%20resources/burke.htm
- Coyle, A., A Human Rights Approach to Prison Management, International Centre for Prison Studies, London, 2002
- Farral, S., Rethinking What Works with Offenders, Probation, social context and desistance from crime, Willan Publishing, Devon, UK 2004
- Making Standards Work, Penal Reform International, March 2001
- Maruna, S. and Immarigeon, R., After Crime and Punishment, Pathways to offender reintegration, Willan Publishing, Devon, UK, 2004;

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	OVERVIEW: GENERAL STATISTICAL AND DATA	<ul style="list-style-type: none"> ▪ Ministry of Justice reports ▪ Ministry of Interior reports ▪ Penal System Reports ▪ Probation System Reports ▪ National Police Crime reports ▪ Court Annual Reports ▪ NGO reports: penal system and social reintegration ▪ Independent prison inspection reports; ▪ Donor reports ▪ Research reports by independent academic institutions 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Ministry of Interior ▪ Senior Prison Service Officers ▪ Senior Probation Service Officers ▪ High Court Judges and other senior judges ▪ NGOs working on criminal justice matters ▪ Prison inspectors, monitoring committees, where they exist ▪ Websites for reports by international inspection bodies ▪ Donor organisations working on the criminal justice sector ▪ Academicians working on criminal justice issues 	
3.	LEGAL AND REGULATORY FRAMEWORK	<ul style="list-style-type: none"> ▪ The Constitution ▪ Penal Code ▪ Penal Procedure Code ▪ Penal Enforcement Code ▪ Probation Act ▪ Regulations to these codes and acts ▪ Acts governing semi-formal/informal justice systems ▪ Court Annual Reports ▪ Judicial Practice Directions: Circulars and Sentencing Guidelines ▪ Government policy documents/ National Reform Programmes ▪ Independent reports made by non-governmental organisations. ▪ Legal textbooks or academic research papers. <p>SITE VISITS</p> <ul style="list-style-type: none"> ▪ Statistics and information at different administrative levels and in different parts of the country (urban, rural, rich, poor) ▪ Case examples 	<ul style="list-style-type: none"> ▪ Ministry of Justice/Ministry of Interior ▪ Senior and local prison service officers ▪ Senior and local probation service officers ▪ High Court Judges, other senior judges, local judges and magistrates ▪ Legislative offices ▪ NGOs working on criminal justice matters ▪ Bar Associations ▪ Academicians working on criminal justice issues 	
3.1	PENAL LEGISLATION	See above	See above	
3.2	OTHER LEGISLATION AND RULES	<ul style="list-style-type: none"> ▪ Labour Act ▪ Social Welfare Act ▪ Health Act ▪ Legislation relating to education ▪ Privacy/Freedom Information Legislation ▪ Regulations to these acts ▪ Rules of individual universities/education institutions 	<ul style="list-style-type: none"> ▪ Ministry of Labour ▪ Ministry of Social Welfare (or similar) ▪ Ministry of Health ▪ Ministry of Education ▪ Senior staff of universities or educational institutions ▪ Senior staff in workplaces where former prisoners are employed ▪ Former prisoners 	
3.3	LAW REFORM	See 2 and 3	See 2 and 3	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.1	MANAGEMENT: DIVERSION FROM PROSECUTION	<p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> ▪ Probation Service, police, prosecutors and NGOs reports on diversion from prosecution and restorative justice programmes; ▪ Rules of Eligibility for diversion; ▪ Relevant Ministry (Ministry of Justice/Interior) financial reports/budget documents relating to funding of restorative justice or medical treatment programmes ▪ Probation Service/police/court/prosecution financial reports and budget relating to restorative justice ▪ Reports by/interviews with health services undertaking the treatment of those diverted. ▪ Contracts/agreements concluded with NGOs to run restorative justice programmes 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Ministry of Interior ▪ Senior and local probation service officers ▪ High Court Judges, other senior judges, local judges and magistrates ▪ Senior and local prosecutors ▪ Senior and local police officers ▪ Legislative offices ▪ NGOs running restorative justice programmes ▪ Health service providers ▪ Donor organisations working on the criminal justice sector ▪ Academicians working on criminal justice issues 	
4.2.1	PRISON SERVICE: MANAGEMENT AND STRUCTURE	<ul style="list-style-type: none"> ▪ Ministry of Justice reports ▪ Ministry of Interior reports ▪ Penal System Reports ▪ Probation Service Reports ▪ Penal Enforcement Code and regulations ▪ Reports by international and national prison inspection bodies ▪ Reports by Prisons Ombudsman ▪ Reports by Law Society or Bar Association ▪ NGO reports ▪ Research reports by independent academic institutions <p>SITE VISITS</p>	<ul style="list-style-type: none"> ▪ Ministry of Justice/Ministry of Interior ▪ Senior and local prison service officers ▪ Senior and local probation service officers ▪ High Court Judges, other senior judges, local judges and magistrates ▪ Legislative offices ▪ NGOs working on criminal justice matters ▪ Bar Associations ▪ Academicians working on criminal justice issues 	
4.2.2	PRISON SERVICE: BUDGET	<p>See above, plus:</p> <ul style="list-style-type: none"> ▪ Government policy documents/National Reform programmes; ▪ Budget documents and financial reports of the prison service 	<p>See above, plus:</p> <ul style="list-style-type: none"> ▪ Senior and local prison staff responsible for finances 	
4.2.3	PRISON SERVICE: PERSONNEL	<p>See 4.2.1, plus:</p> <ul style="list-style-type: none"> ▪ Samples of Recruitment/ Human resources/interview questions ▪ Training materials ▪ Staff terms of reference, contracts ▪ Staff ethics code ▪ Disciplinary board Policy/Procedures 	<p>See 4.2.1, plus:</p> <ul style="list-style-type: none"> ▪ Staff Training Centre Personnel ▪ Prison Governors ▪ Prison staff involved in healthcare, education, work, vocational training, counselling or offending behaviour programmes, as well as first line prison staff ▪ Prisoners ▪ NGOs 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.3.1	PROBATION SERVICE / PROVIDERS OF COMMUNITY SUPERVISION: MANAGEMENT AND STRUCTURE	<ul style="list-style-type: none"> ▪ Ministry of Justice reports ▪ Penal System Reports ▪ Probation Service Reports ▪ Penal Procedure Code ▪ Penal Enforcement Code ▪ Probation Act and regulations ▪ Probation service strategic plans and policy documents relating to pre-release preparation of and post-release support to prisoners ▪ NGO reports ▪ Research reports by independent academic institutions 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Senior and local Probation Service Staff ▪ Specialist probation staff involved in the pre-release preparation and post-release support of offenders ▪ Law Society or Bar Association ▪ NGOs working on criminal justice matters ▪ Academicians working on criminal justice issues ▪ ▪ ▪ 	
4.3.2	PROBATION SERVICE: BUDGET	See above, plus: <ul style="list-style-type: none"> ▪ Government policy documents/National Reform programmes; ▪ Budget documents and financial reports of the probation service 	See above, plus: <ul style="list-style-type: none"> ▪ Senior and local probation system staff responsible for finances 	
4.3.3	PROBATION SERVICE: PERSONNEL	See 4.3.1 plus, <ul style="list-style-type: none"> ▪ Samples of Recruitment/ Human resources/interview questions ▪ Training materials ▪ Staff terms of reference, contracts ▪ Staff ethics code ▪ Disciplinary board Policy/Procedures 	See 4.3.1, plus: <ul style="list-style-type: none"> ▪ Probation Service Training Centre staff ▪ Senior and local probation service staff ▪ Offenders/ex-offenders/parolees ▪ NGOs 	
4.4.1	NGOs AND VOLUNTEERS	See 2, plus: <ul style="list-style-type: none"> ▪ Reports by NGOs supporting offenders and ex-offenders; ▪ Probation service reports; ▪ Volunteer training materials ▪ Reports by donors funding NGOs supporting offenders and ex-offenders SITE VISITS <ul style="list-style-type: none"> ▪ Interviews with NGOs, volunteers, probation service staff and ex-offenders 	See 2, plus: <ul style="list-style-type: none"> ▪ NGOs supporting offenders and ex-offenders; ▪ Senior and local probation service staff ▪ Volunteers involved in supervising ex-offenders ▪ Donors ▪ Ex-offenders and families of offenders 	
4.4.2	PUBLIC SUPPORT	<ul style="list-style-type: none"> ▪ Ministry of Justice/Ministry of Interior reports ▪ Penal System Reports and policy documents and regulations relating to cooperation with outside contractors providing work, education, training in prisons ▪ Probation system reports relating to cooperation with public and private sector for offender rehabilitation ▪ Press reports ▪ Reports of any conferences and seminars ▪ Reports by NGOs working on criminal justice issues ▪ Public surveys and research reports 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Senior Prison and Probation System officials ▪ Media representatives ▪ NGOs working on criminal justice issues ▪ Offenders, ex-offenders and their families ▪ Private contractors working in prisons and employing ex-offenders 	
5.1	REINTEGRATION IN THE COMMUNITY: DIVERSION	See 4.1	See 4.1	

	TOPIC	SOURCES	CONTACTS	COMPLETED
5.2	REINTEGRATION IN THE COMMUNITY: ALTERNATIVES	See 2 and 3	See 2 and 3, plus: <ul style="list-style-type: none"> ▪ Offenders who have received alternative sanctions and measures, with a condition for treatment, education, vocational training etc. ▪ Families of offenders ▪ Treatment and attendance centres for offenders 	
6.1	PRISON AND REINTEGRATION: HEALTHCARE	See 2 and 3, plus: <ul style="list-style-type: none"> ▪ Reports on prison healthcare services ▪ Health Act SITE VISITS	See 2 and 3, plus: <ul style="list-style-type: none"> ▪ Prison healthcare staff ▪ Ministry of Health ▪ Prisoners and former prisoners with drug addiction, psychiatric problems ▪ Families of such prisoners and former prisoners ▪ Civil Health service providers 	
6.2	PRISON AND REINTEGRATION: CONTACT WITH THE OUTSIDE WORLD	See 2 and 3, plus: SITE VISITS	<ul style="list-style-type: none"> ▪ Prison governors of closed and open prisons ▪ Prisoners and former prisoners ▪ Families of prisoners and former prisoners 	
6.3	PRISON AND REINTEGRATION: PRISON REGIME	See 2 and 3, plus: SITE VISITS	See 2 and 3, plus: <ul style="list-style-type: none"> ▪ Prison staff responsible for regime activities (deputy directors for social work, education, work and vocational training, social workers, psychologists, teachers, staff responsible for preparation for release, prison chaplains) ▪ First line prison staff ▪ Prisoners and former prisoners ▪ Families of prisoners and former prisoners ▪ Probation service staff involved in preparation for release 	
6.4	PRISON AND REINTEGRATION: RESTORATIVE JUSTICE IN PRISON	See 2 and 3, plus: SITE VISITS	See 2 and 3, plus: <ul style="list-style-type: none"> ▪ Probation service staff, NGOs or other organisations involved in prison restorative justice programmes ▪ Prisoners participating in restorative justice programmes. 	
6.5	TEMPORARY RELEASE DISPOSITIONS	See 2 and 3, plus: <ul style="list-style-type: none"> ▪ Prison regulations and standing orders relating to temporary release ▪ Probation service reports/other documents relating to support to prisoners on temporary release schemes 	See 2 and 3, plus: <ul style="list-style-type: none"> ▪ Prisoners on home leave, educational and work release ▪ Managers of educational institutions and workplaces 	
6.6	OPEN PRISONS	See 2 and 3, plus <ul style="list-style-type: none"> ▪ Prison regulations and standing orders relating to transfer to open prisons SITE VISITS Open prisons	See 2 and 3, plus: <ul style="list-style-type: none"> ▪ Governors and staff of open prisons ▪ Prisoners in open prisons ▪ Former prisoners, released from open prisons ▪ Families of prisoners in open prisons 	
6.7	HALFWAY HOUSES	See 2 and 3, plus: <ul style="list-style-type: none"> ▪ Prison regulations and standing orders relating to release to half-way houses SITE VISITS Half-way houses	See 2 and 3, plus: <ul style="list-style-type: none"> ▪ Half-way house personnel ▪ Prisoners in half-way houses 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
7.1	EARLY RELEASE SCHEMES: PAROLE AND REMISSION	See 2 and 3, plus <ul style="list-style-type: none"> ▪ Prison regulations and standing orders relating to parole and remission ▪ Probation Service Reports on Parole ▪ Reports by NGOs or other community groups on parole ▪ Research reports on parole 	See 3.3 and 3.4, plus: <ul style="list-style-type: none"> ▪ Probation service staff responsible for parole supervision ▪ NGOs and other community groups supporting prisoners on parole ▪ Prisoners on parole ▪ Independent researchers and academicians working on criminal justice issues 	
7.2	POST RELEASE SUPPORT BY NGOs AND THE COMMUNITY	See 3.2, 4.4.1 and 4.4.2. Plus: <ul style="list-style-type: none"> ▪ Reports or publications by any community groups involved in the social reintegration of offenders and ex-offenders ▪ Reports by donors funding NGOs supporting ex-offenders 	See 3.2, 4.4.1 and 4.4.2, plus: <ul style="list-style-type: none"> ▪ NGOs running projects to support ex-offenders; ▪ Community groups involved in assistance to offenders and ex-offenders ▪ Ex-offenders and their families 	
8.1	PRE-TRIAL DETAINEES	See 2 and 3, plus: SITE VISITS	See 2 and 3, plus: <ul style="list-style-type: none"> ▪ Pre-trial detention centre staff ▪ Pre-trial detainees 	
8.2	JUVENILES	See 2 and 3, plus: <ul style="list-style-type: none"> ▪ Juvenile Court Act ▪ Juvenile Probation Act ▪ Regulations to these acts SITE VISITS	See 2 and 3, plus <ul style="list-style-type: none"> ▪ Juveniles police ▪ Juvenile courts ▪ Staff of juvenile prisons ▪ Juvenile probation staff ▪ Juvenile prisoners/probationers/former prisoners ▪ Families of juvenile prisoners, probationers and former prisoners ▪ NGOs and community groups running support programmes for juveniles offenders and ex-offenders 	
8.3	WOMEN	See 2 and 3 SITE VISITS	See 2 and 3, plus: <ul style="list-style-type: none"> ▪ Staff of women's prisons ▪ Female prisoners/probationers/former prisoners ▪ NGOs and community groups running support programmes for women offenders and ex-offenders 	
8.4	THE MENTALLY ILL	See 2 and 3, plus: <ul style="list-style-type: none"> ▪ Health Act ▪ Regulations to the health act ▪ Prison Service Health Policy/Strategy Paper; ▪ Probation Service Health Policy/Strategy Paper ▪ Medical Association Reports ▪ Psychiatrists' Association Reports SITE VISITS	See 2 and 3, plus: <ul style="list-style-type: none"> ▪ Head of Prison Health Department/Unit ▪ Health services involved in the treatment of mentally ill offenders ▪ Prison medical and psychiatric staff ▪ Mentally ill prisoners and their families ▪ NGOs ▪ Medical Associations ▪ Psychiatrists' Associations 	
8.5	DRUG DEPENDENT OFFENDERS	See 2 and 3, plus: <ul style="list-style-type: none"> ▪ Health Act and regulations ▪ Act governing Drug Courts ▪ Regulations to this act ▪ Medical Association Reports SITE VISITS	See 2 and 3, plus: <ul style="list-style-type: none"> ▪ Drug courts ▪ Drug dependent offenders ▪ Prison specialists running therapy programmes for drug addicts ▪ Drug dependent prisoners/ probationers/former prisoners ▪ Prison medical staff ▪ Medical Associations ▪ Civil healthcare services involved in treating drug dependent offenders 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
8.6	OVERREPRESENTED GROUPS	See 2 and 3, plus: <ul style="list-style-type: none"> UNHCR reports on the country assessed Reports on minority groups by NGOs and others working on minority rights 	<ul style="list-style-type: none"> UNHCR staff Consular representatives and/or families of foreign prisoners Families of minority group prisoners Foreign and minority group prisoners/probationers/former prisoners NGOs working on minority rights 	
9.1	SYSTEM COORDINATION	See 2.3, 3.2 and 4.4.1, plus: <ul style="list-style-type: none"> Budget documents and financial reports by social support services, employment, housing agencies and health services, if providing any assistance to former prisoners. 	See 2.3, 3.2 and 4.4.1, plus: <ul style="list-style-type: none"> Staff responsible for financial reports and accounts – social support services, employment, housing agencies and health services 	
9.1.1	RESEARCH, EVALUATION AND POLICY FORMULATION	<ul style="list-style-type: none"> Strategic plans for social reintegration of offenders Government policy documents/National Reform Programme Penal system reports Probation service reports Reports/interviews: Judicial authorities Evaluations of probation and prison system Research reports 	<ul style="list-style-type: none"> Ministry of Justice Ministry of Interior High court judges and other senior level judicial authority staff Prison Service Headquarters; Probation Service Headquarters; NGOs working on criminal justice matters Academicians and legal specialists working on criminal justice matters 	
9.2	DONOR COORDINATION	<ul style="list-style-type: none"> Donor Strategy papers Progress reports by donor organizations Independent studies conducted by universities/NGOs Ministry of Justice strategy papers relating to cooperation and coordination with donors 	<ul style="list-style-type: none"> Donor organisations Ministry of Justice Universities and NGOs 	



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CROSS-CUTTING ISSUES

Criminal Justice Information

Criminal justice
assessment
toolkit

1

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

CROSS-CUTTING ISSUES

Criminal Justice Information

Criminal Justice Assessment Toolkit



UNITED NATIONS
New York, 2006

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This publication has not been formally edited.

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1. INTRODUCTION TO THE ISSUE

Assessing a criminal justice system can be quite challenging, particularly when there is very little quantitative information available on the system itself, on the problems and the types of crime that it is confronted with, or on the resources at its disposal. The capacity and the current performance of the system itself are difficult to assess in the absence of that information. Unfortunately, the information that is available is often of dubious quality. Even when the required information has been collected and is available somewhere, it is often still difficult to gather and analyze the data that could provide an overview of the crime and security situation and the capacity of the system itself. Analyzing that data and understanding its limitations are sometimes beyond the ability of the assessor who is hard-pressed for time and cannot necessarily meet with representatives of the main agencies responsible for collecting that data.

Assessors should remain cautious when analyzing and interpreting the data they receive. Wherever possible, they should make use of local expertise in interpreting that data and understanding its limitations. They must remain alert to the possibility that they may have been provided only with the data that serve the purposes and interests of certain agencies or individuals. In the context of developing countries, the data that is provided is often outdated and one should ascertain whether it still valid. In many countries, census data – which is typically used to put some crime statistics in context and provide a basis from valid comparisons among jurisdictions or over time – is often weak or incomplete and may introduce even more uncertainty about the information that is available to the assessor.

Crime statistics do not necessarily provide a good indication of the prevalence of crime and victimization in a given country, because they are greatly influenced by the willingness of victims to report the crime to the police. Victims and witnesses of crime are unlikely to report it to the authorities when they do not have much trust in them or cannot reasonably expect much help from them.

One of the first steps in developing the capacity of a country to enhance the overall capacity of its criminal justice system often consists of assisting it in developing some simple criminal justice statistics and basic management information systems. That task has been among the stated priorities of the United Nations Crime Prevention and Criminal Justice Programme for many years. In fact, there were once great hopes that easier access to relatively inexpensive information management technologies would accelerate the development of greater national capacities to collect criminal justice information. That promise did not always come true and many countries still have wholly inadequate criminal justice information systems. Even in situations where countries have received some assistance to develop information systems, the effort to maintain such systems was not always sustained, and the integrity of these systems was often quickly compromised.

1.1 USES AND PURPOSES OF CRIMINAL JUSTICE INFORMATION

According to the United Nations Manual for the Development of a System of Criminal Justice Statistics:

Statistics on crime and criminal justice help Governments to assess and monitor the conditions, circumstances and trends of well-being and the social impact of public expenditures and policies. The collection of reliable and comprehensive criminal justice statistics in countries is of immense importance to everyone involved with criminal justice, especially to the criminal justice administrator. Each component of the criminal justice system inevitably creates large quantities of records, but it is only when such raw information is transformed through purposeful collection and organization into statistical form that these records provide information valuable for criminal justice decision-making. (UN, 2003, p. 1)

Criminal justice statistics are used for several main interdependent purposes: administration, planning, evaluation, and policy research and analysis. They can also be used, at times, as a basis

for developing performance-monitoring indicators. From a management and accountability point of view, the timely collection of management information from which statistics can be derived is essential. According to the Manual mentioned above:

Any organization or agency should be capable of monitoring its own activities. In general terms, management can be characterized as a process of organizing a set of resources to accomplish established goals and objectives. Effective management requires information to determine whether the goals and objectives are being accomplished in a timely and orderly fashion, and whether the resources are being used efficiently and effectively. The more complex the organization, the greater will be the need for statistical information, particularly on resources and resource allocation and on cases and caseloads. (UN, 2003, p. 1)

Donor agencies and development partners are typically concerned with developing the capacity of a country's justice and security sector and are very interested in developing reliable criminal justice information systems. Criminal justice information is essential to the proper planning of justice reforms and capacity building and technical assistance initiatives. For example, reforms to promote access to justice may be significantly advanced by a better understanding of the caseloads of the courts, the volume and nature of cases before them, the average time required for cases to be processed, or the typical delays involved in court proceedings. Donors are also keenly interested in monitoring the impact of the assistance they provide, and justice information systems can offer a useful basis for that process.

For the assessor, gaining access to criminal justice data can be complicated. Few countries have a centralized data collection system. In many countries, the data is collected by different agencies, using rules, protocols, and definitions that can vary widely from each other. During an assessment of a criminal justice system, the assessor typically is looking for: caseload data, case characteristics data, and resource data. In addition, the assessor may be trying to identify other information on the criminal justice process, the organizational structure of its various components, as well as the authority and responsibilities of each component. The last type of information is crucial because it makes it possible for the assessor to interpret the data on caseload, case characteristics, and resources.

1.2 TYPES OF TECHNICAL ASSISTANCE INTERVENTIONS

Technical assistance in the context of a broader strategic framework may include work that would support the:

- The detailed assessment of existing criminal justice information systems;
- The development of a system mapping to identify the flow of cases within the criminal justice system and map out the data that should be collected;
- The conduct of “feasibility studies” to determine whether necessary information is easily retrievable from existing records, “pre-tests” to determine particular forms or survey questions provide the information anticipated in the form anticipated, and “pilot studies” to test the value of large-scale series or surveys by first testing the implementation of small regional or local prototypes;
- The development and implementation of management information systems with a capacity to support management decisions and generate simple system-wide statistics;
- The development of agency-based management information system to enhance the management capacity and the accountability of various criminal justice agencies;
- The conduct of methodological studies to design and test cost-effective data-collection procedures;

- The development of human rights-based and other indicators to monitor the system's compliance with human rights and other international standards, e.g. juvenile justice indicators;
- The development of statistical reporting system to monitor the implementation and impact of compliance with international conventions such as, the UN Convention against Transnational Organized Crime;
- The development of performance indicators for various aspects of the criminal justice system, e.g., court delays, cases solve by the police, etc.;
- The development and conducting of pilot information gathering exercises;
- The development and conducting of victimization surveys;
- The training of criminal justice officials in the collection and utilization of statistical data and in the implementation of management information systems.

2. OVERVIEW OF AVAILABLE CRIME AND CRIMINAL JUSTICE INFORMATION

The first task consists of identifying what information is available. Unless some ministry or agency has been charged with the responsibility of collecting criminal justice data, the assessor will likely have to consult a variety of sources. Most countries have a centre of responsibility for collecting general statistics, e.g. a General Statistics Office. That centre, however, is not necessarily responsible for the collection of criminal justice statistics. Nevertheless, it often offers a good starting point for enquiries, as it will not only provide the assessor with some basic information on the country's population, economy and development situation, but frequently also will be helpful in identifying the main contacts within each criminal justice agency for obtaining relevant data.

In situations where crime and criminal justice information systems are inadequate or non-existent, part of the work of the assessor may involve exploring the feasibility and desirability of the country embarking in the development of such a system. In such cases, various forms of technical assistance may be provided to advance the process. In situations where some crime and/or criminal justice information exists, the assessor's role will also consist of identifying a number of key indicators that may contribute to the overall assessment of the justice system. At the same time, the assessor may also be able to identify specific areas, e.g. prison data, where the existing information system may require enhancements.

The country may have provided its response to the United Nations Survey on Crime Trends and the Operations of Criminal Justice Systems (CTS) at some point in the past. The Survey started in the 1970s and is carried out every two years. Its questionnaire consists of four parts dealing with information, primarily statistical, on the main components of the criminal justice system (police, prosecution, courts and prisons). The CTS questionnaire may guide the assessor in identifying the main crime and criminal justice statistical elements agreed upon by the international community for mutual exchange of information.

There may be crime statistics collected by Interpol. These data was collected at the international level until 2004, but has since been discontinued.

A "country profile" may be available from the UNODC field offices. The format for the profile places a heavy emphasis on the country situation with respect the illicit drugs, organized crime and terrorism and it may also contain some basic information about the criminal justice system, including some figures on personnel and resources. The guidelines for country profiles also suggest the collection of basic statistics and information on the population, and on the country's social and economic development.

Survey data may also be available, either from specialized victim surveys such as national surveys or the International Crime Victim Survey – ICVS or from multi-purpose surveys containing crime modules, the Afrobarometer for example.

Other development agencies, such as UNDP, World Bank, African Development Bank, Inter-American Development Bank, etc., will likely also have developed country profiles that may include relevant information.

2.1 SCOPE AND CONTENTS OF ADMINISTRATIVE CRIMINAL JUSTICE STATISTICS

The contents of a system of criminal justice statistics reflect the country's own legal system. It is the legal system that defines crimes and consequently designates individuals as offenders. Transnational differences in definitions of such widely used terms as "crime", "offence", "offender", "victim", "suspect", "charge", "conviction", or "sentence" are inevitable. Similar observations apply to data from the administrative records of the police, courts, and prisons.

Keeping in mind that, in most instances, there may not be a "comprehensive criminal justice information system", but rather a collection of agency-based data gathering systems of different quality and limited data coverage, the assessor will normally be trying to identify three main types of data that are typically included, to a varying extent, in a criminal justice information system. These include:

- **Caseload data:** Data that measure the volume of events in the justice system. Caseload data may include annual or some other time frame-specific volume indicators, such as the number of incidents reported to police; the number of charges filed by police; the number of persons charged; the number of persons appearing in court; the number of court appearances; and the number of admissions to correctional facilities. Caseload statistics enable a cross-jurisdictional comparison of workloads and the disposition of cases. Caseload data is often expressed in terms of rates per population
- **Case characteristics data:** Data on case characteristics provide more detail on the caseload. These data include, for example, the types of offences committed, the age and sex of offenders, the types of sentences handed, the magnitude of the sentences, and the ethnicity and education level of inmates. Caseload and case characteristics data enable justice agencies to compare the volume and composition of their workloads and the disposition of cases.

- **Resource data:** Resource data quantify the costs of administering the justice system. They include such items as the number of persons employed, the functions of persons employed, expenditures on wages and salaries, operating costs and revenues. Resource data, when combined with caseload data, can provide performance indicators and outline the level of authority and the level of services provided by the various agencies involved.

For information systems to be useful and provide reliable information, data reporting methods and practices must be clearly defined. As part of that exercise it is important to determine the level of data aggregation that will be deemed acceptable at each level. The more aggregated the reported data, the more restricted its future analysis.

The issue of collecting and reporting data disaggregated by age and by gender is a particularly important one. Given the crucial importance of the age and gender factors in determining the appropriate community and justice system responses to children in conflict with the law, all indicators should preferably distinguish between different age categories. Data should also be disaggregated by region, types of criminal offences, and other important characteristics of the criminal incidents. Unfortunately, however, because of their limited means and the difficulties they face in collecting data at the local level and communicating them to a central point where they can be collated and analyzed, developing countries tend only to have national data that is compiled on the basis of aggregated reports from the local levels. This severely limits the analyses that can then be conducted on the basis of that data.

In many instances, it makes sense for criminal justice officials to attempt to derive statistical data from existing operational systems. The statistical data thus collected will obviously reflect the quality of those operation systems and their administrative records. One of the frequent obstacles to the development of criminal justice statistics is the adequacy of administrative records and systems.

2.2 VICTIMIZATION SURVEYS

Administrative criminal justice statistics tend to offer very limited information on criminal victimization (only the criminal incidents that come to the attention of the police) and on the victims themselves. Statistics on victims are typically the weakest, least developed, and most variable of criminal justice statistics. In some countries, police routinely collect some information on victims of crime who report their victimization. In a growing number of countries, victimization surveys have become an additional source of information on criminal victimization, its impact on victims, the victims' response and their needs, and victims' reporting behaviour. Victimization surveys are large-scale studies that ask randomly sampled members of the population about their experience with crime.

The **UNODC** has itself been involved for many years in conducting the **United Nations Crime Victim Surveys**. Household surveys like the **International Crime Victim Survey (ICVS)** may have covered the country being assessed or at least its capital city at one point in time. These surveys provide an alternative source of data on crime to complement administrative statistics. They offer internationally standardized indicators for measuring experiences of and attitudes on crime. At the country level, surveys may be used to monitor differences in crime experienced and perceptions between countries and over time. By collecting social and demographic information on respondents, crime surveys also allow analysis of how both objective and subjective risks of crime vary for different groups within the population, in terms of age, gender, education, income levels and lifestyles. One of the most important aspects of the Survey is its ability to provide estimates of the quantity of crime that is not reported to the police.

The reasons for the non-reporting of crimes may have to do with the inaccessibility of the authorities, which makes reporting difficult, complicated reporting procedures and a lack of confidence that reporting victimization to the police will result in solving the crime or punishing the perpetrator.

Other more general surveys conducted by the local government or by private groups may have included questions on recent victimization, public perception of the justice system, or public concerns about crime. The findings of such surveys, however, may be difficult to locate during an assessment.

- A. Have special studies been conducted in recent years, such as victimization survey, survey of victims who came into contact with the justice system, studies of specific groups of victims, e.g., victims of abuse of power, victims of violence against women, child victims, victims of human trafficking; etc.?
- B. Are the following statistics available on an annual or other periodic basis? (Are the data disaggregated by age, gender, region, or other important characteristics of the incidents?)
 - Victimization rates by types of crime, types of victims
 - Perception of risk of victimization
 - Fear of crime
 - Number of crimes reported to the police by victims (by type of offences)
 - Number of children who have been victimized (rates)
 - Rate of reporting by victims
 - Number of victims who were required to testify in court, of whom how many were children?
 - Changes over time in the victimization rate or the reporting rate?

3. CASELOAD DATA

3.1 ADMINISTRATIVE CRIME STATISTICS

The “criminal event” is the most basic category for any criminal justice statistics system. It includes data on the “criminal offence”, the “offender”, and the victim. Depending on the system, these data are captured in different ways. In many instances, data may be available on the incidents, but neither on the offenders nor the victims.

What the system typically captures is the information on criminal incidents that comes to the attention of the police. A “crime rate” is calculated on the basis of the number of criminal incidents known to the police for each 100,000 people. The rate can be calculated more or less accurately depending on the strength of the census data used to estimate the total size of the population. Because an “incident” may involve multiple offences, many systems count only the most serious offence. Finally, because the offender is not necessarily known when a crime is reported to the police, the information on the offender may be incomplete. This is why, for example, one cannot be sure of how many of the reported incidents involved juveniles, or men, or women.

In administrative crime statistics, only criminal incidents that come to the attention of the police are counted. For a variety of reasons, victims and witnesses of crime may not report the incident to the police. That “reporting rate”, as it is usually referred to, may be affected by a number of factors, including public confidence in the police or lack thereof. The difference between how much crime occurs and how much crime is reported or discovered by the police is usually referred to as the “dark figure of crime”. Crime statistics are therefore a very imperfect measure of the number of crimes actually committed. They are a more accurate measure of the caseload of the police or of police activity.

When it comes to measuring the caseload of each components of the criminal justice system, one quickly encounters the problem of the different “units of count” used by each part of the system. The problem is summarized as follows in the Manual for the Development of a System of Criminal Justice Statistics (UN, 2003, p. 19):

“Each component of the criminal justice system identifies and records information in ways developed mainly in connection with its own activities. The police may use units such as incidents, charges, suspects, victims and persons charged. The courts generally count cases, charges, convictions and sentences. At the end of the process, prisons count mainly offenders and inmates. Incidents can include one or several offenders charged with one or several crimes committed against one or more victims. Consequently, one incident reported by police will not necessarily produce one court case. Further, a court case may involve one or several offenders charged with one or several crimes committed against one or several victims. Thus, 10 cases disposed of by the courts through sentence to prison do not necessarily equal 10 persons committed to prison.”

- A. Is there a national organization responsible for collecting crime statistics?
- B. How are crime statistics reported (periodicity, coverage, time lag before they are available, year of most recent statistics, etc.)?
- C. Are the following statistics available on an annual or other periodic basis? Do they cover the whole country or part of it? What are the most recent data available?
 - Crimes reported to the police by type of crime, serious of offences, or region
 - Cases that have been solved or cleared (the offender has been identified)
 - Crime reported to the police by type of offenders (age, gender, ethnicity, etc.)
- D. Is police data available on victims?

3.2 POLICE CASELOAD DATA

- A. Number of calls to the police (by region, time period, types of call)
- B. Number of incidents reported (type of incidents, region)
- C. Number of incidents investigated
- D. Number of officers deployed
- E. Number of incidents founded

- F. Number of suspects detained (age, gender)
- G. Number of crimes cleared by charge
- H. Number of crimes cleared otherwise
- I. Number of persons charged (age, gender)
- J. Number of diversion cases
- K. Number of recidivists

3.3 PROSECUTION CASELOAD DATA

- A. Number of person/cases initiated
- B. Number of cases by types of cases, by type of offences, or by type of proceedings
- C. Number of charges initiated
- D. Number of appeals initiated
- E. Number of court appearances
- F. Number of cases diverted to other agencies
- G. Number of convictions
- H. Number of cases disposed of in a given period of time

3.4 COURT CASELOAD DATA

- A. Number of person/cases initiated
- B. Number of cases by type of cases, by type of offences, or by type of proceedings
- C. Number of charges initiated
- D. Number of appeals initiated
- E. Number of court appearances
- F. Number of court hearings
- G. Average case elapse time
- H. Number of case convictions
- I. Number of cases disposed of
- J. Number of cases referred to alternative mechanisms
- K. Number of cases dealt with by tribal courts or informal conflict resolution mechanisms

3.5 PRISON CASELOAD DATA

- A. Number of adults admitted
- B. Number of children admitted
- C. Number of cases on remand
- D. Number of cases serving a sentence
- E. Number of revocations
- F. Recidivism rate
- G. Average inmate count (on-register and actual)
- H. Number of releases
- I. Number of early/conditional releases such as parole

3.6 ALTERNATIVE SANCTION PROGRAMMES DATA

- A. Number of adults admitted in programmes such as probation
- B. Number of children/juveniles admitted in programmes such as probation
- C. Number of revocations
- D. Recidivism rate
- E. Average offender count on probation

4. CASELOAD CHARACTERISTICS DATA

Caseload characteristics data can and should be captured at every level of the justice system: police, prosecution, courts (or alternative conflict resolution system), prisons, and non-custodial sentence. Part of the output of one part of the system (e.g. police: cases solved) is part of the input into another part of the system (e.g. prosecution). However, in most instances, except, in the cases of very well developed national information systems, there are too many discrepancies between the data collected at each level by each part of the system for the data produced by each agency to be totally coherent with the data produced by others.

Caseload characteristics data is essential in order to estimate the demand for the services of each agency and to assess the capacity of an agency and, eventually, its performance. In many situations, the best that an assessor can expect is partial data on caseload from which estimates will have to be derived.

4.1 POLICE CASELOAD CHARACTERISTICS

- A. Incident classification: type of offences
- B. Type of charge
- C. Offender and victim characteristics: age, sex, ethnicity, offender-victim relationship, etc.
- D. Incident characteristics: type of firearm, level of injury, loss of property, drug/alcohol use, etc.

4.2 PROSECUTION CASELOAD CHARACTERISTICS

- A. Number of person/cases by offence type
- B. Number of juvenile offender by type of offence
- C. Number of charges by offence
- D. Offender characteristics: age, sex, etc.
- E. Type and number of appearances
- F. Type of disposition

4.3 COURT CASELOAD CHARACTERISTICS

- A. Person/case disposition by type s by offence type
- B. Charges by section/division
- C. Offender characteristics: age, sex, etc.
- D. Type and number of appearances/proceedings
- E. Length of proceedings

- F. Type of cases/offenders dealt with by alternative mechanisms or traditional courts
- G. Number of appeals

4.4 PRISON CASELOAD CHARACTERISTICS

- A. Proportion of inmates on remand vs. sentenced
- B. Inmates by offence type
- C. Inmates by level of security classification
- D. Average time spent by inmate in prisons (time served)
- E. Inmates' characteristics (age, sex, etc.)

4.5 NON-CUSTODIAL PROGRAMMES' CASELOAD CHARACTERISTICS

- A. Number of offenders in non-custodial programmes (age, gender, etc.)
- B. Characteristics of offenders on non-custodial programmes
- C. Number of offenders on probation
- D. Number of offenders fined
- E. Number of offenders involved in restorative justice programmes

5. RESOURCE DATA

Resource data include such items as the number of persons employed, the functions of persons employed, expenditures in wages and salaries, etc. The level of criminal justice resources are sometimes measured and expressed in relation to the overall size of the population. For example, the population per police officer ratio (P.P.R.) and the number of police officers per 100,000 (two equivalent measures) are almost universally used to describe the resources allocated to police forces in a jurisdiction. In other instances, the number of lawyers per 100,000 population, or the number of judges per 100,000 population is sometimes used also.

For each component of the system, the assessor should try to identify data on:

- A. Staff complement and strength
- B. Budget and actual expenditure, if possible by type of activity
- C. Human resources capacity

PLEASE REFER TO INDIVIDUAL SECTOR TOOLS FOR QUESTIONS THAT IDENTIFY AND EXAMINE RESOURCE DATA IN DEPTH.

6. PERFORMANCE INDICATORS

Few countries have in place the kind of data gathering process necessary to collect data on the various aspects of their criminal justice system and develop indicators to monitor their performance. Every criminal justice agency should certainly be encouraged to adopt performance-based indicators and to set in place the necessary data gathering mechanisms to monitor them.

It is generally agreed, however, that the resource analysis exercise should be linked to performance indicators and to approved performance targets for each function within a criminal justice agency. Comparisons of performance indicators between police departments, or between prosecutor services, or between courts are of limited usefulness and should be made with caution. The development of a framework for performance and accountability specific to each criminal justice agency is likely to offer the best way forward. One should remember however that a performance indicator is almost always a proxy of the outcomes it is attempting to measure. An indicator should therefore rarely be used on its own. It needs to be qualified and interpreted on the basis of other indicators as well as contextual information.

A good performance accountability system should: focus on outcomes, represented by a few selected indicators to measure performance; generate data consistently over time; provide information for both policy and program management decisions; and report outcomes regularly and publicly.¹ The performance monitoring system should also have clear operational significance, from the point of view of those involved in the operations of the organization, or it will simply not function.

Where performance indicators do exist, it would be help to get an explanation from several sources as to what they represent, whether they are meaningful, and what they do and do not reveal about a particular function or process. It can be particularly difficult to develop meaningful performance indicators existing data about a system is limited and the capacity to gather data is also undeveloped.

6.1 POLICE PERFORMANCE INDICATORS

Generally recognized indicators of performance are sometimes used. For example, the International CITY/County Management Association (ICMA) has developed a comparative performance measurement system². The ICMA's most recent report presents police performance data from 81 jurisdictions, but readers are warned of the danger of attempting to make direct comparisons between different jurisdictions, as the performance of each department may be affected by a number physical, political, and demographic characteristics of the municipality being policed. Furthermore, many police forces are subject to national guidelines and policies or even to accreditation standards that will define how performance targets are being defined for them.

In policing, the most frequently used indicator is perhaps the **percentage of crime solved** by the police out of all of the criminal incidents that came to their attention (reported crime). The total **case burden**, defined as "the number of criminal offences (excluding traffic) per authorized police strength" is also used as a general measure of workload and the "percentage of crimes solved" (by category of crimes) as a performance indicator. That indicator is not always based on very robust data because of changes in crime reporting behaviour, how the police defines a "solved crime" (e.g., charges are laid, the offender has been identified, enough evidence has been accumulated to obtain a conviction, there was a confession, etc.), or whether all types of crimes are included or only certain ones (e.g. violent crimes only). Another indicator that can be used is the **proportion of crimes resulting in charges** being instigated.

With respect to the patrol function, the performance indicators that are most commonly used include: the **number of calls received and responded to** (by priority), the **response time to different types of calls**, and **officer utilization time**. Sometime, the "blackout" indicator is used: how many times were there no available officers to respond to a call. As previously indicated, each community is unique, and comparisons therefore have very limited value without further assessments of crime types, agency reporting practices, response and investigative policies, and solvability factors.

Police performance is also defined in terms of its other functions beside criminal law enforcement. For example, specific indicators are used to assess the workload and to measure the performance of traffic enforcement units. These include: the number of traffic accidents involving fatalities, the number of traffic accidents involving injuries, the number of moving vehicle infractions, and/or the number of drinking and driving arrests.

It is important to point out that there are certain questions that cannot be answered easily by quantification. For example, it is considered beneficial to “good” policing that officers have discretionary time to engage in proactive activities, such as preventing crime, enhancing community relations, and participating in educational projects, among others.

Moore and Poethig³ offer a discussion of how police effectiveness and performance can be defined differently depending on whether we define its role simply as the first step in the criminal justice process or as an agency of municipal government contributing to the quality of life of the residents.

When a civilian oversight or other public complaint mechanism exists, an assessor may also be able to use as an indicator the number of complaints of misbehaviour (and the number of founded complaints) that came to the attention of these agencies. In some instances, one may also be able to use the number of incidents/complaints of police corruption that came to the attention of authorities.

In other situations, indicators can be developed on the basis of the public perception of the justice system (efficacy, integrity, accountability, corruption, responsiveness, etc.).

Finally, when surveys are conducted on the satisfaction of individuals who came into contact with the police over a certain period of time, the data thus generated may also provide another useful indicator of police performance.

6.2 PROSECUTION PERFORMANCE INDICATORS

Very few jurisdictions have adopted indicators that systematically address the issue of prosecutors' performance. The most obvious indicators in that regard are:

- The average number of cases per prosecutors;
- The average number of appellate cases per prosecutors;
- The number of cases completed per year per prosecutor;
- The number of cases where a prosecution has been initiated and then abandoned or stayed;
- The proportion of cases in a year in which the offenders pleaded guilty;
- The proportion of cases in a year that went to trial;
- The proportion of cases in a year where a conviction was obtained;
- The proportion of cases that went to trial in which the offender was eventually acquitted;
- The number of cases of wrongful convictions in a year;
- The proportion of cases that were diverted away from the formal criminal justice process (and the same indicators for juvenile offenders specifically);
- The average cost per case prosecuted during a given period of time, usually a year.

One may perhaps be also interested in indicators that address some of less tangible aspects of the work of the prosecutors. These indicators are rarely compiled within prosecution services and would likely require a special study based on a review of administrative data. They include:

- Timeliness of prosecution decisions and actions, e.g. Average amount of time a victim/witness must wait before having an initial interview with a prosecutor
- Changes in the rates of diversion and non-prosecution;
- Changes in the rate of witness protection orders obtained by the prosecution, etc.

6.3 COURT PERFORMANCE INDICATORS

Again in the cases of criminal courts, the indicators are fairly simple ones:

- The average number of cases per judge;
- The average length of time for the completion of a criminal case;
- The average number of trials in a year;
- The average number of trial per judge;
- The average length of a trial, the average cost per case.

