Police Reform within the Framework of Criminal Justice System Reform

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Abbreviations and Acronyms

ACPO	Association of Chief Police Officers
ADAM	Automated Donor Assistance Mechanism
CIF	Capacity and Integrity Framework
CJCC	Criminal Justice Co-ordination Committees
CJS	Criminal Justice System
CJSR	Criminal Justice System Reform
CNCA	National Counter Terrorism Coordination Centre
CPC	Criminal Procedure Code
CPSS	Civilian Private Security Services
CSTO	Collective Security Treaty Organization
DCAF	Geneva Centre for the Democratic Control of Armed Forces
ECPS	Executive Committee on Peace and Security
FIU	Financial Intelligence Unit
IOM	International Organization for Migration
ISVA	Independent Sexual Violence Advisers
IWF	Internet Watch Foundation
LCJB	Local Criminal Justice Board
MCCP	Model Code of Criminal Procedure
NCJB	National Criminal Justice Board
NGO	Non-Governmental Organization
NRM	National Referral Mechanisms
OCJR	Office for Criminal Justice Reform
ODIHR	Office for Democratic Institutions and Human Rights
OECD DAC	Organisation for Economic Co-operation and Development‘s Development Assistance Committee
OSCE	Organization for Security and Co-operation in Europe
RCC	Regional Co-ordination Council
SOP	Standard Operating Procedure
THB	Trafficking in Human Beings
TNTD	Transnational Threats Department

TNTD/ATU	Transnational Threats Department/Action against Terrorism Unit
TNTD/SPMU	Transnational Threats Department/Strategic Police Matters Unit
UN	United Nations
UNDCP	United Nations International Drug Control Programme
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
USIP	United States Institute of Peace
VGT	Virtual Global Task Force

Preface

During the last decade, it has been widely acknowledged among criminal justice practitioners, policy makers and academics that reforms in one sector of the Criminal Justice System (CJS) have to be complemented and synchronized with reforms in the other sectors in order to improve the effectiveness and efficiency of the entire criminal justice process, increase access to security and justice for the population, and render sustainable the reform achievements in the CJS.

This Guidebook identifies the interfaces in the criminal justice process among the various institutions of the CJS and between them and other relevant governmental agencies as well as non-governmental security and justice providers and civil society. It elaborates on a number of good practices in addressing these interfaces in practical reform steps and identifies options for enhancing international co-operation in following a holistic CJS reform (CJSR) approach. OSCE's efforts in developing this Guidebook have been warmly welcomed by the OSCE participating States, other international partner organizations and research institutions, and individual CJS practitioners, many of whom were happy to share their experiences in following such a holistic reform approach.

With the adoption of the *OSCE Strategic Framework for Police-Related Activities* in 2012, the OSCE participating States reaffirmed their acknowledgement of the importance of supporting and complementing police reforms with the efforts undertaken in other sectors of the criminal justice system and tasked the OSCE to develop guidance in this respect.

This new Guidebook is to bridge a crucial gap between existing Security Sector Reform (SSR) and CJSR guidance documents. In particular, it addresses the connecting points between the relevant actors of the criminal justice process and provides some concrete examples of practical measures on how to improve collaboration between the various actors.

Acknowledging the regional diversities in the OSCE area, such as different criminal justice traditions including different legal systems, and the varying roles of CJS institutions and non-state security and justice providers, these examples are flexible enough to be applied under a variety of regional, national, and cultural conditions. They also provide policy makers and criminal justice practitioners with a framework for implementing police reform in a holistic approach within the reform of the CJS.

Hopefully, these examples of good reform practices will be broadly disseminated and widely used by international and national stakeholders of CJSR, both inside and outside the OSCE and will further stimulate discussions among them about the best ways to implement reform.

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Co-ordinator of Activities to Address Transnational Threats

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This Guidebook was created through the joint efforts of a group of criminal justice experts, at the request of the OSCE Senior Police Adviser, Mr. Knut Dreyer. These experts included police officers, prosecutors and judges, human rights advocates, policy makers and researchers from OSCE participating States, OSCE executive structures, international partner organizations, research institutions and non-governmental organizations (NGOs). The TNTD/SPMU's Adviser on Research and Analysis, Mr. Thorsten Stodiek served as the principal drafter and editor of the Guidebook. The Guidebook features the findings and conclusions of a thorough desk research and a series of bilateral meetings and multilateral experts workshops, which included the Annual Police Experts Meeting in Vienna in September 2011. The first and second draft versions of the Guidebook were reviewed at two online-workshops, 2012 and 2013.

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Executive Summary

Police reform needs to be complemented and synchronized with reforms in the other sectors of the Criminal Justice System (CJS) in order to improve the effectiveness and efficiency of the entire criminal justice process, and render sustainable the reform achievements in the various sectors of the CJS. The major focus of such a holistic reform approach should be on improving the collaboration between the police and the other CJS institutions as well as the co-operation of the CJS with other governmental agencies, non-state security and justice providers, and civil society.