In terms of the impact of court delays, one can sometimes use the average time spent in custody by accused individuals awaiting trial as an indicator of these delays, or via an analysis of the court's backlog over time. One should remain mindful that, in many circumstances, the available indicators do not

necessarily distinguish clearly between criminal and other types of court cases.

6.4 CORRECTION PERFORMANCE INDICATORS

In the case of prisons, the following indicators are often referred to:

- The ratio of inmates to official beds, e.g. as a measure of prison overcrowding;
- The average number of inmates per guard in an institution;
- The average cost of imprisonment per inmate;
- The number of escapes;
- The number of offenders who die while in custody in a give period of time;
- The number of complaints registered by an ombudsman or by human rights organization about misconduct of prison officials;
- The number of inmates released on conditional release.

Other indicators can sometimes also be used in relation to various alternatives to prison:

- Proportion of all offenders sentenced to probation who successfully complete their probation period;
- The proportion of offenders on parole or some other form of conditional release who complete their sentence, etc.

The percentage of inmates who commit a new offence after their release from prison (or recidivism rate) is often used as a “performance” measure for prisons in general. In practice, however, this is a very problematic indicator for which good data is difficult to obtain.

6.5 CRIME PREVENTION PERFORMANCE INDICATORS

The performance of crime prevention and crime reduction programmes generally tends to be measured in terms of:

- The number of crimes reported to the police, in particular the specific type of crime the program is aiming to reduce; or
- The number of victimization incidents reported by respondents to a victimization survey.

Other indicators are sometimes based on the public perception of safety in the community or on the level of public fear revealed by a survey. One can also think in terms of:

- Improved safety and security in on the streets:
 - Changes in street crime index – see police statistics, or
 - Victimization surveys;
- Improved safety and security at home:
 - Changes in domestic violence,
 - Changes in residential burglaries, etc.
- Improved safety and security in public and social places:
 - Changes in crime rates occurring in schools,
 - Changes in crime rates occurring in the workplace,
 - Changes in crime rates occurring in urban, centres, parks, nightclub districts, etc.

6.6 JUVENILE JUSTICE RIGHTS-BASED INDICATORS

Indicators can be developed or sometimes exist which would allow an assessor to compare the functioning of criminal justice agencies and institutions with regard to their compliance with human rights and other international standards. For example, some countries have developed juvenile justice standards that allow them to monitor the functioning of the juvenile justice system by reference to children's rights standards.

UNICEF, for example, has developed a set of 11 quantitative indicators to monitor the compliance of juvenile justice system with the rights of the child. They are:

- Number of children arrested during a 12 month period per 100,000 child population
- Number of children in detention per 100,000 child population
- Number of children in pre-sentence detention per 100,000 child population
- Time spent in detention by children before sentencing
- Number of child deaths in detention during a 12 month period, per 1,000 children detained
- Percentage of children in detention not wholly separated from adults
- Percentage of children in detention who have been visited by, or visited, parents, guardian, or an adult family member in the last three months
- Percentage of children sentenced receiving a custodial sentence
- Percentage of children diverted or sentenced who enter a pre-sentence diversions scheme
- Percentage of children released from detention receiving aftercare.

PLEASE SEE ALSO **CROSS-CUTTING ISSUES: JUVENILE JUSTICE** for further information on these indicators.

7. DONOR COORDINATION

Understanding what donor efforts are underway to assist the country in developing its justice information system (or parts of it), what has previously been implemented (successfully and unsuccessfully) and what is being planned is critical to developing recommendations for future technical assistance interventions in that area. Other donors may have an interest in specific aspects of the justice system. Some of them, for example, may have been working with UNICEF on the situation of children in conflict with the law. Others may have an interest in women in the criminal justice system. Others may be contemplating information collection and management project as part of good governance and public accountability projects. For example, some projects may be in place to collect data on government expenditures that would include data on resources and expenditures in the various agencies and institutions of the criminal justice system.

- A. What criminal justice information is available from other donor/development partners?
- B. Which donor/development partners are active in the area of criminal justice information system?
- C. Which donor/development partners are involved in other areas of public sector information management systems?
- D. Which donor/development partners are active in the area of human rights, prisoners' rights, children's rights, women's rights, etc. and are concerned with monitoring how the criminal justice system respects these rights?
- E. What information system development 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?
- F. Can some justice reform and capacity development projects in the justice and security sector incorporate work on developing better systems of information management in the criminal justice sector?

-
- ¹ Ammons, D.N. (Ed.), *Accountability for Performance – Measurement and Monitoring in Local Government*. Washington (D.C.): ICMA, p. 61.
- ² Internal City/County Management Association (ICMA) (2003). *Comparative Performance Measurement – FY 2002 Data Report*. Washington (D.C.): ICMA, November 2003, Chapter 13, "Police Services".
- ³ Moore, M.H. and M. Peothig (1999). "The Police as an Agency of Municipal Government: Implications for Measuring Police Effectiveness", in Langworthy, H. (Ed.), *Measuring What Matters – Proceedings From the Policing Research Institute Meetings*. Washington, D.C.: National Institute of Justice, U.S. Department of Justice, pp. 151-167.

ANNEX A. KEY DOCUMENTS

UNITED NATIONS

- *Manual for the Development of A System of Criminal Justice Statistics*. Studies in Methods Series F No. 89. United Nations. Department of Economic and Social Affairs, Statistics Division, New York, 2004.
- *Questionnaire for the 2000 International Crime Victim Survey*. United Nations Interregional Crime and Justice Research Institute (UNICRI), 2000.
- *Format and Guidelines for the Preparation of UNODC Country Profiles*, UNODC, Vienna, 2004.
- Questionnaire for the Ninth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems, covering the period 2003 – 2004. UNODC, Vienna, 2005.
- *Manual for the Development of Juvenile Justice Indicators*, UNICEF/UNODC (2006).

OTHER USEFUL SOURCES

- *Measuring Progress towards Safety and Justice: A Global Guide to the Design of Performance Indicators Across the Justice Sector*. Vera Institute of Justice, New York, 2003

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	Overview of Available Crime and Criminal Justice Information			
2.1	Scope And Contents Of Administrative Criminal Justice Statistics	<ul style="list-style-type: none"> ▪ UN Survey on Crime Trends and the Operations of Criminal Justice Systems ▪ Country Profiles ▪ International crime statistics 	<ul style="list-style-type: none"> ▪ UNODC ▪ UNODC ▪ UNODC (Interpol) 	
2.2	Victimization Surveys	<ul style="list-style-type: none"> ▪ Reports on victimization surveys ▪ Media reports ▪ Reports by international institutions 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Academic institutions ▪ UNODC/ UNICRI ▪ Donor agencies 	
3	Caseload Data			
3.1	Administrative Crime Statistics	<ul style="list-style-type: none"> ▪ Police Reports ▪ National Statistics Agency publications ▪ Minister of Justice's publications ▪ Internal police administrative reports/documents 	<ul style="list-style-type: none"> ▪ Police officials ▪ National statistical agency ▪ Ministry of Justice ▪ Ministry of Interior 	
3.2	Police Caseload	<ul style="list-style-type: none"> ▪ Police reports and publications ▪ Internal police administrative reports ▪ Publications by the Ministry of Interior or Ministry of Justice 	<ul style="list-style-type: none"> ▪ Police officials ▪ National statistical agency ▪ Ministry of Justice ▪ Ministry of Interior 	
3.3	Prosecution Caseload	<ul style="list-style-type: none"> ▪ Court publications ▪ Annual reports by prosecution services ▪ Reports of the Ministry of Justice or Attorney General 	<ul style="list-style-type: none"> ▪ Court officials ▪ Prosecution services ▪ Court administrators or Registrar ▪ Ministry of Justice or Attorney General ▪ Ministry of Interior 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
3.4	Court Caseload	<ul style="list-style-type: none"> ▪ Court publications ▪ Annual reports by prosecution services ▪ Reports of the Ministry of Justice or Attorney General ▪ Special studies (including studies on alternative conflict resolution mechanisms and tribal courts) 	<ul style="list-style-type: none"> ▪ Court officials ▪ Prosecution services ▪ Court administrators ▪ Registrar ▪ Ministry of Justice or Attorney General ▪ Ministry of Interior ▪ Academic institutions 	
3.5	Prison Caseload	<ul style="list-style-type: none"> ▪ Reports from prison authorities ▪ Administrative reports ▪ Ministry of Interior ▪ Reports by human rights organizations 	<ul style="list-style-type: none"> ▪ Prison officials ▪ Prisoners' rights and human rights organizations ▪ Ministry of Interior ▪ Academic institutions 	
3.6	Non-Custodial Sanctions Programme Caseload Characteristics	<ul style="list-style-type: none"> ▪ Special reports ▪ Ministry of Interior ▪ Correctional services reports ▪ Reports by NGOs 	<ul style="list-style-type: none"> ▪ Ministry of Interior ▪ Correctional authorities ▪ Probation services ▪ NGOs 	
4	Caseload Characteristics Data	<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪ 	
4.1	Police Caseload Characteristics	<ul style="list-style-type: none"> ▪ Police reports and publications ▪ Internal police administrative reports ▪ Publications by the Ministry of Interior or Ministry of Justice 	<ul style="list-style-type: none"> ▪ Police officials ▪ National statistical agency ▪ Ministry of Justice ▪ Ministry of Interior 	
4.2	Prosecution Caseload Characteristics	<ul style="list-style-type: none"> ▪ Court publications ▪ Annual reports by prosecution services ▪ Reports of the Ministry of Justice or Attorney General 	<ul style="list-style-type: none"> ▪ Court officials ▪ Prosecution services ▪ Court administrators or Registrar ▪ Ministry of Justice or Attorney General ▪ Ministry of Interior 	
4.3	Court Caseload Characteristics	<ul style="list-style-type: none"> ▪ Court publications ▪ Annual reports by prosecution services ▪ Reports of the Ministry of Justice or Attorney General ▪ Special studies (including studies on alternative conflict resolution mechanisms and tribal courts) 	<ul style="list-style-type: none"> ▪ Court officials ▪ Prosecution services ▪ Court administrators ▪ Registrar ▪ Ministry of Justice or Attorney General. ▪ Ministry of Interior ▪ Academic institutions 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.4	Prison Caseload Characteristics	<ul style="list-style-type: none"> ▪ Reports from prison authorities ▪ Administrative reports ▪ Ministry of Interior ▪ Reports by human rights organizations 	<ul style="list-style-type: none"> ▪ Prison officials ▪ Prisoners' rights and human rights organizations ▪ Ministry of Interior ▪ Academic institutions 	
4.5	Non-Custodial Sanctions Programme Caseload Characteristics	<ul style="list-style-type: none"> ▪ Special reports ▪ Ministry of Interior ▪ Correctional services reports ▪ Reports by NGOs 	<ul style="list-style-type: none"> ▪ Ministry of Interior ▪ Correctional authorities ▪ Probation services ▪ NGOs 	
5	Resource Data	<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪ 	
5.1	Police Resources	<ul style="list-style-type: none"> ▪ Police reports and publications ▪ Internal police administrative reports ▪ Publications by the Ministry of Interior or Ministry of Justice 	<ul style="list-style-type: none"> ▪ Police officials ▪ National statistical agency ▪ Ministry of Justice ▪ Ministry of Interior 	
5.2	Prosecution Resources	<ul style="list-style-type: none"> ▪ Court publications ▪ Annual reports by prosecution services ▪ Reports of the Ministry of Justice or Attorney General 	<ul style="list-style-type: none"> ▪ Court officials ▪ Prosecution services ▪ Court administrators or Registrar ▪ Ministry of Justice or Attorney General ▪ Ministry of Interior 	
5.3	Court Resources	<ul style="list-style-type: none"> ▪ Court publications ▪ Annual reports by prosecution services ▪ Reports of the Ministry of Justice or Attorney General ▪ Special studies (including studies on alternative conflict resolution mechanisms and tribal courts) 	<ul style="list-style-type: none"> ▪ Court officials ▪ Prosecution services ▪ Court administrators ▪ Registrar ▪ Ministry of Justice or Attorney General ▪ Ministry of Interior ▪ Academic institutions 	
5.4	Prison Resources	<ul style="list-style-type: none"> ▪ Reports from prison authorities ▪ Administrative reports ▪ Ministry of Interior ▪ Reports by human rights organizations 	<ul style="list-style-type: none"> ▪ Prison officials ▪ Prisoners' rights and human rights organizations ▪ Ministry of Interior ▪ Academic institutions 	
5.5	Non-Custodial Sanctions Programmes' Resources	<ul style="list-style-type: none"> ▪ Special reports ▪ Ministry of Interior ▪ Correctional services reports ▪ Reports by NGOs 	<ul style="list-style-type: none"> ▪ Ministry of Interior ▪ Correctional authorities ▪ Probation services ▪ NGOs 	
6	Performance Indicators	<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪ 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
6.1	Police Performance Indicators	<ul style="list-style-type: none"> ▪ Administrative data/official reports of the main criminal justice agencies ▪ Crime data ▪ Victimization survey data/reports. Reports and Administrative data of the police ▪ Police reports and publications ▪ Internal police administrative reports ▪ Publications by the Ministry of Interior or Ministry of Justice ▪ Reports from the Home Office ▪ Reports for civilian police oversight agencies ▪ Reports human rights organizations 	<ul style="list-style-type: none"> ▪ Police officials ▪ National statistical agency ▪ Ministry of Interior ▪ Ministry of Justice and/or Attorney General, ▪ Human rights organizations, ▪ UNICEF national office, ▪ Ministry of Interior of Ministry of Justice and/or Attorney General, ▪ Civilian oversight of police agencies; ▪ Ombudsman's office and other human rights organizations; ▪ Defence Bar ▪ Academic institutions 	
6.2	Prosecution Performance Indicators	<ul style="list-style-type: none"> ▪ Court publications/reports ▪ Annual reports by prosecution services ▪ Reports of the Ministry of Justice or Attorney General 	<ul style="list-style-type: none"> ▪ Court officials ▪ Prosecution services ▪ Court administrators or Registrar ▪ Ministry of Justice or Attorney General ▪ Ministry of Interior ▪ Academic institutions 	
6.3	Court Performance Indicators	<ul style="list-style-type: none"> ▪ Court publications, including annual reports ▪ Annual reports by prosecution services ▪ Reports of the Ministry of Justice or Attorney General 	<ul style="list-style-type: none"> ▪ Court officials ▪ Prosecution services ▪ Court administrators ▪ Registrar ▪ Ministry of Justice or Attorney General ▪ Ministry of Interior ▪ Academic institutions 	
6.4	Corrections Performance Indicators	<ul style="list-style-type: none"> ▪ Reports from prison authorities ▪ Administrative reports ▪ Ministry of Interior ▪ Reports by human rights organizations 	<ul style="list-style-type: none"> ▪ Prison officials ▪ Prisoners' rights and human rights organizations ▪ Ministry of Interior ▪ Academic institutions 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
6.5	Crime Prevention Performance Indicators	<ul style="list-style-type: none"> ▪ Administrative data/official reports of the main criminal justice agencies ▪ Crime data, victimization survey data/reports. ▪ Reports from prison authorities ▪ Administrative reports ▪ Ministry of Interior ▪ Reports by human rights organizations 	<ul style="list-style-type: none"> ▪ Police officials ▪ National statistical agency ▪ Ministry of Interior ▪ Ministry of Justice and/or Attorney General, ▪ Human rights organizations, 	
6.6	Juvenile Justice Rights-Based Indicators	<ul style="list-style-type: none"> ▪ Report and Administrative data of the police, the courts and prisons/detention centres ▪ Reports and administrative data of child protection agencies ▪ UNICEF reports ▪ Defense Children International reports ▪ Reports produced by Ombudsman's Office and human rights agencies ▪ Coroner's reports; ▪ Reports from Health Care Services providers or hospitals; ▪ Administrative data from child detention centres ▪ Report from school authorities ▪ Media reports ▪ Court cases ▪ Scholarly studies ▪ Assessments conducted by other donors 	<ul style="list-style-type: none"> ▪ Police officials ▪ Court officials ▪ Prison officials ▪ Child protection agencies/departments ▪ Children's rights and human rights organizations ▪ Ombudsman/human rights authority ▪ UNICEF national office ▪ Academics ▪ Donors ▪ Government Ministries (Attorney General, Justice, Ministry of Interior) ▪ Journalists 	
7	Donor Coordination	<ul style="list-style-type: none"> ▪ Donor reports ▪ Site visits ▪ Meetings with donors ▪ Government reports ▪ Project descriptions 	<ul style="list-style-type: none"> ▪ Donors ▪ Government Ministries (Attorney General, Justice, Ministry of Interior) 	



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CROSS-CUTTING ISSUES
Juvenile Justice

Criminal justice
assessment
toolkit

2

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Juvenile Justice

Criminal Justice Assessment Toolkit



UNITED NATIONS
New York, 2006

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This publication has not been formally edited.

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PART A: CHILDREN IN CONFLICT WITH THE LAW

1. INTRODUCTION

Systems for dealing differently with children in trouble with the law have existed for more than a century, commencing with the establishment of separate institutions for delinquent and ‘at risk’ children, and followed shortly thereafter by legislative provisions to establish separate courts for children. Although different models prevailed from early on, a dominant approach was to focus upon child welfare, that is the best interest of the child. This approach is premised on the idea of interventions in the best interests of children, focusing on their needs rather than their deeds, and based on the involvement of social workers assisting the court in a professional capacity. Frequently, such systems of child justice are surrounded by a variety of therapeutic and education institutions for the rehabilitation and reintegration of child offenders, or those deemed to be at risk. Other juvenile justice systems that can be characterised as distinctive are based on a court system that more closely resembles the adult criminal justice system, or on administrative panels or other informal adjudicative processes.¹ Finally, in some countries, no – or very little – special provision is made for children in conflict with the law. A vast disparity in forms and types of courts, services and institutions that make up juvenile justice systems therefore abounds, and this assessor tool is intended to be used in relation to all of these.

The key players and stakeholders concerned with a juvenile justice may include the usual role players in the criminal justice system generally – police, prosecution and courts, but may, in addition, involve a range of other functionaries and service providers. Examples include social workers and probation officers, local government authorities, child and youth care workers at care and rehabilitation institutions, prison officials, service providers who provide alternative programmes to prosecution for children in conflict with the law (diversion service providers),² community workers, and indeed insofar as restorative justice processes and lay panels are concerned, ordinary citizens may be drawn into criminal justice processes where children are accused of an offence.

The central context relative to children in conflict with the law relates to the fact that due to their age and immaturity, children warrant separate and different treatment from their adult counterparts in criminal processes. This is premised the special vulnerability and limited capacity of children, who are still in a formative stage of development. Not only should any action that is taken be assessed according to the standards of the child’s best interests, but the system should be responsive to the child’s care and developmental needs in order to ensure that children are reintegrated back into their communities as law abiding citizens. Juvenile justice systems should therefore focus not only on the nature of the offence committed, but also on the root causes of the offending and the individual circumstances of the child involved.

However, many (if not most) juvenile justice systems do not in practice operate in the best interests of the child, and children’s rights can be severely comprised in a variety of ways. A recent Defence for Children International Report³ indicated that there are more than a million children behind bars in prisons, and deprivation of liberty in other institutions linked to the juvenile justice system is often used unnecessarily and for longer than is required. The period during which children are most at risk is that following arrest, whilst in police custody, as it is then that detained children are most likely to become victims of torture and other forms of cruel treatment.⁴ Even supposedly child welfare focused systems can violate children’s rights, as they may deny basic due process safeguards, permit interventions for offences that would not otherwise attract the attention of authorities, and use deprivation of liberty in care and education oriented institutions as a primary response to child offending.

A country’s juvenile justice system is often integrally linked to service delivery in other sectors of the society, such as access to education in general, access to health care, and access to social services. Research abounds which indicates the correlation between dysfunctional family and community life and childhood delinquency. Consequently, an assessor may have to have regard to

societal factors and development issues outside the criminal justice arena in assessing the juvenile justice system of a country.

International law in the area of juvenile justice is substantial and detailed, and regard may also be had to more general instruments in the criminal justice and penal policy area. The primary child rights instruments are the **Convention on the Rights of the Child** (1989), the **UN Standard Minimum Rules for the Administration of Juvenile Justice** (1985), the **UN Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty** (1990), the **UN Guidelines for the Prevention of Juvenile Delinquency** (1990), and the **UN Guidelines for Action on Children in the Criminal Justice System** (1997). A recent child-specific instrument which has an intersecting relevance to juvenile justice is the **ILO Convention 182 concerning the Elimination and immediate prohibition of the Worst Forms of Child Labour** (Convention 182) of 1999, insofar as this Convention identifies children who are used by other young people or by adults to commit offences as a worst form of child labour. Other generally applicable instruments include the **UN Standard Minimum Rules for Non-Custodial Measures** (the **Tokyo Rules**), the **UN Basic Principles on the use of Restorative Justice Programmes in Criminal Matters**, The **UN Standard Minimum Rules for the Treatment of Prisoners**, the **Convention against Torture**, and the **Optional Protocol to the Convention against Torture**. At regional level, the **African Charter on the Rights and Welfare of the Child** contains specific juvenile justice provisions.

The focus in this assessment tool will be weighted toward child-specific instruments.

An important recent document that has guided the development of this assessor tool is the **UNICEF/UNODC Manual for the Measurement of Juvenile Justice Indicators** (April 2006), which represents an attempt to define and elaborate global indicators for this sector. The document identifies 15 indicators, all chosen on the basis of their feasibility, and because they will assist local and national officials to assess the extent to which the juvenile justice system for which they are responsible is in place and functioning. The 15 indicators consist of 11 quantitative indicators and 4 policy indicators. The quantitative indicators consist of both ‘snapshot’ measurements’ and measurements that must be made over a period of time – 12 months in some cases.

Four of the 11 quantitative indicators are identified as core. All fifteen juvenile justice indicators are important for the assessment of the situation of children in conflict with the law. However, in situations where a country is unable to measure all fifteen indicators, the core indicators are those that should be measured as a matter of priority.

Indicator		Definition
Quantitative Indicators		
1	Children in conflict with the law	▪ Number of children arrested during a 12 month period per 100,000 child population
2	Children in detention (CORE)	▪ Number of children in detention per 100,000 child population
3	Children in pre-sentence detention (CORE)	▪ Number of children in pre-sentence detention per 100,000 child population
4	Duration of pre-sentence detention	▪ Time spent in detention by children before sentencing
5	Duration of sentenced detention	▪ Time spent in detention by children after sentencing
6	Child deaths in detention	▪ Number of child deaths in detention during a 12 month period, per 1,000 children detained
7	Separation from adults	▪ Percentage of children in detention not wholly separated from adults
8	Contact with parents and family	▪ Percentage of children in detention who have been visited by, or visited, parents, guardian or an adult family member in the last 3 months
9	Custodial sentencing (CORE)	▪ Percentage of children sentenced receiving a custodial sentence
10	Pre-sentence diversion (CORE)	▪ Percentage of children diverted or sentenced who enter a pre-sentence diversion scheme
11	Aftercare	▪ Percentage of children released from detention receiving aftercare

		Policy Indicators
12	Regular independent inspections	<ul style="list-style-type: none"> ▪ Existence of a system guaranteeing regular independent inspection of places of detention ▪ Percentage of places of detention that have received an independent inspection visit in the last 12 months
13	Complaints mechanism	<ul style="list-style-type: none"> ▪ Existence of a complaints system for children in detention ▪ Percentage of places of detention operating a complaints system
14	Specialised juvenile justice system (CORE)	<ul style="list-style-type: none"> ▪ Existence of a specialised juvenile justice system
15	Prevention	<ul style="list-style-type: none"> ▪ Existence of a national plan for the prevention of child involvement in crime

The four principles that underpin the application of the **Convention on the Rights of the Child** as a whole, including provisions relevant to juvenile justice, are:

- The best interest of the child, which should be a primary consideration in all matters affecting the child, (Article 3).
- The principle of non-discrimination, irrespective of a child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth of other status, (Article 2).
- The child's right to survival and development, (Article 6).
- The right to the child to participate in decisions affecting him or her, and in particular to be provided the opportunity to be heard in any judicial or administrative proceedings affecting the child, (Article 12).

The **UN Guidelines for Action on Children in the Criminal Justice System**, 1997, recommend that, in implementing the Guidelines, consideration should be given to the following:

- Respect for human dignity, compatible with the four general principles underlying the Convention, namely: non-discrimination, including gender sensitivity; upholding the best interests of the child; the right to life, survival and development; and respect for the views of the child;
- A rights- based orientation;
- A holistic approach to implementation through maximization of resources and efforts;
- The integration of services on an interdisciplinary basis;
- Participation of children and concerned sectors of society;
- Empowerment of partners through a developmental process;
- Sustainability without continuing dependency on external bodies;
- Equitable application and accessibility to those in greatest need;
- Accountability and transparency of operations;
- Proactive responses based on effective preventive and remedial measures⁵.

The CRC sets an upper age of childhood at 18 years, unless according to law majority is attained earlier. Ideally, any separate juvenile justice system should therefore benefit all persons below the age of 18 years. There are, internationally, many dedicated juvenile justice systems that exclude some children from its operation, either on the basis of age, as in Scotland, where the Children's Hearing system applies to children aged below 16 years, or on the basis of the offence committed, as in the United States, where juvenile court jurisdiction may be waived and the child tried in adult court. In some countries there may be more than one minimum age of criminal responsibility depending on the category of offence concerned. This tool is designed to apply to all children aged under 18, in accordance with the international benchmark distinguishing childhood contained in the CRC, regardless of whether the system differentiates between children and older youth, by, for example, regarding older children as 'juveniles' or as adults and not children. The assessor will thus in some cases have to consider to separate systems.

In some countries, the juvenile justice system also benefits young adults who are aged over 18, typically 18 – 21 year olds. UNICEF/UNODC recommend that for the purposes of measurement of juvenile justice indicators this category of older offender not be considered as required information,

although the tools supplied in their Manual could usefully be (separately) applied. For reasons of consistency, the same approach is advocated in this assessor tool, namely that the juvenile justice system is generally taken to mean the system which applies to all children aged below 18 years who come into conflict with the law.

As regards the lower age limit, the provisions are less clear, as Article 40(3)(a) requires the setting of a minimum age below which children shall be presumed to lack the capacity to infringe the penal law, without specifying a particular age. The monitoring body for the CRC has consistently regarded any minimum age below 10 years as being too low, bearing in mind children's maturity and developmental level, and has regularly requested countries to consider raising the minimum age of criminal capacity to 12 years or higher. There is considerable international disparity in where countries have fixed the minimum age, ranging from 7 years, which prevails in many common law jurisdictions, to ages as high as 16 years in Mozambique.

In some countries, ascertainment of a person's age to determine whether or not that person is a child aged below 18 is no easy task, as effective birth registration systems are not in place, nor are accessible and verifiable means of establishing age (and sometimes identity) available. In these countries, collecting data on the administration of juvenile justice can be frustrated by the fact that the ages of young offenders are falsified by police authorities to enable them to avoid steps required to be undertaken where juvenile offenders are concerned. The **UN Guidelines for Action on Children in the Criminal Justice System** requires states to ensure the effectiveness of birth registration programmes, but in those instances where the age of the child involved in the justice system is unknown, recommends that measures be taken to ascertain the true age of a child by independent and objective assessment, (Guideline 12).

The CRC contains numerous further principles guiding the development and application of systems of juvenile justice, and six of special note can be identified. These are:

- The requirement that children be kept separately from adults (persons 18 years or older) whilst deprived of liberty⁶ (Article 37(c)).
- The requirement that deprivation of liberty be used only as a last resort, and then only for the shortest period of time, (Article 37(b)).
- The requirement that children in conflict with the law be treated in a manner consistent with the promotion of a child's sense of dignity and worth, in a manner which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child assuming a constructive role in society, (Article 40(1)).
- The requirement that due process guarantees be observed in juvenile justice processes and proceedings⁷, Article 40 (2).
- The overarching requirements that separate laws, procedures, authorities and institutions specifically apply to children accused of infringing the penal law, Article 40 (3).
- The requirement that measures be established for dealing with children without resorting to judicial proceedings (diversion), provided that human rights and legal safeguards are fully respected, Article 40 (3)(b).

2. OVERVIEW

Please refer to **Cross-Cutting Issues: Criminal Justice Information** for guidance on the gathering of key criminal justice statistical data that will help provide an overview of the prison population, the number of offenders sentenced to non-custodial sanctions and the overall capacity of the criminal justice system 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.

Written sources of information may include, if they exist:

- Ministry of Justice Reports
- Ministry of Women, Youth and Children Reports

- Children’s Ombudsmen reports
- Juvenile Justice Board Reports
- Penal system reports, including the prosecution, prison and probation systems
- National Police crime reports
- Court annual reports
- Ministry of Social Affairs or Welfare department reports
- Human Rights Commission reports
- Legal Aid Services reports
- Non-governmental organisations reports on the juvenile justice system or aspects related to it (e.g. prisons, diversion)
- Reports of organisations rendering services to children in conflict with the law, including crime prevention services and diversion services
- Education or training institutions reports in respect of places to which sentenced children may be referred
- Reports from or on Private institutions or facilities used as detention or sentence options for children
- Drug treatment centres insofar as children may be referred to these as a sentence
- Reports of independent bodies tasked with monitoring or inspecting places where children are deprived of their liberty
- Donor reports

A diverse array of people might be able to furnish the relevant information, including the Ministry of Justice, the Ministry of Welfare, the Ministry of the Interior, senior probation officers, judges, non- governmental organisations and donor organizations.

Statistical information on juvenile justice systems varies greatly internationally, and the fact the some countries do not include all persons aged below 18 in their juvenile justice systems, as well as the fact that in many countries the statistics for child offenders are not disaggregated from general figures (e.g. statistics on prosecutions, or detention in police custody) often renders it difficult to collect meaningful and comprehensive data. Where a system permits some children to be tried in the adult criminal justice system, general criminal justice statistics may have to be consulted to determine whether separate information concerning children aged less than 18 years can be assessed.

Further, the above difficulties are compounded by ‘mixed’ systems in which children in need of care and protection (who have not come into conflict with the law) are also dealt with in the juvenile court or juvenile justice system. Thus, children in detention may have arrived there either via a system of social services or child protection or by the juvenile (or adult) criminal justice system.

UNICEF/UNODC suggest that for the purposes of the indicators, children who have entered the system mainly through the juvenile justice system or the adult criminal justice system should define the scope of inquiry, which would therefore include children who have been arrested seemingly inappropriately – e.g. for being at risk of delinquency’ or ‘in an irregular situation.’⁶

As regard the difficulties associated with age, it is strongly recommended that assessors consider in all settings – courts, police stations, places of detention – the age of young people that they encounter (both as given by the children themselves and by staff and as recorded, discrepancies will be useful in determining the reality of the system), and how any recorded age has been determined.

Answers to the questions below will assist the assessor to establish the extent and reliability of available data concerning children and the juvenile justice system.

- A. How many people who are aged below 18 years, whether they are defined as children, juveniles, or adults, come into contact with the criminal justice system each year? Are these statistics separately available in a distinct system geared towards alleged offenders aged below 18 years? If not, what sources need to be consulted in order to ascertain this figure? If the applicable system permits trials of children in adult courts, do adult criminal justice statistics disaggregate the numbers of children aged below 18 in conflict with the law?
- B. Are the following statistics available? On an annual basis?
 - The number of children diverted away from the criminal justice system
 - The number of prosecutions of children aged below 18
 - The number of convictions of children aged below 18
 - The number of sentences involving deprivation of liberty involving children aged below 18 years
 - The number of children in the country and the proportion of children entering the juvenile justice system

- C. Are statistics on children deprived of their liberty available in the following categories
 - Children in penal institutions
 - Children in closed remand institutions
 - Children on remand in police custody
 - Children in care or welfare facilities who have been referred there on remand from the juvenile justice system

- D. What is the profile of children in the juvenile justice system?
 - By gender
 - By age
 - By ethnic group or minority
 - By national and foreign citizenship status
 - Are there any other overrepresented groups in the system
 - By offence category, e.g. violent/ non- violent

- E. Are statistics available on the number of children for whom alternatives to deprivation of liberty whilst awaiting trial are used (bail, home-based supervision, release into parental care)?

- F. Are statistics available on the average time a child spends in pre-trial detention before acquittal or conviction? Is there a legal time limit and is this time limit respected?

- G. What percentage of children in the juvenile justice system does legal counsel represent?

- H. What percentage of children in the juvenile justice system receives a sentence involving deprivation of liberty? And for what kinds of offences? Is there a legal limit to the maximum period for which a child can be deprived of liberty as a sentence?

- I. Are there statistics available on the percentage of children in the juvenile justice system who can be regarded as being children in need of special protection measures, such as children who are living or working on the streets, children permanently deprived of a family environment, children with disabilities, and refugees, immigrant and non national children?⁹

- J. Are there any statistics on re-offending among children who have been adjudicated to have infringed the penal law, both those who have served community sanctions or alternative measures, and those deprived of their liberty in welfare, education or penal institutions?

3. LEGAL AND REGULATORY FRAMEWORK

When assessing any country, it will be important to look at the system inside and outside the capital or main cities. In many countries a separate system might have been set up in theory to cover the whole country, in practice separate institutions will only exist in one or two cities due to lack of resources or real or perceived low number of cases. In such cases, it will be important to look at how children are treated in those regions where no separate institutions have been set up or are they sent to the capital or are they dealt with by the adult system?

3.1 GENERAL MEASURES

- A. Is there legislation establishing a separate system for the administration of juvenile justice? If not, which other legal provisions in general penal law or child protection laws apply specifically to children in conflict with the law? When was legislation relating to children in conflict with the law last reviewed? What is/are the competent authorities provided for in this legislation for the adjudication of cases involving children in conflict with the law? If there is a specific juvenile justice law, are there nevertheless other relevant pieces of legislation, e.g. child care and protection laws, criminal procedure legislation, prison laws or criminal codes that are relevant to the juvenile justice system?
- B. How is a “child” defined in relation to the juvenile justice system? Is this age consistent for all groups of children and for children accused of committing any kind of offence? Are there measures in place to establish the correct ages of persons suspected of being children when they face criminal justice processes? Are these measures administrative, legal or are they measures of another type?
- C. Does the law (statutory or otherwise) establish a minimum age for criminal responsibility, and is this age uniform for all children in the juvenile justice system? Is the minimum age set at a sufficiently high level, i.e. not too low, bearing in mind children’s age and maturity? Are there non-penal supportive measures available for dealing with children below the minimum age of criminal responsibility who might come into conflict with the law? Has the minimum age recently been reviewed? Are children who are below the legal age of criminal responsibility ever subjected to criminal charges?
- D. Is the juvenile justice system premised on emphasizing the well-being of children, and is the principle of proportionality adhered to? **Beijing Rule 5.1.**
- E. Are basic procedural safeguards (such as the presumption of innocence, the right to be notified of charges, the right to confront and cross-examine witnesses) guaranteed at all stage of the proceedings? **Beijing Rule 7.1.**
- F. Is children’s right to privacy protected at all times during the arrest, adjudication and any subsequent process? **Beijing Rule 8.** Are court proceedings held without the public being present? May the identities of children in conflict with the law be revealed in the press or other media?
- G. Does the law make provision for parental or other similar assistance to children in conflict with the law? **Article 40 (2)(b)(iii) of CRC.** Are there legal requirements that parents or guardians be notified that a child has come into the juvenile justice system, and, if so, are these provisions enforced? May parents be present during evidential procedures such as when a confession is noted or when fingerprints are taken? Do parents play a role in adjudicatory phases of the juvenile justice system?

- H. Can children be subjected to the measures of the juvenile justice system for actions or behaviour that, if they were adult, would not be sanctionable or warrant the attention of the authorities, e.g. truancy, being on the street, delinquency, being beyond control?
- I. Are children accused of the commission of serious offences treated in the same system as children charged with less serious offences? If not, for which offences, and for children of which age is there a separate system? Do these children forfeit the benefits of the juvenile justice system? May they receive adult sentences? May they be deprived of their liberty in adult institutions?
- J. Does the law provide for legal representation of children facing charges in the juvenile justice system? **Article 37(d) of CRC.** Is this available freely where children cannot afford to employ private legal representatives? Are their standards in law or policy to which legal representative assisting children in the juvenile justice system must adhere? Is adherence to any such standards monitored, and are there remedies for children with complaints about their legal representation?
- K. Are the services of interpreters available to children who need this assistance free of charge and at all stages of the criminal process? **Article 40(2)(vi) of CRC.**

3.2 INITIAL CONTACT

- A. Are contacts between law enforcement agencies and children in conflict with the law managed in such a way as to respect the legal status of the juvenile, and promote his or her well-being and avoid harm? Are the details of children in detention separately recorded? Can a child in conflict with the law be diverted by law enforcement authorities without the necessity of resorting to a formal trial? **Beijing Rule 11.**
- B. Are police officers who primarily deal with children in conflict with the law specially trained and instructed? **Beijing Rule 12.** Is this the case in the whole country or only in limited geographic areas? Does police training in general include special training on children's rights, child development, and international standards applicable to children?
- C. Are there measures in place to ensure that detention in police custody is used only as a last resort and then only for the shortest possible period of time? **Beijing Rule 13.** Are children in police custody separated from offenders over the age of 18 years? Are children in police custody provided with care, protection and all necessary services they may require in view of their age, sex, and personality? **Beijing Rule 13.** Are there differences within the country in this regard?
- D. Are there sufficient and special measures to avoid pre-trial detention in police custody for children provided for in legislation, such as avoidance of arrest, close supervision, placement with families, in an educational setting or elsewhere? **Beijing Rule 13.2.**
- E. Are children in police custody afforded adequate accommodation, food, clothing, bedding, in a child-friendly environment? Are there opportunities for recreation and exercise? Is access to education guaranteed? Are children in police custody permitted maximum access to parents and families? Was this evidenced by children's/parents' statements during visits?
- F. What measures exist, including legal measures, to prevent physical and other forms of harm to children in their contact with the police? What follow-up takes place if a complaint about police brutality or the denial of children's rights is made? Is there an independent and impartial investigation regarding reports of police misconduct? Are

records of such investigations and ensuing disciplinary or other measures against police available?

- G. What is the maximum period after initial contact with the police after which children are brought before a competent authority? Is this complied with?

3.3 DIVERSION

Diversion is the channelling of certain cases away from the criminal justice system, usually on certain conditions. In common law systems, it may be achieved through the operation of prosecutorial discretion, but in civil law systems it may be the judicial officer who makes the decision to divert matters. In many systems, diversion decisions are made earlier on the criminal justice process by other professionals such as the police through the use of cautioning programmes, and increasingly legislation is providing a framework for a more rigorous consideration of diversion for children. Diversion is usually premised on an acknowledgement of responsibility for the offence, and an agreement to make amends for the crime, usually by performing community services or compensating the victim. Where children are concerned, diversion frequently entails attendance at a programme, such as a life skills programme, sexual offences programme or anger management programme. For juvenile justice, diversion is one of the key elements of a sound system. It avoids the child getting a criminal record and being branded at an early age, it avoids children being stigmatized or contaminated through contact with criminal processes, it minimizes the deprivation of their liberty and possible contact with more hardened offenders, and the child may learn valuable lessons from programmes, and acquire social responsibility through the performance of community service or by making amends to the victim, all of which can help to reduce re-offending.

- A. Does the juvenile justice system encourage the use of alternatives to prosecution and court-based trials, and to what extent does this occur? How early in the juvenile justice process can diversion take place, and is diversion possible throughout the juvenile justice process?
- B. Is diversion provided for in legislated form, and if not, what is the basis for diverting children out of the juvenile justice system? Who is the actor responsible for exercising discretion in regard to diversion (prosecutor, district attorney, child welfare officer, social worker, reporter)? What information is available to that professional to inform the decision to divert or not, and what are the main reasons that form the basis for the decision? Are these actors trained in diversionary processes and programmes, children's rights and applicable international standards? Do children have access to legal or other representation during the diversionary process? May any case be diverted, if the child's circumstances indicate that this is in the child's best interests? Does diversion require judicial approval? Please see ACCESS TO JUSTICE: THE PROSECUTION SERVICE, 3.3.2.
- C. Are community-based programmes available to decision-makers who want to divert a child? Are these available for petty offences and more serious offences? Are there specific programmes to deal with issues such as sexual offences and violence? Are these programmes equally available to all children in conflict with the law? Are programme managers and presenters trained in the management of children in conflict with the law? Are due process safeguards guaranteed in diversionary processes and practices? Are there minimum standards for service providers to safeguard children's rights and promote programme effectiveness?

An example can be drawn from the **National Diversion Minimum Standards** developed in South Africa and released in 2005 by the National Department of Social Development. Standards 72 – 84 provide as follows:

- Diversion programmes include post-intervention assessments that measure changes in factors assessed in the pre-intervention assessment
- The diversion programme is reasonably geographically accessible to the child
- The programme is appropriate to the child's age, physical and cognitive ability
- The development of diversion programmes is based on research evidence of what works in reducing criminal behaviour in children and adolescents
- Diversion programmes design and activities can be shown to address the factors directly associated with offending, and are therefore likely to reduce the problem of re-offending

- Diversion programmes have a system for monitoring the quality of programme delivery
- Diversion programmes have a system for monitoring the child's progress including his or /her compliance with the conditions of his or her diversion order, and a record of reasons for non-compliance, where applicable
- The intensity of a diversion programme (frequency and duration of programme activities) vary according to the level of risk recorded in the pre-intervention assessments of participants (i.e. the most intensive services are delivered to higher risk cases; and less intensive services are provided to lower risk cases)
- A senior staff member regularly supervises diversion staff members
- The manner in which the programme is delivered encourages the active participation of the young offender
- Diversion programmes are subject to regular outcomes evaluations
- Diversion programme staff track participating children within one year of programme completion to establish the overall well-being of the child with an emphasis on further offending behaviour

- D. If diversion is not occurring, or occurring only to a limited extent, what are the impediments to it being practiced or practiced more widely? For example, are prosecutors not permitted to withdraw charges? Are existing programmes viewed as ineffectual?
- E. Is the consent of the child, his/her parents or guardian required for any diversion involving referral to community or other services? **Beijing Rules, 11.3.**
- F. Are there any mediation services to which parties to a case may be referred? Is there a mechanism or protocol for determining when mediation might be appropriate? Are families of children involved in mediations?
- G. Are there traditional or customary law dispute resolution systems that serve as diversionary channels? When do they get utilized in relation to juvenile justice? Are children's basic rights safeguarded in customary or traditional dispute resolution forums, including their rights to physical integrity, their rights to participate and other basic human rights?
- H. Are records of diversions kept, and are these disaggregated in such a way as to provide suitable profiles of which matters get diverted (e.g. by age, offence)? Do diversion statistics reflect children's equal access to diversion, or are geographical, ethnic, gender, racial, or other biases evident? What is the success rate of diversion in terms of preventing recidivism?

3.4 ADJUDICATORY PROCESS

- A. Where a child has not already been diverted, are cases dealt with by a competent authority (e.g. family court, juvenile court, criminal court, tribunal, board, council) according to the principles of a fair and just trial? **Beijing Rule 14.1.**
- B. Is the competent authority specialized and its members (judges, prosecutors etc.) to deal with children in conflict with the law? Are child-friendly environments and procedures followed? Are competent authorities specially trained and selected on children's rights and applicable international and national standards?
- C. How is the child's right to express his or her views, and the right to participate, fully respected at all stages of the process? **Article 12 (1) and (2) of CRC.** Are decision makers required by law to provide the child with an opportunity to express views, and to take account of this views, giving due weight to the age and maturity of the child? Does this happen in practice?

- D. Are social inquiry reports, prepared after proper investigation by trained professional, presented in all except cases involving minor offences before a disposition of the case is made? **Beijing Rule 16.**
- E. Do the dispositions of competent authorities reflect the principle that deprivation of liberty be used only as a last resort, and then for the shortest possible period of time? **Article 37(b) of CRC.** In law and in practice is deprivation of liberty restricted to where a child has been adjudicated as having committed a serious act involving violence, or of persistence in committing other serious offences for which there is no other appropriate response? **Beijing Rule 171.** Are the child's well-being and best interests a guiding factor in the consideration of his or her case and any disposition? **Article 3, CRC and Beijing Rule 17.1(d).**
- F. Are capital punishment and corporal punishment for crimes committed by children forbidden? **Article 37 of CRC and Beijing Rule 17.2 and 17.3.**
- G. Are there a variety of dispositions available to competent authorities to minimize recourse to institutionalization to the greatest extent possible, and is the child's right not to be separated from his or her parents or family (unless circumstances make this necessary) respected and protected? **CRC Article 9 and Beijing Rule 18.** Are competent authorities availing themselves of these dispositions?
- H. How long do cases involving children take in average to be considered by a competent authority? **Beijing Rule 20.** Are cases involving children prioritized over and above cases in which children are not involved?
- I. Are records of cases involving children kept strictly confidential and closed to third parties? **Beijing Rule 21.**
- J. Who is responsible for ensuring that any alternative measures which the competent authority may have imposed are followed? Who is responsible for supervision of any such measures? Are these professionals trained and properly qualified to facilitate the reintegration of children back into communities? Does the imposition of alternative measures suitably assist the vocational, educational, housing and psychosocial support necessary for the reintegration process?
- K. Are specialized services available for children with special needs, such as drug or other substance dependency, or physical and mental disability?
- L. Are referrals of cases to non- state justice systems possible, e.g. community or tribal courts or mediation? What is the percentage of cases involving children dealt with by the non-state system, and what is the success rate of reconciliation of disputes in the non-state system?
- M. Are measures imposed by competent authorities when children are adjudicated to having infringed the penal law subject to review by a higher competent, independent and impartial authority or judicial body? **Article 40(2)(b)(v), CRC.** Are dispositions, which involve deprivation of liberty subject to review by higher competent authorities? Is this in all instances? If not, which dispositions are subject to review? What percentage of dispositions and measures are reviewed by higher authorities?
- N. Have competent authorities identified instances where children have been used by adults to commit offences, a worst form of child labour under ILO Convention 182? Have appropriate steps been taken to follow up both as regards the adults and to safeguard and protect such children?

3.5 RESTORATIVE JUSTICE

- A. Is restorative justice a feature/element of the juvenile justice system? Does restorative justice form an element of the dispute resolution mechanism of the system? If so, who runs the restorative justice programmes? How often does this happen in practice? If the above are not being applied, what are the reasons?

Restorative process means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.

Restorative justice programme means any programme that uses restorative processes and seeks to achieve restorative outcomes.

Restorative outcome means an agreement reached as a result of a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender¹⁰

Restorative justice programmes may be used at any stage of the criminal justice system, subject to national law. When used before a case comes to trial or during the trial process, they can lead to the diversion of the case from criminal procedure, provided that an agreement is reached between victim and offender.

Restorative justice processes can be adapted to various cultural contexts and the needs of different communities, and are regarded as being especially suited to juvenile justice systems. Restorative justice has its roots in informal dispute resolution processes that still play an important role in a number of countries in Africa, South Asia and Latin America. Informal dispute resolution takes place in non-State justice settings/institutions, ranging from largely visible intra-family negotiations to quasi-state bodies that apply customary norms to resolve disputes. Non-State justice systems are more affordable and accessible to the poor, and allow for conflicts to be resolved without having to go through a long formal criminal justice process. They also have their drawbacks, such as lack of adequate accountability, discrimination based on social status, gender and wealth, as well as lack of human rights safeguards.

Further information see **CUSTODIAL AND NON-CUSTODIAL MEASURES: SOCIAL REINTEGRATION**; and **ACCESS TO JUSTICE: THE PROSECUTION SERVICE**; and the **UNODC Handbook on Restorative Justice**.

- B. Are children's rights protected, and their responsibilities promoted, during restorative justice processes?

Standards 85–87 of the **South African Minimum Norms and Standards for Diversion programmes** (2005) specifically concern restorative processes. They provide that:

- The details of the participants involved in the restorative justice initiative, and the possible consequences of the restorative justice initiative, are [to be] discussed with all parties involved in the process before their participation
- Participation in restorative justice initiatives is truly voluntary for both the offender and the victim (i.e. totally non-coercive)
- A key objective of restorative justice initiatives is increasing children's investment in and agreement with the decisions made

Standard **89** provides that a key objective of restorative justice initiatives is enhancing the perceived fairness of the process.

- C. Are restorative justice elements found in programme content?

This might require an investigation of the actual activities undertaken during programmes to identify whether restorative features are included, such as reparation to the victim, letters of apology or other means of acceptance of accountability.

- D. Is budgetary provision made for restorative justice as an element of the juvenile justice system, and if so, which agencies or government departments receive financial allocations for restorative justice? Is the budget sufficient and who monitors spending? When NGO's run restorative programmes do they receive funding for this? On a contract basis?
- E. What records of restorative outcomes are kept? To whom are these records available? Who is responsible for monitoring compliance with any agreement reached through a restorative process?

3.5 INSTITUTIONAL TREATMENT

Institutional treatment as used here refers to prevailing conditions at all places where children are in detention or are otherwise deprived of their liberty, and from which they may not leave at will. In juvenile justice systems, this could include an array of possible institutional settings, including welfare, penal and education institutions.

- A. Are annual figures available on child deaths in all forms of detention? What measures existing in penal law, policy and practice to follow up and investigate any deaths of children in detention? If deaths in detention are reported are reports of such investigations available?
- B. Are children kept separately from adults aged 18 or older in all forms of detention, and are females held separately from males? **Beijing Rule 26.3.** Are untried children separated from convicted children in detention? Does the legal system ensure that no child is received in a detention facility without a valid commitment order of a judicial administrative or other public authority? **JDL Rule 20.**
- C. Are children in detention provided with care, protection and all necessary services, including vocational, educational, and psychosocial services? Are personnel appropriately qualified and selected? **JDL Rule 81 and 82.** Have they received training in child psychology, child welfare, international standards?
- D. Which authority does management and staff in institutions where children are held report to? What's the proportion of male vs. female staff? Are teachers, psychologists, social workers and medical staff available and specially trained? Are these staff part of the staff of the institution or are they delegated by the relevant Ministries (Health, Education etc.)?
- E. With regard to education and vocational training is training offered inside institutions recognized by the general education system? Is education and vocational training offered in several levels/classes to adapt to the needs of the children?
- F. Are sufficient measures in place to ensure that children deprived of their liberty maintain contact with the outside world? Are parents and families allowed access to children in detention at least once per week? **Beijing Rule 26.5, JDL Rule 59.** Are friends and representatives permitted to visit? Are home visits permitted? Is contact between children and their parents or families encouraged and fostered by personnel? Is contact with the outside community permitted, including access to education and vocational opportunities in community settings?
- G. Is the physical accommodation at facilities where children are deprived of their liberty satisfactory with respect to:
 - Adequate and suitably prepared food at normal mealtimes?
 - Clean drinking water?
 - Lighting and ventilation?

- Health and hygiene?
 - Sanitary installations?
 - Clothing?
 - Sleeping facilities, access to sufficient bedding and warmth?
 - Adequate space?
 - Opportunities for privacy as well as opportunities for association with peers?
 - Exercise opportunities and the availability of meaningful day-to-day activities?
 - Access to reading material or other recreational materials, including newspapers, and other periodicals, and is access to other media permitted (radio and television)?
 - Adequate supervision by staff?
 - Effective measures to minimize the risk of fire?
 - Provision for complaints and requests?
- H. Are institutions where children are deprived of their liberty subject to a regular system of inspections by a duly constituted body that is not attached to the detention facility concerned? **JDL Rule 14, Optional Protocol to the Convention against Torture, 2002.** Is there a system of inspection of facilities where children are deprived of their liberty by qualified persons, on a regular basis and unannounced? **JDL Rule 72.** Are reports available to the assessor or the public? Do qualified medical officers participate in these inspections to evaluate the physical environment, medical services and all other aspects affecting the physical and mental health of children? **JDL Rule 73.**
- I. Are international standards on the admission of children to detention facilities complied with, regarding their being informed upon admission of their rights whilst in detention, insofar as an assessment of their needs must be undertaken to plan for their detention, and information concerning the rules and regulations, and complaints procedures, of the detention facility is provided to the child upon admission? **JDL Rules 18, 24, 25 and 27.** Are proper written individualised treatment plans prepared when special rehabilitative treatment is required?
- J. Are adequate, complete and secure records containing the following information maintained at every place where children are detained? **JDL Rule 21 and 22.**
- Information on the identity of the child
 - The fact of and reasons for commitment and the authority therefore
 - The day and hour of admission, transfer or release
 - Details of notifications to parents and guardians on every admission, transfer or release of the child in their care at the time of commitment
 - Details of known physical and mental health problems, including drug and alcohol abuse
- K. Is the transport of children in the juvenile justice system carried out in conveyances with adequate ventilation and light, in conditions that maintain dignity and do not cause hardship? **JDL Rule 26.** Are children separated from adults during transfer from one facility to another? Who/which authority/ies are responsible for transporting children in the juvenile justice system between places of detention?
- L. Are religious, cultural and other rights of children in detention adequately protected? Do children from linguistic heritages that differ from that prevailing at the institution have access to interpreters, particularly during medical examinations and disciplinary proceedings? **JDL Rule 6.**
- M. Are there rules in place to ensure that in all institutions where children are deprived of their liberty, instruments of restraint are used only in exceptional cases where all other control methods have been exhausted? Is physical chastisement as a disciplinary measure prohibited in all institutions linked to the juvenile justice system? Is the

carrying of weapons prohibited in all facilities where children are deprived of their liberty? **JDL Rule 65.**

- N. What legal rules and regulations govern the disciplinary regime in all juvenile institutions – education, welfare and penal? Are these rules and regulations consistent with the child’s right to dignity? Do they prohibit placement in a dark cell, closed or solitary confinement, reduction of diet, restriction of contact with family members, group or collective punishment, and other forms of cruel inhuman and degrading treatment or punishment? **JDL Rule 66.**
- O. Is there a complaints system for all children deprived of their liberty or in detention?¹¹ Do children deprived of their liberty have the right to make complaints or requests to the person in charge of the facility or his or /her authorized representative? Do they have the right to a prompt response to any such request or complaint? Is the complaint system protected by law or policy? Is it efficient? Effective?
- P. Where children are deprived of their liberty in privately run (non-state) institutions, do adequate mechanisms for state oversight of the delivery of services and protection of children’s rights by the state authorities exist? Is this oversight spelt out in law? How regularly are services at private institutions evaluated and monitored by the state authorities? What recourse does a child deprived of liberty whose rights have been violated in a private institution have?

3.6 AFTER-CARE AND REINTEGRATION

- A. Do legal rules exist to enable children to benefit from early release schemes? Are they different from those of adults?
- B. Are specialised services – e.g. probation services – available for the monitoring and supervision of children after formal adjudication/release from detention? Is there specially trained staff available for this purpose?
- C. What provisions, if any, have been made in laws and regulations relating to social support and education for children after their release from any place where they have been deprived of their liberty after having been adjudicated to have infringed the penal law?
- D. Are children released from institutions where they have been deprived of their liberty assisted with respect to:
- A suitable residence?
 - Employment?
 - Sufficient means to maintain themselves upon release to ensure reintegration? **JDL Rule 80.**
- E. What happens to children released from the system upon attaining adulthood? Are special measures of reintegration assured to this category of young adults?

4. VULNERABLE GROUPS

4.1 CHILDREN LIVING OR WORKING ON THE STREET

A. Are status offences (truancy, being beyond control, for example) interpreted with regards to the best interest of the child where street children are concerned? Are arrests of street children undertaken with due regard to international standards on children's rights? Is the right to be free from arbitrary detention (**Article 37(b) of CRC**) upheld with regard to street children? Are there mechanisms in place to control and prevent systematic violence against street children?

B. Are there laws that prohibit or regulate the sale of glue and solvents to children? Is the use of children in any form of begging proscribed?

C. Are there laws and programmes that provide effective reintegration services and material support to street children? Are police authorities obliged to notify social services or non-governmental organizations about the apprehension of street children? Is legal assistance provided to street children in the juvenile justice system?

4.2 CHILD SOLDIERS AND ARMED GANG MEMBERS

One of the most alarming trends relating to children and armed conflicts is their participation as soldiers. Children are fighting in nearly every major armed conflict in the world today.¹² Former child soldiers are often vulnerable to become involved in crime in the aftermath of the conflict due to the lack of alternatives, lack of reintegration schemes and difficulties such as stigmatization, loss of family ties and drug or alcohol addiction.

A. Are there child soldiers or former child soldiers present in the country? If yes, has a formal demobilization, disarmament and reintegration (DDR) been put in place? Did it encompass all such children and was it successful?

B. In case of child involvement in armed violence and gangs, have special prevention programmes been put in place? Is the way a child joined a government force or an armed group – whether voluntarily or by force- taken into account and given the due weight when subjecting a child soldier to any criminal justice process? Are factors such as loss of a parent(s) or poverty as a driving force for becoming a child soldier/gang member taken into account to the benefit of the child in the criminal justice system?

C. Have specific offences relating to participation in armed gangs been created, if yes, how does the system ensure that children are still considered individually and treated in accordance with international standards?

4.3 GIRLS IN CONFLICT WITH THE LAW

Within the context of the fact that only a small proportion of offenders who come into contact with the criminal justice system are female,¹³ the numbers of girls in conflict with the law usually constitute a tiny segment of the population of children in conflict with the law in a country. This may mean less access to specialised services, such as institutions supporting the juvenile justice system – education, penal and welfare institutions – and in violation of the principle that children should at all times be separated from adult offenders, as female children are frequently mixed with adult females in institutions where they are deprived of their liberty. Female children who are deprived of their liberty may also have special needs related to their gender, which the system may not adequately accommodate and might be at higher risk to be abused. In some countries, girls are detained for “their own protection” or for offences that are not applied to boys (e.g. prostitution). It is also important to note that while the proportion of girls as compared to boys is often low, in many countries it tends to be increasing.

- A. How are girls in conflict with the law treated? Are they held separately from boys, and from adults, including female prisoners, when deprived of their liberty in any way? Do they enjoy the same rights as boys in the juvenile justice system? If they are held in general women's institutions are they provided with separate facilities? Is access to education and vocational programmes ensured for children when they are held in general women's institutions?
- B. Do girls have equal access to services as boys, including alternative dispositions, and access to education and vocational programmes? Do they have access to the equal recreational facilities? Are their special hygiene and sanitary needs respected?
- C. Are special measures being taken to protect girls from all forms of violence whilst in the juvenile justice system? Are the staff of the institutions specially trained and selected to deal with girls? What is the ratio of male vs. female staff in the institutions where girls are held? Are girls who have been victims of violence provided with reintegration services, including mental health care? Are there records of rapes or other gender-based violence against girls in institutions? Are there records of investigations or disciplinary measures being taken against staff in such cases?
- D. Are special programmes/facilities available for girls in conflict with the law who are/become pregnant? How does the juvenile justice system deal with pregnant girls who come into conflict with the law?

5. MANAGEMENT / COORDINATION

5.1. RESEARCH, POLICY FORMULATION, AND PROGRAMME DEVELOPMENT

The Commentary to **Beijing Rule 30** notes that the utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. This mutual feedback between research and policy is especially important in this sphere because of rapidly changing life-styles amongst the young, technological advances, new forms of delinquency, and changing societal and justice responses to children's involvement in crime. Research is also vital to the improvement of interventions designed to address child offending and to promote more effective reintegration. The Commentary promotes the notion of research by independent bodies and persons, to be facilitated by responsible agencies.

- A. Has research been carried out on the causes, trends and problems pertaining to juvenile delinquency? **Beijing Rule 30**? Is this research available publicly? Has it been used as the basis for developmental planning in the juvenile justice system context?
- B. Has research been carried out on specific issues in the juvenile justice system, for instance, the extent to which children are used or made instruments by adults in the commission of offences?¹⁴ Is detailed information, based on evidence-driven research, available on the identity, prevalence, operation and functioning of gangs involving children? Has research been conducted on the extent and nature of children's involvement in drug or other substance abuse? Is research available on the causes of, and extent to which, children are living or working on the street? Is research available on the experiences or over-representation of children from minority groups in the juvenile justice system? Is there any research on children involved in organized armed violence in non-conflict situations?¹⁵

- C. Is there national, regional or local strategy aimed at the reduction of children's involvement in gangs or to address their involvement in organised armed violence? Is there a national drug and substance abuse reduction strategy that includes specific measures that target children and youth?¹⁶ Is there a strategy aimed at the reduction and prevention of children living or working on the street? To what extent are national anti-poverty strategies in place, and support or social assistance programmes available, to prevent children becoming involved in offending? Are these strategies effectively implemented and evaluated?
- D. Is research used as the basis for regular review and planning within the juvenile justice system, or for the redesign of programmes and interventions? Is a process in place to enable the collection on a routine and systematic basis of the data required to provide the minimum information required by the UNODC/UNICEF juvenile justice indicators?
- E. Is there a planning system for the continued development of the juvenile justice system in place? **Beijing Rule 30.4, UN Guidelines for Action on Children in the Criminal Justice System, Guideline 42.** Do plans identify clear priorities, aimed at ensuring more equitable and effective services to children in the juvenile justice system? Do plans ensure better co-ordination of services, including those provided by communities, volunteers, non-governmental organizations, donors and other agencies?

5.2 SYSTEM COORDINATION AND MANAGEMENT

- A. Is there a national, regional or local system of co-ordination of services in the juvenile justice system? Who are the stakeholders involved? Is this co-ordination established by law? To which authority does the co-ordination mechanism report? Are written reports publicly available? How often does the co-ordination mechanism meet (quarterly, monthly)? Does the co-coordinating agency cover all aspects of the juvenile justice system, including police, courts, diversion service provision, probation, and all institutions – welfare, educational and penal – linked to the juvenile justice system? If not, are aspects of the system covered by separate co-coordinating mechanisms?
- B. What government departments and ministries or agencies are involved in the delivery of services in the juvenile justice system (prosecutors, social workers and probation officers, police and prisons and so forth) and how is the management of the services structured within each of these as far as juvenile justice is concerned? Is there a specialised division in each institution dealing with juvenile justice? Are officials working in any specialized units provided specific training on children's rights, child development and child psychology?
- C. How is policy in the juvenile justice sphere formulated? How is it reviewed and implemented? Are written policies available in relation to aspects of juvenile justice, such as the minimum standards for diversion programmes, minimum standards for the treatment of children in institutions linked to the juvenile justice system (welfare, educational and penal institutions), or written guidelines for the exercise of prosecutorial or other discretion to divert cases away from formal court proceedings?
- D. Are there written policies for service providers, government officials and agencies dealing with children in the juvenile justice system on how the treatment of children should occur?
- E. Are separate statistics kept regarding children in relation to all aspects of the juvenile justice system and all government agencies involved, including arrests, prosecutions,

diversions, dispositions, and how is the data collected? Is it accurate? If it is collected on an automated system, who is responsible for the data entry and what quality control mechanisms are in place to ensure accuracy? How is the collection of data across multiple agencies - e.g. police and court – synthesized? Is this done manually? How are children’s rights to privacy and confidentiality protected?

- F. Are non-governmental agencies involved in services in the juvenile justice system? If so, how is coordination achieved between these non-governmental organisations and state actors in the juvenile justice system?
- G. Has technical assistance been sought in the field of juvenile justice in order to strengthen national capacities and infrastructures in the field?¹⁷ What was the nature of assistance sought or provided? Was an evaluation of its impact carried out? Are evaluation reports available?
- H. Has the state committed financial or other resources to strengthen project activities designed to further the **Guidelines for Action for Children in the Criminal Justice System**? What was the nature of these projects, and where were they situated, either within or outside the country concerned?
- I. Is there a national plan for the prevention of child involvement in crime/youth crime prevention?¹⁸ Is this plan comprehensive and does it exist in law or in policy? Does it contain mechanisms for its implementation and co-ordination? Does include the following:
 - Support to families
 - Community network support for vulnerable children
 - Services for low income families and support for flexible working arrangements
 - Employment or vocational training opportunities for children
 - Prevention of drug, alcohol and substance abuse by children
 - Alternatives to formal schooling and education
 - Sport and cultural activities for children

5.3 FISCAL CONTROL AND BUDGETS

- A. How is the juvenile justice system funded? Is there a central budget for all functions and functionaries involved in the juvenile justice system, or are aspects allocated to different government departments (e.g. police, prosecution, welfare and probation authorities)? If so, who determines the budget allocation? Who prepares and submits the budget? Who oversees the efficient spending of identified allocations?
- B. Can spending on the juvenile justice system be disaggregated and identified in national, provincial or local budget processes? If so, what proportion of allocation for criminal justice generally does it constitute? And what proportion of spending on services to children (child protection or child welfare services)? Has the overall costs of implementation of a right’s-compliant juvenile justice system been fully planned, taking account of the need for a variety of diversion options, and alternative dispositions such as care, guidance, supervision orders, counselling, probation, foster care, education and alternative training programmes and other alternatives to institutional care? **Article 40(4) of CRC**. Have suitable fiscal arrangements been made for the transportation of children in the juvenile justice system in conditions which promote their dignity and well-being and which provide for separation from adults?
- C. If the budget is available at national, regional or local level, is this budget sufficient for the funding of the tasks, programmes, activities and personnel? Are institutions

where children may be deprived or their liberty provided with sufficient resources, relative to the numbers of children expected to be accommodated there annually, to ensure fulfilment of the needs of children? Are sufficient personnel for the care, education and psychosocial support of children provided for in annual budgets related to institutions where children are deprived of their liberty?

- D. Where budgetary allocations are available, are these timely received? Are there other fiscal constraints to the efficient management and development of the juvenile justice system?
- E. If non-governmental organisations are involved in the delivery of services in the juvenile justice system, what sources of funding do they rely on? Do they receive funding from government? If so, is this sufficient to enable them to perform the required services? Do they receive donor funding? How can fiscal sustainability be maintained by the non-governmental sector providing services in the juvenile justice system?
- F. Where a budget or budgets for services and functions in the juvenile justice system has been identified, is this information publicly available? How are budgets accounted for?

5.4 DONOR COORDINATION AND PARTNERSHIPS

- A. Which donor /development partners are active in the juvenile justice sector?
- B. Are there donor strategy plans for the coordination and strategic direction of juvenile justice development?
- C. What projects related to juvenile justice have donor agencies supported in the past? What projects are currently underway? Were evaluations of previous projects undertaken, and if so, what lessons can be derived from these projects?
- D. What linkages exist between donor agencies and ministries, departments or other agencies (e.g. local authorities, administrative tribunals, professional legal assistance bodies) involved in the juvenile justice system? How are relations between donor agencies and other bodies managed? Is there a formal agreement or strategy document in place?
- E. Are partnerships in existence between agencies and government actors involved in the juvenile justice system, and other social services professionals dealing with children generally, such as education and health authorities? **UN Guidelines for Action on Children in the Criminal Justice System, Guideline 42.**

PART B. CHILD VICTIMS AND WITNESSES

1. INTRODUCTION

Millions of children throughout the world suffer harm as a result of crime and abuse of power, and as a result come into contact with the criminal justice system. Their vulnerability in criminal justice processes, due to their age and immaturity, requires that special measures be taken to ensure the protection of their rights and the delivery of enhanced justice to them. The UN has recently focused increased attention on the position of victims of crime generally and, in 2005, the **United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime** were adopted by the Economic and Social Council. These principles elaborate on the standards contained in other international treaties and instruments, notably the **Convention on the Rights of the Child**, and suggest specific principles and protections that should be afforded child victims and witnesses in criminal justice systems and processes.

Child victims of crime can appear as witnesses in a variety of legal and institutional settings, not limited to criminal proceedings. These may include care or welfare proceedings, as complainants in dismissal or disciplinary proceedings, in family violence tribunals, and array of other settings. A wide range of CRC child protective provisions are relevant to the position of child victims and witnesses, not the least of which is Article 19, which proscribes all forms of violence against children, whilst in the care of a parent, legal guardian or any other person having responsibility for the care of the child, and which requires the establishment of effective procedures, social programmes and follow-up in instances of child maltreatment, including where appropriate, judicial involvement, (Article 19(2)); Article 34, which deals with the sexual exploitation of children; and Article 39, which requires State Parties to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation or abuse, torture or other form of cruel inhuman or degrading treatment or punishment, or armed conflict. The **Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography**, adopted in 2000, requires State Parties to take appropriate measures to protect the rights and interests of child victims of the practices prohibited under the Protocol. The **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime**¹⁹ which entered into force in 2003 is also relevant in particular its Articles 6, 7 and 8.

International instruments are increasingly being developed to highlight and address the special vulnerability of victims and witnesses, not the least of which are child witnesses. Central is the **Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985**. A further relevant document is the **UN Guidelines for Action on Children in the Criminal Justice System (1997)**, which includes within its ambit, plans concerning child victims and witnesses in Part 111. This document is, however, focused particularly on children as victims or witnesses in the criminal justice system. This was followed by the **Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, 2005**²⁰ which provide a practical framework for achieving more child-sensitive responses to child victims and witnesses, including through legal reforms, rules of procedure and evidence, attitudes and training of professionals, and through elaborating the right to effective assistance to victims and witnesses who are aged below the age of 18 years. The Guidelines recognize and are premised on the cross-cutting principles of the child's rights to dignity, non-discrimination, recognition of the best interests of the child (which include the right to protection²¹ and the right to a chance for harmonious development²²), and the right to participation, which includes the right to express views and to contribute to decisions affected his or her own life, including those taken in any judicial processes, and to have these views taken into consideration.

The Guidelines contain two important definitions: first, the definition of "professionals" which refers to persons who, within the context of their work, are in contact with child victims and witnesses of crime and, hence, for whom the Guidelines are applicable. They include: child victim advocates and support persons, child protection service practitioners, child welfare agency staff, prosecutors and defence lawyers, diplomatic and consular staff, domestic violence programme staff, judges, law enforcement officials, medical and mental health professionals and social workers.

Second, the definition of a “justice process” is a very inclusive one. It encompasses the detection of the crime, the making of a complaint, investigation, prosecution and trial, post trial procedures, and the term applies whether it is a national, regional or international criminal justice system dealing with both adults and children, and whether or not this is effected in a formal or the informal customary system of the administration of criminal justice.

Guideline 6: “The guidelines should also be applied to processes in informal and customary systems of justice such as restorative justice and in non-criminal fields of law including but not limited to, custody, divorce, adoption, child protection, mental health, citizenship, immigration and refugee law.”

Of future relevance may be **Guidelines for the Protection and Alternative Care of Children Without Parental Care**, which are being developed by UNICEF and International Social Services, in collaboration with the NGO Working group on Children Without Parental Care. A comprehensive draft was produced on December 5, 2006, and this contains some relevant principles to alternative care and child protection.

2. OVERVIEW

Please refer to the **Cross-Cutting Issues: Criminal Justice Information** for guidance on the gathering of key criminal justice statistical data that will help provide an overview of the prison population, the number of offenders sentenced to non-custodial sanctions and the overall capacity of the criminal justice system 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.

- Ministry of Justice Reports
- Ministry of Women and Children Reports, including reports on child victimization contained in National Child Protection Registers
- Juvenile Justice Board Reports
- Penal system reports, including the prosecution, prison and probation systems
- National Police crime reports
- Court annual reports
- Welfare department/Ministry of Social Affairs reports
- Human Rights Commission reports, or the reports of any ombudsperson for children
- Victim surveys
- Non-governmental organisations reports on child victimization
- Reports of organisations rendering support services, such as trauma counselling or rape crisis counselling to child victims
- Donor reports

A diverse array of people might be able to furnish the relevant information, including the Ministry of Justice, the Ministry of Welfare, any Ministry of the Women and Children’s Affairs, health officials dealing with trauma, abuse and violence against children, senior probation officers, judges, statutory or non-statutory child protection organisations, non-governmental organisations and donor organizations.

It is likely to be difficult to find comprehensive and detailed data that accurately reflects child victimization rates, and that presents a composite picture of child witnesses and their experiences of legal proceedings, criminal and otherwise. This is an emerging field of enquiry, and is hampered by the fact the children’s evidence is usually presented behind closed doors and in private. It is unlikely that in most countries a detailed array of statistics on child witnesses can be obtained, although some courts may keep disaggregated records that identify and single out children as witnesses (e.g. family courts, children’s courts, domestic violence courts, specialized courts dealing with sexual offences). National, regional and local victimization studies are increasingly being conducted, and it is important to ascertain whether children are identified and reported on as a separate group when victimization surveys are being undertaken.

- A. What statistics on child victimization and child witnesses exists? The following statistics may be available:
- National figures of children appearing as witnesses and/or victims in criminal matters

- National statistics of children appearing as witnesses due to being victims in non-criminal matters (e.g. domestic violence, parental abuse or maltreatment)
 - National statistics of children requiring special protection due to abuse (e.g. a National Child Protection register)
 - National, regional or local figures of children requiring specialized services in order to testify (e.g. using an intermediary, video link up services etc)
 - National, regional or local statistics derived from victimization surveys amongst the general population
 - Police statistics which disaggregate crimes against children aged below 18 years
 - Prosecution services statistics which disaggregate crimes prosecuted where witnesses and or victims were aged below 18 years
 - Number of crimes against children reported via telephone help lines/hotlines or other services designed to render assistance to child victims
 - Data held by child protection agencies
 - Data on child witnesses held by refugee tribunals, immigration authorities or boards hearing applications for any form of residence from non- national children or their parents
- B. What is the profile of children in the available statistics collected above?
- By gender
 - By age
 - By ethnic group or minority
 - By national and foreign citizenship status
 - Are there any other overrepresented groups?
 - By offence category, e.g. violent/ non- violent offence against child
- C. Can the data be disaggregated according to whether the perpetrator was known or unknown to the child? Living with the child or not? Can unaccompanied non-national children be identified in available statistics?
- D. Are statistics available on the number of children for whom social reintegration services were provided due to their having been victims or crime, or witnesses in legal proceedings arising out of a criminal act (e.g. care and protection proceedings, domestic violence proceedings)? What professional can be identified in the statistics as having provided reintegration services to child victims (social workers, psychologists, counsellors, health workers)?
- E. Are there statistics available on child victims of abuse and deliberate neglect? Of children removed from parental care via the child protection system? Are statistics available on children in the residential care system as a result of abuse or deliberate neglect by their caregivers?
- F. Are statistics available on how many children have been victims of trafficking on an annual basis? Or child victims of commercial sexual exploitation? What forms did this exploitation take? Are there records of convictions for any form of possession or production of child pornography?

3. LEGAL AND REGULATORY FRAMEWORK

3.1 LEGISLATION

- A. At the level of detection and investigation of crimes against children, are there laws, policies or specific procedures that protect and advance the rights of such children to be found in laws or regulations governing the police? Are there specific operational procedures for securing evidence from child victims, for the police to inform a child of his or her rights to the availability of health and other relevant services (e.g. psychological services, legal advice)?
- B. Is there a legal obligation to report child abuse and neglect to the authorities? Who is duty bound to report child abuse and neglect? Are persons in authority in relation to children (teachers, nurses, child focused facility staff) under such a duty? Are these people obliged to take steps to secure the safety of the child from risk of harm or further harm?
- C. Is there a legal and policy framework for following up on reported cases of child abuse and neglect? Does this legal or policy framework include duties to provide a child victim with assistance and support services, such as counselling, legal advice, health and social services, physical and psycho-social recovery services?
- D. Do legal provisions exist to protect the privacy and the identity of child victims and witnesses? Are these adequately implemented in practice in all cases? Is information related to the child's involvement in the justice process adequately protected, e.g. through rules relating to non-disclosure? Do legal rules exclude the media and the public from a courtroom during the testimony of a child witness?
- E. Are prosecutors required to consider the views of victims when their personal interests are affected, and ensure that victims are informed of their rights in accordance with the Basic Principles of Justice for Victims of Crime and Abuse? **See also ACCESS TO JUSTICE: THE PROSECUTION SERVICE, Section 5.4.**
- F. Does the law make provision for child-sensitive procedures during the justice process, such as the use of child-friendly interview rooms, modified court environments where children give testimony, screens or one-way glass to protect the child witness from facing the person accused, the acceptability of pre-recorded video testimony, giving evidence through an intermediary or using other testimonial aids to enable child witnesses to testify?
- G. Does the regulatory framework include protecting children from hardship in justice processes by including interview rooms designed for children, modified court environments to take child witnesses needs into account, recesses during a child's testimony, and hearings scheduled at the time of the day that are appropriate to the age and maturity of the child? Are child witnesses interviewed out of sight of alleged perpetrators and provided with separate waiting rooms at court? **Guideline on Justice Involving Child Victims and Witnesses, 31(d).**
- H. Does the law provide for other protective measures to ensure the safety and well-being of the child, such as restraining orders against a perpetrator, orders that will enable a child victim to avoid direct contact with a perpetrator, "no contact" bail conditions, or orders planning an accused person under house arrest? Do these types of protections apply in respect of all spheres of potential victimization of children, including in relation to criminal acts perpetrated by non-family members, in relation to domestic violence within the home, and in relation to acts against child victims in schools and institutions?

Note: a broad range of legislation may have to be surveyed in order to determine the adequacy of the protection afforded child victims and witnesses, including legislation in the education sphere, the family violence sphere, criminal codes, and child care and protection laws, divorce laws, immigration laws, to mention a few.

- I. Do the rules of evidence adequately reflect the principle that the age of a child witness should not be a barrier to participation in the justice process, that every child has the right to be treated as a capable witness, and that his or her testimony should be presumed valid and credible at trial unless proven otherwise and as long as his or her age and maturity allow the giving of intelligible testimony, with or without communication aids and other assistance?
- J. Does the law provide adequately for reparations to child victims in any form, whether by means of restitution ordered by criminal courts, restorative justice programmes, victim compensation programmes administered by the state, or damages in civil proceedings? Does the law provide for recompense in respect of the child's social and educational reintegration, medical treatment, mental health care and legal services?
- K. Does the law provide avenues for hearing child victims' voices even where they do not testify, and during post-trial processes, such as permitting victim impact statements to be introduced at sentencing stage or when an incarcerated offender is considered for release?

3.2 INSTITUTIONAL FRAMEWORK

- A. Who are the primary stakeholders concerned with the protection of child victims of crime? Are specialized services available at all stages of the criminal process, from detention and investigation to post-trauma support and counselling? Are these services primarily state funded, or are other role players, such as non-governmental and welfare organisations, involved? What is the respective area of collaboration of those involved in the sector, i.e. who is responsible for what services?
- B. What access do children have to justice where they have been victims of crimes, including abuse and neglect? Are there, for example, toll free telephone numbers available to children? Is information about accessing assistance freely available to children in language or other form that they understand?
- C. Do professionals working with child victims receive adequate training on the needs of children, on subject specific information such as the detection of child abuse, collection of medical and other appropriate evidence, battered child syndrome, and on the preparation of trials involving children (e.g. children's evidence)? Does this apply at all levels and across disciplines, e.g. to police, social workers, health professionals, prosecutors and judges? What measures are being taken to minimize the number of professionals that a child victim will have to "tell his or her story"? What technical and other strategies have been developed to minimize child victims and witnesses exposure to offenders during all stages of the procedure?
- D. Does the public have confidence that the child protection system works effectively to promote children's rights, including their rights to a responsive justice system?
- E. Is the institutional framework geared to meet the special needs of particularly vulnerable children, such as the girl child victim of sexual assault?

4. CHILD VICTIMS

4.1 CHILD VICTIMS OF TRAFFICKING

- A. Does the law deal adequately with trafficking of children internally and internationally, declaring it a criminal offence and providing effective remedies for victims of trafficking? Have legal and administrative measures been adopted to ensure that children abducted within the jurisdiction are found as speedily as possible and returned?

See Article 5 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Article 35 of CRC, the Optional Protocol to the CRC on the involvement of children in armed conflict, and the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.

- B. Does the law and does practice indicate that child victims of trafficking are not detained in police custody nor subjected to criminal procedures for offences related to their situation as trafficked persons?
- C. Are measures in place to prevent the use of adoption procedures as a tool for concealing trafficking in children? Are there national time bound programmes in place to reduce the numbers of children exposed to the worst forms of child labour, including being trafficked, and the use of slavery or other forms of debt bondage?

4.2 CHILD VICTIMS OF COMMERCIAL SEXUAL EXPLOITATION

- A. Are adequate legal provisions in place to ensure that children are not used, offered or procured for prostitution, child pornography or for pornographic performances? Is it an offence to possess, produce and to disseminate child pornography? Can nationals or citizens be prosecuted in domestic legal systems for offences committed abroad involving the sexual exploitation of children?
- B. Are children exposed to commercial sexual exploitation treated as child victims, and not subjected to the criminal justice system for any offences they may have committed whilst being victims of commercial sexual exploitation?
- C. Is there an age set by law below which children are presumed to lack the capacity to consent to sexual activities? What is this age? Is the age the same for girl children and male children?
- D. Are measures in place to ensure that the child victim of sexual exploitation is not subjected to further victimization during investigation, intervention and further legal or administrative procedures?

5. MANAGEMENT / COORDINATION

5.1 GENERAL

- A. Is there a national, regional or local framework for ensuring that all personnel dealing with the child victims co-ordinate their activities? Who are the stakeholders involved? Is this co-ordination established by law? To which authority does the co-ordination mechanism report? Are written reports publicly available? How often does the co-ordination mechanism meet (quarterly, monthly)? Does the co-coordinating agency cover all service providers dealing with child victims, including police, prosecution services, courts, social welfare service provision, and all institutions linked to the child care and protection system? If not, are aspects of the system covered by separate co-coordinating mechanisms (e.g. in relation to trafficking of children, child labour, child care and protection)?
- B. What government departments and ministries or agencies are involved in the delivery of services to child victims (prosecutors, social workers, police, labour department officials) and how is the management of the services structured within each of these? Is there a specialised division in each organization/agency dealing with child victims? Are officials working in any specialized units provided specific training on children's rights, child development and child psychology?
- C. How is policy in relation to child victims formulated? How is it reviewed and implemented? Is there a national strategy or protocol to encourage co-operation between different service providers dealing with child victims and witnesses? **UN Guidelines on Justice for Child Victims and Witnesses, Guideline 44.** Are written policies available in relation to distinct aspects, such as written guidelines for prosecutors dealing with child victims or witnesses, access to witness protection programmes, protocols for action concerning child victims of domestic violence?
- D. Are there written policies for service providers, government officials and agencies dealing with children in the justice system on how the treatment of children as victims or witnesses should occur?
- E. Are measures in place to ensure international co-operation in relation to child trafficking and unaccompanied non-national children? Is inter-country adoption effectively controlled at national, regional or local level in order to prevent trafficking of children? Are there measures to facilitate the collection and exchange of information and the detection, investigation and prosecution of transnational crimes involving child victims? **UN Guidelines on Justice for Child Victims and Witnesses, Guideline 45.**
- F. Are groups of vulnerable child victims and witnesses not covered in national laws, policies or practices? If so, which groups are these? What is being done to ensure that effective measures in relation to these groups are adopted?
- G. Are persons dealing with child witnesses selected and trained to meet the special needs of child witnesses?

Guideline 43 on of the **UN Guidelines on Justice for Child Victims and Witnesses** provides that training for professionals dealing with child witnesses should include:

- Relevant human rights norms and standards,
- Principles and ethical duties of their office,
- Appropriate adult child communication techniques,
- Methods to protect and present evidence and to question child witnesses; and
- Roles of and methods used by professionals working with child victims and witnesses.

5.2 FISCAL CONTROL AND BUDGETS

- A. How are services to child victims and witnesses funded? Is there a central budget involved, or are aspects allocated to different government departments (e.g. police, prosecution, and welfare authorities)? If so, who determines the budget allocation? Who prepares and submits the budget? Who oversees the efficient spending of identified allocations?
- B. Can spending on child victims and witnesses be disaggregated and identified in national, provincial or local budget processes? Is there an allocation in criminal justice budgets for services to child victims and witnesses? If so, what proportion of allocation for criminal justice generally does it constitute? And what proportion of spending on services to children (child protection or child welfare services)?
- C. If the budget is available at national, regional or local level, is this budget sufficient for the funding of the tasks, programmes, activities and personnel? Are sufficient trained personnel available to provide services – including welfare services, counselling, reintegration and psychosocial support – of child victims and witnesses provided for in annual budgets?
- D. Where budgetary allocations are available, are these timely received? Are there other fiscal constraints to the efficient management and development services to child victims and witnesses?
- E. Is budgetary provision made for infrastructural development such as child friendly interview rooms, and equipment (such as testimonial aids and recording equipment)?
- F. If non-governmental organisations are involved in the delivery of services to child victims and witnesses, what sources of funding do they rely on? Do they receive funding from government? If so, is this sufficient to enable them to perform the required services? Do they receive donor funding? How can fiscal sustainability be maintained by the non-governmental sector providing the required services?

5.3 DONOR COORDINATION

- A. Which donors /development partners are active in the child protection sector insofar as child victims and witnesses are concerned? Are specific groups of child victims identified by donors in their support, e.g. victims of sexual abuse, victims of trafficking, or unaccompanied non-national children?
- B. Are there donor strategy plans for the coordination and strategic direction of services to child victims and witnesses?
- C. What projects related to child victims and witnesses have donor agencies supported in the past? What projects are currently underway? Were evaluations of previous projects undertaken, and if so, what lessons can be derived from these projects?
- D. What linkages exist between donor agencies and ministries, departments or other agencies (e.g. local authorities, administrative tribunals, professional legal assistance bodies) involved in the juvenile justice system? How are relations between donor agencies and other bodies managed? Is there a formal agreement or strategy document in place?

- E. Are international technical assistance programmes in place regarding any matters concerning child victims, e.g. trafficking or harmful and exploitative labour practices? Who is involved in technical assistance in this field, and how are activities co-ordinated?

5.4 RESEARCH

- A. Has research been carried out on the causes, trends and problems pertaining to the victimization of children, including all forms of violence and abuse? Is this research available publicly? Is research available on especially vulnerable child victims, such as trafficked children or victims of harmful and exploitative labour practices?
- B. Are policies, programmes and services to child victims and witnesses based on appropriate, detailed and targeted evidence-based research? Is research regularly updated to reflect changing societal and other circumstances?
- C. Is there national, regional, or local strategy aimed at the reduction of child victimization and the prevention of all forms of abuse and neglect? To what extent are national anti-poverty strategies in place, and support or social assistance programmes available, to prevent children becoming victims, for example of sexual exploitation, trafficking and labour? Are these strategies effectively implemented and evaluated? Is a process in place to enable the collection on a routine and systematic basis of the data required to provide the minimum information required to show improved services to child victims and witnesses, and to measure any reduction in child victimization? Is a process in place to enable the collection on a routine and systematic basis of the data required to provide the minimum information?

¹ UNICEF, 2005, p 2.

² Diversion means the referral of matters away from formal proceedings, often to programmes or to community based sanctions.

³ Defence for Children International 'Kids behind bars' (2006).

⁴ Innocenti Digest No 3 "Juvenile Justice" Unicef, Florence, 1998.

⁵ Guideline 8.

⁶ 'Deprivation of liberty includes any placement of a child – detention or imprisonment in a public or private setting, from which the child is not permitted, by order of any competent authority, to leave at will (Rule 11.2 of the UN Rules for the Protection of Juveniles Deprived of their Liberty). This might include a range of institutions, such as police stations, detention or remand centres, prisons, including adult prisons, closed specialized school, borstals or reformatory schools, secure facilities for awaiting trial children, and treatment facilities which are used as a sentence (drug treatment facilities).

⁷ Such as the right to be presumed innocent, the right to prompt access to legal assistance, the right to notice of charges, and the right to have the matter determined without delay by a competent impartial and independent authority or judicial body in a fair hearing.

⁸ UNICEF/UNODC Manual for the Measurement of Juvenile Justice indicators (2006).

⁹ See UN Guidelines for Action on Children in the Criminal Justice System, guideline 17.

¹⁰ Definitions as in "UN Basic Principles on the use of Restorative Justice Programmes in Criminal Matters", E/2002/INF/2/Add.2.