Key steps for planning and implementing such a holistic approach to police reform within the framework of Criminal Justice System Reform (CJSR) include the following:

Holistic Assessments of the CJS

The holistic reform of the police within the framework of CJSR should be based on a comprehensive analysis of the national reform context, including the legal framework; the relevant structures and actors; their performance; and in particular the security and justice needs of the public, since the improvement of the criminal justice service to the public is at the core of CJSR.

Target groups of such an assessment should be all relevant CJS institutions, with whom the law enforcement agencies are interlinked in the criminal justice process, such as defence lawyers/bar associations, prosecution offices, courts, and prison institutions. On behalf of security providing institutions, the military and the border services may need to be addressed too.

In addition to the Ministries of Interior and Justice that have a direct role in the governance of the CJS, other relevant Ministries, such as, those of Defence, Finance, and Foreign Affairs; legislative and policy making institutions; as well as public oversight and administrative institutions need to be approached.

Civil society plays a crucial role in providing a comprehensive picture of the security and justice needs of the public and the public perception of the performance of the CJS. In order to gain a representative picture of the needs and views of the public, a wide spectrum of organizations and actors need to be consulted who represent various sections of society.

In order to determine the added value of one's own CJSR initiative and to avoid duplication of efforts of other international actors, a thorough analysis of CJSR initiatives of other international actors is required. This will also prevent the delivery of even conflicting and contradictory reform concepts that may lead to confusion among the recipients of the assistance. The assessment should also aim to inquire whether international assistance could be co-ordinated, sequenced and even combined to build synergies and safe resources.

Developing a Reform Strategy and Implementation Plans

Based on the information gathered in the assessment process, a reform strategy should be developed that defines long-term programmes and short-term/annual projects, providing all stakeholders with a clear understanding of the planned activities.

The reform strategy must define realistic and achievable objectives, benchmarks and criteria of success to be achieved within a realistic timeframe. These benchmarks should be used later to evaluate the success and/or impact of the implementation of CJSR programmes.

The reform strategy needs to be complemented with concrete action plans for implementing the strategy, which provide a detailed description of how the different implementation steps shall be put into practice. These plans should also identify the required organizational changes and resources for the different steps with an emphasis on the most efficient use of available resources, rather than the provision of new equipment.

Any reform strategy can only be successfully implemented if there is a political will for reform by the government backed by a commitment to providing the required funds and resources. A prerequisite to gain full buy-in and local ownership of the reform by the national stakeholders is to involve relevant representatives from the state institutions as well as from civil society in the strategy development right from the beginning, convince them of the need for and the benefits of reform, and to have the interests of all stakeholders reflected in the reform programme.

In this context, it is important to take into consideration the political nature of reform, including potential benefits for different actors at the local and national level. Reinforcing one CJS actor at the perceived or actual expense of another actor can destroy the delicate political balance between the institutions and cause resistance from the "losing" side.

Furthermore, if the public do not notice any immediate benefits for themselves, having the feeling that the reform does not and will not improve their safety and security and their access to justice they will not

support the reform process which will make sustainability of reform impossible.

Reforming the Legal Framework

The applicable law of a country may need to be modified to better adapt it to universally applicable human rights and criminal justice standards, adopted under the auspices of the United Nations, and in accordance with the OSCE commitments to human rights, fundamental freedoms and the rule of law.

Moreover, the criminal law of a country may need to be updated to adapt the law to the changing environment of social norms and customs as well as to address new threats emanating from new forms of terrorism and crime, in particular organized crime. New criminal laws may therefore address new criminal offences as well as new investigative tools. New provisions in criminal procedure laws have to be checked with regard to their impact on the relations between the different CJS institutions. With the introduction of new tasks, responsibilities and tools for the CJS, the newly defined distribution of powers among the CJS institutions may need to be clarified in the new law.

Developing Policies, Procedures, Rules and Regulations

In order to translate legislation into action and apply it in practice, policies need to be adopted that define how the law shall be applied. Furthermore, the policies and the measures required to implement them need to be expressed in clear formal “policy statements” that would explain, in a few succinct words, the goals that the state and the CJS are trying to achieve with the introduction of the policies.

Strategies and action plans to implement these policies and corresponding procedures, rules and regulations, and to monitor their implementation should be developed by state authorities and the CJS in close co-operation with civil society and non-state security and justice providers.

Policies should explicitly acknowledge the importance of communication and close collaboration between the different CJS institutions, and between the formal CJS and informal structures as well as civil society with regard to enhanced effectiveness and efficiency of the criminal justice process. Therefore, policies should also promote and facilitate the necessary implementation of organizational and structural reform steps for providing the environment for improved communication and collaboration.

Furthermore, policies on the organizational and structural reform of the CJS should address cross-cutting issues, such as the protection of human rights; gender mainstreaming in the criminal justice process; and the creation or enhancement of accountability and oversight procedures and mechanisms.