¹¹ UNODC/UNICEF Manual on the measurement of child justice indicators, indicator 13.

¹² J Becker 'Child soldiers: Changing a culture of violence' (2005) 32 *Human Rights Winter* 16.

¹³ Normally the percentage of women in prison as a whole, including pre-trial detention is between 2% and 9% worldwide: see also Custodial and Non-Custodial Measures: Detention Prior to Adjudication, Section 5.2.

¹⁴ See further UN General Assembly Resolution 45/115 of 1990 on the use of children in criminal activities.

¹⁵ See www.coav.org for information about projects and research concerning children involved in organised armed violence in non-conflict situations. See further C Frank 'Children in organised armed violence' vol 8 (1) Article 40 p 6 available at www.communitylawcentre.org.

¹⁶ See UN General Assembly Resolution 43/121 (1988) on the use of children in illicit traffic in narcotic drugs and on the rehabilitation of drug addicted minors.

¹⁷ See Preamble to the UN Guidelines on Action for Children in the Criminal Justice System.

¹⁸ UNODC/UNICEF indicator no 15.

¹⁹ General Assembly resolution 55/25 of 15 November 2000.

²⁰ ECOSOC resolution 2005/20 of 22 July 2005.

²¹ Article 8 (c) (i) defines this as follows: Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse or neglect.

²² Article 8 (c)(ii) defines this as follows: Every child has the right to a chance for harmonious development and to a standard of living adequate for physical, mental, spiritual, moral and social growth. In the case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development.

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
- Convention on the Rights of the Child, 1989
- ILO Convention 182 on the Elimination of the Worst Forms of Child Labor, 1999
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Prostitution and Child Pornography, 2000
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000
- Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime, 2000
- Optional Protocol to the Convention against Torture, 2002 (in force from 2006)
- Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power (UN Doc. A/RES/40/34)
- Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules)
- Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, 1988
- Standard Minimum Rules for Non-Custodial Measures, 1990 (Tokyo Rules)
- Rules for the Protection of Children Deprived of their Liberty, 1990
- Guidelines for Action on Children in the Criminal Justice System, 1997
- Guiding Principles on Drug Demand Reduction of the General Assembly of the UN, 1998
- Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 2002
- Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime 2005
- General Comment No. 6 of the UN Committee on the Rights of the Child on “Treatment of unaccompanied and separated children outside their country of origin,” 2005
- General Assembly Resolution 43/121 (1988) on the use of children in illicit traffic in narcotic drugs and on the rehabilitation of drug addicted minors, 1988
- General Assembly Resolution 45/115 of 1990 on the use of children in criminal activities
- Handbook on Alternatives to Imprisonment, UNODC, 2006
- Handbook on Restorative Justice, UNODC, 2006
- A Manual on the Measurement of Juvenile Justice Indicators, UNICEF/UNODC, 2006
- UNICEF and Penal Reform International, Juvenile Justice Training Manual, 2006

REGIONAL

- African Charter on Human and Peoples’ Rights 1986
- African Charter on the Rights and Welfare of the Child 1990
- Council of Europe Convention on Cybercrime 2003
- Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, 1953
- American Convention on Human Rights 1969
- American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1989

BOOKS / ARTICLES

- Defence for Children International ‘Kids behind bars’ (2006).
- Innocenti Digest No 3 “Juvenile Justice” Unicef, Florence, 1998
- Gallinetti, J and Sloth-Nielsen, J (eds) Child Justice in Africa: A Guide to Good Practice (Children’s Rights Project, Community Law Centre, University of the Western Cape 2004).
- Hodgkin, R and Newell, P “Implementation Handbook on the Convention on the Rights of the Child 2002 Fully revised edition, UNICEF Geneva
- Geraldine Van Bueren, the International Law on the Rights of the Child, 1998

- Marie Wernham, An outside chance, Street Children and Juvenile Justice – An international perspective, Consortium for Street Children
- Marie Wernham with Savina Geerickx and Elanor Jackson, Police Training on Child Rights and Child Protection: lessons learned and manual
- Protecting the Rights of Children in Conflict with the Law, Programme and Advocacy Experiences From Member Organisations of the Inter-Agency Coordination Panel on Juvenile Justice 2005
- Geert Cappelaere and Anne Grandjean, Enfants privés de liberté. Droits et réalités, Editions Jeunesse et Droit, Liège, Belgium, 2000.

OTHER USEFUL SOURCES:

UNITED NATIONS

United Nations Human Rights Committee

- General Comment No. 13 “Article 14 (Administration of Justice)” (21st session, 1984) Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies (1992), UN Doc. HRI/GEN/1, 32
- General Comment No. 17 “(Article 24) Rights of the Child” (35th session, 1989)
- General Comment No. 20 Concerning Prohibition of Torture and Cruel Treatment or Punishment (Forty-fourth session, 1992), reproduced in: UN Doc. HRI/GEN/1, 29

REGIONAL

- Abuja Declaration on Alternatives to Imprisonment: The Abuja declaration results from a national conference on alternatives to imprisonment held in Abuja between 8 and 10 February 2000.
- International Conference of American States 1948
- Bangkok Declaration calling for action on organized crime and terrorism 2005
- Kampala Declaration on Prisons in Africa 1996

NATIONAL

- Constitution
- Child protection laws
- Juvenile or youth justice legislation
- Legislation governing the social services or welfare sector
- Legislation regulating institutions linked to juvenile justice (penal institutions, prisons, education and welfare institutions)
- Criminal and Criminal Procedure Codes
- Penal Enforcement Statutes—including Probation Act
- Laws on trafficking
- Child labour laws/employment laws
- Immigration laws
- Research and evaluation reports by independent bodies, NGOs, academicians
- Reports by National Human Rights Commissions or bodies exercising independent oversight over persons deprived of their liberty

WEBSITES

- Inter-agency Panel on Juvenile Justice: <http://www.juvenilejusticepanel.org> (links to all member organisations and resources)
- Children’ s Rights Information Network: <http://www.crin.org>
- International Association of Youth and Family Judges and Magistrates, <http://www.judgesandmagistrates.org>
- Amnesty International www.amnesty.org
- Children in Organized Armed Violence <http://www.coav.org.br>
- Human Rights Watch <http://www.hrw.org>

ANNEX B. ASSESSOR'S GUIDE / CHECKLIST: JUVENILE JUSTICE

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

	TOPIC	SOURCES	CONTACTS	COMPLETED
2.0	OVERVIEW: GENERAL STATISTICAL AND DATA	<ul style="list-style-type: none"> ▪ Ministry of Justice reports ▪ Ministry of Women, Youth and Children Reports ▪ Juvenile Justice Board Reports ▪ Penal System Reports including the prosecution, prison and probation systems ▪ Ministry of Interior reports ▪ National Police Crime reports ▪ Court Annual Reports ▪ Welfare Department/Ministry of Social Affairs Reports ▪ Human Rights Commission Reports ▪ Legal Aid Services Reports ▪ Education or training institutions reports in respect of places where children referred as a sentence may be sent ▪ Reports from or on Private institutions used as detention or sentencing options for children ▪ Drug treatment centres insofar as children may be referred to as a sentence ▪ Reports of independent bodies tasked with monitoring or inspecting places ▪ Donor reports ▪ NGO reports: penal system and administration of alternatives ▪ Reports/studies of think tanks and academic institutions ▪ Children's Ombudsmen Reports ▪ State Party Reports to the UN Committee on the Rights of the Child ▪ State Party Reports to the UN Torture Committee ▪ Reports from UNICEF ▪ State party reports to regional organizations ▪ Community/traditional/religious leaders involved in dealing with children 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Ministry of Women, Youth and/or Children ▪ Ministry of Welfare/Social Affairs ▪ Prosecutors office ▪ Senior Prison Service Officers ▪ Police Commissioners and high ranking officers ▪ Senior Probation Service Officers ▪ Ministry of Interior ▪ Human Rights Commission ▪ Legal Aid Service ▪ Education and training institutions ▪ Drug treatment centres ▪ Children's Ombudsmen ▪ UN Committees ▪ Regional Organizations ▪ High Court Judges and other senior judges ▪ NGOs working on criminal justice matters ▪ Intergovernmental organizations ▪ Community/traditional/religious leaders ▪ Donor organisations working on the criminal justice sector 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
3.0	LEGAL AND REGULATORY FRAMEWORK: LAW AND PRACTICE	<ul style="list-style-type: none"> ▪ The Constitution ▪ Penal Code ▪ Penal Procedure Code ▪ Penal Enforcement Code ▪ Probation Act and any other relevant acts of parliament ▪ Regulations to these codes and acts ▪ Amendments to all laws mentioned above ▪ Acts governing semi-formal/informal justice systems ▪ Directives ▪ White papers on crime, punishment, detention etc ▪ Standing orders ▪ Law Commission/Committee reports/issue papers ▪ Submissions to parliament on law reforms ▪ Relevant international instruments ratified by a country ▪ Relevant regional instruments ratified by a country ▪ Prosecutors Policy Document ▪ Judicial Sentencing Policy Document ▪ Judicial Practice Directions, Circulars and Sentencing Guidelines ▪ Government policy documents/ National Reform Programmes ▪ Independent reports made by non-governmental organisations. ▪ Legal textbooks or academic research papers. 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Ministry of Women and Children ▪ Ministry of Interior ▪ Human Rights Commission ▪ Legal Aid Service ▪ UN/Regional treaty bodies ▪ Senior Probation Service Staff ▪ Senior Prison Service Staff ▪ Legislative offices (at all local, provincial and national levels) ▪ Law reform offices ▪ High Court Judge ▪ Senior Court personnel ▪ Law schools and academic institutions ▪ Public libraries ▪ NGOs working on criminal justice matters ▪ Bar Associations ▪ Senior and local police staff ▪ Local courts ▪ Judges and magistrates ▪ Local probation service offices or other relevant bodies 	
3.1	GENERAL MEASURES	See SECTIONS 2.0 and 3.0 ABOVE	See SECTIONS 2.0 and 3.0 ABOVE	
3.2	INITIAL CONTACT	<p>See SECTIONS 2.0 and 3.0 ABOVE as relevant Plus</p> <ul style="list-style-type: none"> ▪ NGO reports on diversion from prosecution and restorative justice programmes; ▪ Curriculum of police colleges/universities ▪ Training reports conducted for police officers ▪ Evaluation reports done on the qualifications of police officers ▪ Media reports <p>SITE VISITS</p> <ul style="list-style-type: none"> ▪ Police detention centres ▪ Police colleges/universities 	<p>See SECTIONS 2.0 and 3.0 ABOVE Plus</p> <ul style="list-style-type: none"> • Police colleges/universities • Former juvenile detainees • Families of juvenile detainees • NGOs and community groups running support programmes for children in detention • Bar associations and lawyers working on children • Media agencies especially those working on investigative journalism 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
3.3	DIVERSION	<p>See SECTIONS 2.0 and 3.0 ABOVE Plus:</p> <ul style="list-style-type: none"> ▪ Rules regulating the power of police to divert ▪ Rules regulating the power of the prosecutor to divert and also withdraw charges on children ▪ Rules regulating the power of the social worker to divert ▪ Diversion minimum standards ▪ Rules regulating the power of a judicial authority to divert ▪ Guidelines on mediation ▪ Probation Service, police, prosecutors and NGOs reports on diversion from prosecution and restorative justice programmes; ▪ Rules of Eligibility for diversion; ▪ Relevant Ministry (Ministry of Justice/Interior) financial reports/budget documents relating to funding of restorative justice or medical treatment programmes ▪ Probation service/police/court/prosecution financial reports and budget relating to restorative justice ▪ Reports by/interviews with health services undertaking the treatment of those diverted ▪ Contracts/agreements concluded with NGOs to run diversion programmes ▪ NGO activity reports <p>Interviews with community/traditional/religious leaders involved in dealing with children</p>	<p>See SECTIONS 2.0 and 3.0 ABOVE Plus:</p> <ul style="list-style-type: none"> ▪ Children in conflict with the law ▪ Families of children in conflict with the law ▪ NGOs running special programmes for children in conflict with the law <p>Community/traditional/religious leaders</p>	
3.4	ADJUDICATORY PROCESS	<p>See SECTIONS 2.0,3.0 and 3.2 ABOVE as relevant Plus</p> <ul style="list-style-type: none"> ▪ Mandates of prosecutor, district attorney, child welfare officer, social worker, or reporter to exercise the discretion to resort to diversion ▪ Court registrar records ▪ Social enquiry reports ▪ Reports on the exercise of corporal punishment for crimes committed by children (both as a sentence of a court or as disciplinary measure in prisons/detention centres) ▪ Reports on the exercise of capital punishment for crimes committed by children ▪ Review reports of bodies on the institutionalization of children ▪ Reports of juvenile courts ▪ Reports of community or tribal courts 	<p>See SECTIONS 2.0, 3.0 and 3.2 ABOVE as relevant Plus</p> <ul style="list-style-type: none"> • Social workers • Human rights/juvenile justice Commissions • Intergovernmental organizations like Amnesty International and Human Rights Watch • Appeal Courts 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
3.5	<p style="text-align: center;">INSTITUTIONAL TREATMENT</p>	<p>See SECTIONS 2.0 and 3.0 ABOVE Plus</p> <ul style="list-style-type: none"> ▪ Reports on child death in detention ▪ Reports of hospitals on deaths of children ▪ Reports of education institutions where children are kept ▪ Budget reports (preferably with breakdowns) allocated for running a detention centre ▪ Financial reports indicating expenditure preferably with breakdowns ▪ Audit reports of detention centres by the Auditor general or an auditor ▪ Medical reports from hospitals/clinics dealing with children in detention centres indicating number, frequency, type and causes of illness ▪ Rules/practice pertaining to lodging a complaint ▪ Media reports ▪ Any institutional reviews conducted by an independent body ▪ Rules and regulations in detention centres ▪ Reports/records on disciplinary measures taken on staff in detention centres ▪ Organizational chart/accountability structure of detention centres and staff <p>SITE VISITS:</p> <ul style="list-style-type: none"> ▪ Juvenile centres ▪ Adult prisons where children are also housed ▪ Police detention centres ▪ Education institutions where children are kept 	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <ul style="list-style-type: none"> • Former juvenile detainees • Families of juvenile detainees • Prison/detention guards • Medical practitioners involved in the medical examination of detainees • Medical associations 	
3.6	<p style="text-align: center;">AFTER-CARE AND REINTEGRATION</p>	<p>See SECTIONS 2.0 and 3.0 ABOVE Plus:</p> <ul style="list-style-type: none"> ▪ Probation service strategic plans and policy documents relating to pre-release preparation of and post-release support to prisoners ▪ NGO reports ▪ Research reports by academic institutions ▪ Prison/detention rules on early release ▪ Reports/interviews with families of children and children ▪ Laws and regulations addressing social support and education for children after release 	<p>See SECTIONS 2.0 and 3.0 ABOVE Plus</p> <ul style="list-style-type: none"> • Juvenile courts / Juvenile police • Juvenile probation staff • Children in conflict with the law • Families of children in conflict with the law • NGOs running special programmes for children in conflict with the law 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
3.7	RESEARCH, POLICY FORMULATION AND PROGRAMME DEVELOPMENT	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> ▪ Strategic plan for the administration of juvenile justice ▪ Government policy documents on the administration of juvenile justice ▪ White papers on detention, crime, juvenile justice etc ▪ Penal system reports ▪ Probation service reports ▪ Reports by Law Society ▪ Reports by bar Association ▪ Reports/interviews: Judicial authorities ▪ Reports/interviews: Prosecutors ▪ Reports/interviews: Social workers ▪ Evaluations of probation and prison system ▪ Research reports and availability of courses/trainings on juvenile justice in academic institutions 	<p>See SECTIONS 2.0</p> <p>Plus:</p> <ul style="list-style-type: none"> • Research centres • Academic institutions • Law societies • Bar Associations 	
4	SUBJECT SPECIFIC ISSUES	See BELOW	See BELOW	
4.1	RESTORATIVE JUSTICE	<p>See SECTIONS 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> ▪ Standards on the procedure in restorative justice processes ▪ Interviews with community/traditional/religious leaders involved in restorative justice processes 	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> ▪ Children in conflict with the law ▪ Families of children in conflict with the law ▪ NGOs running special programmes on restorative justice ▪ Community/traditional/religious leaders involved in restorative justice 	
4.2	CHILDREN IN ARMED CONFLICT	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> ▪ Country reports on the use of child soldiers and how they are dealt in the criminal system ▪ Reports to the UN treaty bodies ▪ Reports to regional organizations ▪ Reports of the Special Representative on the Involvement of Children in Armed Conflict ▪ Reports from Ministry of Defence ▪ Reports from intergovernmental organizations like the ICRC ▪ Reports from military tribunals/courts martial ▪ Reports on the demobilisation and reintegration of child soldiers into the community ▪ Reports of UN/regional missions in respective countries ▪ Media reports 	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> ▪ Ministry of Defence ▪ Court martial judges ▪ High ranking officials in the military ▪ Intergovernmental organizations like ICRC ▪ UN agencies involved in the disarmament, demobilisation, and reintegration of child soldiers ▪ Child soldiers ▪ Families of child soldiers ▪ The media 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.3	GIRLS IN CONFLICT WITH THE LAW	<ul style="list-style-type: none"> ▪ Reports from women's rights lawyers associations ▪ Reports from NGOs running special programmes for female offenders ▪ Research reports by academic institutions ▪ Prison/detention rules on treatment of girls in conflict with the law ▪ Reports/interviews with prison/detention guards and officials ▪ Reports/interviews with families of girls in conflict with the law and girls in conflict with the law 	<ul style="list-style-type: none"> ▪ Female offenders on whom alternative measures or sanctions have been imposed ▪ NGOs running special programmes for female offenders ▪ Women's rights lawyers associations ▪ Prison/detention staff 	
5.1	SYSTEM COORDINATION AND MANAGEMENT	<p>See 2.0, 3.0, 3.1, 3., 3.3, 3.4, 3.5, 3.6, 4.1, 4.2, 4.3, and 4.4 ABOVE plus:</p> <ul style="list-style-type: none"> ▪ Budget documents and financial reports by social support services, employment, housing agencies and health services, if providing any assistance to former prisoners. ▪ Directory of NGOs/organizations working on juvenile justice ▪ White papers for service providers ▪ Guidelines for service providers ▪ Minimum standards on undertaking any diversion programmes ▪ Criteria's for becoming involved to undertake any activity in juvenile justice 	<p>See 2.3, 3.2 and 4.4 ABOVE Plus:</p> <ul style="list-style-type: none"> ▪ Staff responsible for financial reports and accounts ▪ Directors of NGOs ▪ Universities and academic institutions 	
5.2	FISCAL CONTROL AND BUDGETS	<ul style="list-style-type: none"> ▪ Government policy documents/National reform programmes ▪ Reports from Ministry of Finance ▪ Budget documents and financial reports of government agencies working on juvenile justice ▪ Budget documents and financial reports of NGOs and intergovernmental organizations working on juvenile justice ▪ Reports of the Auditor General ▪ Reports of anti-corruption commissions/bodies ▪ SITE visits to be used to gather information on the disbursement of funds ▪ Bank transfer and withdrawal reports 	<ul style="list-style-type: none"> ▪ Ministry of Finance ▪ Ministry of Justice ▪ Government policy documents/National reform programmes ▪ Anti-corruption commissions/bodies ▪ Auditor General 	
5.3	DONOR CO-ORDINATION AND PARTNERSHIPS	<ul style="list-style-type: none"> ▪ Donor Strategy papers ▪ Progress reports by donor organizations ▪ Independent studies conducted by universities/NGOs ▪ Ministry of Justice strategy papers relating to cooperation and coordination with donors ▪ Reports/documents of networks working on juvenile justice ▪ Directory of donors/NGOs working on juvenile justice ▪ Reports of government offices in charge of regulating and issuing licenses for donors 	<ul style="list-style-type: none"> ▪ Donor organisations ▪ Ministry of Justice ▪ Directors of Penal System and Probation System ▪ Directors of networks ▪ NGOs, universities and academic institutions 	

ANNEX C. ASSESSOR'S GUIDE / CHECKLIST: CHILD VICTIMS AND WITNESSES

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
2.0	OVERVIEW: GENERAL STATISTICAL AND DATA	<ul style="list-style-type: none"> ▪ Ministry of Justice reports ▪ Ministry of Women and Children Reports ▪ Juvenile Justice Board Reports ▪ Penal System Reports including the prosecution, prison and probation systems ▪ National Police Crime reports ▪ Court Annual Reports ▪ Welfare Department Reports ▪ Human Rights Commission Reports ▪ Legal Aid Services Reports ▪ Education or training institutions reports in respect of places where children referred as a sentence may be sent ▪ Reports from or on private institutions used as detention or sentencing options for children ▪ Victim surveys ▪ NGO reports on child victimisation ▪ Reports of organisations rendering support services, such as trauma counselling or rape crisis counselling to child victims ▪ Donor reports 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Ministry of Women and Children ▪ Ministry of Welfare ▪ Prosecutors office ▪ Senior Prison Service Officers ▪ Police Commissioners and high ranking officers ▪ Senior Probation Service Officers ▪ Family courts, children's courts, domestic violence courts, specialized courts dealing with sexual offences ▪ Human Rights Commission ▪ Legal Aid Service ▪ Education and training institutions ▪ Drug treatment centres ▪ Children's Ombudsmen ▪ UN Committees ▪ Regional Organizations ▪ High Court Judges and other senior judges ▪ NGOs working on criminal justice matters ▪ Intergovernmental organizations ▪ Donor organisations working on the criminal justice sector 	
3.0	LEGAL AND REGULATORY FRAMEWORK: LAW AND PRACTICE	<ul style="list-style-type: none"> ▪ The Constitution ▪ Penal Code ▪ Penal Procedure Code ▪ Penal Enforcement Code ▪ Rules on evidence ▪ Regulations to these codes and acts ▪ Amendments to all laws mentioned above ▪ Children's Acts/laws ▪ Rules on court procedure ▪ Acts governing semi-formal/informal justice systems ▪ Directives ▪ White papers on crime, punishment, detention etc ▪ Standing orders ▪ Law Commission/Committee reports/issue papers ▪ Submissions to parliament on law reforms ▪ Relevant international instruments ratified by a country ▪ Relevant regional instruments ratified by a country ▪ Judicial Practice Directions and Circulars and ▪ Independent reports made by non-governmental organisations. ▪ Legal textbooks or academic research papers. 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Ministry of Women and Children ▪ Human Rights Commission ▪ Legal Aid Service ▪ UN/Regional treaty bodies ▪ Senior Probation Service Staff ▪ Senior Prison Service Staff ▪ Legislative offices (at all local, provincial and national levels) ▪ Law reform offices ▪ High Court Judge/ Senior Court personnel ▪ Social Workers and psychologists/psychiatrists ▪ Police Officers (investigators and those working in child protection units) ▪ Law schools and academic institutions ▪ Persons in authority in relation to children (teachers, nurses, child focused facility staffs) ▪ Bar Associations ▪ Local courts ▪ Local probation service offices or other relevant bodies 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
3.1	INSTITUTIONAL FRAMEWORK	<p>See SECTIONS 2.0 and 3.0 ABOVE plus</p> <ul style="list-style-type: none"> ▪ Reports of courts ▪ Reports of community or tribal courts ▪ Curriculum of colleges/universities which train judges, prosecutors, police officers, psychiatrists, social workers, interpreters, etc. ▪ Training reports conducted for judges, police officers, psychiatrists, social workers, and staff of NGOs dealing with child victims ▪ Evaluation reports done on the qualifications of staff dealing with child victims and witnesses ▪ Any institutional reviews conducted by an independent body ▪ Polls/assessments on the child protection system ▪ Reports of witness protection programmes ▪ Media reports <p>SITE VISITS</p> <ul style="list-style-type: none"> ▪ Police stations ▪ Colleges/universities ▪ Courts where child victims or witnesses are involved in the criminal justice system ▪ Children's homes where child victims or witnesses are housed ▪ NGOs offering service to child victims or witnesses 	<p>See SECTIONS 2.0 and 3.0 ABOVE plus</p> <ul style="list-style-type: none"> ▪ Court clerks/interpreters/staff ▪ Former child victims or witnesses ▪ Families of former child victims or witnesses ▪ Trainers/academicians dealing with judges, police officers, psychiatrists, social workers, and staff of NGOs ▪ Staff of NGOs offering services to child victims or witnesses ▪ Medical Associations ▪ Psychiatrists' Associations 	
4	SUBJECT SPECIFIC ISSUES	See BELOW	See BELOW	
4.1	CHILDS VICTIMS OF TRAFFICKING	<p>See SECTIONS 2.0,3.0 and 3.1 ABOVE Plus</p> <ul style="list-style-type: none"> ▪ Reports from NGOs ▪ Review reports of bodies on the institutionalization of children ▪ Reports of juvenile courts ▪ Reports of professionals working on child trafficking ▪ Bilateral/multilateral cooperation agreements on trafficking ▪ Reports from UN agencies such as IOM 	<p>See SECTIONS 2.0, 3.0 and 3.1 ABOVE</p> <p>Plus</p> <ul style="list-style-type: none"> ▪ Social workers ▪ Intergovernmental organizations like Amnesty International and Human Rights Watch ▪ Appeal Courts ▪ Medical Associations ▪ Psychiatrists' Associations ▪ IOM 	
4.3	CHILD VICTIMS OF COMMERCIAL SEXUAL EXPLOITATION	<p>See SECTIONS 2.0,3.0, 3.1 and 4.1 ABOVE Plus</p> <ul style="list-style-type: none"> ▪ Interviews with clients of child victims of commercial sexual exploitation ▪ Interviews with child victims of commercial sexual exploitation 	<p>See SECTIONS 2.0,3.0, 3.1 and 4.1 ABOVE Plus</p> <ul style="list-style-type: none"> ▪ Families of child victims of commercial sexual exploitation ▪ Child victims of commercial sexual exploitation 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
5	SYSTEM COORDINATION	See BELOW	See BELOW	
5.1	GENERAL	<p>See 2.0, 3.0, 3.1, 3., 3.3, 3.4, 3.5, 3.6, 4.1, 4.2, 4.3, and 4.4 ABOVE plus:</p> <ul style="list-style-type: none"> ▪ Budget documents and financial reports by social support services, employment, housing agencies and health services, if providing any assistance to former prisoners. ▪ Directory of NGOs/organizations working on juvenile justice ▪ White papers for service providers ▪ Guidelines for service providers ▪ Minimum standards on undertaking any diversion programmes ▪ Criteria for becoming involved to undertake any activity/offer services in the child victims and witnesses sphere 	<p>See 2.0, 3.0, 3.1, 3., 3.3, 3.4, 3.5, 3.6, 4.1, 4.2, 4.3, and 4.4 ABOVE plus:</p> <ul style="list-style-type: none"> ▪ Staff responsible for financial reports and accounts ▪ Directors of NGOs ▪ Universities and academic institutions 	
5.2	FISCAL CONTROL AND BUDGETS	<ul style="list-style-type: none"> ▪ Government policy documents/National reform programmes ▪ Reports from Ministry of Finance ▪ Budget documents and financial reports of government agencies working on juvenile justice ▪ Budget documents and financial reports of NGOs and intergovernmental organizations working on child victims and witnesses ▪ Reports of the Auditor General ▪ Reports of anti-corruption commissions/bodies ▪ Site visits to be used to gather information on the disbursement of funds ▪ Bank transfer and withdrawal reports 	<ul style="list-style-type: none"> ▪ Ministry of Finance ▪ Ministry of Justice ▪ Government policy documents/National reform programmes ▪ Anti-corruption commissions/bodies ▪ Auditor General 	
5.3	DONOR CO-ORDINATION AND PARTNERSHIPS	<ul style="list-style-type: none"> ▪ Donor Strategy papers ▪ Progress reports by donor organizations ▪ Independent studies conducted by universities/NGOs ▪ Ministry of Justice strategy papers relating to cooperation and coordination with donors ▪ Reports/documents of networks working on child victims and witnesses ▪ Directory of donors/NGOs working on child victims and witnesses ▪ Reports of government offices in charge of regulating and issuing licenses for donors 	<ul style="list-style-type: none"> ▪ Donor organisations ▪ Ministry of Justice ▪ Directors of Penal System and Probation System ▪ Directors of networks ▪ NGOs, universities and academic institutions 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
5.4	RESEARCH	See SECTIONS 2.0,3.0, 4.1, 4.2, 4.3,and 4.4 ABOVE Plus: <ul style="list-style-type: none"> ▪ Strategic plan for dealing with child victims and witnesses ▪ Government policy documents on issues pertaining to child victims and witnesses ▪ White papers pertaining to child victims and witnesses ▪ Reports by Law Society ▪ Reports/interviews: Judicial authorities ▪ Reports/interviews: Prosecutors ▪ Reports/interviews: Social workers and medical experts 	See SECTIONS 2.0,3.0, 4.1, 4.2, 4.3,and 4.4 ABOVE	



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CROSS-CUTTING ISSUES

Victims and Witnesses

Criminal justice
assessment
toolkit

3

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

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Criminal Justice Assessment Toolkit



UNITED NATIONS
New York, 2006

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This publication has not been formally edited.

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1. INTRODUCTION TO THE ISSUE

A fair, effective and efficient criminal justice system is a system that respects the fundamental rights of victims as well as those of suspects and offenders. It focuses on the need to prevent victimization, to protect and assist victims, and to treat them with compassion and respect for their dignity. Victims should also have access to judicial and other mechanisms to seek remedy for the harm they suffered and obtain prompt redress. They should also have access to specialized assistance in dealing with any emotional trauma and other problems caused by their victimization.

Crime takes an enormous physical, financial and emotional toll on victims. However, in many criminal justice systems, victims of crime are often forgotten and sometimes even re-victimized by the system itself. They are rarely allowed to fully participate in decisions that concern them and do not always receive the assistance, support and protection they need. Redress for the harm they suffered as a result of victimization is often not available and, when it is, it is too often insufficient or late in coming.

In November 1985, the General Assembly adopted the **United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power** (resolution 40/34, annex) in which it recommended measures that should be taken at the national, regional and international levels to improve access to justice and fair treatment, restitution, compensation, protection and assistance for victims of crime and abuse of power. In 1988, the Economic and Social Council recommended that Member States take the necessary steps to give effects to the provisions of the Declaration (resolution 1989/57). Finally, in 1998, the Economic and Social Council endorsed a **Plan of Action for the Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power** (resolution 1998/21, annex).

Other resolutions also provided guidance on how justice systems ought to deal with various specific groups of victims. In 1997, the General Assembly adopted resolution 52/86 dealing with the need to review criminal justice practices to better prevent violence against women and support and assist women victims of gender-based violence. The resolution includes an annex entitled **Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice**. The Model Strategies suggest a series of measures that can be taken in variety of areas to prevent violence against women and improve the law and processes for dealing with this widespread form of victimization.

With respect to child victims, the Economic and Social Council adopted in 2005 the **Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime** (resolution 2005/20). One of the objectives of the Guidelines is to assist in the review of national laws, procedures and practices and to assess whether they fully respect the rights of child victims and witnesses of crime.

Furthermore, the **United Nations Convention against Transnational Organized Crime** (2000) and the **Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**, as well as the **United Nations Convention against Corruption** (2003), contain various binding dispositions for States Parties concerning victim protection and victim assistance.

All of the above international instruments, and others of a more regional nature, provide guidance to Member States and, in some cases, create some specific obligations for them regarding the rights of victims or certain groups of victims. An assessment of a criminal justice system or, for that matter, of anyone of its components cannot be complete without a careful examination of how the system and its various components treat victims of crime, the extent to which victims have access to effective redress mechanisms, and the extent to which victims receive the help, protection and support they need.

Every aspect of the justice system either comes in contact with or makes decisions affecting the lives of victims. Some general principles always apply. However, depending on the characteristics of the victims or the nature of the crime, different responses are required of the justice system. In addition, special precautions must be taken to protect and assist some particularly vulnerable groups of victims, such as children. Moreover, as many criminal groups operate across borders, the threat they represent to victims is not confined to within national borders. Victimization frequently occurs across borders, as does the physical and psychological intimidation of victims and their relatives. Victims of human trafficking, for example, may need assistance in order to return to their country of origin while waiting for a hearing or a trial during which they are to provide evidence. For all these reasons, international cooperation in protecting victims and their relatives and supporting them is often required.

For all the above reasons, this cross-cutting tool has been developed to provide an overview of the general ways in which a justice system ought to respond to the needs and concerns of victims and victims as witnesses. Although the tool will not support a detailed assessment of the situation of victims of crime in a given country, it can assist a general assessment by identifying victims concerns and issues that should be taken into consideration in assessing various elements of a criminal justice system.

There are two aspects of criminal victimization that are not covered in any detail in this tool: victimization occurring as a result of various terrorist activities; and, victimization as a result of crimes against humanity. Both of these types of victimization require a different kind of intervention to support and protect the victims. Finally, the response to various forms of victimization and the protection of victims and their rights may be particularly challenging in the context of post-conflict transitions while a justice system is still in transition. These situations are not dealt with in the present instrument.

Technical assistance to improve the manner in which victims and witnesses of crime are treated by the justice system may include initiatives to:

- Review and enhance the legal framework and how it addresses the rights of victims in general;
- Review and improve the legal framework and how it addresses the rights of child victims;
- Review and enhance the legal framework and how it specifically addresses women victims and the victims of gender-based violence;
- Review and enhance the legal framework and how it specifically addresses the rights of victims of abuse of power;
- Review and enhance indigenous and customary practices to ensure that they respect the rights of victims;
- Develop national policies with respect to victim assistance and victim and witness protection;
- Develop the capacity of existing institutions and agencies to offer victim assistance services;
- Train law enforcement and justice officials in child-sensitive intervention techniques;
- Provide training in the use of testimonial assistance techniques to protect the safety, privacy, and identity of victims who testify as witnesses in court;
- Develop alternative conflict resolution mechanisms and restorative justice programs that support victims, give them a voice, enable their participation and address their needs;
- Train and support victim/witness assistance workers and professionals;
- Develop new court-based and police-based victim and witness assistance services;
- Support non-governmental organizations involved in providing assistance and support to victims of crime;
- Support the development of victim compensation schemes;
- Facilitate the provision of protection and legal assistance to victims of abuse of power;

- Evaluate the impact of existing programs to assist and protect victims and witnesses of crime;
- Conduct victimization surveys to understand existing victimization patterns and monitor the experience of victims in their contacts with justice systems;
- Develop performance indicators to monitor the satisfaction of victims and witnesses with their experience with the criminal justice system;
- Develop the capacity of local authorities to cooperate internationally in the protection of victims, their compensation for the harm they suffer, and their safe repatriation when necessary.

2. OVERVIEW

When assessing the mechanisms in place within a country to treat victims of crime, protect their rights and respond to their needs, a preliminary assessment should be made of the existing needs and the available resources. The goals of the assessment should include the following:

- To determine the rate of victimization by types of crime;
- To determine the prevailing patterns of victimization and the general characteristics of victims of crime;
- To obtain a general understanding of the needs of victims in the jurisdiction and how they are addressed, including the needs of specific groups of victims such as children, foreigners, women victim of violence, etc.;
- To assess the availability of existing resources to meet these needs and the capacity of existing agencies to provide effective protection and assistance to victims of crime;
- To identify what policies, procedures and laws dealing with victims are currently in place in the country;
- To understand how existing practices in every aspect of the criminal justice system are affecting victims of crime and how they can be improved;
- To understand what access victims have, and in what circumstances, to various forms of compensation, if any;
- To understand specifically how victims of abuse of power are treated and what recourses and accesses to redress they have;
- To determine what forms of technical assistance would be most useful in improving the situation of victims of crime and abuse of power in the country.

2.1 STATISTICAL DATA

Please refer to **Cross-Cutting Issues: Criminal Justice Information** for guidance on gathering key criminal justice statistical data that will help provide an overview of the number and characteristics of victims who come into contact with the criminal justice system.

When they do collect crime statistics, most countries collect incident-based data that contains information on criminal incidents that came to the attention of the police, and sometimes on the offenders involved in these offences. They rarely collect data on the victims of these crimes. Crime statistics do not necessarily provide a good indication of the prevalence of victimization in a given country, because they are greatly influenced by the willingness of victims to report the crime to the police. When victims of crime or abuse of power do not have a lot of trust in the authorities and when they cannot expect much help from them, they are less likely to report the crime.

Some agencies responsible for victim assistance services may have collected some data on the number and characteristics of victims utilizing their services, but these data are very limited or localized and are typically of limited utility in understanding the overall situation of victims of crime in a country. Unless a victimization study has been conducted in the country, or some part of it, useful data on victims of crime and their experience in the criminal justice system are unlikely to be available.

Victimization studies may also have been conducted in the country or part of the country. Their findings may provide data on victims' reporting behaviour and on their experience of the justice system. Some victimizations studies use a standardized methodology that may lead to some useful international comparisons in this respect.

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

- Crime Statistics – Law Enforcement
- Court Annual reports
- Ministry of Justice reports
- Ministry of Interior/National Police Crime reports/Penal System reports
- Certain health statistics
- Nongovernmental organisation reports on the situation of the victims
- Studies conducted by academic institutions
- UN Crime (victims) surveys

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

- Ministry of justice
- Senior court personnel, registrars
- Non-governmental organizations working on criminal justice matters
- Donor organisations working on the criminal justice sector
- Academic institutions involved in criminal justice research
- Health and mental health professions
- Ombudsman's office
- Bar association

- A. Are the following statistics available on an annual or other periodic basis? (Is that statistical information publicly available?)
- o Crime rates
 - o Victimization rates by types of crime, types of victims (disaggregated by age and gender and places where the crimes have occurred)
 - o Rate of reporting by victims
 - o Number of crimes reported to the police by victims
 - o Number of abuses of power that came to the attention of authorities
 - o Number of children who have been victimized
 - o Number of victims who received restitution
 - o Number of victims who were required to testify in court (and, how many of them were children)
 - o Number of victims who received state compensation (and amounts)
- B. Have special studies been conducted in recent years (victimization survey, survey of victims who came into contact with the justice system, study of specific groups of victims (e.g., victims of abuse of power, victims of violence against women, child victims, victims of human trafficking; etc).
- C. Is there a national organization responsible for the promotion of victims' rights?
- D. Is there a national organization responsible for promoting and protection the rights of child victims?
- E. Is there a "lead" organization within the government to coordinate all efforts to protect the rights of victims?

3. LEGAL AND REGULATORY FRAMEWORK

3.1 LEGAL FRAMEWORK

While victim-oriented practices may be implemented without legislative changes, experience suggests that in many cases a special impetus may be created by the adoption of legislation reaffirming the rights of victims. A number of jurisdictions have enacted “victims’ bills of rights”. Others have simply adopted an overarching policy that can provide guidance to public officials in their dealings with victims of crime and abuse of power.

In most instances however, the most important changes have been brought in by specific legislative amendments to existing procedures, evidentiary requirements, sentencing provisions and other aspects of procedural law. Some of these changes had a specific group of victims in mind (e.g. victims of violence against women, child victims, victims of sexual assaults, victims of trafficking, etc.), while others were of a more general nature.

There are also many instances of legislation adopted to create specific programmes (and sometime establish an authority to use public funds to support them). This may be the case, for example, when a government is seeking to establish a state-funded compensation programme, or victim/witness assistance and protection programme.

Finally, addressing the needs of victims may often mean bringing changes to other laws that may create a hardship for victims of crime or be insufficient to protect their rights (e.g., constitutional law, privacy protection laws, family law, contract law, laws governing private insurance, bankruptcy law, immigration, citizenship and refugee protection laws, access to public information, laws governing access to legal aid or access to other government services, etc.). In the case of victims of abuse of power, there are other laws that may also prevent their access to justice (e.g., law on access to legal aid, police powers, laws governing police accountability and civilian oversight of the police, antiquated correctional laws, laws restricting access to certain kinds of information about public officials, prescription provisions under law relating to the commencement of proceedings, evidentiary requirements under existing law, etc.).

Because these many aspects of the law can be complex, it is not easy for an assessor to properly assess the existing legal framework with respect to the rights of victims. The assessor should be looking for assessments or partial assessments that may already have been conducted in the country (e.g., by law schools, special studies and report by advocacy groups, reviews conducted by other donors). When a proper assessment has not been conducted, conducting one may be a good starting point for any technical assistance to be provided in that regard.

The following documents are likely to be sources from which to gain an understanding of the legal and regulatory framework for the protection of the rights of victims and witnesses Please see also **ANNEX 2: Criminal Law and Criminal Procedure:**

- Acts of the legislature, ordinances and decrees and regulations pursuant to legislation. The relevant legislation will mostly be found in criminal codes, criminal procedure laws, and special laws relating to victims of crime (when they exist).
- Government policy statements, “standing orders”, decrees, circulars.
- Government legislation or decrees establishing specific programmes for victims and witnesses of crime
- Legislation dealing with specific types of victimization (e.g. child abuse, child sexual exploitation, violence against women, etc.), Child protection legislation, family law, citizenship, and immigration and refugee protection law, and various aspects of tort law and civil law (property, contract, liability, bankruptcy).

- A. What are the issues that local professionals, victims’ rights organizations, and advocacy groups have identified with respect to existing laws and the protection it offers to the rights of victims of crime?
- B. What issues have been identified by local ombudsmen, human rights groups, justice professionals, victims rights organizations, and advocacy groups with respect to existing laws and the protection, assistance and access to justice it offers to the victims of abuse of power?

- C. Has the country enacted legislation on victims of crime? If yes, what did it cover, when it has been adopted, has it been fully implemented? Does the legislation apply to the whole country?
- D. Has the country enacted legislation to protect the rights of specific groups of victims, such as victims of:
- terrorism;
 - human trafficking;
 - family violence ;
 - sexual abuse;
 - child abuse;
 - abuse of power.
- E. Has there been a review of procedural law to ensure that victims of crime are treated with fairness, compassion, and respect for their dignity?
- F. Has there been a review of the laws that govern judicial and administrative mechanisms to enable victims to obtain prompt redress through informal and formal procedures that are effective, fair and accessible?
- G. Has there been a recent review of existing laws to ensure that they are in compliance with the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime? What were the findings? What legislative action was taken, if any?

Please see also **CROSS-CUTTING ISSUES: JUVENILE JUSTICE** for additional information on child victims and witnesses.

- H. Has there been a review of the laws that govern restitution and compensation?
- I. Has there been a recent review of existing laws to ensure that they are in compliance with the United Nations Convention against Transnational Organized Crime and its protocol of trafficking in persons, and the United Nations Convention against Corruption. If the State is not yet a Party to these Conventions, does it plan to become a party? Will it need assistance in the implementation of these instruments, particularly with respect to the situation of victims and witnesses?

4. ACCESS TO JUSTICE AND FAIR TREATMENT

The assessor should not expect to find a lot of information directly addressing the question of whether or not a criminal justice system is generally giving victims access to justice and fair treatment. Information is rarely collected on the actual experience of victims who come into contact with the justice system. Focusing on five general types of victims' concerns should provide a rough framework for analysis:

- The extent to which victims are treated fairly and with compassion by the different components of the criminal justice system;
- Whether victims receive adequate protection;
- Whether they have access to redress, in particular restitution;
- Whether they have access to state-based compensation; and,
- Whether they receive adequate assistance to deal with both the immediate and longer term consequences of their victimization.

In assessing the existing situation against these concerns, one should be mindful of the fact that some of these concerns may be addressed in some parts of the country and not in others, for some types of victims and not others, or in some circumstances and not others. One should also be aware of the fact that some groups of victims, such as children for example, have special needs that require special attention. Finally, the assessor should also be mindful of the possible presence of discriminatory practices that would affect how certain groups of victims may be treated.

4.1 RESPONSIVENESS OF THE SYSTEM TO THE NEEDS OF VICTIMS AND WITNESSES

The responsiveness of the justice system to the needs of victims (and witnesses) should be facilitated by informing victims of their role and the progress in their case, allowing their views to be expressed at appropriate stages of proceedings, assisting them through the process, taking measures to reduce the inconvenience associated with the process, to protect them and avoid unnecessary delays.