At the operational level, rules and regulations, standard operating procedures and guidelines would need to be introduced that govern the operationalization of the law and policies among the CJS institutions during the criminal justice process.

Structural and Organizational Reform

Structural and organizational changes in the various CJS institutions, and in particular at the interfaces between the different CJS institutions, should aim at:

- ensuring efficient and effective co-ordination and co-operation between the police and their partners in the CJS, and between the CJS and customary and non-state security and justice providers as well as civil society;
- rationalizing available resources;
- establishing shared services and facilities, where relevant;
- promoting respect for and the protection of the rule of law, human rights and fundamental freedoms; and
- establishing and ensuring democratic accountability and oversight of the CJS institutions.

Key areas of structural and organizational reform are the following:

Collaboration within the CJS

Joint working requires cross-agency co-operation, a shared vision of an effective CJS and respect for each partners' independent remit. While the overall political accountability for the investigation, prosecution and adjudication institutions should remain separate, there is still the need for a mechanism of securing some central direction and joint management of the process of achieving the shared objectives.

At the strategic and managerial level, multiagency CJS steering groups should therefore be established that co-ordinate and monitor the implementation of holistic CJSR strategies and work plans. They should take into consideration the effect that changes in one agency would have on other agencies.

In order to institutionalize co-ordination between the various CJS institutions, cross-agency co-ordination forums, comprised of high-level representatives of the different CJS institutions could be created at the ministerial level and the agency management level. They would be tasked to provide overall direction of the CJS.

At the local level, the national criminal justice co-ordination forums should be replicated by local forums, comprising, for instance, the local heads of CJS institutions, representatives from health services, juvenile delinquency boards, other municipality agencies, non-state security and justice providers, as well as representatives from civil society.

At the operational level, the co-ordination of activities and co-operation in case processing can be significantly improved if the physical infrastructure is set up for meeting, discussing and exchanging information and views among the actors of the different CJS institutions.

Some of the most far-reaching interventions in setting up physical infrastructure would be to: merge the offices of the police and the prosecution; co-locate prosecutors in the police offices; and/or to establish joint special investigation teams or task forces located in one office. Even if the establishment of such a physical infrastructure is not an option in a given country, there are often at least opportunities to significantly improve the communication between the different CJS actors, for instance, by establishing regular meetings, and in particular electronically storable communication tools that prevent a loss or the misinterpretation of information.

Record keeping and information sharing tools

Keeping accurate records is not only important for efficiently compiling strong cases against accused persons, but also for protecting the rights of defendants to defend themselves, for example by providing them with access to records of actions taken during the investigation, and the findings of these actions.

In order to efficiently and effectively manage these records, they should be gathered and organized in electronic databases. Modern information and communications technology and digital evidence provide the CJS with opportunities to rationalize and streamline administrative systems and processes.

Care must be taken, however, that the database systems of the different CJS institutions are able to communicate which each other to allow for an integrated data processing from charge to disposal. The most effective and efficient way of organizing a case file management system would be to develop a common database among the CJS institutions that would

allow the sharing of data in an electronic file. Once created, such a file should contain and record all documents and information about each particular case and be able to flow quickly through the entire CJS. Access of all CJS actors to these case file databases would also allow to aggregate case-related information about defendants, victims, outcomes or anything else across the system, information that might be relevant in the investigation and prosecution of other cases.

Effective case tracking and management systems do not only speed up the prosecution process but also allow to better assess the work of the investigators and prosecutors, which is highly relevant with regard to the accountability of the CJS.

Integrated case files management systems can be created simultaneously or sequentially, depending on the availability of financial, training and change management resources.

Forensic capacities

Forensic services are key to an effective and fair criminal justice system because they provide objective and timely information to be used by the police to identify suspects in the investigative phase and by attorneys and judges during the trial phase of the criminal justice process. Forensic services must therefore be provided by a highly qualified and impartial entity in an effective and efficient way. This requires well-educated and scientific experts and criminal justice practitioners who understand the conclusions that can be drawn from scientific testing, as well as good co-operation between all the relevant institutions involved in recognizing, collecting, analysing, interpreting and presenting forensic evidence in the criminal justice process.

Collaboration between the CJS and customary/non-state security and justice providers

In states where customary and non-state security and justice providers have a complementary role in the provision of security and justice, supervisory measures of the CJS as well as mechanisms for information sharing between the customary and non-state institutions and the formal CJS need to be established.

With regard to the delivery of security, vigilante-type organizations, including neighbourhood-watch schemes, may be appropriate instruments for involving communities in problem-solving, fostering routine communication between the public and the police and enhancing the communities' spirit of responsibility for their own safety. Clear and strict regulations should be in place on these organizations, restricting them to having a monitoring and reporting role only, while the monopoly of force

remains in the hand of the police. The police should also have a supervisory and co-ordinating role, taking responsibility for these organizations' actions.

Civilian Private Security Services are supplying security-related services, such as protecting or securing people, goods, sites, locations, events, processes and information from predominantly crime-related risks, for payment. They may support law enforcement agencies or even complement their activities where the law permits this. Still, their roles, responsibilities, and relationship with the police must be clearly defined.

Traditional dispute resolution mechanisms, including customary courts, also play an important role in a number of states. It is important to define an appropriate degree of integration of the formal and customary/non-state systems that may include a limited jurisdiction for customary justice systems, usually limited to petty crime; the recognition of customary resolutions as a legitimate form of out-of-court settlement; or the incorporation of customary courts at the lowest tier of the formal judiciary.

In any case, the practices of all these customary and non-state security and justice providers must be in line with international human rights standards and they must be transparent and accountable in their work.

Collaboration between the CJS and civil society

In addition to the involvement of civil society in the development and implementation of CJSR steps and the development of external oversight of the CJS, there are a number of specific security and justice-related areas, where co-operation of the CJS with civil society can improve the delivery of criminal justice significantly. Characteristic examples include, for instance, crime prevention within the field of community policing, or civil society involvement in diversion or mediation programmes.

Crime prevention requires shared commitment and ownership of the police and the public. This can only be achieved by establishing trustworthy police-public partnerships, where the entire police organization, all government agencies and all segments of the society actively co-operate in identifying and solving problems. Community policing is a philosophy and organizational strategy that promotes such a partnership-based, collaborative approach. Interactive community outreach programmes, such as the creation of formal or informal forums for open discussions between the police and representatives of all communities, are particularly valuable for eliciting the views of the public and for promoting the exchange of views and co-operation. This can lead to community involvement in crime prevention programmes, including by developing problem-solving coalitions, and to the development of a sense of mutual responsibility for enhancing public safety. Special attention

should be paid to ensure that a wide section of society, including minorities and vulnerable groups, are also represented in these forums.

A criminal justice diversion programme is an alternative and/or complementary procedure to normal criminal case processes, often involving the community in the resolution of the conflict. Diversion programmes provide the accused with the opportunity to avoid an accessible criminal record and receive appropriate assistance through rehabilitation, counselling and/or treatment, while the victim or the community as a whole benefit from donations or unpaid community work to various charities or local community projects. Juvenile diversion programmes are particularly common. Civil society actors can play an important role in implementing diversion programmes since they may work with, rehabilitate and reintegrate offenders, and monitor and provide support to the diversion programme participants.

Mediation in penal matters is another flexible, problem-solving and participatory option, which is complementary or alternative to traditional criminal proceedings, and often involves civil society representatives as mediators.

In all of these alternative procedures to traditional criminal proceedings, the rights of both, victims and offenders, as well as the rights and responsibilities of and the relationship between civil society representatives and the criminal justice authorities must be clearly defined by the law, policies, regulations and procedures.

Human rights aspects

A fair, effective and efficient criminal justice system protects the rights of the individuals to personal security, life and liberty, and provides access to justice and equality before the law. Moreover, it respects the fundamental rights of victims, witnesses as well as those of suspects and offenders, including in particular the rights of juveniles and other vulnerable groups. Particular areas of human rights protection where effective co-operation between various CJS institutions and with civil society is crucial, are, *inter alia*, access to justice and the provision of legal aid; victim assistance; witness assistance and protection; integrated offender management; and juvenile justice.

Accountability and oversight of the CJS

Accountability means that CJS institutions – ranging from the behaviour of single CJS practitioners to the strategies for managing the criminal justice process, appointment procedures or budget management –, are open to observation by a variety of oversight institutions.

The legislature is responsible for defining the boundaries of the framework in which the CJS institutions operate; the executive is responsible for implementing the CJS framework; and the judiciary and legislature are responsible for assessing whether the framework has been implemented correctly. In addition to these three state pillars of oversight, there are various external non-state structures that can play a crucial role in the oversight of the CJS, such as human rights commissions, civilian complaint review boards, independent ombudspersons, and the media.

Civil society organizations can conduct various kinds of oversight activities, such as: compiling information and reporting on violations of human rights and other forms of misconduct by CJS institutions; reviewing caseloads; monitoring and reporting on conditions in pre-trial detention and prison conditions; attending and commenting on trials; and analysing and reporting on criminal justice performance trends.

In order to fulfil their oversight mandate effectively, internal and external oversight institutions need sufficient resources, legal powers and independence from executive influence.

Changing the work culture

All the structural and organizational changes at the managerial and operational level, in line with new laws, policies and regulations, will have little impact without a culture of co-operation and co-ordination among the various CJS institutions.

Changing the work culture may require to raise the level of mutual trust, understanding and appreciation of the role, responsibilities and needs of all the CJS institutions among them, and develop a common outlook on the essence of law and order.

If the request for enhanced co-operation and co-ordination challenges the power relations between the different CJS institutions, resistance from the "losing" side needs to be expected. Police or prosecutors may also be reluctant to accept changes, particularly if the responsibilities for investigations are transferred from one organization to the other.