The need to be responsive to the needs and rights of the victims throughout the justice system translate itself into a number of specific obligations for each aspect of the system. Assessing the responsiveness of the system may involve looking at the extent to which each part of the system has taken effective measures to respond to the needs and concerns of victims. In most instances, since there is little data on the actual practices and the performance of the system's various agencies, one may have to rely on whether policies, guidelines, and protocols have been set in place. Where some evaluations have been conducted, their findings should be consulted.

4.1.1 Victims and the Police

The police are most likely to be the first agency contacted by the victims. That first contact is crucial for the victims and may affect how they cope with their victimization and recover from its effects. There are a number of things that a police force can and should do to improve its response to victims of crime. Improving the response often depends on adopting internal policies and guidelines, developing inter-agency collaboration protocols, providing effective training to front line officers, and offering them some practical tools for effective interventions. When the victimization occurs across borders, the quality of the police response to the needs of victims is sometimes dependent on its capacity to cooperate internationally with other police agencies. (See also: **POLICING: Public Safety and Police Service Delivery**)

- A. Is there any information on victims' perception of the police?
- B. Has a study been conducted of police interactions with victims?
- C. Are police procedures in place to ensure that the victims' needs for safety are addressed and to prevent their further victimization?
- D. Are police procedures in place to ensure the proper detention and investigation of suspects to protect the safety of victims and witnesses?

- E. Are police forces able to respond promptly to calls for protection or assistance from victims and witnesses?
- F. Have police officers received some basic training on the needs and concerns of victims of crime, and on victims' rights?
- G. Have police officers received training on child sensitive interventions and investigation techniques?
- H. Are police officers trained and able to explain police procedures and investigatory process to victims?
- I. Are police forces collaborating with other services to provide assistance and protection to victims?
- J. Are police forces cooperating with other law enforcement agencies in the country or in another country to provide assistance and protection to victims and witnesses?
- K. Have specialized police squads been created to deal more effectively with certain types of victimization (e.g. child abuse, family violence, human trafficking, etc.)?
- L. Have police officers been trained on how to inform victims of crime on how to protect evidence and how to take measures to protect themselves against further victimization?
- M. Do police officers typically accompany victims, when they need it, to emergency medical services?
- N. Are police officers able to refer victims to victim assistance services? Do they do so?
- O. Do police officers generally inform victims of crime of their rights and the potential availability of compensation or redress? Have they been trained to do so?
- P. Are procedures in place to ensure that victims of crime are periodically informed of the status of the investigation in their case?
- Q. Has training on victims' rights and needs been incorporated into basic police training?
- R. Are the police able to offer protection and assistance to victims of minority groups, victims who speak a non-native language, etc.?
- S. Is there any evidence of discriminatory practices in the way the police respond to the needs of victims (e.g. on the basis of race, gender, ethnicity, religion, socio-economic status, citizenship, etc.)?
- T. Is there an established witness protection program providing for relocation and change of identity? Is there any data available on how frequently it is being used for victim/witnesses, how long people stay in the program, and what benefits they are entitled to?

4.1.2 Victims and the Prosecution Service

The majority of victims do not come into contact with a prosecutor because their victimization does not lead to the actual prosecution of an offender. The prosecution services are delivered through a variety of means in different countries. Public prosecutors play a unique role in criminal cases in that they appear on behalf of the government as the representative of the people rather than an individual victim. The prosecutor's relationship with the victims is sometimes ambiguous, except perhaps when they call a victim to testify in court. The **United Nations Guidelines on the Role of Prosecutors** requires that prosecutors consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights. There are a number of things that prosecutors can do to protect the rights of victims. See also: **Access to Justice: The Prosecution Service**.

- A. How does the prosecutions service seek to meet the needs and concerns of victims and witnesses, in particular vulnerable persons (children, victims of family violence, victims of sexual crimes)?
- B. Have prosecutors received training on the needs, concerns and rights of victims and witnesses?
- C. Is there a prosecutor-based victim/witness assistance programme? If not, are certain individuals within prosecution services assigned to work with victims and witnesses?
- D. Is there any information available on victim/witness satisfaction with their contact with prosecution services?
- E. Have procedures been set in place to provide basic levels of services to victims and witnesses (e.g. information, translation, notification, measures to limit the inconveniences associated with having to testify in court)?
- F. Do prosecution services have access to witness protection services and programmes?
- G. Are prosecution services providing information about the criminal justice system and proceedings in simple lay terms to help victims and witnesses understand the justice process?
- H. Are child-friendly areas provided for children witnesses?
- I. Have some prosecutors received training in child-friendly interviews and examination?
- J. Do prosecutors coordinate the inclusion of victim impact statements in court proceedings and other relevant proceedings?
- K. Do prosecutors assist victims in seeking restitution and prompt return of their property? Does the prosecution regularly seek restitution on behalf of the victims?
- L. How are victims kept informed by the prosecution service about their case, including decisions whether to prosecute,, verdicts, and sentences? Are such victims informed of the decision not to prosecute and the reasons for such a decision?
- M. Do prosecutors take measures to minimise the inconvenience of court appearances for victims and other witnesses? What measures do they employ?

4.1.3 Victims as Witnesses and the Judiciary

Judges can provide essential protection to victims. With child victims, for example, they can order some special arrangements to facilitate their testimony. They play an important role in ensuring that victims are treated with courtesy, respect and fairness. They can take measures to ensure expeditious trials and to avoid unnecessary delays. Judges should play a significant role in ensuring the safety of victims and witnesses who are called upon to testify. They can also issue protection orders, where the law makes it possible, in cases of violence against women or against children, which order the perpetrator removed from the home, prohibit further contact with the victim and others and impose penalties for violating the order.

The court may also order the application of evidentiary measures to protect the identity of the victim/witness or prevent intimidation by the defendant. Such measures include the use of shields or screens, testimony via videoconference, anonymous testimony or allowing the presence of an accompanying person during court hearings.

Judges can also include information concerning the impact of the crime on the victim in their assessment of the sentence to be imposed and, where the law allows, it includes reparative measures in the sentence. See also **Access to Justice: The Courts**.

- A. Have members of the judiciary received training on the needs, concerns and rights of victims and on their responsibilities with respect to victim/witness protection.
- B. Are the needs of vulnerable persons especially addressed (for example: women, children, victims of sexual abuse or domestic violence) in policies or in existing practices and services?

- C. Are there staffs 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?
- D. Is adequate training being offered to court personnel dealing with vulnerable persons?
- E. Are victims/witnesses given information about the services that are available, or what protections they may seek? How and by whom?
- F. Can the court decide on the use of protective measures such as anonymity for victim/witnesses where there is serious risk of intimidation by the defendant or even a threat to their physical safety? What other evidentiary measures are available?
- G. Can the witness request the presence of an accompanying person (parent, therapist, teacher, female police officer, etc.) during court testimony and for what types of crime?
- H. Are witnesses in criminal cases legally entitled to compensation for loss of wages or other expenses associated with their appearance in court?
- I. 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 changes in scheduling?
- J. Are there special waiting areas where victims and witnesses can wait in a courtroom without fearing a confrontation with the accused?

4.1.4 Role of Victims in the Justice System

Different criminal justice systems allow different levels and forms of victim participation in criminal proceedings. In most instances, however, that role is minimal. **Article 6(b) of The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power** specifies that, at a minimum, the views and concerns of victims should be allowed to be presented and considered at appropriate stages of the proceedings where their personal interests are affected.

- A. Are victims of crime permitted under national law to participate in any proceedings against the accused?
- B. What measures are in place to ensure that victims of crime can have their views expressed at various stages of the proceedings where their personal interests are affected?
- C. If restorative justice or traditional conflict resolution mechanisms are in use, what is the role of victims in these mechanisms (e.g. victim involvement in restorative justice)?

4.1.5 Alternative to Formal Proceedings

The country's justice system may provide for the possibility of resorting to alternative or informal conflict resolution processes? Many of these alternative responses provide the parties involved, and often also the surrounding community, with an opportunity to participate in resolving conflict and addressing its consequences. In some cases, the informal mechanisms amount to a form of formal diversion from the criminal justice system. Referrals may come from the community, the police, the prosecutors, or the court. Many of these mechanisms involve a form of mediation; some include a restorative approach. A restorative process is any process in which the victim and the offender and, where appropriate any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.

Informal processes, although some of them explicitly profess to exist for the benefits of victims, do not always offer adequate protection to victims and their rights. See: **United Nations Principles on the Use of Restorative Justice Programmes in Criminal Matters, 2002.**

- A. Are alternative conflict resolution mechanisms or restorative justice programmes in use in criminal matters in the country? What do they consist of?
- B. What are the types of crime that may be dealt with by alternative conflict resolution mechanisms utilized? Are some types of crimes, such as domestic violence, excluded?
- C. Can alternative conflict resolution mechanisms be used as an alternative to formal proceedings? If yes, at what stage? How are referrals made to these programmes? How often are they used? How are they managed?
- D. Have policies, guidelines or other formal guidance been issued on the use of these informal mechanisms?
- E. Have the individuals who manage these informal mechanisms received adequate training, including training on the needs and rights of victims?
- F. Are victims free to participate or not in these alternative process? If not, why not? How are they compelled to participate? Victims should not be coerced.
- G. Can victims be compelled to accept the outcome of these processes? Victims should not be coerced.
- H. Are the outcomes of these informal mechanisms considering the needs and concerns of victims?
- I. Is restitution or compensation usually part of the outcomes of these informal mechanisms?
- J. Is the safety of the victim considered in referring cases to informal mechanisms?

4.1.6 Traditional/Customary Courts

The Constitution or criminal procedure law of the country may grant jurisdiction to a customary or traditional court. See: **Access to Justice: The Prosecution Service (3.2.1)**. There are often some human rights and due process issues associated with these systems, some of them may have a direct impact on victims of crime. Traditional, community-based, or non-state informal systems can take many forms and produce different outcomes in terms of access to justice as well as equity and fairness. On the other hand, they may offer a greater opportunity for victims to be involved in the resolution of the conflict.

In many countries, the idea of community involvement in the justice process enjoys a large consensus. In some countries, community participation is already part of traditional practices and customary law. There appears to be a resurgent interest in preserving and strengthening customary law and traditional justice practices. A fundamental challenge for participatory justice is, however, to find ways to effectively mobilize the involvement of civil society, while at the same time protection the rights and interests of victims.

For further background information, please see **ANNEX 1, Comparative Legal Systems**.

- A. Is there a system of traditional or customary law courts? What is the basis of the authority of these customary/traditional courts? How often are these courts dealing with criminal matters? What kind of criminal matters are they typically dealing with?
- B. Is there some available documentation on these traditional mechanisms and the customary laws they apply?
- C. What issues/problems have victims encountered in dealing with these courts?
- D. Are there any specific aspects of the customary law(s) that are being invoked in these customary courts that create particular difficulties for victims? (Lack of due process, discriminatory practices, gender-based or age-based discrimination, etc.).

4.1.7 Military Courts/ Special Tribunals

The situation of victims of crime and abuse of power can be particularly precarious when the matter is dealt with by a military court or a special tribunal.

- A. Are there military courts operating in the country?
- B. When military courts try criminal offences, what assistance, support and protection can they offer victims?
- C. If the criminal procedure law in force in military courts and special tribunals is different from that which applies to other courts, what provisions does it contain to protect the rights of victims and allow them access to redress?
- D. What issues have advocacy groups, human rights groups and others identified concerning the way these military courts or special tribunals deal with victims of crime and abuse of power?

4.1.8 Corrections (Prisons and Alternative Sanctions)

Victims have a legitimate interest in seeking to ensure not only that those who have committed a crime against them are brought to justice, but also that offenders do not continue to present a danger to them or others after their conviction or release. Community corrections agencies (e.g. probation services) and prisons must also play a role in supporting and protecting victims of crime. Measures can be taken to address the concerns of victims during an offender's incarceration (both before adjudication and as a sentence), while he or she is being supervised in the community, or at the time of his or her release from prison (either on parole at the end of a sentence). See also: the assessment tools on: **Custodial and Non-Custodial Measures: The Prison System; Custodial and Non-Custodial Measures: Detention Prior to Adjudication; and Custodial and Non-Custodial Measures: Alternatives to Incarceration**".

- A. At the time an offender is released on bail, are conditions typically imposed to protect the victim and witnesses? Who is responsible for supervising and enforcing these conditions? Is the safety of the victim an explicit consideration in making decisions about bail or the release of offenders while awaiting a trial or other proceedings?
- B. If probation is sometimes ordered, does it typically include (or can it include) the following:
 - Conditions regarding contact with the victim(s)?
 - Payment of monetary obligations to the victim, such as restitution, child support, mortgage payments, etc.?
- C. Does the probation service or another agency effectively enforce the conditions of probation that relate to restitution or the protection of the victim?
- D. Is the probation service or another equivalent agency monitoring the probationer's involvement in any victim-offender programme (e.g. mediation) in which victims choose to participate on a strictly voluntary basis?
- E. Are prison and probation officials taking appropriate measure to protect the information concerning the victims and to protect their privacy?
- F. Are prison and probation officials taking appropriate measure to protect victims of crime from intimidation or harassment by the offenders during their period of incarceration or probation?

- G. Are prison officials, upon request, notifying victims and witnesses of an offender's status, including the offender's current location, classification, potential release date, escape, and death?
- H. Are parole agencies (and similar authorities involved in decisions to release an offender from prison) providing victims with an opportunity to have an input in the decision to release the offender? Are victims provided in a timely manner with information about the decision making process and the decisions themselves?

4.2 PROTECTION

Access to justice also means that effective measures must be taken to protect the safety of victims, witnesses and their families. Many victims fear intimidation and retaliation and expect the criminal justice system to protect them. These fears are particularly acute when there is a close relationship between the victim and the offender (family violence), or when the offender is part of a powerful group or organization (e.g. terrorist organization or organized crime group). In the case of victims of abuse of power or corruption, the fear of intimidation or retaliation is often linked to a distrust of government officials, law enforcement and the judiciary.

Part of the debate over the scope and nature of many victim protection measures and programmes is around the question of whether or not they extend to protect all victims or only those who are needed as witnesses

Ensuring the protection of the privacy of the victims/witnesses is a concern, particularly, in the case of children. Measures should be taken to protect children from undue exposure to the public by, for example, excluding the media from the courtroom during the child's testimony, or ordering a publication ban. Countries can also issue guidelines or directive to ensure that the media treat information regarding victims responsibly.

The **UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Article 6 (d))** refers to the need for each justice system to "protect the privacy of victims, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation". In the case of child victims, the **Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime**, propose a number of means to ensure the children's right to safety (#32, 33, 34). The **Convention Against Transnational Organized Crime (articles 24,25,26)** also include a number of provisions requiring States Parties to take measures to protect witnesses, to assist and protect victims, and to cooperate with other enforcement authorities to offer protection to victims and witnesses. The **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children** also contains a number of provisions dealing specifically with the protection of victims of human trafficking (articles 6,7,8), including physical protection, protection against intimidation, measures to permit victims of trafficking to remain temporarily or permanently in the receiving State, protection measures at the time of repatriating the victims to their own country to ensure that due regard is given to their safety and that of their relatives. The **United Nations Convention against Corruption** (article 32) contains similar provisions concerning the protection of victims/witnesses of corruption.

In situation of transition, victims of crime and abuse of power may find themselves particularly vulnerable and powerless. 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. In post conflict situation and in cases of crimes against humanity or serious abuses of human rights, it is essential to be able to protect victims and witnesses in order to encourage them to come forward and provide testimony. The **Rome Statute** (articles 68-69), for example, and the rules of Procedure and Evidence for the International Criminal Court contain provisions relating to the protection of victims and witnesses (e.g. Rule 87 on applications for protective measures).

- A. What measures are available to the courts to protect victims of crime (protective orders, no-contact orders, conditions of bail, escorts for victims/witnesses, testimonial aid, etc.)?
- B. Are professionals trained in recognizing and preventing the intimidation of victims, particularly children?

- C. What measures are available to ensure the out-of-court (before and after the trial) physical safety of victims? Does the police have a special program for enhanced protection in place?
- D. What measures are available to protect victims against intimidation during trial or while they provide a testimony (videotaping of evidence, closed-circuit transmission of testimony, safe transportation of victims and witnesses to and from courts, safe houses for victims and witnesses, etc.)? Are these measures used routinely or only in special cases? Are these measures readily available in the case of child victims?
- E. Are there procedural and evidentiary rules (e.g. regarding disclosure) that may place the victims at greater risk of retaliation or intimidation?
- F. Are there provisions that allow courts to protect the privacy and, where necessary, the identity of victims of crime?
- G. Is there a special programme for victim/witness assistance and protection? Who operates the programme? What protective measures are available? How broadly is it available? What are the most commonly applied measures? How often is the programme used? How many victims have received protection?
- H. Have measures been put in place to assist victims of human trafficking in obtaining temporary or permanent residency permits and protecting them and their relatives at the time of their repatriation?
- I. Has the country entered into international law enforcement cooperation agreements to protect victims of transnational crime?
- J. Is anything known about the level of confidence the public has in the criminal justice system, the police, and the system's ability to protect victims of crime?
- K. Is there any data on the experience of victims of crime and whether they tend to receive adequate protection from the police and other elements of the justice system?
- L. In recent years, have the media reported any major cases of intimidation or retaliation against victims/witnesses?
- M. Is there any evidence that victims and witnesses of crime (or certain types of crimes) are afraid to come forward and denounce the crime to the authorities for fear of retaliation?
- N. What training is offered, if any, to law enforcement and other justice officials on victims' safety concerns and the best way to address them?
- O. Has the State ensured that its domestic law provides at least the same level of protection for victims of abuse of power, gross violations of international human rights law and serious violations of international humanitarian law as that required by their international obligations?
- P. Under the law, what measures can be taken to protect the privacy of victims with regard to disclosure of identity by the media? What measures have been taken to protect the privacy of victims/witnesses, particularly children (e.g. ability of the court to order a publication ban, exclusion of the media from the courtroom, guidelines or regulations for the media)?

4.3 RESTITUTION

Offenders should, where appropriate, make restitution to victims, their families or dependants. The restitution should include the return of property or payment for the harm and loss suffered, reimbursement of expenses incurred as a result of victimization, the provision of services and the restoration of rights. Restitution can be implemented in a number of ways and at various points in the system: as a condition of probation, as a sanction in itself or as an additional penalty. It can also be an outcome of a traditional court or an alternative mechanism, such as a victim-offender mediation process, group conferencing, or another restorative justice process. For restitution to be ordered by the court or as part of another process, the information about the damage suffered by the victims must be available and presented, the loss has to be assessed in one way or another, and the ability of the offender to provide restitution has to be considered. In some cases, when the offender does not have the means to pay restitution, the restitution can be offered in kind, or in the form of services offered to the victim or the community. Finally, there is always the question of whether restitution orders are effectively enforced and whether there are any consequences imposed on offenders who do not comply with the restitution order.

- A. Do the laws and regulations of the country allow restitution to be ordered as part of a sentence, either as a sentencing option or in addition to other criminal sanctions?
- B. Are victims aware of the dispositions of the law allowing restitution to be ordered?
- C. What means are available to victims to present a request for restitution? How is information about the harm the suffered presented to the court (e.g., as part of the normal proceedings in which they participate, through a victim impact statement, through the prosecution, etc.)?
- D. Is restitution available to victims as part of the outcome of traditional courts or informal dispute resolution or restorative justice mechanisms?
- E. Where public officials or other agents of government violated the criminal law or perpetrated abuses of power, can the victim receive compensation from the State? Are there any known cases where such restitution was recently provided by the State?
- F. Do victims of crime receive assistance in presenting their request for restitution to the court (or alternative, informal mechanisms)?
- G. How are restitution orders enforced?
- H. Is there any data on how frequently restitution is ordered by the courts (or alternative dispute resolution mechanisms) and in what types of cases?

4.4 COMPENSATION

Where compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation. In cases where the offender was an agent of the state or was acting on behalf of the State, the State has a responsibility to compensate victims for the harm that was caused to them as a result of the victimization. Victim compensation is often the most direct way of offering financial assistance to victims of crime and abuse of power. In some cases, some States have adopted legislation and established special mechanisms for providing compensation. Several models of victim compensation schemes exist. There are often major financial implications in establishing a compensation fund. Conditions of admissibility are sometime purposefully restrictive to limit the number of potential claims against the fund.

Recognizing the importance of addressing the question of remedies and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law in a systematic and thorough way at the national and international levels, the UN has adopted the **Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law**. It specifies the actions that should be taken by States to ensure that victims of abuse of power and violations of human rights law have access to redress and reparation. The remedies in question include the victim's right to the following as provided for under international law: (a) Equal and effective access to justice and (b) Adequate, effective and prompt reparation for harm suffered; (c) Access to relevant information concerning violations and reparation mechanisms.

- A. Is there a victim compensation scheme or programme in the country? If so:
 - What agency is responsible for the scheme
 - Does it apply to victims everywhere in the country?
 - Does it apply to victims who are not nationals?
 - How is the scheme funded?
 - What are the eligibility requirements?
 - Are victims of crime generally aware of the availability of compensation? (Information and outreach programmes)
 - Is the application process simple and accessible?
 - How are the claims being processed (fairness, expeditiousness, sound decisions, impartiality, confidentiality, etc.), and by whom?

- B. Is there any statistical information or other data on the functioning of the programme, the compensation being offered, etc.?

- C. In cases of abuse of power, gross violations of international human rights law and serious violations of international humanitarian law, do victims have:
 - Effective access to justice and means of seeking redress?
 - Access to adequate, effective and prompt reparation for the harm they suffered?
 - Access to relevant information concerning violations and reparation mechanisms.

- D. Has the State adopted appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice to victims of abuse of power and victims of gross violations of international human rights law and serious violations of international humanitarian law?

- E. Has the State made available adequate, effective, prompt and appropriate remedies, including reparation for victims of abuse of power and gross violations of international human rights law and serious violations of international humanitarian law?

4.5 ASSISTANCE

Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, and community-based means. In assessing the availability of victim assistance services in a country, one is confronted with issues of coverage (geographical, rural vs. urban, etc.), accessibility of services, and quality of services provided. It is rare that a country has an inventory of the victim assistance providers and of all the services offered to victims. Many of the available services tend to be offered to specific groups of victims and not necessarily to others (e.g., services for victims of sexual assaults, victims of family violence, child victims, victims of human trafficking, etc.). Typically, the services are offered by different agencies that are poorly coordinated and sometimes competing for resources. When services are available, there is sometimes some discrimination involved in determining who has access to them. Eligibility criteria may also be unduly restrictive. The services advertised might not be the services actually offered. Funding for such services is often precarious and the services that are actually delivered are often limited.

Some basic services (information, outreach, referrals) can be offered by the police and other criminal justice agencies (the prosecution service, the courts, etc.). Other services (medical treatment) are more specialized.

The provision of assistance to victims in countries that are in transition is particularly important and difficult. The services that are required, however, tend to be essentially the same as in other situations.

- A. Does the country have a policy on the provision of victim assistance? (or a policy on assistance to certain specific groups of victims - e.g. children, victims of violence against women?)
- B. Is there an inventory of specialized agencies offering services to victims of crime?
- C. Are the activities of victim assistance agencies coordinated (at the local or national levels)?

- D. Which agency, if any, in the country is playing an advocacy role with respect to victims' rights and assistance to victims? (Some of the agencies may be focussing on a specific group of victims, e.g. women, children)
- E. How is the provision of victim assistance funded in the country (government charitable organizations, foreign donors, etc.)?
- F. What crisis intervention assistance is available to victims? (Which victims, when, where?)
- G. Can victims receive assistance in coping with the physical impact of the crime (e.g. repairing property, replacing possessions, installing security measures, accessing health services, funeral burial expenses, etc.)
- H. Can victims access medical and psychological assistance even if they cannot afford it?
- I. Can victims receive assistance and support during the investigation, the trial, and even after the trial (counselling, accompaniment, information, advice, assistance with applying for restitution or compensation)?
- J. Are victims who need to do so generally able to access post-victimization counselling or advice?
- K. If assistance is not provided free of charge, those who cannot afford it receive some kind of financial support from the State?

5. PARTNERSHIPS AND COORDINATION

5.1 SYSTEM COORDINATION

When possible, policies and programmes to improve the treatment of victims and provide assistance and protection should be based on a comprehensive strategy that coordinates efforts at all levels. One possible step, as suggested in the Handbook on Justice for Victims is the establishment of a high-level committee or working group with representatives from all relevant bodies, such as ministries or departments of justice, the interior, safety and security, welfare, health, education and social services, as well as leaders of services responsible for policing, prosecutors, courts, legislators and local government. The academic and research community, health and mental health professions, various voluntary organizations, religious organizations and the business sector, including insurance, can also be involved.

Such advisory bodies can undertake, or be assigned, the tasks of:

- Performing needs assessments, including participation in the international victimization surveys, and studies of special victims groups, such as victims of domestic violence, abuse of power or sexual assaults;
- Assessing the shortfall between needs on the one hand and services and existing legislation on the other, including the identification of obstacles hindering access to justice;
- Making proposals for improvements in the treatment of victims in the immediate and long terms, including those requiring financial commitment and/ or legislative reform
- Recommending ways to finance services, such as general revenue and reparative payments by offenders.

- A. Are there mechanisms /measures in place to coordinate the different activities of the relevant government agencies and ministries dealing with victims?
- B. Are there mechanisms in place to coordinate and support the role of non-governmental agencies providing assistance and support to victims of crime and abuse of power (i.e., advocacy groups, human rights organizations, women's rights groups, child protection agencies, victims services, religious organizations, health organizations, etc.)?
- C. Are there any civil society organizations specifically representing the interests or advocating for the rights of victims?

5.2 DONOR COORDINATION

Understanding what donor efforts are underway, what has previously been implemented (successfully and unsuccessfully) and what is planned is critical to developing recommendations for future technical assistance interventions. Many of the donors' previous or current projects may not be specifically focussed on victims' rights, but may have included some aspects that were nevertheless relevant to the situation of victims (e.g., child protection projects, court management, law enforcement training and capacity building project, women's rights projects, etc.)/

- A. Which donor/development partners are active in the area of victim assistance?
- B. Which donor/development partners are active in the area of child protection?
- C. Which donor/development partners are active in the area of human rights and are concerned with the ability of victims of abuse of power and human rights abuses to seek and obtain redress?
- D. 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?
- E. Can some victims' rights objectives be incorporated in other training and capacity development projects in the field of crime prevention and criminal justice?

ANNEX A. KEY DOCUMENTS

UNITED NATIONS

- Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power 1985 (General Assembly resolution 40/34)
- Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Economic and Social Council resolution 1989/57)
- Plan of Action for the Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Economic and Social Council resolution 1998/21)
- Guidelines on Justice Matters Involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20)
- Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations on International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147)
- Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, Article 25)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (General Assembly res. 55/25, Articles 6-8)
- Convention Against Corruption (General Assembly resolution 58/4, Article 32)
- The Convention on the Rights of The Child, (General Assembly Resolution 44/25, 1989, Article 19)
- Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, (Annex to General Assembly resolution 52/86, 1997.
- Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (Annex to ECOSOC resolution 2002/12 of 24 July, 2002)

DRAFT

- 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.

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

REGIONAL

- African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, (Convention of Belem do Para), OAS, 1994.
- Council of Europe Convention on the Compensation of Victims of Violent Crimes of 1983
- Council of Europe Recommendation R (85) 11 on the Position of Victim within the Framework of Criminal Law and Procedure
- Council of Europe Recommendation R (87) 21 on Assistance to Victims and the Prevention of Victimization of November 1987
- Council of Europe Recommendation Rec (2006) 8 on Assistance to Victims of June 2006
- European Union Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings

- European Union Council Directive 2004/80/EC of 29 April 2004 Relating to Compensation for Victims of Crime

Post Conflict

- ICC - Rome Statute of the International Criminal Court, 1998
- ICTR Statute – 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.
- ICTY Statute – 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.

Other Useful Sources

- Handbook on Justice for Victims: On the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UNODC, 1999
- Guide for Policy Makers on the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UNODC, 1999
- Strategies to Eliminate Violence Against Women - A Resource Manual, INODC/ICCLR/HEUNI/ILANUD, 1999.

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	<ul style="list-style-type: none"> ▪ Ministry of Justice reports ▪ Ministry of Interior reports ▪ National Police Crime reports ▪ Court annual reports ▪ Penal System reports ▪ NGO reports: victim services ▪ Victimization surveys 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Ministry of Interior ▪ Police officials ▪ Senior court personnel ▪ Registrar/Court manager ▪ NGOs working with victims ▪ Donor organisations working on justice reforms ▪ Academic Institutions 	
3.1	LEGAL FRAMEWORK	<ul style="list-style-type: none"> ▪ Acts of Parliament and regulations to those Acts ▪ Court Rules ▪ Government policy documents, decrees, circulars ▪ Legal textbooks or academic research papers 	<ul style="list-style-type: none"> ▪ Legislative offices ▪ Ministry of Justice ▪ Senior Court personnel ▪ Court Administrator / Registrar ▪ NGOs working with victims of crime ▪ Donor organisations working on justice reforms and human rights 	
4.1	RESPONSIVENESS OF THE SYSTEM TO THE NEEDS OF VICTIMS/WITNESSES	<ul style="list-style-type: none"> ▪ Victims' rights advocacy group's reports ▪ Surveys of victims ▪ Government reports 	<ul style="list-style-type: none"> ▪ Government agencies ▪ Ministry of Justice ▪ NGO's working with victims ▪ Academic institutions ▪ Human rights organizations 	
4.1.1	VICTIMS AND THE POLICE	<ul style="list-style-type: none"> ▪ Victims' rights advocacy group's reports ▪ Surveys of victims ▪ Police policies and reports 	<ul style="list-style-type: none"> ▪ Ministry of Interior ▪ Ministry of Justice ▪ Police officials ▪ NGO's working with victims ▪ Academic institutions ▪ Human rights organizations 	
4.1.2	VICTIMS AND THE PROSECUTION SERVICE	<ul style="list-style-type: none"> ▪ Prosecution service's policies and procedures ▪ Annual reports of prosecution services ▪ On site visits 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Victims' rights advocacy group's reports ▪ Surveys of victims ▪ Prosecution service's policies ▪ Court administrators 	
4.1.3	VICTIMS AS WITNESSES AND THE JUDICIARY	<ul style="list-style-type: none"> ▪ Annual reports ▪ Court's rules and policies ▪ On site visits 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Victims' rights advocacy group's reports ▪ Surveys of victims ▪ Court administrators ▪ Court Registrar ▪ Members of the judiciary 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.1.4	ROLE OF VICTIMS IN THE JUSTICE SYSTEM	<ul style="list-style-type: none"> ▪ Criminal Code and Law on Criminal Procedure 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Ministry of Interior ▪ Police officials ▪ Senior court personnel ▪ Registrar/Court manager ▪ NGOs working with victims ▪ Academic institutions 	
4.1.5	ALTERNATIVE TO FORMAL PROCEEDINGS	<ul style="list-style-type: none"> ▪ Laws ▪ Reports on operations of alternative programmes ▪ Reports from Ministry of Justice ▪ Reports from NGOs 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Ministry of Interior ▪ Police officials ▪ Senior court personnel ▪ Registrar/Court manager ▪ Members of the judiciary ▪ NGOs working with victims ▪ Academic institutions 	
4.1.6	TRADITIONAL/CUSTOMARY COURTS	<ul style="list-style-type: none"> ▪ Reports on customary law (including some attempts at codification where they exist); ▪ Law journals ▪ Government reports ▪ Academic reports 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Police officials ▪ Members of the judiciary ▪ Law schools ▪ NGOs working with victims ▪ Academic Institutions 	
4.1.7	MILITARY COURTS/SPECIAL TRIBUNALS	<ul style="list-style-type: none"> ▪ Military Law 	<ul style="list-style-type: none"> ▪ Military officials ▪ Judge advocate ▪ Victims' rights advocates 	
4.1.8	CORRECTIONS (PRISONS AND ALTERNATIVE SANCTIONS)	<ul style="list-style-type: none"> ▪ Penal law ▪ Policies and procedures of prisons and correctional services ▪ Policies and procedures of probation services 	<ul style="list-style-type: none"> ▪ Prison officials ▪ Ministry of Interior ▪ Probation services officials ▪ Prison reform groups ▪ Victims' rights advocates 	
4.2	PROTECTION	<ul style="list-style-type: none"> ▪ Criminal law and criminal procedure law ▪ Special legislation concerning protection programs ▪ Reports on existing victim protection schemes ▪ Court procedures ▪ Reports from court Registrar and court administrators 	<ul style="list-style-type: none"> ▪ Ministry of justice ▪ Ministry of Interior ▪ Police officials ▪ Members of the judiciary ▪ Court managers/administrators ▪ Official from prosecution services ▪ Prison officials 	
4.3	RESTITUTION	<ul style="list-style-type: none"> ▪ Criminal law and criminal procedure law ▪ Reports from Ministry of Justice ▪ Courts' annual reports ▪ Probation service's annual report ▪ Reports and studies by victim assistance organization 	<ul style="list-style-type: none"> ▪ Ministry of justice ▪ Members of the judiciary ▪ Court managers/administrators ▪ Official from prosecution services ▪ Victim services ▪ Probation service's officials 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.4	COMPENSATION	<ul style="list-style-type: none"> ▪ Annual reports from Victim Compensation Fund (or scheme) ▪ Government reports ▪ Auditor's reports ▪ Ministry of Justice reports ▪ Special studies ▪ Reports published by victims' rights advocates 	<ul style="list-style-type: none"> ▪ Victim Compensation scheme's manager or authority ▪ Ministry of Justice ▪ Victim services agencies ▪ Lawyers 	
4.5	ASSISTANCE	<ul style="list-style-type: none"> ▪ Ministry of Justice reports ▪ Reports from victim assistance agencies ▪ Victims surveys ▪ Academic studies 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Victims services agencies ▪ Police officials ▪ Academic institutions ▪ Prosecutors ▪ Court administrators 	
5.1	SYSTEM COORDINATION	<ul style="list-style-type: none"> ▪ Annual reports by relevant agencies 	<ul style="list-style-type: none"> ▪ Victims services agencies ▪ Ministry of Justice ▪ Police officials 	
5.2	DONOR COORDINATION	<ul style="list-style-type: none"> ▪ Ministry of Justice reports ▪ Reports, project descriptions, and publications by donor agencies 	<ul style="list-style-type: none"> ▪ Donor organisations ▪ Ministry of Justice ▪ Heads of criminal justice agencies 	



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International Cooperation

Criminal justice
assessment
toolkit

4

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Vienna

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UNITED NATIONS
New York, 2006

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This publication has not been formally edited.

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1. INTRODUCTION

Globalization and, more specifically, the emergence and expansion of transnational crime confront all justice systems with some new difficulties. Criminal offenders are mobile and often seek to evade detection, arrest, and punishment by operating across international borders. They avoid being caught by taking advantage of those borders and playing on the frequent reluctance of law enforcement authorities to engage in complicated and expensive transnational investigations and prosecutions. The weak capacity of any one country to address effectively some of these new threats translates itself into an overall weakness in the international regime of criminal justice cooperation. For countries with a relatively weak criminal justice capacity, these challenges can sometimes appear insurmountable.

The international community now recognizes international cooperation in criminal matters as an urgent necessity. This demands national efforts to comply with new international standards, to encourage convergence and compatibility of national legislation, to introduce complex procedural reforms, and generally to develop a much greater investigation and prosecution capacity at the national level as well as strengthen the capacity to cooperate at the international level. For some countries, building a capacity for international cooperation within their own criminal justice system is, to say the least, a struggle.

The main mechanisms supporting international cooperation are mutual legal assistance, extradition, transfer of prisoners, transfer of proceedings in criminal matters, international cooperation for the purposes of confiscation of criminal proceeds and asset recovery as provided for in the United Nations Convention against Corruption, as well as a number of less formal measures, including measures in the area of international law enforcement cooperation. These mechanisms are based on bilateral or multilateral agreements or arrangements or, in some instances, on national law. All of them are evolving rapidly to keep pace with new technologies and their evolution over the last decade or so reflects the new determination of Member States to work more closely with each other to face the growing threats of organized crime, corruption and terrorism.

Noticeably, some of the most innovative strategies are coming out of cooperation efforts between countries that have either a crime problem or a geographical border in common. Some of the most significant lessons learned in recent years come from the experience of countries working at the bilateral, sub-regional or regional level to address practical issues on a regular basis. Regional cooperation is evolving rapidly in all parts of the globe.

A consensus is emerging around some of the most promising means of enhancing international cooperation in the investigation and prosecution of serious crimes. Some of them are now included in the international cooperation framework established by the **United Nations Conventions against Transnational Organized Crime; against Corruption; and against the Financing of Terrorism**, and several other multilateral instruments at the global and regional levels, which provide a strong basis for internal cooperation. Having national legislation in place to implement fully these instruments is therefore of paramount importance, as are the development of a capacity to cooperate and the adoption of the administrative measures necessary to support the various modalities of international cooperation.

This assessment tool identifies some practical issues that are typically encountered by a country trying to actively engage in international cooperation. It refers also to some of the practical issues that have recently emerged during the implementation of new international conventions, such as the **UN Convention against Transnational Organized Crime**, whose main purpose is precisely to facilitate international cooperation. Questions are suggested for assessing the capacity and willingness of a particular jurisdiction to cooperate at the international level, as well as the obstacles it is facing with respect to building that capacity.

For the purpose of this tool, international cooperation is defined broadly because it can and should occur at various levels of the criminal justice system. The assessor, however, will frequently need to narrow the scope of the assessment. In doing so, one may consider the nature of the country's existing or anticipated future obligations under various treaties (multi-lateral, regional or bi-lateral).

In spite of the considerable progress accomplished at the bilateral, regional, trans-regional, and international levels, international cooperation in the investigation and prosecution of serious crimes still needs considerable strengthening. Practitioners are well aware of the many obstacles that still exist to international cooperation in criminal matters. They include sovereignty issues, the diversity of law enforcement structures, the absence of enabling legislation, the absence of channels of communication for the exchange of information, and divergences in approaches and priorities. These problems are often compounded by difficulties in dealing with the varied procedural requirements of each jurisdiction, the competitive attitude that often exists between the agencies involved, language, and human rights and privacy issues.

There are also rule of law issues that require attention in relation to international cooperation. Measures to reinforce the rule of law need not be characterized as impediments to international cooperation. A country's commitment to the rule of law and the protection of human rights should not be negotiable or bartered against some international cooperation concessions in fighting transnational crime or terrorism. In fact, a commitment to the rule of law can enhance international cooperation in criminal matters. Measures to enforce the rule of law and adherence to international human rights standards are also directly relevant to enhancing mutual assistance and international cooperation. In matters of extradition, mutual legal assistance, or joint investigations, the agencies and institutions involved retain an obligation to ensure the lawfulness of all actions taken in the name of cooperation.

Integrated approaches are also important in the provision of technical assistance. Smaller countries often experience difficulties implementing the numerous international conventions and bilateral treaties they are expected to comply with. The basic capacity of their criminal justice and law enforcement institutions is often limited. They can benefit from integrated technical assistance activities that focus on building their overall investigation and prosecution capacity as well as their ability to cooperate effectively.

Technical assistance in the area of international cooperation in the context of a broader strategic framework may include work that will support the following:

- Review and enhance the legal framework to include measures that support and strengthen mutual assistance;
- Review and enhance the legal framework to include measures that enable mutual legal assistance as required by instruments to which the country is a party;
- Review and enhance the legal framework to enable extradition as required by any treaty to which the country is a party;
- Review and enhance the legal framework to include measures that authorize law enforcement cooperation as required by any bilateral or multilateral agreements;
- Review and enhance the legal framework to include measures that authorize law enforcement cooperation as required by any bilateral or multilateral agreements;
- Review and enhance the criminal and criminal procedure code to ensure that the predicate proscribed acts described in the instruments above are criminalized under the legislative framework, that legal jurisdiction for them is established;
- Review and enhance the criminal and criminal procedure code to ensure that the appropriate criminal acts are extraditable;
- Review and enhance the criminal and criminal procedure code to ensure that sensitive information received via international cooperation is kept confidential;
- Develop national policies and implement procedures to facilitate exchange of information as well as its analysis and to prevent the disclosure of sensitive information received via such exchanges;
- Develop national policies for and implement mechanisms such as central authorities, liaisons, secondments and exchanges of prosecutors and law enforcement officials, and networks to facilitate mutual cooperation;

- Develop national policies and implement procedures for mutual legal assistance in the absence of treaties and to the extent possible where dual criminality is absent;
- Develop the capacity of existing institutions and agencies to develop, use, and respond to requests for mutual legal assistance and information;
- Train law enforcement personnel, prosecutors and judicial officials regarding legal requirements for mutual legal assistance and extradition;
- Develop the capacity of authorities to cooperate internationally in the protection of victims, their compensation for the harm they suffer, and their safe repatriation when necessary.

2. OVERVIEW

The assessor may wish to enquire about the experience of the country and its various criminal justice agencies with various transnational forms of crime, including prevalence, patterns, routes, trends, modus operandi, victims, etc. The assessor should also be curious about the countries experience with international cooperation, both as a provider of assistance and as a requesting State. Furthermore, it is clear that inter-agency cooperation at the national level is not only crucial to effective local action against transnational organized crime, corruption and terrorism, but is also an important precondition for effective cross-border cooperation against these major threats.

Designating a single central authority for all incoming and outgoing legal assistance and extradition requests and strengthening its effectiveness remain crucial to the success of international cooperation in criminal matters. This is how a country, among other things, can coordinate its own requests for assistance and stand ready to respond expeditiously to requests for cooperation it receives from other countries. Increasingly, mutual legal assistance treaties require that States Parties designate a central authority (generally the Ministry of Justice) to which requests can be sent, thus providing an alternative to diplomatic channels. The **Convention against Transnational Organized Crime** and the **Convention against Corruption** makes it mandatory for States Parties in order to ensure the expeditious transmission or execution of the requests. Nevertheless, the role of the central authorities need not necessarily be an exclusive one. Direct exchanges of information and cooperation, to the extent permitted by domestic law, should also be encouraged.

- A. How frequently, in what circumstances and with what results have agencies have been involved in seeking cooperation from another country?
- B. From which countries was international assistance most frequently requested?
- C. What difficulties have agencies typically encountered in trying to seek the assistance of other countries?
- D. How frequently, in what circumstances, for what type of offences are agencies most frequently asked for assistance from other countries? What is the volume of request? Are agencies typically able to reply positively for request for assistance? What are the delays typically involved in responding to a request for assistance?
- E. What are the countries that most frequently request assistance from agencies? For what kind of assistance? What are offences usually involved?
- F. What difficulties have agencies typically encountered in trying to offer technical assistance to other countries? Are some kinds of assistance more problematic than others?
- G. Does the country have a Central Authority for International Cooperation or equivalent? Has another agency been delegated this responsibility?
- H. Does the Central Authority have sufficient resources to achieve its mandate (skilled and trained staff, communication equipment, ongoing training, etc.)? Is it able to collaborate and exchange with other central authorities?

- I. Are law enforcement agencies able to share criminal record and other law enforcement information with each other, directly, in real time, while providing all the required security and human rights safeguards?
- J. Do agencies have access to advanced data communication and storage technologies for the sharing of criminal record information and the exchange of other criminal justice data between agencies?
- K. Are there clear guidelines, rules, and accountability mechanisms to prevent and detect improper or corrupt practices in data sharing?

3. LEGAL FRAMEWORK

Whether a country is attempting to prevent organized crime activities, financial and economic crime, computer crime, corruption or terrorism, the establishment of better legal bases for international cooperation is a prerequisite. Strengthening the convergence of criminal law and criminal law procedure is part of any long-term strategy to build more effective international cooperation. Developing stronger bilateral and multi-lateral agreements on mutual legal assistance is also part of the solution. The universal conventions against terrorism, as well as the **United Nations Conventions against Transnational Organized Crime** and **against Corruption** provide a strong basis for legal cooperation and often suggest some of the elements that must be developed as part of a national capacity for effective investigation and prosecution of these crimes. Having national legislation in place to fully implement these instruments is therefore of paramount importance.