Moreover, a certain interpretation of the doctrine of separation of powers that supports the judiciary's claim of independence from the executive government often hampers the development of a spirit of co-operation and co-ordination between the courts and the other institutions of the CJS.

The work culture of the CJS institutions not only needs to be changed with regard to CJS-internal collaboration attitudes but also with regard to the interaction with the public. In order to encourage the public to share responsibility for enhancing the communities' quality of life and thus

actively support the police in their efforts to control and prevent crime, the police must aim at building a true partnership with the public. The willingness to accept the public as an equal partner also depends on a change in the mind sets and attitudes of the police and other criminal justice actors towards not overreacting to public criticism about CJS performance and becoming more open to principles of accountability and transparency.

Changing the work culture of the CJS institutions may, however, be a challenging task since organizational arrangements and work attitudes of CJS staff may be so deeply entrenched that they are difficult to change. Reform thus requires a sound change management approach that takes into consideration: the inherent resistance to change by both individuals and organizations; the identification of and support to drivers of change and the control of potential spoilers; as well as the CJS-wide communication on the need for change and its potential benefits for all stakeholders, and on the role of the various CJS actors in implementing the change. The latter would also include the release of standard operating procedures (SOPs) and the provision of training on how to operationalize them.

Training and professional development

In order to change the culture, including the attitudes and behaviour of the CJS actors, the provision of polices, codes of conduct and SOPs, and the regular and consistent articulation of the related values by the management must be complemented with initial and continuing in-service training and professional development activities. In the professional development process, supervisors, through mentoring, encouragement, rewards and disciplinary action, can enhance and sustain such changes among their staff and ensure appropriate behaviour. Changing values and attitudes, including stereotypes that are often deeply rooted among adults, is particularly challenging and requires skilful trainers and long-term processes.

CJS practitioners must also be provided with the knowledge on criminal procedure codes that rule and regulate the roles, duties and responsibilities of the different CJS institutions as well as the context in which the other CJS institutions operate. This is essential in order to raise awareness on the needs of all CJS actors working at the interfaces in order to facilitate an effective and efficient criminal justice process.

General cross-cutting training topics for enhancing co-operation and co-ordination among the CJS institutions could include general management and executive development training as well as methods of interagency co-operation, including the building of cases to be taken forward to trial.

Joint specialized investigation training is recommended for criminal justice practitioners for dealing with specific crimes, such as sexual assault, domestic violence, human trafficking, illicit drugs and precursors, economic crimes, financial crimes including money laundering and the financing of terrorism, corruption and cybercrime.

Moreover, training should also address the requirements for enhancing co-operation of the CJS with non-state security and justice providers as well as with civil society.

Last, but not least, human rights and fundamental freedoms must be an integral part of all types of basic, advanced and specialized training courses or educational programmes for CJS staff.

Evaluation and Review of CJSR

Introducing holistic CJSR is a long-term effort and needs cyclic evaluations, which should be linked to the policy cycle, enabling the strategic level to systematically and continuously improve the quality of the CJS service.

Care should be taken to ensure that any monitoring and evaluation framework contains a sufficiently broad range of both qualitative and quantitative indicators. General criteria for evaluating CJSR implementation processes, in accordance with the OECD Development Assistance Committee (DAC) criteria for evaluating development assistance, are: relevance, efficiency, effectiveness, impact and sustainability of the reform initiatives. Ultimately, a criterion for evaluating the success of the initiatives within the different CJS institutions and to assess the impact on the criminal justice process in general would be the extent of structural and organizational changes, addressing: the establishment of a legal framework that facilitates close co-operation and co-ordination within the CJS; the development of communication and co-ordination structures; the allocation and provision of resources and training; as well as the creation of transparent, fair and effective accountability mechanisms.

Based on the evaluation of the implementation process and its results, a review process should be initiated, involving all stakeholders and focusing on all stages of the implementation process. Any strategic, structural, organizational and operational activities that have not proven to be successful in improving the effectiveness and efficiency of the criminal justice process over a longer period of time should be thoroughly redesigned.

Integrated CJSR Approaches among International Reform Assistance Organizations

Close consultations between international stakeholders involved in CJSR are crucial in order to develop holistic and complementary reform goals and strategies, and deliver coherent and joint statements of goals and expectations to the national counterparts; and to avoid contradictory project philosophies and implementation methodologies that can lead to considerable confusion and frustration among the programme beneficiaries, including CJS institutions and civil society. In view of scarce financial and personnel resources, co-operation can help build synergies, delegate and divide tasks, and avoid duplication of efforts and incompatible equipment donations.

Clearly, the recipients of international CJSR assistance should be involved in the planning and co-ordination of international reform activities, especially to foster their local ownership of the reform process. Co-ordination on behalf of the recipient side could be facilitated by co-ordinating cells or steering groups within national core implementation groups, or by a lead agency among the international actors selected by the host government that would be tasked with and empowered to co-ordinate the activities of all external agencies and stakeholders involved.

Integrated CJSR Approaches within International Reform Assistance Organizations

The holistic approach to police reform within the framework of CJSR naturally requires an integrated approach within an assistance providing organization, where all relevant departments of a mission and within the organization's headquarters/secretariat closely co-ordinate, synchronize and complement their activities during the planning, assessment, implementation and review phases.

In order to ensure such a holistic approach, consideration should be given to the introduction of CJSR Units, or at least liaison officer positions in the field missions who would co-ordinate and facilitate CJSR in their host States and closely communicate with relevant counterparts in their main headquarters/secretariats. These units/liaison officers should be located at the strategic level in the Office of the Head of Mission to ensure that it possesses sufficient political and bureaucratic leverage to permit a co-ordinated and complementary approach of the relevant mission departments.

A basic requirement for a consistent and coherent holistic approach by international organizations is, first, that the different mission departments are convinced of the need to apply holistic multisectoral CJSR

approaches, and willing to integrate their own reform projects in a cross-dimensional mission approach; and second, that they are aware of the specific needs and contextual framework of the different CJS institutions in their host State and in the other mission departments. Strategic and operational guideline documents on holistic CJSR and a thorough joint preparation of the mission staff are essential to convey this knowledge and thinking.

I. Introduction

Criminal Justice System Reform (CJSR) has become a priority for the international community in its efforts to assist transitional and post-conflict societies in establishing or re-establishing the rule of law. CJSR is also taking place in many mature democracies where the need for improving the effectiveness and efficiency of the criminal justice process has been identified.

Since 1998, the OSCE's police-related activities have become a key element of the OSCE's contribution to these international efforts. Some of the lessons learned in the implementation of these activities are that achievements and their sustainability in improving the operational effectiveness of the police may be impaired by insufficient developments in the reform of the wider criminal justice system, for instance, in the legal, judicial and corrections system. The lack of reform in other criminal justice areas, however, had a negative impact on police reform achievements.

There is, for instance, little use in providing high-end forensic capacity building for the police if forensic evidence cannot be used in court due to a lack of a legislative foundation and the required professional skills of prosecutors and judges.

Also, a lack of communication between the police, prosecutors and judges, including insufficient mechanisms for storing and sharing information and tracking cases of criminal offences, significantly hampers co-ordination in criminal proceedings. This may result in delays in criminal proceedings and in the creation of incomplete investigation files, which may lead to the dropping of cases before charges are pressed, or to verdicts issued without the knowledge that certain defendants are recidivists.

Moreover, suspects apprehended by the police may regularly be released due to judicial process errors or corruption, or simply because there are not enough prison cells available.

The lack of judges, prosecutors and at times also of defence attorneys can result in situations where detainees are held far beyond the limits of 48 or 72 hours provided by the law before being charged, and far longer before being brought to trial.

Dysfunctional reporting and case-management systems and unnecessarily prolonged pre-trial detention times violate the human rights of both detainees and victims with regard to access to case-related

information and due criminal process, and damage the credibility of the entire criminal justice system.

A lack of progress in the wider CJSR, including the lagging behind of reform in the judicial or penitentiary sectors with respect to police reform, can lead to a feeling of impunity among the population and of frustration and cynicism among police officers, which can lead to the latter's improper behaviour and violation of the law.

General public distrust in the formal Criminal Justice System (CJS) can also lead to an increasing reliance of the public on customary, non-state justice mechanisms, which may, however, violate universal human rights provisions in their procedures and decisions.

It has been widely acknowledged among CJS practitioners, policy makers and academics that reforms in one sector of the CJS must be complemented by reforms in the other sectors in order to improve the criminal justice process throughout the system and to make reform achievements sustainable.

In 2004, the Secretary-General of the United Nations explicitly pointed out that "enhancing the capacity of police […] to make arrests cannot be seen as a contribution to the rule of law if there are no modern laws to be applied, no humane and properly resourced and supervised detention facilities in which to hold those arrested, no functioning judiciary to try them lawfully and expeditiously, and no defence lawyers to represent them."[1]

The Secretary-General emphasized that re-establishing police services would need to be complemented by reform efforts with respect to "legislative work, crime prevention, judicial development, legal education, prison reform, prosecutorial capacity, victim protection and support, civil society support, citizenship and identification regulation, and property dispute resolution".[2] Furthermore, strategies for a comprehensive and holistic[3] CJSR would need to "include attention to the standards of justice, the laws that codify them, the institutions that implement them, the mechanisms that monitor them and the people that must have access to them".[4]

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1 United Nations Security Council, *The rule of law and transitional justice in conflict and post-conflict societies. Report of the Secretary-General*, S/2004/616, 23 August 2004, Para. 30, pp. 10f.

2 Ibid, Para. 24, p. 9.

3 The holistic approach to CJSR is based on the acknowledgement of the strong interdependence of the various elements of the CJS with regard to the performance of the entire CJS. The holistic reform approach therefore promotes the idea not to focus separately on the different parts of the CJS, but to reform the system as a whole.