In matters of international cooperation, criminal justice agencies must rely, to a large extent, on the treaty network developed by their country. The various conventions mentioned above call upon their States Parties to widen their treaty network by entering into new bilateral and multilateral treaties to facilitate international cooperation in criminal matters. Making this network work for them in a practical manner is often still a challenge for prosecution services.

It is important to note, however, that mutual legal assistance can be provided without the existence of a specific treaty if national laws are flexible enough.

Existing treaties and laws should be reviewed periodically and amended as necessary to keep pace with rapidly evolving practices and challenges in international cooperation. They should provide maximum flexibility to enable broad and expeditious assistance. To facilitate these efforts, the General Assembly adopted a **Model Treaty on Mutual Assistance in Criminal Matters**.

The country may require technical assistance in adopting measures to establish under their domestic law a number of offences called for by the conventions and protocols relating to terrorism and other related forms of crime, and to ensure that these offences are punishable by appropriate penalties that take into account the grave nature of the offences. This is also important where a dual criminality requirement may exist. Countries may require assistance to help them define the material and mental elements of the offences in accordance with the general criminal law of each State Party. Part of an assessment may be concerned with verifying whether the country has in place the criminal law provisions it needs to comply with its obligations under international law in particular international human rights, refugee, and humanitarian law.

- A. Does national legislation allow or support lawful and effective exchanges of data on an international basis? Does national legislation authorize or provide mechanisms for the exchange of such information among domestic law enforcement agencies?
- B. Where the country is not a party to mutual legal assistance or extradition treaties, does the national legislation authorize such activities? Under what circumstances? Are these circumstances defined by law?

3.1 ESTABLISHING OFFENCES UNDER NATIONAL LAW

3.1.1 Terrorism Offences Under National Law

- A. Have terrorist acts been criminalized as required by Resolution 1373?
- B. Have offences relating to civil aviation been incorporated into national law?
- C. Have offences based on status of victims (protected persons) and the **Convention on the Safety of United Nations and Associated Personnel** (1994) been incorporated into national law?
- D. Have the necessary offences relating to dangerous materials, such as explosives, nuclear materials, etc., been created?
- E. Have the necessary offences relating to the protection of vessels and fixed platforms been created?
- F. Have the necessary offences contained under the universal anti-terrorist instruments been incorporated into national legislation?
- G. Have the following offences been criminalized:
 - The financing of terrorism?
 - The provision or collection of property to commit terrorist acts?
 - The provision of services for commission of terrorist acts?
 - The use of property for commission of terrorist acts?
 - The making of arrangements for the retention or control of terrorist property?
 - The soliciting and giving of support to terrorist groups or for the commission of terrorist acts?
 - The harbouring of persons committing terrorist acts?
 - The provision of weapons to terrorist groups?
 - The recruitment of persons to be members of terrorist groups or to participate in terrorist acts?
 - The provision of training and instruction to terrorist groups and persons committing terrorist acts?
 - The incitement, promotion or solicitation of property for the commission of terrorist acts?
 - The provision of facilities in support of terrorist acts?
 - Conspiracy to commit offences?
 - Membership in terrorist groups?
 - The arrangement of meetings in support of terrorist groups?
 - Participation in the commission of terrorism-related offences?
 - The taking of hostages?

3.1.2 Organized Crime Offences Under National Law

- A. Has the participation in an organized criminal group been criminalized?
- B. Has the liability of legal persons been established in law?

3.1.3 Money Laundering Offences Under National Law

- A. Has the conversion, concealment or disguise of the proceeds of crime been criminalized?
- B. Has the acquisition, possession or use of proceeds of crime been criminalized?

- C. Has the participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating and counselling the commission of money laundering offences been criminalized?
- D. How are the predicate offences defined?

3.1.4 Obstruction Of Justice Offences Under National Law

- A. Has the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the production of evidence in relation been criminalized?
- B. Has the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official been criminalized?

3.1.5 Corruption Offences Under National Law

- A. Have active bribery, passive bribery, complicity in bribery offences, and other forms of corruption been criminalized?
- B. Have embezzlement, misappropriation or other diversion of property by a public official been criminalized?
- C. Has the bribery of foreign public officials and officials of public international organizations been criminalized?
- D. Has the trading in influence been criminalized?
- E. Has the abuse of functions been criminalized?
- F. Has illicit enrichment been criminalized?
- G. Has bribery in the private sector been criminalized?
- H. Has the liability of legal persons involved in acts of corruption been established?

3.1.6 Smuggling Of Migrants And Human Trafficking Offences Under National Law

- A. Has the smuggling of migrants (including attempts, participation as an accomplice, organizing, and directing others) been criminalized?
- B. Has the enabling of illegal residence been criminalized?
- C. Has the production and the procuring, providing, or possession of fraudulent travel and identity documents been criminalized?
- D. Has trafficking in persons been criminalized?

3.1.7 Trafficking in Firearms Trafficking Offences Under National Law

- A. Has the illicit manufacturing of firearms been criminalized?
- B. Has the illicit trafficking in firearms been criminalized?
- C. Has the tampering with markings on firearms been criminalized?

3.1.8 Illicit Drugs Offences Under National Law

- A. Have the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery, transport, importation or exportation of illicit narcotic drugs or psychotropic substances been criminalized?
- B. Have the illicit cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs been criminalized?
- C. Have the illegal possession or purchase of narcotic drugs or psychotropic substances been criminalized?
- D. Have the manufacture, transport or distribution of equipment, materials or substances knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances been criminalized?
- E. Have the organization, management or financing of drug offences been criminalized?

3.1.9 Cybercrime Offences Under National Law

- A. Have illegal access to computer data and systems, illegal interception, data interference, and system interference been criminalized?
- B. Have computer related forgery and frauds been criminalized?
- C. Have the necessary substantive and procedural laws to prevent and punish terrorist and other criminal activities perpetuated with the aid of computers and computer networks been enacted?

3.1.10 Jurisdiction Under National Law

- A. Does the law establish jurisdiction for the above criminal offences? What courts may hear such offences?
- B. Under the law, how does the state obtain jurisdiction over those individuals and entities committing these offences?

4. INTERNATIONAL COOPERATION MECHANISMS

4.1 EXTRADITION

Multilateral Conventions dealing with extradition have been developed within the framework of various regional and other international organizations, such as the African Malagasy Common Organization, the Benelux Countries, the Council of Europe, the Commonwealth, the European Union, the Nordic States, the Organization of American States, the Arab League and the Southern African States. Extradition provisions are also included in a number of international conventions dealing with specific types of crime, including the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the UN Convention against Corruption, the UN Convention against Transnational Organized Crime and the universal conventions against terrorism. Bilateral treaties on extradition are too numerous to keep track of. In spite of all this, there are still numerous situations where existing legal instruments are insufficient or do not cover the offence or the country concerned. The existing regime of international cooperation in criminal matters is still in need of major improvements to avoid legislative loopholes and eliminate safe havens. There also remain numerous obstacles to quick and predictable extradition. The often-cumbersome processes of extradition need to be streamlined. For that purpose, model treaties have been made available to countries wishing to enter into new bilateral agreements including the **United Nations Model Treaty on Extradition**.

Furthermore, the **UN Conventions against Transnational Organized Crime and against Corruption** address some of the extradition issues that have arisen and recommend means to simplify evidentiary requirements and keep the burden of proof to a minimum in extradition proceedings. These conventions set basic minimum standards for extradition for offences they cover and also encourage the adoption of a variety of mechanisms designed to streamline the extradition process.

Countries need to continue to develop and refine their treaty network and modernize their extradition treaties. Nevertheless, it is the domestic law of the requested States that ultimately governs extradition works. According to the UNODC Informal Expert Working Group on Effective Extradition Casework Practice, “the sheer size and scope of the resulting domestic variations in substantive and procedural extradition law create the most serious ongoing obstacles to just, quick and predictable extradition”. Countries tend to have widely differing preconditions for granting extradition and have in place a number of procedural requirements and practices that impede expeditious collaboration. Recent trends in extradition treaties have focused on relaxing the strict application of certain grounds for refusal of extradition requests.

Reviewing the national these laws and renegotiating existing treaties are often necessary to ensure maximum flexibility in dealing with extradition requests. In many instances, changes to national extradition legislation are required as a procedural or enabling framework in support of the implementation of the relevant international treaties. In cases where a country can extradite in the absence of a treaty, a national legislation is often useful as a supplementary, comprehensive and self-standing framework for surrendering fugitives to requesting States. The UNODC has prepared a model law on extradition to assist interested Member States in drafting such legislation.

- There are often unnecessary obstacles to cooperation and extradition in existing laws and treaties. For example, the concept of “dual criminality” has been a procedural backbone of many, if not most, existing treaties on extradition and mutual legal assistance, but can also preclude more cooperative relationships in the investigation and prosecution of criminal matters. The use of the principle varies from one country to another, with some requiring dual criminality for all requests for assistance, some for compulsory measures only, some having discretion to refuse assistance on that basis, and some with neither a requirement or discretion to refuse. One of the innovations of the **UN Convention against Corruption** is to allow States Parties to depart from the application of the double criminality requirement (Art. 44, para. 2) The newly established framework on surrender (**Framework Decision on the European Arrest Warrant (EAW)**) among the Member States in the European Union introduces several innovations to previous extradition procedures, including: **Expeditious proceedings**: The final decision on the execution of the EAW should be taken within a maximum period of 90 days after the arrest of the requested person. Where the subject of the warrant consents, the maximum period is within 10 days after consent has been given (Art. 17).
- **Abolition of double criminality requirement in prescribed cases**: The double criminality principle shall not be verified for a list of 32 offences, (Art. 2, para. 2), should be punishable in the issuing Member State for a maximum period of at least 3 years of imprisonment and defined by the law of this Member State. These offences include participation in a criminal organization, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, illicit trafficking in narcotic drugs and psychotropic substances, illicit trafficking in weapons, munitions and explosives, corruption, fraud including that affecting the financial interests of the European Communities, laundering of the proceeds of crime, computer-related crime, environmental crime, facilitation of unauthorized entry and residence, murder and grievous bodily injury, rape, racism and xenophobia, trafficking in stolen vehicles, counterfeiting currency, etc.. For offences that are not included in the abovementioned list or do not meet the 3-year threshold, the double criminality principle still applies (Art. 2, para. 4).

- **“Judicialization” of the surrender:** The new surrender procedure based on the EAW is removed from the realm of the executive and has been placed in the hands of the judiciary. The judicial authorities are competent to issue or execute an EAW by virtue of the law of the issuing or executing Member State (Art. 6). Consequently, since the procedure for executing an EAW is primarily judicial, the administrative stage inherent in extradition proceedings, i.e. the competence of the executive authority to render the final decision on the surrender of the person sought to the requesting State, is abolished.
- **Surrender of nationals:** The European Union Member States can no longer refuse to surrender their own nationals. The Framework Decision does not include nationality as either a mandatory or optional ground for non-execution. Furthermore, Art. 5 para. 3, provides for the option of making execution conditional on a guarantee that, upon conviction, the individual is returned to his/her State of nationality to serve the sentence there.
- **Abolition of the political offence exception:** The political offence exception is not enumerated as mandatory or optional ground for non-execution of an EAW. The sole remaining element of this exception is confined to the recitals in the preamble of the Framework Decision (Recital 12) and takes the form of a modernized version of a non-discrimination clause.
- **Additional deviation from the rule of speciality:** (Art. 27 para. 1 of the Framework Decision enables Member States to notify the General Secretariat of the Council that, in their relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to carrying out of a custodial sentence or detention order for an offence committed prior to surrender, other than that for which the person was surrendered.

- Does the country require a treaty, under its law, to extradite an individual? Is a lawful extradition of an individual to another country possible without a treaty?
- Is there a national legislation governing extradition? What is it? What does it cover?
- On what grounds, according to national legislation, can extradition be refused? Are exceptions based on certain types of offences or punishment, political exceptions, prohibitions concerning extradition of nationals, etc.? Modern multilateral treaties addressing organized crime, corruption, terrorism or drug trafficking explicitly render certain offences ineligible for the political offence exclusion with respect to extradition.
- What are the main requirements of the country for granting an extradition request?
- Is there a dual criminality requirement in domestic law and bilateral treaties? Modern extradition legislation and treaty practice adopts a simple “punishability test” of both the foreign offence and equivalent domestic offence, regardless of their name or characterization in domestic legislation.
- Does the country recognize arrest warrants of other countries?
- What treaties does the country have with other countries? Are there countries that are obviously missing with which a treaty would be important?
- How recent are the country’s existing extradition treaties?
- Do existing treaties cover the offences that need to be covered by the international conventions to which the country has become a State Party, e.g. **UN Convention against Transnational Organized Crime**?
- Does the country’s current system impose complex authentication and certification requirements?
- Who or what agency deals with extradition requests? How is this obligation coordinated? Have the relevant personnel been trained in the legal requirements of extradition?
- Does the national law allow the temporary surrender of persons sought by a requesting State, e.g., temporarily extraditing someone serving a prison sentence?
- Is there a simplified process for the surrender of persons sought who voluntarily consent to stand trial or punishment in the requesting State?

- N. Does the country recognize its duty, in certain cases, to “extradite or submit to prosecution”?
- O. Are extradition requests subject to unduly lengthy juridical review and appeals processes, notwithstanding the fundamental right to review or appeal by the person sought?
- P. What kind of results is the country currently receiving to its requests for extradition?
- Q. Are modern means of communication and other technological means available to expedite the transmission of requests and responses?
- R. What is the language capability of key officials involved in processing requests (e.g. within the central authorities and prosecution services in general)?
- S. Is the country usually able to ensure that requests for extradition are executed within the deadlines specified by the requesting State?

4.2 MUTUAL LEGAL ASSISTANCE

Mutual legal assistance, as is the case with extradition, is generally based on bilateral and multilateral treaties, as well as on national legislation that either gives full effect to the relevant treaties or enables mutual assistance in absence of a treaty. Multilateral instruments such as the **UN Convention against Transnational Organized Crime**, the **UN Convention against Corruption**, or the **UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances** include detailed provisions concerning mutual assistance. Instruments on mutual legal assistance in criminal proceedings have also been adopted within the framework of the Commonwealth, the Council of Europe, the European Union, the Organization of American States, the South-East Asian Region (see the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters, signed on 29 November 2004), the Economic Community of West African States, and the Southern African Countries.

Further action is often required to minimize obstacles to the provision of effective assistance. Many jurisdictions are taking legislative, judicial and administrative initiatives to enhance their ability to give, receive, and effectively use mutual legal assistance. A key component of such efforts is the establishment of, at the national level, an effective and comprehensive legal basis for mutual legal assistance and, at the international level, the necessary treaties to create binding obligations to cooperate with respect to a range of modalities. These treaties and laws should be reviewed periodically and amended if necessary to keep pace with rapidly evolving practices and challenges in international cooperation. They should provide maximum flexibility to enable broad and expeditious assistance. To facilitate these efforts, the General Assembly has adopted the **Model Treaty on Mutual Assistance in Criminal Matters**. A model law on mutual legal assistance is also under preparation.

The current trend in international cooperation mechanisms is to favour arrangements which: (1) allow direct transmission of requests for mutual assistance and expedite the sending and service of procedural documents; (2) require compliance with formalities and procedures indicated and deadlines set by the requesting Member State; (3) facilitate the cross-border use of technical equipment (for observation purposes) and the interception of communications; (4) authorize controlled deliveries and allow covert investigations to take place across borders; (5) encourage the establishment of joint investigation teams; (6) permit, under certain circumstances, the hearing of witnesses by video or telephone conferences; and, (7) permit the temporary transfer of persons held in custody for purposes of investigation.

There is an increasing awareness of the need to limit the scope of any conditions or evidentiary requirements that may hinder the provision of effective legal assistance within the framework of human rights and other relevant international standards. The **UN Conventions against Transnational Organized Crime and against Corruption** include provisions on the freezing of assets, the use of video-conferences, and the “spontaneous transmission of information” without a request, which are finding their way into other bilateral and multilateral agreements.

Mutual assistance is often hindered by the fact that procedural laws of cooperating countries can vary considerably. For instance, the requesting State may require special procedures that are not recognized under the law of the requested State, or the latter may provide evidence in a form or manner which is unacceptable under the procedural law of the requesting State. Member States should strive to ensure that their current framework for providing assistance does not create unnecessary impediments to cooperation.

At the operational level, designating a single central authority for all incoming and outgoing legal assistance and extradition requests is crucial to international cooperation in criminal matters. In this way, a country can coordinate its own requests for assistance and stand ready to respond expeditiously to requests from other countries. Increasingly, mutual legal assistance treaties require that States Parties

designate a central authority (generally the ministry of justice) to which requests can be sent, thus providing an alternative to diplomatic channels.

The **UN Convention against Corruption** (as well as other instruments) calls for the widest measure of mutual legal assistance among States Parties. There may also be some “corruption-specific” obstacles to international legal assistance. For one thing, the offenders involved in a corruption case may well be part of or closely associated with the government officials whose cooperation is being sought. They may try to use their power and influence to hide, suppress or destroy relevant information or evidence or otherwise derail international cooperation attempts. They may have contacts or influence in the national financial institutions and be able to count on their complicity to cover their own wrongdoings. Finally, there may also be instances where “national interests” may be invoked against cooperation (e.g. to protect a national industry, employment, etc.). All this points at the need for strong relationships between law enforcement authorities based on a shared commitment to cooperate and to take all the measures necessary to stamp out corruption wherever it occurs.

There are a number of best practices that can facilitate the timely and efficient response of a state to a request from another states. Similarly, there are steps that a country can take to increase the likelihood that it will receive assistance from another state.

Criminal justice agencies understand the vital importance of receiving a timely response to their request for assistance. When delays are inevitable, they need to be informed about the reasons. All recent treaties emphasize the need for promptness in responding to requests for assistance. One should look for practical and procedural means of addressing the problem. Some of the solutions reside in building the capacity within each State to respond and to deal with some frequently occurring problems: improved communication channels; enhanced translation capacities; language training; use of standardized forms and guidebooks; development and use of checklists of evidentiary requirements to be satisfied for a request to be accepted; secondment and exchanges between personnel in central authorities or between executing and requesting agencies; training material and courses; bi-lateral and regional seminars and information exchange sessions; and, the use of liaison officers and liaison magistrates to facilitate the preparation of the requests for assistance and any follow-up communications.

Cooperation can also be expedited through the use of alternatives to formal mutual assistance requests, such as informal police channels and communication mechanisms, or when evidence is voluntarily given or publicly available, or the use of joint investigation teams with a capacity to directly transmit and satisfy informal requests for assistance.

- A. Could measures be taken by the country to minimize the grounds upon which assistance may be refused, e.g. finding ways to minimize the consequences of the principle of *ne bis in idem* as a ground of refusal? (*Ne bis en idem* stands for the proposition that once a person has been the subject of a decision on the facts and legal norms in a criminal case, then he or she should not be the subject of further decisions on the same matter.)
- B. Could the country reduce existing limitations on the use of evidence in response to a request for mutual assistance and streamline the grounds upon which and the process whereby limitations are imposed?
- C. Is the country ensuring, as much as possible, that requests are executed in compliance with procedures and formalities specified by the requesting State to ensure that the request achieves its purpose.
- D. Are existing measures sufficient for the protection of confidential data and information relating to requests of mutual assistance? (Also, is the confidentiality of requests for assistance received protected when possible and, when not possible, is the requesting State advised that its request may not be kept confidential?)
- E. Does the existing national legal framework provide fortuitous opportunities for third parties to unduly delay cooperation and to completely block the execution of a request for assistance on technical grounds?
- F. What is the current capability/capacity of the central authority, if one exists? If there is no central authority, are there plans to create one?
- G. Are justice officials aware of national legislation, existing treaties and their requirements?
- H. Have steps been taken to make sure that foreign officials are aware of the national legal requirements in international cooperation (e.g. be developing guidelines, simple forms,

checklists, and procedural guides on the requirements that must be met in order to obtain assistance)?

- I. Have the relevant personnel been trained in mutual legal assistance?
- J. Are direct contacts between justice officials with foreign officials encouraged/ permitted/facilitated?
- K. Are prosecutors and other officials encouraged to avoid a rigid interpretation of the prerequisites to mutual assistance in a way that can impede the granting of assistance?
- L. What kind of results is the country currently receiving to its request for extradition and mutual legal assistance?
- M. Are modern means of communication and other technological means available to expedite the transmission of requests and responses?
- N. What is the language capability of key officials involved in processing requests (e.g. within the central authorities and prosecution services in general)?
- O. Is the country usually able to ensure that requests for legal assistance and/or extradition are executed within the deadlines specified by the requesting State?
- P. Are officials generally able to coordinate multi-jurisdictional cases with the jurisdictions involved?

4.3 TRANSFER OF SENTENCED PERSONS

It often important to be able to transfer persons sentenced to imprisonment from one country to another. Transfer may also be used in a manner that complements other forms of cooperation. Depending on national law it is sometimes necessary to have a treaty as a basis for such exchange. Bilateral treaties vary considerably among themselves. International treaties, such as the **Conventions against Transnational Organized Crime and against Corruption** also have dispositions meant to encourage that kind of international justice collaboration when appropriate. Model treaties also exist, including the **Model Agreement on the Transfer of Foreign Prisoners**.

- A. What does national law provide concerning the transfer of prisoners to another country?
- B. To what treaties (bilateral or multilateral) is the State a party?
- C. Are there any restrictions to the prisoner exchanges in which the country will engage?
- D. What difficulty have justice officials encountered in obtaining the transfer of prisoners?
- E. What difficulty have justice officials encountered in negotiating treaties with other countries for the transfer of prisoners?
- F. How frequent are transfer of prisoners?

4.4 TRANSFER OF PROCEEDINGS IN CRIMINAL MATTERS

The possibility of transferring proceedings in criminal matters from one country to another is another interesting option upon which to build stronger international cooperation. Such a transfer can be used to increase the likelihood of the success of a prosecution, when for example another country appears to be in a better position to conduct the proceedings. It can also be used to increase the efficiency and effectiveness of the prosecution in a country that is initiating proceedings in lieu of extradition. Finally, it can be a useful method of concentrating the prosecution in one jurisdiction and increasing its efficiency and the likelihood of its success in cases involving several jurisdictions.

The **UN Conventions against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Article 8)** against **Transnational Organized Crime (Article 21)** and against **Corruption (Article 47)** contain provisions enabling States Parties to transfer proceedings where this is in the interest of the proper administration of justice. Please see also the **UN Model Treaty on the Transfer of Proceedings in Criminal Matters**.

- A. Is the transfer of criminal proceedings possible under national law?
- B. Are there any restrictions, under law, to the possible transfer of criminal proceedings?
- C. What treaties is the country currently party to which refer to or call for transfers of proceedings?
- D. What difficulties/issues have been encountered in attempting to transfer proceedings?
- E. Does the country frequently receive requests for transfer of proceedings? From predominantly which countries?
- F. Does the country frequently request a transfer of proceedings from other countries? On what basis? From most often which countries?

4.5 INVESTIGATION OF BRIBERY; CORRUPTION; ECONOMIC AND FINANCIAL CRIME; AND MONEY-LAUNDERING

Given that organized criminal groups and terrorist organizations make use of illegal financial transactions to both transfer and fraudulently acquire funds, higher levels of international cooperation between States are required to prevent and punish financial crimes without disrupting legitimate commerce. Advances in technology and new opportunities for criminal activities present constant challenges for prosecutors and stretch the capacity of existing international cooperation mechanisms to their limit. International cooperation has focused in part on controlling money laundering. The international regime against money laundering is the result of a framework and international standards adopted in the context of various regional and international organizations. Recent United Nations conventions against organized crime and against corruption also include provisions against money laundering. There is also growing international interest in exploring the viability of building a tighter international cooperation framework to combat financial and economic crimes in general.

The gathering and exchange of information by Member States to detect financial networks linked to organized crime groups and terrorist actors, including exchange of information between law enforcement and regulatory bodies, are necessary to a strategic approach to combating organized crime. Establishing financial intelligence units (FIUs) is essential for financial investigations and international cooperation. It is also important to identify innovative and technologically advanced methods of direct cooperation between FIUs, as well as cooperation between FIUs and prosecution services across national borders.

The successful investigation and prosecution of financial and economic crime and money laundering offences require the quick identification and communication of information from banks and other financial institutions. In many instances, changes to bilateral treaties or national legal frameworks are required to allow for the lawful and expeditious exchange of that information across borders. Treaties and international arrangements include provisions not only for prompt responses to requests for information on banking transactions of natural or legal persons, but also for the monitoring of financial transactions at the request of another State and for the spontaneous transmission of information on instrumentalities or proceeds of crime to another State. Spontaneous transmission of information, even in the absence of a request, should be encouraged when they may assist the receiving State in initiating or carrying out investigations or proceedings that might lead eventually to a formal request for cooperation. Article 56 of the **UN Convention against Corruption** requires States parties to endeavour to enable themselves to forward information on proceeds of corruption offences to

another State Party without prior request, when such disclosure might assist the receiving State in investigations, prosecutions or judicial proceedings or might lead to a request by that State under this chapter of this Convention.

Finally, the existence of offshore centres presents practical problems from the point of view of cooperation among prosecution services. Difficulties are frequently experienced in dealing with the differences in company laws and other regulatory norms. There are also issues with cyber-payments, "virtual banks" operating in under-regulated offshore jurisdictions, and shell companies operating outside of the territory of the offshore centre. Finally, control agencies have been trying to improve measures to curb money laundering in countries where participation in the "formal" financial system is low. Understanding these informal financial networks and how criminal actors can abuse them is a priority.

PLEASE SEE ALSO POLICING: CRIME INVESTIGATION and POLICE INFORMATION AND INTELLIGENCE SYSTEMS; AND ACCESS TO JUSTICE: THE PROSECUTION SERVICE.

- A. Is there a FIU in the country? How is it staffed, funded, resourced, etc?
- B. Does national legislation criminalize money laundering?
- C. Is national legislation in compliance with the standards set by international treaties?
- D. Is there a regulatory regime that requires banks and financial institutions to ensure: customer identification, record keeping, and mechanisms to report suspicious transactions?
- E. What measures did the country establish to monitor cross-border movement of cash and other monetary instruments?
- F. Is there any data of the functioning and efficiency of the country's FIUs?
- G. Is the FIU collaborating directly with other national FIUs?
- H. Is the intelligence collected by the FIUs used by law enforcement and prosecutions services?
- I. What is the situation in the country with respect to informal value transfer systems?
- J. What are the typical requests the country receives or sends out for financial information? What are the average delays in receiving that information or in responding to a request for financial information?
- K. What bank secrecy laws exist that may impede investigations or become a basis for refusing a request for cooperation?
- L. Are there offshore centres in the country? If yes, how and where do they operate and under what regulations?
- M. What evidence is there of money laundering activities in the country?
- N. What evidence is there of financial and economic crime in the country?
- O. What evidence is there of bribery and corruption in both public life and in commercial transactions in the country?

4.6 CONFISCATION OF CRIME-RELATED ASSETS

Confiscation within a jurisdiction and internationally is made difficult by the complexities in the banking and financial sector and by technological advances. The **UN Conventions against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; against Transnational Organized Crime; against Corruption; and for the Suppression of the Financing of Terrorism** contain provisions on the tracing, freezing, seizing and confiscation of instrumentalities and proceeds of crime. Other international efforts against money laundering and terrorist finance are based on the **Forty + Nine Recommendations of the Financial Action Task Force on Money Laundering** and the Basel Committee on Banking Regulations and Supervisory Practices.

Effective action against corruption must include measures to deprive perpetrators of the proceeds of corruption and targeting such proceeds by rigorous international cooperation to enable the freezing, seizing and recovery of assets diverted through corruption. The **UN Convention against Corruption** contains some innovative and far-reaching provisions on asset recovery, including provisions to facilitate the return of stolen government assets to their countries of origin.

International cooperation in confiscation continues to pose particular difficulties. The **UN Convention against Transnational Organized Crime (UNTOC)** and, most importantly, the **UN Convention against Corruption (UNCAC)** offer standards along which national laws and practices can be aligned. A ground-breaking innovation of the Convention against Corruption is the entire chapter devoted to asset recovery, which addresses the cooperation between jurisdictions where assets are located and victims, including States and other parties. The objective is to develop national legislative frameworks and practices that provide flexibility in providing international cooperation while protecting the legitimate interests of third parties. Efforts should also be made to enlist the cooperation of the banking and financial sectors and to ensure that relevant law enforcement authorities are familiar with the cooperation currently available from other countries and with the means to seek and obtain that cooperation.

Article 57 of UNCAC is a provision on the return and disposal of assets that departs from the UNTOC and other earlier Conventions under which the confiscating State is deemed to have ownership of the confiscated proceeds. (Article 14 para. 1 of the UNTOC, for example, leaves the return or other disposal of confiscated assets to the discretion of that State in accordance with its domestic law and administrative procedures). In the case of asset recovery, the return of confiscated property to the requesting State depends on how closely this property is linked to that State, but there is an obligation to return the confiscated property in the case of embezzlement of public funds or laundering of embezzled public funds. For other offences established in accordance with UNCAC, the obligation for return exists where the requesting State establishes prior ownership or where the requested State recognizes damage to the requesting State as a basis for the return. In all other cases, priority consideration shall be given to returning confiscated property to the requesting State, returning such property to prior legitimate owners or compensating the victims of the crime.

Art. 53 of UNCAC requires States Parties to enable other States Parties to seek for the direct recovery of property and permit: a) other States parties to initiate civil action to establish title to or ownership of property acquired through corruption offences (no more dependence on mutual legal assistance request); b) national courts to order corruption offenders to pay compensation or damages to another State Party; and c) national courts, when deciding on confiscation issues, to recognize other State Party's claim as a legitimate owner of property acquired through corruption. UNCAC extends international cooperation to cover investigations of or proceedings in civil and administrative matters as well

The European Union also took decisive steps to improve cooperation for the confiscation of proceeds of crime. In May 2005, a comprehensive regional framework for international cooperation in such matters was also adopted in the **Council of Europe Convention on Laundering, Search and Confiscation of the Proceeds of Crime and on the Financing of Terrorism**.

These international instruments are to ensure that each Party adopts such legislative and other measures as may be necessary to trace, identify, freeze, seize, confiscate criminal assets, manage these assets, and extend the widest possible cooperation to other States Parties in relation to tracing, freezing, seizing or confiscating proceeds of crime. A similar ability must also exist among cooperating states with respect to assets of a licit or illicit origin, used or to be used for the financing of terrorism.

The implementation of effective measures against terrorism financing remains a priority for the international community. The **International Convention for the Suppression of the Financing of Terrorism** requires States Parties to establish the offence of financing of terrorism and to enact certain requirements concerning the role of financial institutions in the detection and reporting of evidence of financing of terrorist acts. In addition, States Parties are required to engage in wide-ranging cooperation with other States Parties and to provide them with legal assistance in the matters covered by the Convention. The G-8 Lyon Group has put forward a set of best practice principles on tracing, freezing and confiscation of crime related assets, including terrorism. These principles emphasize the need for multi-disciplinary cooperation between legal, law-enforcement, and financial and accountancy experts within and across jurisdictions. They underline the necessary specialization of competent authorities to deal with complex cooperation issues.

Finally, international cooperation can be substantially facilitated by the development of equitable arrangements for the sharing of forfeited assets and confiscated proceeds of crime. See as well the Model Bilateral Agreement on the Sharing of confiscated proceeds of crime or property covered by the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, http://www.unodc.org/pdf/ECOSOC_resolution_2005-14.pdf.

- A. What is the legal framework regarding asset recovery, confiscation, and forfeiture? Is it adequate?
- B. What are the treaties to which the State is a party that create obligations with respect to asset confiscation and forfeiture?
- C. What mechanisms exist in the country to identify, trace, seize or freeze property/assets, including bank, financial, or commercial records, as well as equipment and other instrumentalities used in, or destined to be used in the commission of crimes?
- D. What bank secrecy laws exist that may impede investigations or become a basis for refusing a request for cooperation?
- E. Are agencies able to use investigative strategies that target the assets of organized crime through inter-connected financial investigations?
- F. Is there a national capacity to engage in active and continuous exchanges of relevant financial intelligence information and analyses with other countries?
- G. Can there be informal (and not formally requested) exchanges of information between the country and other jurisdictions?
- H. Are there dispositions in national law that enable confiscation or forfeiture of assets proceedings that are independent from other criminal proceedings?
- I. Has the country entered into bilateral or other agreements for asset sharing among countries involved in tracing, freezing and confiscation of assets originating from organized crime activities?
- J. What is the legislated authority of law enforcement agencies to seize property used in the commission of criminal offences?
- K. Is there any data on the confiscation of crime-related assets facilitated by international cooperation?
- L. Any data on the value of assets seized/recovered? How these assets were distributed or returned?
- M. What problems have been encountered in seeking or offering international cooperation in relation to crime-related assets?

4.7 PROTECTION OF WITNESSES AND VICTIMS

As many criminal and terrorist groups operate across borders, the threat they represent to witnesses and collaborators is not confined to national borders. Physical and psychological intimidation of witnesses and their relatives can take place in a variety of contexts. Furthermore, witnesses need at times to move from to another country during lengthy criminal proceedings. Victims of human trafficking, for example, may need to return to their country of origin while waiting for a hearing or a trial during which they are to provide evidence. Finally, there are cases where a State, because of its size, means or other circumstances, may not be able on its own to provide the required protection and safety to the witnesses.

For all these reasons, cooperation in the protection of witnesses and their relatives, including repatriated victims/witnesses of trafficking and their relatives, and collaborators of justice becomes a necessary component of cooperation between prosecution services. Furthermore, international cooperation may also be required at times in order to protect interpreters, the prosecutors themselves and other judicial and correctional personnel.

Effective protection of witnesses, victims, and collaborators of justice involves legislative and practical measures to ensure that witnesses testify freely and without intimidation: the criminalization of acts of intimidation, the use of alternative methods of providing evidence, physical protection, relocation programmes, permitting limitations on the disclosure of information concerning their identity or whereabouts, and in exceptional circumstances, protecting the anonymity of the person giving evidence.

The **UN Conventions against Transnational Organized Crime** and **against Corruption** require States Parties to take appropriate measures within their means to effectively protect witnesses in criminal proceedings who give testimony concerning offences covered by the Conventions. The cooperation of corporate information sources and protection of "whistle-blowers" are often crucial in the prosecution of corruption offences.

To ensure greater international cooperation in effective witness protection, bilateral and multilateral instruments can be adopted for the safe examination of witnesses at risk of intimidation or retaliation and to implement temporary or permanent relocation of witnesses. Offering effective protection to collaborators of justice, including members or former members of criminal organizations, is also part of that equation.

- A. Is the intimidation of witnesses and victims criminalized?
- B. Does national law allow the use of alternative methods of providing evidence?
- C. What capacity is there to offer effective physical protection to victims and witnesses?
- D. Are there victim/witness assistance and protection programmes? Are they available to victims/witnesses of crime in other countries?
- E. Does national law establish limitations on the disclosure of information concerning victims' and witnesses' identity or whereabouts, and in exceptional circumstances, protecting the anonymity of the person giving evidence?
- F. Can agencies assist other countries in safely repatriating victims, particularly children?
- G. Can agencies offer international assistance in evaluating the threat against a witness or victim? Can they promptly communicate information concerning potential threats and risks to other jurisdictions?
- H. Can the country offer assistance to other jurisdictions in relocating witnesses and ensuring their ongoing protection?
- I. Can the country offer protection to witnesses who are returning to a foreign country in order to testify and collaborate in the safe repatriation of these witnesses?
- J. Can the country cooperate in the safe repatriation of victims of human trafficking and international kidnapping?
- K. Can the country offer protection to prisoners who will be or have been witnesses in cases in other countries?
- L. Any data on international cooperation in the protection of witnesses and victims?
- M. What the problems most frequently encountered?

4.8 USE OF SPECIAL INVESTIGATIVE TECHNIQUES

Obstacles to law-enforcement cooperation include the diversity of national policing structures and big differences between the regulations governing special investigative methods. Proactive law enforcement strategies and complex investigations frequently involve special investigative techniques. When a case requires international cooperation, differences in the law regulating the use of these techniques can become a source of difficulties. Major efforts are made in the process of implementing the **UN Convention against Transnational Organized Crime** and other international initiatives to identify and remedy these difficulties.

The effectiveness of techniques such as electronic surveillance, undercover operations and controlled deliveries cannot be overemphasized. These techniques are especially useful in dealing with sophisticated organized criminal groups because of the inherent difficulties and dangers involved in gaining access to information and gathering intelligence on their operations. Technological advances, such as cross-border surveillance using satellites or the interception of telephone conversations through satellite connections, make cross-border investigation possible without physical presence of a foreign investigating officer.

Domestic arrangements and legislation relating to these techniques must be reviewed to reflect technological developments, taking full account of any human rights implications, and to facilitate international cooperation.

The use of DNA analyses is playing an important role in resolving complex criminal cases and in supporting the prosecution of serious offences. Not all jurisdictions have legislation allowing the use of this tool as part of criminal investigations. Some of them have the necessary legislation, but do not have the forensic analysis capacity to collect, analyze and make use of that kind of evidence. International cooperation, in many instances, is taking the form of sharing that analytical capacity. The exchange of expertise regarding scientific and technological developments such as advances in forensic sciences is to be encouraged. The country may need to review its legislation to ensure that it provides for the gathering, analysis, storage and lawful sharing of DNA information on offenders.

In addition to the admissibility of evidence collected in other countries through methods that are not accepted in another country, there is also the question of whether violations of national laws by investigation officers from other countries affect the admissibility of the evidence. The answer to that question varies from country to country. The verification of the legitimacy of evidence obtained as a result of international police cooperation is replete with procedural and practical difficulties. With a few regional exceptions, international cooperation in the field of covert investigations tends to take place in a juridical vacuum. Member States increasingly seek to provide a legal basis for judicial cooperation in criminal matters for officers acting under cover or false identify.

- A. Is the use of modern investigation techniques allowed under national law? If not, how has it created problems for international cooperation?
- B. What legislative amendments would be required to facilitate international law enforcement cooperation?
- C. Are the police making use of the facilities of other countries (forensic labs, analytical expertise, etc.)?
- D. If special investigative techniques are allowed under national law, what is the experience of the country in using them in the context of international cooperation?

4.9 LAW ENFORCEMENT COOPERATION

International law enforcement cooperation can be enhanced through the development of more effective systems of information sharing at the regional and international levels. In many instances, international cooperation is hindered by the absence of clear channels of communication. In other instances, channels exist but their inefficiency prevents the timely exchange of both operational (data useful in responding to specific offences, offenders, or criminal groups) and general information (data on criminal networks, on trends and patterns of trafficking, extent of known criminal activity in a particular sector and typical modus operandi). The development of regional or sub-regional databases could also be considered.

The establishment of joint investigative teams represents a major new trend in the development of an effective capacity to investigate and prosecute transnational crimes of all sorts. It offers one of the most promising new forms of international cooperation against organized crime, corruption and terrorism, even if there are still some remaining issues in terms of making it fully functional on a broad scale. There are legal issues, as well as issues of attitude and trust among law enforcement agencies, or even procedural questions such as whether a foreign investigation official who participated in a joint investigative team may be compelled to take the witness stand subsequently during the criminal proceedings.

There are also some practical problems in the organization of joint investigations, including the lack of common standards and accepted practices, issues around the supervision of the investigation, and the absence of mechanisms for quickly solving these problems. For joint investigative teams to become an effective tool for international cooperation States must put in place the required legal framework, both at the national and international levels, although such a framework need not necessarily be very complicated.

Law enforcement liaison officers provide direct contact with the law enforcement and government authorities of the host State. They can develop professional relationships, build confidence and trust, and generally facilitate the liaison between the law enforcement agencies in the States involved. When the legal systems of the States concerned are very different, liaison officers can also advise law enforcement and prosecutorial authorities, both in their own State and in the host State, on how to formulate a request for assistance. The role of such liaison officers can be enhanced by ensuring that they have access, in accordance with the law of the host country, to all agencies in that country with relevant responsibilities.

Reciprocal arrangements can also be made by States to facilitate the exchange of "liaison magistrates" or other criminal justice liaison personnel. These appointments aim to encourage cooperation between countries, particularly but not exclusively in international criminal law and mutual legal assistance in criminal matters. They can alleviate the misunderstandings created by real and perceived differences between legal systems and facilitate and expedite requests and other communications between the participating States.

- A. Is the country capable of establishing joint investigation teams with other countries? If not, why not? What are the obstacles?
- B. Does the country have arrangements with other countries for the exchange of liaison police officers, or liaison magistrate?
- C. Do the national police participate in the activities of INTERPOL?
- D. What is the situation in the country with respect to the collection and analysis of DNA evidence?
- E. Is the country involved in arrangements with other countries for the exchange of information and intelligence? If so, which ones?
- F. What is the experience of law enforcement agencies of the country with international cooperation?
- G. Have law enforcement agencies been involved in international joint investigation teams? What was the experience?
- H. Has the country entered into bilateral or multilateral agreements on law enforcement cooperation?
- I. Is the national law enforcement agency a member of Interpol? How does it cooperate with the agency?
- J. Does the country have law enforcement liaison officers in other countries?
- K. Are there foreign police liaison officers in the country? From what country? How do they work with the police? What is their view on the quality of existing law enforcement cooperation with the country?
- L. Does the national police cooperate with police agencies in other countries in the collection, exchange and analysis of criminal intelligence information?

4.10 CRIME PREVENTION

Several international instruments call for law enforcement and other international forms of cooperation in the prevention of crime. The **UN Convention against Corruption**, for example, calls for cooperation between preventive anti-corruption bodies.

- A. Is the country engaged in international cooperation for the purpose of crime prevention? What are these activities? With what countries, regional or international bodies?
- B. To what extent is the public aware of these efforts? How is the public being reached? Is there evidence that these cooperative activities are effective in preventing crime?
- C. What has been the international cooperation experience of the country in the field of crime prevention?
- D. Has the country participated in the development of regional crime prevention strategies (e.g. the CARICOM Strategy)?

5. COORDINATION OF ASSISTANCE

- A. Identify the donor strategy papers for the justice sector and amount of money set aside in support.
- B. Is international cooperation/compliance with treaty obligations 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 international cooperation/compliance with treaty obligations in particular?
- E. Which donor/development partners are active in criminal justice issues? Is the approach by donors targeted to the institution concerned 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

- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- United Nations Convention against Transnational Organized Crime and the Protocols thereto
- United Nations Convention against Corruption
- International Convention for the Suppression of the Financing of Terrorism (1999), G.A. res. 54/109
- The 13 Universal conventions against terrorism (see: UNODC compendium of legislation)
- UNODC (2005). Corruption - Compendium of International Legal Instruments
- UNODC (2005). Legislative Guides for the Implementation of the UN Convention against Transnational Organized Crime and the Protocols thereto
- UNODC (2006). Legislative Guide for the Implementation of the UN Convention against Corruption
- UNODC (2005), Guide for the Legislative Incorporation and Implementation of the Universal Instruments against Terrorism
- United Nations Office on Drugs and Crime (2004). Report of the Informal Expert Working Group on Effective Extradition Casework Practice, Vienna
- The United Nations Model Treaty on Extradition (General Assembly resolution 45/116, subsequently amended by resolution 52/88). See also the manual on the Model treaty in the UNODC website: http://www.unodc.org/unodc/en/legal_advisory_tools.html
- United Nations Office on Drugs and Crime (2004). Model Law on Extradition. www.unodc.org/pdf/model_law_extradition.pdf
- Model Treaty on Mutual Assistance in Criminal Matters, General Assembly resolution 45/117, annex, and 53/112, annex 1
- Model Treaty on the Transfer of Proceedings in Criminal Matters. G.A. resolution 45/118 of 14 December 1990
- Model Bilateral Agreement on the Sharing of confiscated proceeds of crime or property covered by the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, http://www.unodc.org/pdf/ECOSOC_resolution_2005-14.pdf
- Model Checklists and Forms for Good Practice in Requesting Mutual Legal Assistance, developed by the UNDCP Informal Expert Working Group on Mutual Legal Assistance Casework Best Practice (Vienna, UNDCP, December 3-7, 2001)
- United Nations Office for Drug Control and Crime Prevention (2001). Report of the UNDCP Informal Expert Working Group on Mutual Legal Assistance Casework Best Practice, Vienna, December 3-7, 2001

REGIONAL

- The European Convention on the Transfer of Proceedings in Criminal Matters (Council of Europe) came into force in 1978.
- Council of Europe, Council of Europe Convention on Laundering, Search and Confiscation of the Proceeds of Crime and on the Financing of Terrorism. Warsaw, 16.5.2005.

OTHER USEFUL SOURCES:

- International Monetary Fund (2003). *Suppressing the Financing of Terrorism – A Handbook for Legislative Drafting*. New York
- G8 – Best Practice Principles on Tracing, Freezing and Confiscation of Assets http://www.usdoj.gov/ag/events/g82004/G8_Best_Practices_on_Tracing.pdf
- International Association of Prosecutors (2004). *International Co-operation –Basic Guide to Prosecutors in Obtaining Mutual Legal Assistance in Criminal Matters*. The Hague: IAP

ANNEX B. ASSESSOR'S GUIDE / CHECKLIST

	TOPIC	▪ SOURCES	CONTACTS	COMPLETED
2.	OVERVIEW	<ul style="list-style-type: none"> ▪ UN conventions and international treaties to which country is a party ▪ Bilateral and multilateral treaties, incl. mutual legal assistance to which country is a party ▪ Constitution ▪ National legislation, criminal code, criminal procedure code ▪ Governmental reports ▪ Policy/procedure manuals ▪ Donor reports 	<ul style="list-style-type: none"> ▪ Foreign Ministry ▪ Ministry of Justice/ Attorney General's Office ▪ Minister of Interior ▪ National Police ▪ Head of Prosecution Service, senior prosecutors ▪ Senior law enforcement officials ▪ Central Authority personnel, if any ▪ Judges ▪ Senior justice officials ▪ Law schools/Academics 	
3.	LEGAL FRAMEWORK			
3.1	ESTABLISHING OFFENCES UNDER NATIONAL LAW	<ul style="list-style-type: none"> ▪ Conventions as above ▪ Constitution ▪ National legislation, criminal code, criminal procedure code 	<ul style="list-style-type: none"> ▪ Attorney General's Office ▪ Ministry of Justice ▪ Ministry of Interior ▪ Senior justice officials ▪ Senior prosecution personnel ▪ Law schools ▪ Academics 	
4.	INTERNATIONAL COOPERATION MECHANISMS			

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.1	EXTRADITION	<ul style="list-style-type: none"> ▪ Extradition treaties to which country is a party ▪ National legislation, criminal code, criminal procedure code ▪ Governmental reports ▪ Policy/procedure manuals ▪ Donor reports 	<ul style="list-style-type: none"> ▪ Foreign Ministry ▪ Ministry of Justice/ Attorney General's Office ▪ Minister of Interior ▪ Central Authority personnel, if any ▪ National Police ▪ Head of Prosecution Service, senior prosecutors ▪ Senior law enforcement officials ▪ Central Authority personnel, if any ▪ Judges ▪ Senior justice officials ▪ Defence Attorneys ▪ Law schools/Academics 	
4.2	MUTUAL LEGAL ASSISTANCE	<ul style="list-style-type: none"> ▪ UN conventions and international treaties to which country is a party ▪ Bilateral and multilateral treaties, incl. mutual legal assistance to which country is a party ▪ Constitution ▪ National legislation, criminal code, criminal procedure code ▪ Governmental reports ▪ Policy/procedure manuals ▪ Donor reports 	<ul style="list-style-type: none"> ▪ Foreign Ministry ▪ Ministry of Justice/ Attorney General's Office ▪ Minister of Interior ▪ National Police ▪ Head of Prosecution Service, senior prosecutors ▪ Senior law enforcement officials ▪ Central Authority personnel, if any ▪ Judges ▪ Senior justice officials ▪ Law schools/Academics 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.3	TRANSFER OF SENTENCED PERSONS	<ul style="list-style-type: none"> ▪ UN conventions and international treaties to which country is a party ▪ Bilateral and multilateral treaties, incl. mutual legal assistance to which country is a party ▪ Constitution ▪ National legislation, criminal code, criminal procedure code ▪ Governmental reports ▪ Policy/procedure manuals 	<ul style="list-style-type: none"> ▪ Foreign Ministry ▪ Ministry of Justice/ Attorney General's Office ▪ Minister of Interior ▪ National Police ▪ Central Authority personnel, if any ▪ Head of Prosecution Service, senior prosecutors ▪ Special Investigation/Prosecution Units ▪ Senior law enforcement officials ▪ Central Authority personnel, if any ▪ Judges ▪ Senior justice officials ▪ Defence Attorneys ▪ Law schools/Academics 	
4.4	TRANSFER OF PROCEEDINGS IN CRIMINAL MATTERS	<ul style="list-style-type: none"> ▪ UN conventions and international treaties to which country is a party ▪ Bilateral and multilateral treaties, incl. mutual legal assistance to which country is a party ▪ Constitution ▪ National legislation, criminal code, criminal procedure code ▪ Governmental reports ▪ Policy/procedure manuals 	<ul style="list-style-type: none"> ▪ Foreign Ministry ▪ Ministry of Justice/ Attorney General's Office ▪ Minister of Interior ▪ Central Authority personnel, if any ▪ National Police ▪ Head of Prosecution Service, senior prosecutors ▪ Special Investigation/Prosecution Units ▪ Financial Intelligence Unit Leader/Staff ▪ Senior law enforcement officials ▪ Central Authority personnel, if any ▪ Judges ▪ Senior justice officials ▪ Defence Attorneys ▪ Law schools/Academics 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.5	INVESTIGATION OF BRIBERY; CORRUPTION; ECONOMIC AND FINANCIAL CRIME; AND MONEY-LAUNDERING	<ul style="list-style-type: none"> ▪ UN conventions and international treaties to which country is a party ▪ Bilateral and multilateral treaties, incl. mutual legal assistance to which country is a party ▪ Constitution ▪ National legislation, criminal code, criminal procedure code, administrative codes, including banking law ▪ Governmental reports ▪ Policy/procedure manuals ▪ Donor reports 	<ul style="list-style-type: none"> ▪ Foreign Ministry ▪ Ministry of Justice/ Attorney General's Office ▪ Minister of Interior ▪ National Police ▪ Central Authority personnel, if any ▪ Special Investigation/Prosecution Units ▪ Financial Intelligence Unit Leader/Staff ▪ Head of Prosecution Service, senior prosecutors ▪ Senior law enforcement officials ▪ Central Authority personnel, if any ▪ Judges ▪ Senior justice officials ▪ Law schools/Academics 	
4.6	CONFISCATION OF CRIME-RELATED ASSETS	<ul style="list-style-type: none"> ▪ UN conventions and international treaties to which country is a party ▪ Bilateral and multilateral treaties, incl. mutual legal assistance to which country is a party ▪ Constitution ▪ National legislation, criminal code, criminal procedure code, administrative codes, including banking law ▪ Governmental reports ▪ Policy/procedure manuals ▪ Donor reports 	<ul style="list-style-type: none"> ▪ Foreign Ministry ▪ Ministry of Justice/ Attorney General's Office ▪ Minister of Interior ▪ National Police ▪ Special Investigation/Prosecution Units ▪ Financial Intelligence Unit Leader/Staff ▪ Head of Prosecution Service, senior prosecutors ▪ Senior law enforcement officials ▪ Central Authority personnel, if any ▪ Judges ▪ Senior justice officials ▪ Law schools/Academics 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.7	PROTECTION OF WITNESSES AND VICTIMS	<ul style="list-style-type: none"> ▪ UN conventions and international treaties to which country is a party ▪ Bilateral and multilateral treaties, incl. mutual legal assistance to which country is a party ▪ Constitution ▪ National legislation, criminal code, criminal procedure code, administrative codes, including banking law ▪ Governmental reports ▪ Policy/procedure manuals ▪ NGO reports ▪ Donor reports 	<ul style="list-style-type: none"> ▪ Foreign Ministry ▪ Ministry of Justice/ Attorney General's Office ▪ Minister of Interior ▪ Central Authority personnel, if any ▪ National Police ▪ Head of Prosecution Service, senior prosecutors ▪ Senior law enforcement officials ▪ Central Authority personnel, if any ▪ Heads of victim/witness assistance and protection programmes ▪ Judges ▪ Senior justice officials ▪ Defence Attorneys ▪ Law schools/Academics ▪ NGOs serving victims 	
4.8	USE OF SPECIAL INVESTIGATIVE TECHNIQUES	<ul style="list-style-type: none"> ▪ UN conventions and international treaties to which country is a party ▪ Bilateral and multilateral treaties, incl. mutual legal assistance to which country is a party ▪ Constitution ▪ National legislation, criminal code, criminal procedure code, administrative codes, including banking law ▪ Governmental reports ▪ Policy/procedure manuals ▪ NGO reports ▪ Donor reports 	<ul style="list-style-type: none"> ▪ Foreign Ministry ▪ Ministry of Justice/ Attorney General's Office ▪ Minister of Interior ▪ Central Authority director/staff ▪ National Police ▪ Head of Prosecution Service, senior prosecutors ▪ Senior law enforcement officials ▪ Central Authority personnel, if any ▪ Special Investigation/Prosecution Units ▪ Financial Intelligence Unit Leader/Staff ▪ Judges ▪ Senior justice officials ▪ Defence Attorneys ▪ Law schools/Academics 	

	TOPIC	▪ SOURCES	CONTACTS	COMPLETED
4.9	LAW ENFORCEMENT COOPERATION	SEE ABOVE	SEE ABOVE	
4.10	CRIME PREVENTION	SEE ABOVE	SEE ABOVE PLUS Directors of Crime Prevention for Ministry Interior/JUSTICE/POLICE/	
5	COORDINATION OF ASSISTANCE	<ul style="list-style-type: none"> ▪ Governmental reports ▪ Policy/procedure manuals ▪ NGO reports ▪ Donor reports 	<ul style="list-style-type: none"> • Donors • Ministry of Justice • Ministry of interior • Foreign Ministry • Head of prosecution, prosecutors • Senior law enforcement officials • Central Authority personnel • Judges 	



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CROSS-CUTTING ISSUES

Crime prevention assessment tool

Criminal justice
assessment
toolkit

5

UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC)
UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME (UN-HABITAT)

Crime Prevention Assessment Tool

CRIMINAL JUSTICE ASSESSMENT TOOLKIT



UNITED NATIONS
New York, 2009

UNITED NATIONS PUBLICATION
HS/1232/09E
ISBN 978-92-1-132197-5

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Preface

The present Crime Prevention Assessment Tool is a joint assessment tool developed by the United Nations Office on Drugs and Crime (UNODC) and the United Nations Human Settlements Programme (UN-HABITAT) to support joint programming at the country level. The Tool is an essential step towards more sustainable and integrated approaches to crime prevention and also an important advance in inter-agency collaboration at the country level.

In the memorandum of understanding signed in 2003, the two agencies recognized the need to develop relevant approaches to address crime prevention also at the local level, in particular in urban contexts, and the potential for joint development of tools in that regard. The present Tool is a first crucial step in developing more integrated and effective responses by the international community to the challenges of crime prevention.

As is pointed out in the various instruments adopted by the United Nations to support crime prevention, locally relevant interventions are crucial in addressing issues of crime in a preventive manner. Urban crime prevention has also received specific attention by the international community. The present assessment tool, which has been developed as part of the Criminal Justice Assessment Toolkit in preparation by UNODC since 2006, addresses crime prevention for the first time from a national, provincial and local/municipal perspective, with a view to providing a tool for overall assessment and the basis for integrated UNODC and UN-HABITAT needs assessment and programme design.

The overall purpose of the Criminal Justice Assessment Toolkit is to aid in the assessment of country needs in the areas of criminal justice and crime prevention so that appropriate and effective technical assistance can be provided.

It is essential that this Tool be used in conjunction with the main Toolkit, which discusses four main justice sectors: policing, access to justice, custodial and non-custodial measures, and cross-cutting issues (criminal justice information, juvenile justice, victims and witnesses, and international cooperation). Cross-references to other tools are indicated in the text in **bold type**, but it is helpful to have an overview of the other components beforehand. In general, because of this multisectoral approach, and in particular when issues in the urban context are addressed, some specific reference to the overall sector components is also required.

Similarly, “sectoral” tools developed by UN-HABITAT, such as the Rapid Urban Sector Profiling for Sustainability, which can be found on the UN-HABITAT website (www.unhabitat.org), include a component to integrate crime prevention into more traditional urban development interventions.

In terms of the assessment methodology, it is important to look at the **Introduction** to the **Criminal Justice Assessment Toolkit**, which provides valuable guidance on how assessors should use the guidance information (**Using the tools**) and the

General guidelines for conducting assessments. These are based on the experience of many experts in the field. They will be especially helpful for external assessors in clarifying the terms of reference of a mission, preparing background material and learning about the country before travelling, as well as in showing them how to listen and seek answers during the assessment mission and afterwards.

Like all the other parts of the Toolkit, the Crime Prevention Assessment Tool is a dynamic document that will be updated online, and users are invited to provide comments, corrections and suggestions to UNODC at criminal.justice@unodc.org.

Acknowledgements

The Crime Prevention Assessment Tool was prepared for the United Nations Office on Drugs and Crime (UNODC) and the Safer Cities Programme of the United Nations Human Settlements Programme (UN-HABITAT) by Margaret Shaw of the International Crime Prevention Centre, a member of the United Nations Crime Prevention and Criminal Justice Programme network of institutes.

The first draft of the Tool was reviewed at an expert group meeting held in Berlin from 2 to 4 July 2008. UNODC and UN-HABITAT wish to acknowledge the valuable contributions made by the following experts who participated in that meeting: Arturo Alvarado, Kauko Aromaa, Rosemary Barberet, Edson Barroso, Claudio Beato, Otto Boenke, Oscar Bonilla, Elias Carranza, Anthony Harriott, Peter Homel, Arne Kinnunen, Mary Anne Kirvan, Erich Marks, Valerie Sagant, Masamba Sita, Cindy Smith, Elrena Van der Spuy and Johanna Wysluch.

Others who have contributed to the development of the Tool are Laura Petrella (UN-HABITAT), Hatem Aly, Estela Máris Deon, Alexandra Martins, Sławomir Redo, Anna Giudice Saget, Mia Spolander and Oliver Stolpe of UNODC, with the assistance of Nadia Freudiger and Esther Saabel (interns) and Mark Schott (United Nations Trust Fund for Human Security, Office for the Coordination of Humanitarian Affairs of the Secretariat).

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*“In matters of justice and the rule of law,
an ounce of prevention is worth significantly more than a pound of cure...
Prevention is the first imperative of justice.”¹*

¹S/2004/616, para. 4.



1. Introduction

The present Crime Prevention Assessment Tool is designed as a full component of the **Criminal Justice Assessment Toolkit**, developed by the United Nations Office on Drugs and Crime (UNODC),² in the category of cross-cutting tools.³ It will be complementary to the forthcoming technical manual to accompany the United Nations **Guidelines for the Prevention of Crime**, adopted by the Economic and Social Council in its resolution 2002/13, and the **guidelines for cooperation and technical assistance in the field of urban crime prevention** (resolution 1995/9).

1. Who the assessment tools are for

These assessment tools are designed as dynamic tools to enable United Nations entities, donor organizations and Governments, government officials involved in crime prevention development and other organizations and individuals:

- To undertake an assessment of crime prevention needs
- To identify areas of technical assistance
- To assist agencies to design interventions that incorporate the United Nations standards and norms on crime prevention
- To assist in training on these issues

The **Introduction to the Criminal Justice Assessment Toolkit** provides guidance on how to conduct an assessment and on the use of the Toolkit. The Assessment Tool is not intended to provide an in-depth assessment of country (or city) needs, but an initial assessment based on a set of questions concerning such aspects as existing socio-economic and crime concerns, sources of data, problems and capacities. It provides examples of the kinds of people to talk to and the range of issues to be covered. It also provides a practical guide to key issues and questions for

² See www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html.

³ Current cross-cutting tools relate to **Criminal justice information, Juvenile justice, Victims and witnesses, and International cooperation.**

assessors examining crime prevention needs at the national and local levels. It is not designed as a rigid guide or checklist, but as the basis for developing an initial contextualized assessment that will take into account both specific country conditions and capacities, and the views and experiences of key authorities, actors and individuals, at both the national and the local level.

2. Why assess crime prevention needs?

Crime prevention has been defined in the 2002 **Guidelines for the Prevention of Crime** (para. 3) as comprising “strategies and measures that seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society, including fear of crime, by intervening to influence their multiple causes”.

A fuller discussion of the principles guiding crime prevention and how prevention should be undertaken are summarized in section 4 below. This section discusses why it has become important to consider crime prevention and country needs in that area, in addition to their needs for assistance in developing and upgrading their criminal justice system.

In many countries, crime prevention has traditionally been seen as the responsibility of the police or as stemming from the deterrent aspects of the law or repression of offenders. However, as a result of increasing innovation, research and experience throughout the world, it is now recognized that crime has multiple causes and that many other sectors of society can have an impact on crime levels and therefore have a responsibility to act to help prevent crime. The police cannot do so alone.

The **standards and norms on crime prevention** adopted by the United Nations over the past 14 years reflect the knowledge that the factors that cause crime and violence to increase or decline include many different social, economic and environmental factors. As both the 1995 **guidelines for cooperation and technical assistance in the field of urban crime prevention** and the 2002 **Guidelines for the Prevention of Crime** underline, there is a much broader role for government at all levels in establishing proactive rather than reactive strategies for preventing and reducing crime and victimization. Housing, health and job creation, recreation, social services and environmental services can all make a significant difference to crime levels when they work in partnership with the police and justice sector.

More significantly, this is not just a government role, but one that includes communities and civil society organizations, working in partnership with government and public and private institutions. For this reason, this Tool emphasizes the need to understand how security and safety emerge in a specific context and what measures may be taken to support governance, and the involvement of stakeholders and communities in crime prevention.

The evaluation of crime prevention programmes in many countries has also demonstrated that well-planned strategies and programmes can be cost-effective and

“cost-beneficial”.⁴ For the money invested, they save considerable expenditure on criminal justice and social service activities and bring other social and economic benefits, such as increased earned income or lower health costs.

The assumption that prevention can somehow be accomplished through the establishment of the rule of law⁵ and a viable criminal justice system remains strong in many countries, nevertheless. Having a well-resourced and well-run criminal justice system has been assumed to be the best way not only to build strong democratic institutions, but also to prevent crime. What has become increasingly clear, however, is that this is not necessarily the case. In developed countries such as the United Kingdom of Great Britain and Northern Ireland, for example, over a 10-year period significant increases in penalties, in the numbers of police and in resources for youth justice have resulted in increasing numbers of young people being drawn into the criminal justice system and being charged or placed in custody.⁶

Further, in developing countries, and of particular relevance to this Assessment Tool, it has become clear that development itself will not be achieved without dealing with everyday security and safety issues in a country or city. It is not sufficient to increase the efficiency and capacity of the justice system or to train the police and prison staff. The factors that contribute to crime, such as social exclusion and lack of employment or of access to good health, housing or environmental services, all need to be addressed. A wide range of donor organizations, countries and international bodies now acknowledge that crime affects the quality of life of citizens, destroys social and human capital, discourages investment and undermines democracy.⁷

In this Tool, the view is taken, as promoted by the Guidelines on the Prevention of Crime, that crime prevention is a multisectoral and integrated endeavour, not a “criminal justice issue” alone and that it should be addressed by examining the causal factors and vectors of crime so as to identify appropriate measures. The justice system can be a key point of entry and may in many contexts have key responsibility in crime prevention, but the assessment covers a much wider range of actors and dimensions in order to be able to provide sufficient understanding and guidance for relevant and sustainable action.

⁴ See I. Waller and D. Sansfacon, *Investing Wisely in Crime Prevention: International Experiences* (Washington, D.C., Bureau of Justice Assistance, 2000); and R. Homel and A. Morgan, *Evaluating Crime Prevention Pathways for Australia and Asia* (Canberra, ACT, Australian Institute of Criminology, 2008).

⁵ The basic constitutional principle requiring government to be conducted according to the law.

⁶ E. Solomon and R. Garside, *Ten Years of Criminal Justice under Labour: an Independent Audit* (London, Centre for Crime and Justice Studies, 2008).

⁷ See, for example, United Nations Office on Drugs and Crime, *Crime and Development in Africa* (Vienna, UNODC, 2005), *Crime and Development in Central America: Caught in the Crossfire* (United Nations publication, Sales No. B.07.IV.5); and *Maximizing the Effectiveness of the Technical Assistance Provided in the Fields of Crime Prevention and Criminal Justice* (HEUNI Report Series No. 49, 2006); *Crime, Violence and Economic Development in Brazil: Elements for Effective Public Policy* (World Bank Report No. 36525, 2006); and United Nations Human Settlements Programme, *Global Report on Human Settlements 2007: Enhancing Urban Safety and Security* (London, Earthscan, 2007).

How crime hinders African development^a

- *Crime destroys Africa's social and human capital:* Crime degrades quality of life and can force skilled workers overseas; victimization, as well as fear of crime, interferes with the development of those who remain. Crime impedes access to possible employment and educational opportunities, and it discourages the accumulation of assets.
- *Crime drives business away from Africa:* Investors see crime in Africa as a sign of social instability, driving up the cost of doing business. Corruption is even more damaging, perhaps the single greatest obstacle to development. Furthermore, tourism, of large and growing importance to Africa, is an industry especially sensitive to crime.
- *Crime undermines the State:* Crime and corruption destroy the relationship of trust between people and the State, undermining democracy. Aside from direct losses of national funds due to corruption, crime can corrode the tax base as the rich bribe tax officials and the poor recede into the shadow economy. Corruption diverts resources into graft-rich public works projects, at a cost to education and health services.

^a United Nations Office on Drugs and Crime, *Crime and Development in Africa* (Vienna, UNODC, 2005), p. 67.

The need to deal with everyday safety applies also to the achievement of the **Millennium Development Goals**, established in 2000, which aim to reduce poverty, hunger, child mortality and HIV/AIDS and other diseases, and to improve education, gender equality, health and environmental development by 2015 (see the box below). Without everyday safety and security, civilian populations, businesses, employment and productivity are unlikely to flourish.

Millennium Development Goals^a to be achieved by 2015

1. *Eradicate extreme poverty and hunger*

- Target 1. Halve, between 1990 and 2015, the proportion of people whose income is less than US\$1 a day.
- Target 2. Achieve full and productive employment and decent work for all, including women and young people.
- Target 3. Halve, between 1990 and 2015, the proportion of people who suffer from hunger.

2. *Achieve universal primary education*

- Target 1. Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling.

3. *Promote gender equality and empower women*

- Target 1. Eliminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015.

4. *Reduce child mortality*

Target 1. Reduce by two thirds, between 1990 and 2015, the under-five mortality rate.

5. *Improve maternal health*

Target 1. Reduce by three quarters the maternal mortality ratio.

Target 2. Achieve universal access to reproductive health.

6. *Combat HIV/AIDS, malaria and other diseases*

Target 1. Have halted by 2015 and begun to reverse the spread of HIV/AIDS.

Target 2. Achieve, by 2010, universal access to treatment for HIV/AIDS for all those who need it.

Target 3. Have halted by 2015 and begun to reverse the incidence of malaria and other major diseases

7. *Ensure environmental sustainability*

Target 1. Integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources.

Target 2. Reduce biodiversity loss, achieving, by 2010, a significant reduction in the rate of loss.

Target 3. Halve, by 2015, the proportion of the population without sustainable access to safe drinking water and basic sanitation.

Target 4. By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers.

8. *Develop a global partnership for development*

Target 1. Address the special needs of least developed countries, landlocked countries and small island developing States.

Target 2. Develop further an open, rule-based, predictable, non-discriminatory trading and financial system.

Target 3. Deal comprehensively with developing countries' debt.

Target 4. In cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries.

Target 5. In cooperation with the private sector, make available benefits of new technologies, especially information and communications.

^a The United Nations Millennium Development Goals were adopted by the General Assembly in its resolution 55/2 of 8 September 2000. *The Millennium Development Goals Report 2008* (United Nations publication, Sales No. E.08.I.18) documents progress so far in achieving the goals (see www.un.org/millenniumgoals).

In this way, well-planned and implemented crime prevention strategies can play an important and effective role in reducing crime levels and resources need to be allocated to this sector in parallel with resources and technical assistance to support and modernize the justice sector. The rule of law and a good justice system are not a

sufficient prerequisite. Effective strategies to prevent crime and violence need to be planned and built in at the same time.

3. How to undertake a crime prevention assessment

Crime prevention practice is often much less visible than most components of the criminal justice system, such as police services or prisons. It involves a wider range of services and institutions, so assessing country needs is not as straightforward as it may be with other assessments. Each country is also unique in terms of its historical, political, economic and sociocultural context. Some countries may already have established a national crime prevention strategy and an implementation programme of some kind. Federal countries may have national strategies and/or strategies for individual states or provinces. Some local government authorities may also have their own prevention strategies.

Crime prevention strategies that involve a range of institutions and services are not easy to implement and sustain, even in countries that have the benefit of good resources and capacity. In many developing, transitional and, in particular, post-conflict countries, there are likely to be many challenges, including weak criminal justice systems, abuse of power, human rights violations and corruption. Many countries may not have reliable and comprehensive data collection systems and implementation of government strategies or legislation may not be backed by resources.

Nevertheless, there are certain structural features—governance practices, legislation, organizational, data and research capacity, civil society, private sector and media components, as well as information on overall socio-economic and population characteristics, and problems affecting specific groups or areas—which can be used to draw an overall picture of the approach to crime prevention, the existing capacity and the problems crime prevention should be addressing. This in turn will provide an indication of immediate and longer-term country needs for capacity-building and training in crime prevention.

As is stressed in other components of the **Criminal Justice Assessment Toolkit**, it is important to have a broad understanding of the current legal and institutional framework of the country being assessed, as its system of criminal justice and institutional structures and capacity will impinge on prevention possibilities. The Toolkit provides a valuable overview of legal systems and concepts and some of the cross-cutting issues—criminal justice information, juvenile justice, victims and witnesses, and international cooperation—that will impinge on opportunities to develop crime prevention strategies.

The decentralization framework needs to be given some attention as countries have very different decentralization arrangements and division of responsibilities across levels of government, not only across national departments or ministries.

The key players who need to be consulted for the assessment (who may already be involved in some form of strategic crime prevention) will include federal or central government ministries responsible for areas such as justice, the interior or local government. Core responsibility may be delegated to a subsecretariat or a central police authority. Other key players and sources that will need to be consulted include ministries responsible for urban renewal or redevelopment, public health, education, employment, social affairs, women's affairs, youth and family services, and the justice system. Provincial authorities, where they exist, and local authorities (urban and rural) also need to be consulted, as well as civil society organizations, the business sector and donor organizations.

To assess the immediate, short-, medium-, and long-term needs and priorities of a country, the basic questions asked in this Assessment Tool will include:

- Where are responsibilities for crime prevention located?
- What stage has the country reached in developing its prevention capacity?
- What exists already in terms of components of a strategic approach, e.g. laws, policies, departmental responsibility, funding, programmes, training and monitoring systems?
- What are the major crime concerns the country has or wishes to tackle?
- What are the main vulnerable populations at greatest risk of lapsing into crime or becoming the subject of victimization?
- What are the main areas of concentration of crime problems (rural, urban etc.)?
- What are the main urban concerns affecting the incidence of crime?
- What are the main rural concerns affecting the incidence of crime?
- What capacity exists to develop and sustain strategic crime prevention?
- What exists in terms of recent or current technical assistance?

In line with the other sections of the Toolkit, and drawing on the principles and approach recommended in the Guidelines for the Prevention of Crime, the Assessment Tool outlines a series of 10 overall areas of investigation:

- Country overview information, including data sources and legal frameworks
- Existing national prevention frameworks and capacities
- State of provincial strategies and capacity
- Local strategies and capacity
- Research and knowledge base
- Partnerships and coordination capacity
- Sustainability, monitoring and evaluation
- Specific crime concerns and issues
- Specific vulnerable groups
- Management and coordination

In each area a series of questions is provided to guide the assessment process, not all of which may be appropriate in every country. It is recognized that it may be difficult to answer a number of these questions.

A list of key resources, documents and institutions and organizations that can help to provide relevant information in relation to the questions suggested for each area is given in annex I.

An assessor's checklist, summarizing crime prevention needs and capacity and information sources, is included in annex II, but, as stressed above, this is for guidance rather than being a definitive and exhaustive list.

As indicated in the Preface to this Assessment Tool, it is essential that it be used in conjunction with the main **Criminal Justice Assessment Toolkit** and its **four main sections**:

- **Policing.** Public safety and police service delivery; the integrity and accountability of the police; crime investigation; and police information and intelligence systems
- **Access to justice.** The courts; the independence, impartiality and integrity of the judiciary; the prosecution service; and legal defence and legal aid
- **Custodial and non-custodial measures.** The prison system; detention prior to adjudication; alternatives to incarceration; and social reintegration
- **Cross-cutting issues.** Criminal justice information; juvenile justice; victims and witnesses; and international cooperation.

Cross-references to these tools are indicated in the text, but it will be helpful to have an overview of the other components beforehand.

Finally, it is important to read the **Introduction** to the **Toolkit**, which provides valuable guidance on how assessors should use the guidance information, especially pages 4-8, **Using the tools** and **General guidelines for conducting assessments**.

These are based on the experience of many experts in the field. They will be especially helpful for external assessors in clarifying the terms of reference of a mission, preparing background material and learning about the country and its political background before starting the field work. This also includes clarifying what level of effort is required, what resources are available for the assessment, how long the assessment exercise is to be and whether there will be a national and/or local team to provide support to an external mission or, if not, whether the assessment will be conducted by a national or international team or a combination of the two.

These general guidelines also provide some guidance on how to listen and seek answers and corroborate information during an assessment mission. During the mission, for example, it may be useful to use a range of research tools, such as document study, interviews, focus groups, questionnaires or surveys and site visits, to collect

information. The guidelines also stress that assessment missions should be seen as the first step in a collaborative working relationship to build capacity: they are not inspections and should not be conducted as such.

Given the complexity of the issues examined when dealing with crime prevention, it is often advisable to design the assessment mission in close collaboration with local counterparts at different levels who will be able to assist in mobilizing stakeholders and motivating them to work with the mission. This should also be considered in view of managing the expectations a mission of this nature may raise in terms of forthcoming assistance and technical cooperation.

Finally, given the approach to crime prevention adopted by this Tool and the general presence of misunderstanding concerning the concept of crime prevention itself beyond law enforcement, it is very important for the assessment mission to take time to introduce the concepts being used and the approach adopted by the mission. This will assist in soliciting relevant inputs from local counterparts and in some cases also in stimulating local debate on the diversity of approaches and roles.

The **Introduction** also contains guidance on what to do after the mission and what the assessors' report should contain and aim to convey. This includes determining priorities and areas for technical assistance in terms of immediate action (high-impact/low-cost action etc.); short-term action (visible action, urgency, building consensus); medium-term (further research and strategic planning, public awareness-raising, building coalitions); and long-term (law and penal reform, major policy changes, long-term planning and costing).

4. Norms and standards guiding crime prevention⁸

The norms and standards on crime prevention adopted by the Economic and Social Council in 1995 and 2002 set out the principles on which crime prevention should be based, what it entails, who should be involved and the methodology of working.

The norms emphasize that because crime has multiple causes, a coordinated and multisectoral approach is necessary and that government authorities at all levels have an important role to play. The national Government (and provincial authorities) have a major role in setting standards and initiating and facilitating action. Local government authorities have a major role in developing and tailoring programmes to local circumstances, since crime is experienced at the local and the neighbourhood level and many of the causes can be tackled locally.

Prevention strategies need to be balanced and targeted to causal factors. A wide array of approaches can be used, ranging from environmental and situational interventions,

⁸ Both sets of guidelines can be found in United Nations Office on Drugs and Crime, *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice* (United Nations, New York, 2006), part three (available at www.unodc.org/pdf/compendium/compendium_2006_part_03_01.pdf).

which reduce opportunities for crime; educational and social interventions, which promote well-being and work to build the resilience of families, children and young people to resist involvement in crime or victimization; community-based approaches, which help to build local capacity and social cohesion; to social reintegration approaches, which aim to prevent recidivism.

The methodology involves working across government departments and services and in partnership with civil society, with careful diagnosis of problems, developing and implementing an action plan and monitoring and evaluating outcomes in order to adjust programmes and policies. There is a strong emphasis in the guidelines on using valid evidence as the basis for action and programmes and on building in evaluation.

Fundamental to the development of crime prevention strategies is the existence of the rule of law, recognition of the human rights of individuals and the use of policies that are inclusive of all sectors and groups in society.

Six United Nations guiding principles of crime prevention⁹

1. The principle of the rule of law.
2. The principle of socio-economic inclusion.
3. The principle of community-centred action.
4. The principle of partnership.
5. The principle of sustainability and accountability.
6. The principle of evidence-based practice.

⁹Drawing on the 1995 and 2002 guidelines, S. Redo, "Six United Nations guiding principles to make crime prevention work", M. Coester and E. Marks, *International Perspectives of Crime Prevention* (Mönchengladbach, Forum Verlag Godesburg, 2008).

Many guides and tools based on the United Nations guidelines have been produced, providing examples both of strategic crime prevention policies and programmes at the national or local level and of effective projects and initiatives.⁹ Similarly, many research reports on the risk factors that facilitate crime and victimization have been published internationally. These show that while there will always be particular country and local factors that facilitate crime, there are also many similarities.¹⁰ Individual

⁹See, for example, International Centre for the Prevention of Crime, *The Role of Local Government in Community Safety* (Crime Prevention Series No. 2); United Nations Human Settlements Programme, *Safer Cities Toolkit* (Nairobi, UN-HABITAT, 2007); and International Centre for the Prevention of Crime, *International Report on Crime Prevention and Community Safety: Trends and Perspectives* (Montreal, Canada, ICPC, 2008) and *International Compendium of Crime Prevention Practices to Inspire Action across the World* (Montreal, Canada, ICPC, 2008).

¹⁰See, for example, J. Van Dijk, *The World of Crime: Breaking the Silence on Problems of Security, Justice and Development across the World* (Thousand Oaks, California, Sage, 2007); R. Homel, "Developmental crime prevention", N. Tilley, *Handbook on Crime Prevention and Community Safety* (Cullumpton, Devon, United Kingdom, Willan, 2005); and *Handbook on Planning and Action for Prevention in Southern Africa and the Caribbean Regions* (United Nations publication, Sales No. E.09.IV.1).

and family factors, exposure to violence, poor housing, environment, schooling and community conditions, and inequality are all risk factors for crime and victimization, often exacerbated by the presence of drugs and guns, as well as the lack of social reintegration opportunities for former offenders.

The sections below outline the main frameworks of the United Nations guidelines adopted in 1995 and those adopted in 2002, which were intended to update and complete the 1995 recommendations.

The 1995 **guidelines for cooperation and technical assistance in the field of urban crime prevention** argue (para. 2) that urban crime is characterized by a multiplicity of factors and forms, which require a multi-agency approach and a coordinated response at the local level.

They set out two basic principles for tackling urban crime:

- (a) A **local approach to problems**, including the use of:
 - (i) A local diagnostic survey or safety audit of crime problems;
 - (ii) Identifying relevant local actors who should be involved;
 - (iii) Setting up local consultation mechanisms;
 - (iv) Developing possible solutions to respond to the local problems identified;
- (b) An **integrated crime prevention action plan**, which should:
 - (i) Define the type and nature of crime problems and their causes;
 - (ii) Set out the objectives to be achieved within a given time;
 - (iii) Describe the action envisaged and who should be responsible for implementing the plan;
 - (iv) Consider all the actors to be involved in addition to the justice sector, from elected officials, social workers, education, housing and health, and community organizations, to the economic sector, transport, business and the media;
 - (v) Consider the relevance of crime prevention for each of these sectors;
 - (vi) Consider primary prevention action and the prevention of recidivism and protection of victims.

In implementing the action plan, central government authorities are urged to provide active support, training, assistance and encouragement to local actors, to adapt national policy and strategies to local needs, and to organize consultation and cooperation mechanisms at the central level. Authorities at all levels are urged to respect human rights and to provide training and support, and the means to evaluate and revise the strategy implemented.

The 2002 Guidelines for the Prevention of Crime build on the 1995 guidelines. They recognize the long-term cost-benefits from well-planned crime prevention strategies (para. 1):

“There is clear evidence that well-planned crime prevention strategies not only prevent crime and victimization, but also promote community safety and contribute to the sustainable development of countries. Effective, responsible crime prevention enhances the quality of life of all citizens ... Crime prevention offers opportunities for a humane and more cost-effective approach to the problems of crime.”

The conceptual frame of reference defines “crime prevention” (para. 3) as comprising “strategies and measures that seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society, including fear of crime, by intervening to influence their multiple causes”.

Community involvement—defined as the involvement of civil society at the local level—and *cooperation/partnerships* are important elements.

The 2002 Guidelines also spell out the range of approaches to crime prevention that have been developed. These are derived from the different theoretical bases of types of prevention practice, which have been supported by extensive research and evaluation over the past 20 years or more:

“Prevention encompasses a wide range of approaches, including social development, community integration, urban renewal and situational prevention, and reintegration.”

- Social development and community approaches target the most vulnerable groups and populations and promote protective factors through, for instance, education, health, job skills and job creation, housing and family and child support programmes; actions to redress marginalization and exclusion and to strengthen community capacity; promoting positive conflict resolution; and educational and public awareness strategies to foster tolerance and a culture of lawfulness.
- Situational approaches aim to reduce opportunities for crime and victimization through improved urban renewal and environmental design, for example, of housing, public spaces and recreation, and roads; appropriate surveillance in parallel with respect for privacy; the design of consumer goods to minimize crime; and strengthening the ability of the built environment, such as housing, to resist crime.¹¹
- Social reintegration can be understood as the support given to offenders during re-entry into society following detention. A broader definition, however, encompasses the period starting from prosecution to release and post-release support. Social reintegration measures aim at reducing rates of recidivism and

¹¹ B. van Bronkhorst, *A Resource Guide for Municipalities: Community Based Crime and Violence Prevention in Urban Latin America* (Washington, D.C., World Bank, 2003), pp. 39-40.

may include imposing alternative sentences instead of detention, assisting with the moral, vocational and educational development of the detained individual and social, psychological and other support provided to former detainees after release.¹²

The Guidelines also urge Governments and civil society to address the impacts of organized crime at the local level, including through legislative and administrative measures, and strategies to protect the most vulnerable groups, especially women and children, from trafficking in persons, for example.

The 2002 Guidelines outline eight basic principles on which crime prevention action should be based:

- **Government leadership** at all levels to create and maintain an institutional framework for effective crime prevention.
- **Socio-economic development and inclusion:** integration of crime prevention into relevant social and economic policies, focus on integration of at-risk communities, children, families and youth.
- **Cooperation and partnerships** between government organizations, civil society, the business sector and so on.
- **Sustainability and accountability:** adequate funding to establish and sustain programmes and evaluation, and clear accountability for funding.
- **Knowledge base:** strategies, policies and programmes to be based on a broad, multidisciplinary foundation of knowledge and evidence about crime problems, their causes and proven practices.
- **Human rights/rule of law/culture of lawfulness:** respect for the rule of law and human rights, and promotion of a culture of lawfulness.
- **Interdependency:** account to be taken of links between national and local crime problems and international organized crime.
- **Differentiation:** strategies to respect the different needs of men and women, boys and girls and vulnerable members of society.

To assess the use and implementation of the 2002 Guidelines, a questionnaire, designed in accordance with Economic and Social Council resolutions 2004/28 and 2006/20 on the use and application of United Nations standards and norms related primarily to the prevention of crime, was submitted to all Member States in August 2006 and a report on the findings was submitted to the Commission on Crime Prevention and Criminal Justice at its sixteenth session, in April 2007 (E/CN.15/2007/11). A total of 42 Member States replied in the time frame allotted and it may be useful to refer to relevant country responses in the report before beginning an assessment. The report addresses four main issues:

- Structuring crime prevention at the government level
- Crime prevention approaches

¹² See also **Custodial and non-custodial measures** in the Criminal Justice Assessment Toolkit, in particular **Alternatives to imprisonment and social reintegration**.

- Implementation issues
- International cooperation, networking and technical assistance

The 2002 Guidelines are not the only normative guidelines for community-based crime prevention. The **Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order**¹³ also urged (para. 28) that community participation in all phases of crime prevention and criminal justice should be promoted and strengthened.

The prevention of crime and violence is also addressed in the Habitat Agenda Goals and principles, Commitments and the Global Plan of Action,¹⁴ which recognizes crime prevention as a key to sustainable human settlements. The Habitat Agenda also provides some guidance to member States and stakeholders from the perspective of sustainable urban development and human settlements management, in particular (para. 123):

“To prevent, reduce and eliminate violence and crime, Governments at the appropriate levels, including local authorities, in partnership with all interested parties, should:

“(a) Design, create and maintain liveable human settlements that encourage the use of public spaces as centres of community life so that they do not become places for criminal activity;

“(b) Promote awareness and provide education in an effort to mitigate crime and violence and strengthen society;

“(c) Promote crime prevention through social development by finding ways to help communities deal with underlying factors that undermine community safety and result in crime by addressing such critical problems as poverty, inequality, family stress, unemployment, absence of educational and vocational opportunities, and lack of health care, including mental health services;

“(d) Encourage youth and children, in particular street children, to become interested parties in their own future and in their community’s future through education, recreation, and job training and counselling that can attract private-sector investment and support from non-profit organizations;

“(e) Enhance women’s safety in communities through the promotion of a gender perspective in crime prevention policies and programmes by increasing in those responsible for implementing those policies the knowledge and understanding of the causes, consequences and mechanisms of violence against women;

“(f) Establish programmes designed to improve the skills of local leadership in group facilitation, conflict resolution and intervention;

¹³ *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. 1, sect. B, annex.

¹⁴ www.unhabitat.org.

“(g) As appropriate, promote personal security and reduce fear by improving police services, making them more accountable to the communities they serve, and by encouraging and facilitating, whenever appropriate, the formation of lawful community-based crime prevention measures and systems;

“(h) Provide accessible, affordable, impartial, prompt and humane local systems of justice by, inter alia, facilitating and strengthening, where appropriate, existing traditional institutions and procedures for the resolution of disputes and conflicts;

“(i) Encourage the establishment of programmes and projects based on voluntary participation, especially of children, youth and older persons, to prevent violence, including violence in the home, and crime;

“(j) Take concerted and urgent action to dismantle international and national sex trafficking networks.”



2. Overview

Please refer to **Cross-cutting issues: Criminal justice information and Juvenile justice**, and to **Public safety and police service delivery** in the **Criminal Justice Assessment Toolkit** for guidance on gathering key criminal justice statistical data and to help provide an overview of the situation in the country being assessed and the information available. The availability of statistics will vary, as will their reliability and integrity, and it is important to validate figures against other data sources, such as non-governmental organizations (NGOs) and international bodies.

1. Statistical background data

Some of the main risk factors for crime and victimization relate to population densities and income disparities. Rapid population growth in urban areas, immigration and migration from rural areas can become risk factors if infrastructure capacity and social and economic development cannot match that growth. Disputes over scarce resources can accelerate friction. Answers to the questions below will help to provide a broad overview of the country situation.

The **Human Development Index**¹⁵ and the **Gini coefficient**¹⁶ are two measures that can be used in this connection. The Gini coefficient measures economic equality or inequality. The Human Development Index helps to provide an assessment of the relative levels of well-being and development in a country, based on measures of life expectancy, literacy, education and living standards.