4 Ibid, Para 23, p. 9.

Consequently, establishing the rule of law requires not only law enforcement capacity and institution-building, but also comparable and synchronized improvements across the entire CJS, particularly in the interfaces that connect the work of the various sectors of the CJS, as well as the CJS with non-state security and justice providers during the criminal justice process.

The holistic approach to police reform within the framework of CJSR thus requires harmonized and complementary reform activities within the OSCE among its various thematic components, as well as between the OSCE, its international partner organizations and the national stakeholders of the reform processes.

Based on its political framework, its comprehensive and cross-dimensional approach to security implemented by the organization's various executive structures, and its long-term field presence in a number of participating States, the OSCE is well-positioned to address long-lasting CJSR in a holistic way.

While many international and national organizations have started to promote a comprehensive approach to CJSR, and while the challenges of this approach are well known in the international community, practical guidelines on the implementation of such a holistic approach are nevertheless still lacking. In particular, there are no guidelines that would address the interfaces between the various sectors of the CJS.

In view of the above challenges of police reform in the framework of CJSR, and based on its mandates to assist the participating States in upholding the rule of law and enhancing key policing skills,[5] and to give "enhanced attention in its policies and activities to the key role of criminal justice systems […] and to take better into account the interaction between the components of those systems",[6] in 2011, the OSCE Transnational Threats Department's Strategic Police Matters Unit (TNTD/SPMU) embarked on developing a Guidebook on good practices in the implementation of police reform programmes that follow a holistic approach to the general reform of the CJS. This approach was further approved by the OSCE participating States in 2012 with the adoption of the *OSCE Strategic Framework for Police-Related Activities*, in which they reaffirm their acknowledgement of the importance of supporting and complementing police reforms with the efforts undertaken in other sectors of the criminal justice system, and tasked the OSCE to develop guidance in this respect.

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5 Cf. OSCE, *OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century,* Eleventh Meeting of the Ministerial Council, Maastricht, 1 and 2 December 2003, Para. 32.

6 OSCE, Ministerial Council Decision No. 5/06, *Organized Crime,* Fourteenth Meeting of the Ministerial Council, Brussels, 5 December 2006, Para. 11.

I.1 Objectives of the Guidebook

The objectives of the Guidebook are to:

- raise awareness among relevant stakeholders, such as law and policy makers, donors, researchers, criminal justice practitioners of the OSCE, other international organizations, governmental agencies and representatives of civil society in the participating States, on the need for holistic police reform approaches within the framework of CJSR;

- identify the interfaces between the relevant sectors of the CJS, such as the police, the prosecution, the defence, the courts and the prison system, as well as customary and non-state justice systems and security providers that need to be addressed; and

- provide guidance to the relevant OSCE executive structures, international partner organizations and relevant stakeholders in the participating States on how to achieve more effective and sustainable results in police reform within the framework of CJSR based on:

    - harmonized (complementing and synchronizing) police reform activities with reform activities in the other sectors of the CJS;
    - enhanced co-operation and co-ordination between different OSCE executive structures; other international and national reform agents and donors, and the national stakeholders;
    - enhanced co-operation and co-ordination between the various sectors of the CJS; and
    - enhanced co-operation and co-ordination between CJS institutions, other governmental agencies, non-state security and justice providers, and civil society.

There are numerous relevant guidebooks available on Security Sector Reform (SSR) and CJSR, in general, and on police reform and the reform of other elements of the CJS, in particular. Some of the most comprehensive and prominent examples of these documents are the *OECD DAC Handbook on Security System Reform*, the United Nations Office on Drugs and Crime (UNODC) *Criminal Justice Assessment Toolkit* and UNODC's guidebook on *Criminal Justice Reform in Post-Conflict States*, which describe in detail the essential elements of the reform of the CJS.

Therefore, this Guidebook does *not* describe in detail the reform steps in each of the various CJS sectors; rather, it will briefly and succinctly address basic aspects of reform in the various sectors of the CJS and provide cross-references to further detailed information in other documents. The Guidebook will also serve as a key to unlocking these documents for the reader.

The main goal of the Guidebook is to complement the existing literature by focusing on the interfaces between the various CJS sectors at the legislation, strategic, procedural, organizational and training level that need to be addressed in the holistic approach to CJSR and by providing a compilation of good practices from the OSCE, the participating States and other international and national partner organizations on how to effectively and efficiently implement these holistic reform steps.

Moreover, the main perspective taken in this analysis and compilation of good practices will be that of the police, addressing primarily the relevant interfaces between the police and their counterparts within the CJS, non-state security and justice providers, and civil society.