- What is the population size? What is the rate of growth?
- What is the demographic profile (age, gender)?
- What are the main ethnic/linguistic breakdowns?

¹⁵ See www.hdr.undp.org for information on the Human Development Index and country rankings.

¹⁶ The World Bank's Gini coefficient of inequality is the most commonly used measure of inequality in a country or region or population group, taking account of disparities in income. For more information and country rankings, see www.worldbank.org.

- What proportion of the population is urban/rural? Density?
- Is there significant immigration, rural/urban migration or emigration?
- What is the Gini coefficient (measuring inequality)?
- Is the country in a post-conflict, developing or transitional situation?
- Does there appear to be a high level of corruption at the government and institutional levels (e.g. politicians, justice system or police)? How does the country rate on the international index of corruption¹⁷ and assessments by international organizations?
- What is the infrastructure capacity (e.g. housing, slums, environment, roads, transport, sewage and water)?
- What are the employment levels? Is there long-term/intergenerational unemployment? Are unemployment rates high for young people?
- Is primary and secondary schooling available for all? Is schooling free?
- Are there any estimates of the numbers of working children?
- Are statistical data available on trafficking in persons (provided by public authorities)?
- What are the enrolment levels for primary and secondary schools (disaggregated by sex)?
- What is the drop-out rate from schools (disaggregated by sex)?
- Is there equitable access to recreational spaces, programmes and facilities?
- Are health-care services widely available and accessible?
- Is there a developed and accessible social services system? Is there a social protection scheme for families at risk?
- Are there slums or areas with deprived living conditions?¹⁸

2. Data sources and crime prevention performance indicators

Traditionally, countries have relied on police statistics of reported and recorded offences to assess changes in rates of offending over time. Since many offences are not reported to the police, victimization surveys, which ask people about the crimes they have experienced, are increasingly used to assess levels of offending and to track trends. Surveys of fear of crime, which are usually included in victimization surveys, are also important ways of assessing levels of insecurity (not necessarily related to actual crime levels) among different populations and communities. The International Crime Victims Survey and the International Violence Against Women Survey provide

¹⁷ Transparency International (www.transparency.org).

¹⁸ For definitions and statistical data, see United Nations Human Settlements Programme, *Slums of the World: the Face of Urban Poverty in the New Millennium?* (Nairobi, UN-HABITAT, 2003), as well as subsequent editions of the *State of the World's Cities Report* (for 2004-2005, 2006-2007 and 2008-2009) (London, Earthscan, 2004, 2006 and 2008).

comparative information for a number of countries.¹⁹ Participatory methods such as women's safety audits are another way of collecting information about local victimization and insecurity.²⁰ To help assess crime prevention problems, as well as the performance of projects, it is also important for data to be disaggregated in terms of gender, age and ethnic and other minority groups.

The availability of statistical data on crime and victimization will vary greatly, as will their reliability and integrity. Where possible, statistics from government agencies should be validated against data from other sources such as NGOs or international bodies. In addition to national data, provincial or local authorities may also collect relevant statistics.

Please also refer to **Cross-cutting issues: Victims and witnesses** in the **Criminal Justice Assessment Toolkit**.

Does the national Government have/use information about:

- Numbers of crimes reported to the police?
- Victim incidents reported in victimization surveys?
- Reported levels of fear and insecurity in public surveys?
- Technical information systems such as geographical information systems (GIS)?
- Does it have access to a regional or national observatory or monitoring centre on crime and social problems?
- Do any provincial or municipal authorities collect/use additional information about:
 - Reported crimes, victimization levels or insecurity?
 - Do any of them use technical information systems such as GIS?
 - Do they have access to an observatory or monitoring centre on crime and social problems?
- Is information disaggregated and available/accessible at different scales/territorial units?
- Is the information analysed, communicated and used?

Other information that can be used relates to the incidence of crime and violence in particular sectors, or among specific populations, such as domestic and sexual violence, or residential burglary. Changes in their incidence can be used as indicators of crime prevention performance. Alternative information on the incidence of violence comes from sources such as the records of injuries or incidents of hospital or social protection services.

¹⁹ See J. Van Dijk, *The World of Crime ...*, op. cit.

²⁰ Women in Cities International, *Women's Safety Audits: What Works and Where?* (Nairobi, UN-HABITAT, 2008).

Are any of the following data available at the national, provincial or city level?

- Hospital records of injuries and deaths
- Incidence of racial or hate crimes
- Incidence of crimes against indigenous populations
- Incidence of residential burglary
- Incidence of domestic violence
- Incidence of child abuse
- Incidence of street violence against women and girls
- Incidence of sexual exploitation of women and girls and trafficking in persons
- School-based incidents/insecurity
- Workplace incidents/insecurity
- Household/residential incidents/insecurity
- Public transport incidents/insecurity
- Public space incidents/insecurity (parks, urban centres, etc.)
- Business and commercial districts; nightclub and entertainment districts, etc.
- Are data generally disaggregated in terms of race, gender and/or age?
- Are data disaggregated in terms of spatial and/or administrative units?

3. Legal and regulatory framework

Crime prevention policy may be enacted without specific legislation. However, it often requires a specific impetus such as the launch of a national strategy or an overarching policy to provide guidance to public officials.

In some cases, legislative amendments may be enacted to create specific programmes, for instance, to allocate resources to programmes, or may require prevention programmes to be integrated into youth justice, childcare systems, prison and release systems, and victim or family violence strategies. In some countries, such as Colombia, certain powers and resources have been devolved to municipal authorities, giving them greater flexibility to develop city strategies.

It will not be easy for the assessor to identify such legislation, especially in post-conflict countries, and it may be useful to consult internal or external legal or advocacy groups or donor studies and reports.

Please refer also to **Criminal justice information** and the **annex on Comparative legal systems** in the **Criminal Justice Assessment Toolkit**.

- Has the country enacted any legislation or policy on crime prevention?
- Are there any departmental guidelines on crime prevention?
- Has the country enacted any legislation to protect the rights of specific groups, such as victims of:
 - Human trafficking?
 - Family violence?
 - Sexual abuse?
 - Child abuse?
- Have there been any recent reviews of compliance with the Guidelines on the Prevention of Crime?
- Is there any devolution of powers to lower levels of government?
- Who are the primary stakeholders concerned with crime prevention?



3. National crime prevention framework and capacity

1. National strategy

The United Nations Guidelines recommend the establishment of a national crime prevention strategy. A number of countries have developed such strategies over the past 20 years.²¹ Core responsibility for crime prevention may be located within a particular ministry, for example, justice, the interior, public security or policing. Additional responsibilities may be allocated to other ministries, such as those responsible for local government, urban development or renewal, youth issues, victim policies or violence against women.

Monitoring and evaluation of strategies and programmes should be an integral part of such initiatives so as to assess how far they are achieving the intended objectives, to aid in the readjustment of programmes where necessary and to assess costs and benefits.

The following questions seek to identify whether such a strategy exists and what its scope is, or, alternatively, what the concept of the government authorities of crime prevention is:

- What is the role of the national Government in crime prevention?
- Is there a proactive national crime prevention strategy? How does it define “crime prevention” in terms of core functions and responsibilities? Has it been updated recently?
- Is the national strategy based on any analysis of crime problems (trends, causes, types, location and impact of crime)?
- How is it linked to sectoral policies and strategies?²²
- Does the strategy address crime problems in both urban and rural areas?

²¹ See International Centre for the Prevention of Crime, *International Report on Crime Prevention and Community Safety ...*, op. cit.

²² In the context of developing countries, poverty reduction strategy papers and United Nations common country assessments should also be reviewed where relevant.

- Does the strategy address prevention of the crime of human trafficking, including educational, social and economic measures?
- Which crime prevention approach(es) does the strategy encompass: social development, community-based, situational and/or social reintegration of offenders?
- Does it include achievable objectives and indicators against which progress can be assessed?
- Does it provide guidance for implementation of strategies at the provincial and/or local levels?
- Does it provide guidance on the involvement of local communities? What are the mechanisms to ensure the inclusion and consultation of non-state actors?
- What are the Government's crime prevention priorities? Is there an action plan? If so, does it assign responsibility and time limits, resource plans and budget? Are there any targets set for implementation?
- Has any evaluation of the overall strategy been conducted or established? Is there regular monitoring and evaluation of implementation of national strategies?
- How likely are the Government's crime prevention policies to be sustained over the medium or long term, for example, with a renewed government mandate, change of minister or a new Government?
- If there is no strategy, how is crime prevention defined at the national level? Who has primary responsibility for safety and security issues?
- Are there any initiatives dealing with prevention of crime from any of the national-level actors? Are there pilot projects?
- Are there social programmes that have crime prevention components and/or crime prevention objectives?
- Is there a national plan for the prevention of children's involvement in crime? For the prevention of youth violence and crime? For the prevention of violence against women?
- Are there crime prevention objectives reflected in other sectoral programmes or strategies?
- Is the private sector involved in crime prevention strategies at national level?

2. National infrastructure

“Governments should include prevention as a permanent part of their structures and programmes for controlling crime, ensuring that clear responsibilities exist within government for the organization of crime prevention.”

The United Nations Guidelines urge Governments to include prevention as a permanent part of their structures and programmes for controlling crime and to establish a central authority or department with responsibility for implementing and

coordinating action plans (para. 17). As suggested above, core responsibility may be centralized in one ministry or shared between a range of ministries.

A specific role for the police in crime prevention is also important. In post-conflict and other settings, police authorities and organizations may still be centralized rather than decentralized, and policing styles militaristic and confrontational, with little citizen trust in the police. Moving towards a less centralized model, using a problem-solving approach, involving local communities and working to gain their trust will all increase the ability of the police to prevent rather than repress crime.

Various forms of problem-oriented, local and community policing have emerged in recent years as an effective approach that facilitates partnerships with the community, helps to improve relationships with them and promotes a proactive problem-solving approach to local crime problems. It requires policing structures to be more consultative and less hierarchical than traditional policing approaches. Where community policing arrangements are well developed, individual patrol areas or beats are allocated to a particular officer as the focal point for that area and to support crime prevention activities with other local services and the community.

Please refer to **Public safety and police service delivery** and **The integrity and accountability of the police** in the **Criminal Justice Assessment Toolkit** for further information on policing.

The following questions seek to identify core national responsibilities for crime prevention and any policing role in prevention and among other key sectors:

- Which ministry or ministries have responsibility for crime prevention and/or safety and security?
- Is there a central body or department in charge of implementing national crime prevention programmes or coordinating the work of central/provincial/local government?
- Does the ministry or central body work across government with other government ministries or agencies (e.g. health, housing, the environment, education, women's affairs, etc.)?
- What is the role of the police in prevention? Is it proactive or reactive? Is there a community or local policing strategy?
- Who has responsibility for policing at the local level? Do the police foster partnerships with the community at the local level? What style of policing is used? Do citizens generally trust the police?
- If community police forces exist, how are they structured? Do they include specialized service divisions (e.g. human trafficking, domestic violence, child abuse, youth violence and/or drug abuse)?

- What is the proportion of women police officers?
- Do transit police or customs and border police have a specific role in crime prevention?
- Does the private security sector have a major role?
- Is there a specific ministry responsible for rehabilitation programmes in prison settings, post-sentence or post-custody rehabilitation and prevention programmes?
- Are there any mechanisms for sustaining prevention programmes beyond the life of a specific Government or minister (e.g. funding streams and resource allocation, long-term strategic plans and/or city contracting systems)?
- Have any of these policies or strategies been evaluated? Have outcomes and impact been measured?²³
- Are there any national-level non-governmental or civil society organizations that play a major role or are concerned with crime prevention?
- What is the perception of the police by the communities and other stakeholders in terms of effectiveness, respect for human rights and possibilities of collaboration?

²³ Monitoring and evaluating action plan implementation involves looking at inputs (resources) and activities against the outputs (results), outcomes (expected or unexpected), impact, overall objectives and sustainability.



4. Regional/state/provincial crime prevention strategies and capacity

In federal countries, states or provinces may have some authority for crime prevention and safety issues. In non-federal countries, provincial/regional entities may also have some authority over crime prevention and safety issues. States within a country may vary in their capacity and involvement.

As with national strategies, monitoring and evaluation are also essential in assessing how far provincial programmes are achieving their intended objectives and in aiding readjustment of programmes, where necessary, and in assessing costs and benefits:

- Do any states/provinces have a crime prevention policy or strategy? How do these bodies define crime prevention in terms of core functions and responsibilities? Have they been updated recently?
- Which crime prevention approach(es) does the policy/strategy follow: social development, community-based, situational and/or social reintegration of offenders?
- How are they funded and supported?
- Who are the key actors with responsibility for the strategy and its implementation and evaluation?
- What are the Government's crime prevention priorities? Are there any targets set for implementation?
- If there is no policy, what is their conception of crime prevention?
- Have any of these policies or strategies been evaluated? Have outcomes and impact been measured? Is there regular monitoring and evaluation of provincial strategies?
- Are there any mechanisms for sustaining prevention programmes beyond the life of a specific Government or minister (e.g. funding streams and resource allocation, long-term strategic plans and/or city contracting systems)?
- Are there any provincial-level non-governmental or civil society organizations that play a major role or are concerned with crime prevention? Is the private sector playing a role?



5. Local crime prevention strategies and capacity

The United Nations Guidelines recommend action at the local level; some cities or urban areas may have initiated their own crime prevention strategies and responsibilities. The city of Dar es Salaam, for example, has a permanent Safer Cities structure and coordinator, while Bogota has developed its very effective prevention strategy over a number of years and published its long-term strategic plan, the *Libro Blanco*, in 2008.²⁴

As with national and provincial-level strategies, local prevention strategies and programmes need to be monitored and evaluated to assess the extent to which they are reaching the targeted groups of neighbourhoods and achieving their intended objectives, and to aid readjustment of programmes where necessary.

The following questions seek to assess the extent, strengths and/or limitations of local crime prevention strategies:

- Do any cities have a crime prevention policy or strategy? Have they been implemented partially or fully?
- How do local authorities define crime prevention in terms of core functions and responsibilities? Have these been updated recently?
- Does a local diagnosis and consultative mechanism exist? Who is involved?
- Which crime prevention approach(es) does the policy/strategy follow: social development, community-based, situational and/or social reintegration of offenders?
- How are they funded and supported?
- What kinds of coordination mechanisms do they use?
- Who are the key actors with responsibility for the strategy and its implementation and evaluation?

²⁴ A. Mtani, "Local innovations for crime prevention. The case for safer cities: Dar es Salaam", M. Shaw and K. Travers, *Strategies and Best Practices in Crime Prevention in particular in relation to Urban Areas and Youth at Risk, Proceedings of the Workshop held at the 11th United Nations Congress on Crime Prevention and Criminal Justice, Bangkok, 18-25 April 2005* (Montreal, Canada, ICPC, 2005); and *Libro Blanco para la Seguridad Ciudadana* (White paper for city safety) (Bogota, City of Bogota, 2008).

- What are the local government crime prevention priorities? Are there any targets set for implementation?
- If there is no policy, how is crime prevention defined at the local level?
- Are there crime prevention outcomes set explicitly within sectoral policies or service delivery?
- Who has responsibility for policing at the local level? Are there any municipal police forces, municipal guards or auxiliary police?
- Do the police foster partnerships with the community at the local level? What style of policing is used? Do citizens generally trust the police?
- Is much use made of private policing or private security services?
- Are there law enforcement and justice functions within the municipal functions (administrative courts, for instance, or enforcement of by-laws etc.)?
- Have any of these policies or strategies been evaluated? Have outcomes and impact been measured? Is there regular monitoring and evaluation of local strategies?
- Have there been any reductions in crime, victimization and insecurity?
- Are there any mechanisms for sustaining prevention programmes beyond the life of a specific city mayor and administration (e.g. funding streams and resource allocation, a long-term strategic plan and/or a city contracting system)?
- Are there any local non-government or civil society organizations, including child or youth participation groups, that play a major role or are concerned with crime prevention? Is the private sector involved or interested in crime prevention?
- Are there conflicts or differences between national and local approaches?

Many of the questions for other levels of government should also be asked of the local level actors and authorities, depending on the level of decentralization in each context. Data also need to be collected specifically to provide background information on the city's profile (socio-economic and environmental information), in particular if there is a concentration of crime problems in urban areas. It may be difficult to collect information directly in many urban centres in the context of one assessment mission, even if relevant. However, one or two cities should be included with a sufficient level of detail to gain a complete picture of issues and needs at the local level.

Given the complexity of the situation in some of the metropolises where crime prevention is a high priority, it is advisable to allow sufficient time to assess urban dimensions and specialized competences.



6. Research and knowledge base

Crime prevention strategies at the national, provincial and local levels all need to be built on the basis of reliable information and evidence about crime problems and their causes, as well as using good practice interventions to target those causal factors. They need to be evidence based.

Measuring the effectiveness of crime prevention activities in terms of changes in police-recorded offences, household victimization surveys or public opinion surveys will provide important information, but is not sufficient. Many other sources of information, such as health and employment services, family and social services, schools and housing departments, can assist in the analysis of the impact of intervention programmes, as well as participatory methods, which can provide assessments by particular populations or communities.

The existence of both reliable baseline data and research and also of information on good crime prevention practices is important in developing and adapting relevant programmes that target causal factors. Such data are equally important for the monitoring and evaluation of activities undertaken. Government authorities at all levels, and police services and NGOs, often work with universities or research and training centres to assist them in developing data, measuring performance and evaluating the impact of programmes.

For example, the Centre for Crime and Public Safety Studies at the Federal University of Minas Gerais, Brazil, has developed the use of GIS to assess the geography of crime problems. It has also worked closely with the state of Minas Gerais and the city of Belo Horizonte in developing and evaluating the impact of an action-research project, *Fica Vivo*.²⁵ Similarly, the Centre for Scientific and Industrial Research of South Africa has worked with Governments to develop training and crime prevention manuals and tools.²⁶ Some countries, such as El Salvador, and cities, such as Bogota, now have access to regional or city observatories on crime and social problems, which can aid their own analysis and ongoing programme monitoring.

²⁵ C. Beato, *Case Study "Fico Vivo" Homicide Control Project in Belo Horizonte* (Washington, D.C., World Bank, 2005).

²⁶ See www.csir.co.za.

There are a number of other good tools and resources available, such as that on conducting local safety diagnoses or audits, a *Guidance on Local Safety Audits: a Compendium of International Practice*, published in Paris in 2007 by the European Forum for Urban Safety and the Government of Canada.

Please also refer to **Cross-cutting issues: Criminal justice information**, and **Custodial and non-custodial measures: Alternatives to incarceration** in the **Criminal Justice Assessment Toolkit**.

1. Research

Effective intervention models exist in a number of countries, but need to be adapted to specific contexts and conditions. The monitoring and evaluation of programmes is an important means of assessing their value and appropriateness and of adapting them more carefully to meet particular needs. NGOs may play an important role, for example the Institute for Security and Democracy (INSyDE) in Mexico City provides training and undertakes research on issues of police ethics and the rule of law.²⁷

Tools such as victimization surveys, observatories, local safety diagnoses and audits or participatory assessments are all important in developing a sound knowledge base. The questions below seek to assess the current use of research-based information and existing/potential capacity, and to identify existing institutional and civil society activity and capacity for research and knowledge development:

- Which institutions/agencies at the national, provincial or local level conduct research on crime, health and social problems?
- Do they have the capacity to undertake applied research? Do they have sustainable funding?
- Has research on the trends, problems and causes of crime been carried out? Are the results publicly available? Are there specific victimization studies? Are there specific studies on, for instance, street children, child abuse, youth gangs, assaults in the street or high-risk areas?
- Is there any research on the crime and root causes of trafficking in persons?
- Is there any research on the impact of in-prison and post-custody reintegration programmes, for example, with young offenders or former gang members?
- Do any NGOs conduct research and policy analysis on any of these issues?

²⁷ See www.insyde.org.mx.

- Is there civil society involvement in research such as on children and youth at risk?
- Are research results used to update or inform policies and programmes on a regular basis?
- Is there ongoing research capacity to monitor and analyse trends and evaluate programmes?
- Is there ongoing research capacity to assist with programme implementation or evaluation?
- Are any specialized tools used, such as GIS, safety audits (or safety diagnoses) or local or regional observatories (or monitoring centres), in studying crime and social problems?
- Have any crime prevention initiatives been evaluated? Were the findings disaggregated by geographical area, age, gender and/or ethnic group? Have the findings been used to adjust the initiative if needed?

2. Training and skill development

Policymakers and practitioners will not necessarily be familiar with how to work in partnership with other institutions and organizations. Courses on crime prevention need to reflect the methodology and approach recommended by the United Nations Guidelines (developing partnerships, working with the community, using a problem-solving approach, developing safety audits, learning about effective practices, etc.) and not be restricted to legislation or regulations, security procedures or specific training, such as in dog handling or property security. The following questions may help assess this:

- Are there any training institutions or university/educational centres offering courses in crime prevention/community safety, prevention of recidivism and capacity-building in this area (e.g. for the police, local authority staff, social workers, prison staff, civil society or the media)?
- Are these national institutions, provincial or local?
- Do all relevant stakeholders receive ongoing training in their respective areas?
- Do any NGOs or civil society organizations give training in crime prevention or related areas such as human rights or victim issues?
- Is there any training at the provincial or local level for community or problem-oriented policing or municipal guards?
- Does the content of courses reflect the principles embodied in the United Nations Guidelines: the importance of government leadership; socio-economic development and inclusion; cooperation and partnerships; sustainability and accountability; use of a knowledge base; human rights and the rule of law; interdependency; and differentiation?

- Is there a basis for developing such centres (e.g. interested centres/universities, NGOs)?
- Who is the target of training? Does it address different groups of stakeholders (e.g. the public sector, private, civil society, communities or local leaders) and different sectoral responsibilities (e.g. law enforcement, social development, education, urban planning or design or community mobilization specialists)?



7. Partnerships and coordination

Partnerships form a central aspect of the United Nations Guidelines for the Prevention of Crime. They entail partnerships horizontally across government departments, vertically between levels of government, and between government institutions, agencies, United Nations entities and civil society, including local citizens, the business community, the media and NGOs. The questions below will help determine what partnerships exist:

- Are there any measures/mechanisms in place to coordinate the different activities of relevant government agencies and ministries dealing with crime and recidivism prevention (i.e. horizontally across government)?
- Are there any measures/mechanisms in place to coordinate different levels of government, national, provincial and/or local (i.e. vertically between levels of government)?
- Are there any mechanisms in place to work in partnership with international donors?
- Are there any mechanisms in place to coordinate and support the role of non-governmental agencies providing services for those at risk of offending or victimization or coming out of prison (e.g. advocacy groups, human rights organizations, women's rights groups, child protection agencies, youth-serving organizations, health organizations, neighbourhood watch groups, etc.)?
- Are there any civil society organizations representing the interests and working in support of specific groups, such as street children or members of youth gangs?
- Are there any mechanisms to involve the media more positively in crime prevention strategies and programmes? Are any specialized awareness-raising campaigns carried out?
- Are there any donor coordination mechanisms dealing with crime prevention?



8. Sustainability of crime prevention strategies and programmes

Sustaining crime prevention strategies involves more than setting up a series of pilot initiatives, although these may be a useful way to begin. It involves a clear institutional vision and goal-oriented approach. This means establishing ongoing programmes, supporting local government and community partnership strategies and action plans, establishing permanent institutional support, including coordination and evaluation, ongoing research programmes and planned training and capacity development. It means ensuring adequate ongoing funding for prevention programmes and their monitoring and evaluation, and for training and research.

At the national, provincial or local government levels, sustainability can be ensured by regular contract funding mechanisms for neighbourhood projects. Such a mechanism has been used successfully in Belgium, France and Colombia, where, for example, the city of Bogota offers funds to local municipalities for projects that they devise and submit, and that then form the basis of a contract between the municipality and the city.

Please refer to **Cross-cutting issues: Criminal justice information** and **Custodial and non-custodial measures** in the **Criminal Justice Assessment Toolkit**.

Questions relating to sustainability include:

- How much funding is allocated to crime prevention at the national level, for example, as compared with the rest of the criminal justice sector or with other kinds of public security spending? Is crime prevention also included in budgets for education or urban renewal and public space, for example, and if so, how much?
- Is this time-limited or programme funding, or long-term funding?
- Are strategies and programmes likely to be sustained beyond the life of a specific national, provincial or local government?

- Do resources match needs and mandates? For instance, if policing has been decentralized, have resources from the state/federal level also been decentralized?
- Are institutional structures for managing crime prevention strategies well resourced and staffed?
- Are there resources for the adaptation or scaling-up of programmes?
- Are there any public-private partnerships?
- Are the results of strategy or project evaluations published?
- Are any indicators of crime prevention effectiveness (lower levels of crime, victimization and insecurity, improved neighbourhood or city capacity, changes in infrastructure or increased youth employment or participation, etc.) communicated to the public regularly?
- At the national, provincial or local government levels, are there any ongoing funding or contract systems for local projects?
- Are there any independent funding oversight mechanisms to ensure accountability?



9. Specific crime issues and perceptions

What are the main crime concerns facing the country and its communities—as seen by government authorities, civil society, academics, NGOs and the media—as well as from the point of view of donors and external observers?

Insecurity and fear of crime may be an issue, as well as public confidence in the institutions seen as responsible for controlling and preventing crime. National and local priorities may differ, given the scale of analyses and the level of responsibility. In addition, different actors may have different experiences and perceptions regarding the relative importance of crime concerns.

It is important both to contextualize crime and to identify the priorities and perceptions of the different stakeholders:

- Do crime problems relate to border security or transnational crime affecting local crime conditions (e.g. trafficking in persons, firearms or drugs)?
- Do crime problems relate primarily to crime in urban areas? Is there significant crime associated with drug trafficking and gun use? Are there geographical differences across the country?
- Are any crime problems associated with disputes over scarce resources?
- Where are the main local crime problems, for example, in urban centres, suburbs, poor housing and environmental areas or slums? Is rural or small town crime a concern?
- Are there crime problems associated with land tenure and forced evictions? Are there any problems associated with race, gender, migration or sexual orientation?
- Are there areas that are largely controlled by gangs, organized crime or paramilitary groups?
- Is there concern about violence in private spaces, such as violence against women and children or trafficking in persons for domestic work?
- Is there concern about internal human trafficking (e.g. from rural to urban areas)?

- Is there concern about institutionalized violence (e.g. by the police, in prisons, in schools or in residential care institutions)?
- Is fear of crime high? Is there insecurity in public spaces? Are there problems associated with different uses of public space (e.g. informal traders versus business districts)?
- Are there security problems/insecurity about the use of public transport or private transport (e.g. taxis)?
- Is residential crime, crime in commercial centres, against business or in nightclub areas a serious concern?
- Is there vandalism or crime against public infrastructure and goods?
- Is there heavy investment in private security systems and technology among some groups (e.g. closed-circuit television, guards or gated communities in well-off suburbs and residential areas or in city centre business districts and commercial areas)?
- Is there political violence or violence related to conflict and civil unrest?
- What is the level of “informality” of the existing security systems (vigilante groups, security committees, etc.) and is this cause for concern?
- Is cybercrime, Internet fraud or identity theft a concern?
- Is there general public confidence and trust in the police and the justice system, and in government and elected officials?
- How far is corruption a major concern compared with conventional crime?



10. Specific groups

The need to take account of all sectors of society and to develop inclusive policies that respect the human rights of all groups is stressed in the **United Nations Guidelines**.

The questions below should help identify whether there are significant groups or populations whose circumstances put them at high risk of crime and victimization or who are excluded from government policies and decision-making. In post-conflict settings, some groups are likely to be at high risk, such as ethnic minorities, and women and children are likely to be very vulnerable to violence.

The views of Governments, civil society, academics, NGOs and the media, as well as donors and external observers, should be sought.

Please also refer to **Cross-cutting issues: Juvenile justice** and **Victims and witnesses** and **Custodial and non-custodial measures** in the **Criminal Justice Assessment Toolkit**, and the United Nations Children's Fund (UNICEF)/UNODC *Manual for the Measurement of Juvenile Justice Indicators*, published in 2006.

- Are there significant groups of children and young people at risk of victimization or entry into crime (e.g. living in disadvantaged areas or slums with high population density, poor infrastructure, high levels of unemployment, poor or non-existent social services, poor or non-existent safe public spaces, etc.)? Is one group (children or young people) larger than the other?
- Are large numbers of street children commonly found in public spaces and elsewhere in cities?
- Are there significant problems of alcohol and drug use by young people?
- Are youth groups/gangs a concern? Are there long-term (institutionalized) youth gangs using organized armed violence?

- Are there significant numbers of people (e.g. members of youth gangs) deported back from other countries?
- Are there significant populations of ethnic/cultural minority, migrant, refugee, illegal immigrant populations, in cities or rural areas?
- Is violence against women and children in domestic settings a major concern?
- Are women and girls seen as vulnerable to HIV/AIDS or trafficking?
- Is violence against women and girls in public places a concern?
- Are there significant numbers of ex-child soldiers or war-affected children?
- Are there significant numbers of young people in correctional institutions?
- Is violence against children in detention and institutional care a concern?
- Are there any non-custodial programmes for children and young offenders?
- Are there concerns about crimes against indigenous populations?

1. Specific policies to prevent social exclusion

The United Nations **Guidelines** also underline the importance of inclusion and of differentiation—of recognizing the specific vulnerabilities and needs of different groups in society—and of ensuring that there are policies that seek to respond to those needs.

The questions below will help identify whether there are any policies that promote the well-being of the groups identified above and encourage pro-social behaviour, for instance, through social, economic, health and educational measures.

Please refer also to **Custodial and non-custodial measures**, in particular the sections entitled **Alternatives to incarceration** and **Social reintegration**, in the **Criminal Justice Assessment Toolkit**.

- Does the national crime prevention strategy (if any) include specific social protection/welfare interventions for children at risk and their families (including the groups mentioned above)?
- Are there any specific policies at the national/provincial/local levels to promote the health and safety and participation of children and young people?
- Are there any specific policies at the national/provincial/local levels to respond to unemployment, the needs of street children and war-affected children or to counter social exclusion?
- Are there any specific policies to respond to the needs of immigrant/minority populations?

- Are there specific policies and programmes to respond to the needs of indigenous populations?
- Are there specific policies to prevent recruitment or to reintegrate members of youth gangs?
- Are there any specific policies to address drug and alcohol addiction?
- Are there any specific policies at the national/provincial/local levels to promote the safety of women and children in the home and outside?
- Are there any strategies to protect vulnerable groups, such as women and children, who are vulnerable to human trafficking and exploitation by organized criminal groups?
- Are there any social reintegration programmes for people released from prison?
- Are there social inclusion and reintegration programmes for trafficked persons?
- Are there any rehabilitation and reintegration programmes or services for children and young people in custody? Are there any community-based programmes or services for young people on their release from custody?
- Do urban renewal/slum upgrading/public space projects take account of the views and needs of the users of specific spaces, such as marginalized populations?
- Are there specific policies for the informal sector?



11. Management and coordination

1. Overall coordination

When possible, policies and programmes for crime prevention need to be built on the basis of comprehensive strategies and partnerships across government and with the community. This means involving a variety of sectors of government at all levels, as well as academic and research institutions, NGOs and civil society, the media and donor organizations. In small States, such as those of the Caribbean or Central America, regional policies may also be important. Relevant questions here include:

- Overall, are there mechanisms that support vertical coordination between the national Government and lower levels of government, and across sectors including ministries, institutions, service providers, NGOs and civil society?
- Are there any advisory bodies that bring together these sectors on crime prevention issues? Do they operate at the local, provincial or national level?
- Are there specific strategies to educate the public and other stakeholders, including service providers, about crime problems and prevention outcomes?
- Is there a regional mechanism for the implementation, coordination and monitoring of crime prevention strategies?

2. Donor coordination

External aid or technical assistance has not always been effective or sustainable, and there is general recent agreement that donors and external organizations need to work with recipient countries, taking account of their ideas of their own needs and their planning and financial timetables.²⁸ Uncoordinated external aid can provide conflicting models, or not be adapted to country contexts.

²⁸ See *Maximizing the Effectiveness of the Technical Assistance Provided in the Fields of Crime Prevention and Criminal Justice*, op. cit.

Awareness of what donor efforts are being made, have previously been implemented or are planned is critical to developing recommendations for future technical assistance:

- Which donors are active in the crime prevention sector? Do they work with the national Government, the provincial or local authorities?
- Does donor activity target specific groups, people or places for support, for instance, children and youth at risk, youth gangs, women and girls, cultural/ethnic minorities, street children, war-affected children, the municipal police?
- Are any donors targeting white-collar crime or corruption?
- Are there donor strategy plans for the coordination and strategic direction of services to any specific groups?
- What projects have donor agencies supported in the past? What projects are currently under way? Have previous projects been evaluated and published, and if so, what lessons can be learned?
- What linkages exist between donor agencies and ministries, departments or other agencies (e.g. national or local authorities, NGOs, the police)? How are relations between donor agencies and other bodies managed? Is there a formal agreement or strategy document in place?
- Are international technical assistance programmes in place regarding any crime prevention issues, such as human trafficking or harmful and exploitative labour practices? Who is involved in technical assistance in this field, and how are activities coordinated?

3. International cooperation

The United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air,²⁹ and other international instruments have been ratified by many countries, and some legislation, policies and cooperative initiatives may be in place. The principle of interdependency in the Guidelines for the Prevention of Crime recognizes that international organized crime has local connections, roots and impacts. The questions below will assist in assessing the extent to which national and local crime prevention initiatives take into consideration the international dimension of local crime problems.

Please consult also **Cross-cutting issues: International cooperation** in the **Criminal Justice Assessment Toolkit**.

²⁹ United Nations, *Treaty Series*, vols. 2225, 2237 and 2241, No. 39574.

- Is there evidence that international organized crime and corruption is an issue?
- Is the country involved in international cooperation for the purpose of crime prevention? What are the activities? With what countries, regional or international bodies?
- To what extent is the public aware of these efforts? How is the public being reached? Is there evidence that these cooperative activities are effective in preventing crime?
- What has been the international cooperation experience of the country in the fields of crime prevention, corruption and trafficking?
- Has the country participated in the development of regional crime prevention strategies (e.g. those of the Southern Cone and Central American countries, the Caribbean Community, the Southern African Regional Police Chiefs Cooperation Organisation, the African Union and the Association of Southeast Asian Nations)?



Annex I. Key documents and resources

United Nations

Guidelines for cooperation and technical assistance in the field of urban crime prevention (Economic and Social Council resolution 1995/9, annex).

Guidelines for the Prevention of Crime (Economic and Social Council resolution 2002/13, annex).

Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. 1, sect. B, annex.

Report of the Secretary-General on United Nations standards and norms in crime prevention and criminal justice (E/CN.15/2007/11).

Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616).

The Millennium Development Goals Report 2008 (United Nations publication, Sales No. E.08.I.18).

United Nations Children's Fund and United Nations Office on Drugs and Crime. *Manual for the Measurement of Juvenile Justice Indicators* (New York, United Nations), 2007.

United Nations Development Programme. *Strengthening the Rule of Law in Conflict and Post-Conflict Situations: a Global UNDP Programme for Justice and Security 2008-2011* (New York, UNDP), 2008.

United Nations Human Settlements Programme. *Global Report on Human Settlements 2007: Enhancing Urban Safety and Security* (London, Earthscan) 2007.

_____. Safer Cities Programme (www.unhabitat.org).

_____. Safer Cities Toolkit, 2007.

_____. *State of the World Cities Report* for 2004-2005, 2006-2007 and 2008-2009 (London, Earthscan), 2004, 2006 and 2008.

United Nations Office on Drugs and Crime, *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice* (United Nations, New York) 2006, part three.

_____. *Crime and Development in Africa* (Vienna, UNODC) 2005.

_____. *Crime and Development in Central America: Caught in the Crossfire* (Vienna, UNODC) 2007.

_____. *Handbook on Planning and Action for Crime Prevention in Southern Africa and the Caribbean Regions* (United Nations publication, Sales No. E.09.IV.1).

United Nations Office on Drugs and Crime and the Latin America and Caribbean Region World Bank. *Crime, Violence, and Development: Trends, Costs, and Policy Options in the Caribbean* (Washington, D.C., World Bank) Report No. 37820, 2007.

United Nations Population Fund. *State of World Population 2008; Reaching Common Ground: Culture, Gender and Human Rights* (New York, UNFPA), 2008, annex on indicators.

World Health Organization. *Preventing Violence and Reducing its Impact: How Development Agencies can Help* (Geneva, WHO), 2008.

International and regional bodies

International Centre for the Prevention of Crime (www.crime-prevention-intl.org)

European Crime Prevention Network (www.eucpn.org)

European Forum for Urban Safety (www.fesu.org)

European Institute for Crime Prevention and Control (www.heuni.fi)

Facultad Latinoamericana de Ciencias Sociales (Latin American School of Social Sciences) (www.flacso.org)

Fórum Brasileiro de Segurança Pública (Brazilian Forum on Public Safety) (www.forumseguranc.org.br)

Other resources^a

Frühling, H. and Cancina, A. *Community Policing and Problem-Solving Strategies* (Washington, D.C., World Bank) 2005.

Guerra, N. G. *Youth Crime Prevention: Community-Based Crime and Violence Prevention in Urban Latin America and the Caribbean* (Washington, D.C., World Bank) 2005.

^aWorks mentioned in full in the main text and footnotes are not repeated here.

International Centre for the Prevention of Crime. *Strategies and Best Practices in particular in relation to Urban Areas and Youth at Risk, Proceedings of the Workshop held at the 11th United Nations Congress on Crime Prevention and Criminal Justice, Bangkok, 18-25 April 2005* (Montreal, Canada, ICPC) 2005.

Linking to Learn and Learning to Link: Building Integrated Systems of School-Based Support for Children and Families in a Disadvantaged Community (Brisbane, Australia, Griffith University) 2007 (available at www.griffith.edu.au/_data/assets/pdf_file/0019/13285/linking-learn.pdf).

Waller, I. *Less Law, More Order: the Truth about Reducing Crime* (Santa Barbara, California, Praeger) 2006.

Whitzman, C. *The Handbook of Community Safety, Gender and Violence Prevention: Practical Planning Tools* (London, Earthscan) 2008.

National resources

- Legal or regulatory frameworks
- Strategic plans for crime prevention/safety and security
- National policing strategy and reports
- Development publications/socio-economic publications
- NGO reports
- Local urban observatories^b
- Donor country reports
- Regional reports
- Research and evaluation reports by internal/external researchers

^b Exist only in some countries (see list at ww2.unhabitat.org/guonet/members.asp).

Annex II. Assessor's checklist

This checklist is designed to assist the assessor in keeping track of which topics have been covered, using what sources and with whom.

<i>Topic</i>	<i>Sources</i>	<i>Contacts</i>	<i>Completed</i>
Overview: General statistical data	<ul style="list-style-type: none"> • Reports from ministries of justice, the interior, youth/social services, housing and the environment, education, health, women • Police organization reports • Non-governmental organizations (NGO) reports • Observatory reports • Donor reports and funding • Academic and consultancy research reports • United Nations regional and country reports • Status of women/gender-based violence reports • Transparency International 	<ul style="list-style-type: none"> • Ministry of justice • Ministry of the interior • Ministry of local government • Ministry of urban development • Ministries in charge of metropolitan areas • Ministries of youth or social services • Ministry of women's affairs • Ministries of housing and the environment • Ministries of education and health • Police departments and organizations • National statistics bureau • NGOs working on crime prevention and rehabilitation issues • Observatory on crime and social problems • Local urban observatories (members of the Global Urban Observatory Network) • Donor organizations working on crime prevention and security • Academic centres or individuals focusing on crime prevention and safety and security • Chambers of commerce or business associations 	

<i>Topic</i>	<i>Sources</i>	<i>Contacts</i>	<i>Completed</i>
National strategies on safety and prevention	<ul style="list-style-type: none"> • National policy framework or strategy or pilot projects, guidelines or regulations • National association reports on crime prevention • Youth organization reports 	<ul style="list-style-type: none"> • Ministry of justice • Ministry of the interior • Ministries of youth or social services • Ministry of local government or urban development • Ministries of housing and the environment • Ministries of education and health • Police departments and organizations • NGOs working on crime prevention and rehabilitation issues • Human rights groups and national human rights commissions • Observatory on crime and social problems • Donor organizations working on crime prevention and security • Academic centres or individuals focusing on crime prevention and safety and security 	
Monitoring and evaluation	<ul style="list-style-type: none"> • Evaluation reports 	<ul style="list-style-type: none"> • Ministry of justice • Ministry of the interior • Heads of national police • Military or state/provincial police • Universities and research centres • NGOs • Donor organizations 	
Policing	<ul style="list-style-type: none"> • Community policing plan, policy documents and manuals • Other local policing policy documents and manuals 	<ul style="list-style-type: none"> • National ministries • Donor organizations • Other relevant ministries • Universities and NGOs • Associations of mayors, local government • Youth organizations 	

<i>Topic</i>	<i>Sources</i>	<i>Contacts</i>	<i>Completed</i>
Regional strategies (where relevant)	<ul style="list-style-type: none"> • Regional strategies and policies • Protocols • Reports • Manuals • Partnership agreements • Funding agreements 	<ul style="list-style-type: none"> • State or provincial ministries responsible for safety, security and crime prevention • Universities and research centres • NGOs 	
Local strategies	<ul style="list-style-type: none"> • Local strategies and policies • Local policing plans • Protocols • Reports • Manuals, toolkits • Partnership agreements • Funding agreements 	<ul style="list-style-type: none"> • Selected mayors and city administrators • Associations of local authorities • Municipal police • Municipal services: education, health, recreation, housing, urban planning, the environment and others • Head of safety and security and crime prevention • NGOs and community sector groups • Local private sector associations 	
Research, training and technical assistance	<ul style="list-style-type: none"> • Practitioner training courses • Technical assistance reports • Academic courses in crime prevention 	<ul style="list-style-type: none"> • Ministries • NGOs • Donors • Universities, police colleges, technical colleges 	
Children and families		<ul style="list-style-type: none"> • Ministry of justice • Ministry of the interior • Ministries of youth or social services • Ministries of housing and the environment • Ministries of education and health • Police departments and organizations • NGOs working on crime prevention and rehabilitation issues 	

<i>Topic</i>	<i>Sources</i>	<i>Contacts</i>	<i>Completed</i>
Youth		<ul style="list-style-type: none"> • Ministry of justice • Ministry of the interior • Ministries of youth or social services • Ministries of housing and the environment • Ministries of education and health • NGOs and youth organizations running support programmes for youth at risk or leaving care or custody 	
Women and girls		<ul style="list-style-type: none"> • Ministries responsible for women's issues and combating violence against women • NGOs and organizations running support programmes for women and girls 	
Indigenous groups		<ul style="list-style-type: none"> • Ministries responsible for indigenous issues • Indigenous organizations and NGOs 	
Minority groups		<ul style="list-style-type: none"> • Ministry of justice • Ministry of the interior • Ministries of youth or social services • Minority support organizations and NGOs 	
Schools		<ul style="list-style-type: none"> • Ministries of youth or social services • Ministries of education and health • Boards of education • NGOs 	
Public transport		<ul style="list-style-type: none"> • Ministries responsible for transport, the environment and urban renewal • Public transport departments • Transport police • Private transport and taxi companies 	

<i>Topic</i>	<i>Sources</i>	<i>Contacts</i>	<i>Completed</i>
Public spaces		<ul style="list-style-type: none"> • Ministries responsible for transport, the environment and urban renewal • Municipal departments: education, health, recreation, housing, urban planning and the environment • Service providers agencies: water, transport, environmental services, waste collection and others 	
Budget for crime prevention		<ul style="list-style-type: none"> • National ministries • Regional departments • Local government • Donor funding 	
Donor coordination	<ul style="list-style-type: none"> • Donor reports • Independent studies • Ministry reports and papers relating to donor cooperation 	<ul style="list-style-type: none"> • Donor organizations • Relevant ministries • Universities and NGOs 	



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HS/1232/09E
ISBN 978-92-1-132197-5

United Nations publication
Printed in Austria



V.09-82502—October 2009—1,000

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