While this Guidebook focuses on CJSR at the national and local level, it still acknowledges the importance of enhancing CJS co-operation at the international and regional level. Without effective cross-border co-operation between the different actors of the CJS, transnational threats emanating from terrorism and organized crime cannot be tackled appropriately. The Guidebook therefore addresses international CJS co-operation in the context of legal reform and joint training initiatives that aim to implement international CJS co-operation instruments, such as the United Nations Conventions against Transnational Organized Crime (UNTOC), which requires that the ratifying states adopt frameworks for extradition, mutual legal assistance and law enforcement co-operation.

I.2 Structure of the Guidebook

Chapter II of this Guidebook clarifies and defines a number of relevant terms and assumptions with regard to CJSR, briefly elaborating on the basic elements and principles of CJSR.

Chapter III elaborates on the essential elements of holistic baseline assessments of the CJS, addressing the following: CJS legislation; policies and regulations; organizational structures; training and professional development structures; and accountability and oversight structures. There will be a specific focus on the interfaces between the police and the other sectors of the CJS.

Chapter IV focuses on the development of strategies and action plans for the comprehensive and holistic reform of the police within the framework of CJSR, identifying objectives, roles and responsibilities of the international and national stakeholders of the reform process.

Chapter V explores the fundamental legal framework of the CJS that is needed for ensuring compliance of the law with international human rights norms and standards and for facilitating effective and efficient co-operation between all sectors of the CJS and other relevant actors in the criminal justice process, such as governmental agencies, non-state security and justice providers, and civil society.

Chapter VI describes ways to translate legal criminal justice provisions into policies and regulations in order to facilitate better co-operation between all relevant actors with a view to improving access to security and justice, and enhancing the effectiveness and efficiency of the criminal justice process in line with human rights norms and standards.

Chapter VII provides an overview of practical examples of organizational and structural changes that are required to support the implementation of the policies and regulations. A focus will be placed on some key areas and mechanisms of collaboration among the CJS institutions and between the CJS and the non-state and civil society actors that are relevant for improving access to security and justice and the effectiveness and efficiency of the criminal justice process.

This overview also covers the field of joint training and professional development initiatives that enhance the operational effectiveness and efficiency of the CJS and other relevant actors in the criminal justice process.

Chapter VIII briefly deals with the evaluation and review of CJSR.

In all of the above chapters, the basic foundation and principles of the rule of law and democratic CJS, including human rights, gender mainstreaming, accountability and oversight issues, are continuously addressed where appropriate.

Finally, chapter IX elaborates on the key elements of an integrated CJSR approach among different international actors, while chapter X briefly describes the requirements of an integrated approach within the CJS assistance organizations.

II. Terminology

II.1 Justice and the Rule of Law

Justice, as defined by the Secretary-General of the United Nations, "is an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interests of victims and for the well-being of society at large. It is a concept rooted in all national cultures and traditions and, while its administration usually implies formal judicial mechanisms, traditional dispute resolution mechanisms are equally relevant."[7]

The Secretary-General defines the rule of law as follows: "The 'rule of law' is a concept at the very heart of the Organization's mission. It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."[8]

II.2 Actors of the Criminal Justice System

In line with UNODC's guidebook on *Criminal Justice Reform in Post-Conflict States* as well as UNODC's *Criminal Justice Assessment Toolkit*, the different institutions of the CJS that shall be addressed by this Guidebook include: the police; prosecution service; lawyers and criminal defence; the courts; and correctional services (detention and prisons).[9]

In addition to the above-mentioned institutions of the CJS, there are other important state and non-state institutions that need to be addressed during and in the context of holistic CJSR:

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7 United Nations Security Council, *The rule of law and transitional justice in conflict and post-conflict societies* (op. cit. note 1), Para.7, p. 4.

8 Ibid, Para. 6, p. 4.

9 Cf. UNODC/United States Institute of Peace, *Criminal Justice Reform in Post-Conflict States. A Guide for Practitioners*, New York, September 2011, pp. 9-11 and 14f.

- criminal justice management institutions, such as the Ministry of Justice and the Ministry of the Interior (or Internal Affairs), who are often the primary source of legislative and regulatory initiatives and may have a supervisory role and /or budget control over the justice institutions, respectively the police;

- oversight institutions, including internal oversight bodies and external oversight bodies, such as ministries, parliaments/parliamentary committees, national security advisory boards, ombudspersons, national human rights commissions, civil society oversight bodies and the media.[10]

Moreover, in line with the above statement by the Secretary-General of the United Nations (see chapter II.1), i.e. that traditional dispute resolution mechanisms are equally relevant as formal judicial mechanisms, non-state security and justice providers, such as vigilant groups, neighbourhood watch groups, civilian private security services, and customary courts, may play an important role in the delivery of security and justice in a given country.

In societies where formal security and justice institutions are very limited in their reach and hardly accessible to the majority of the population, the public relies to a large extent on customary or non-state justice systems to resolve all matters of dispute, including crime.

Particularly in post-conflict states, non-state security providers often play a more important role than state actors since they are more willing and able to provide for security, whereas the state actors are either not willing or unable – because of a lack of credibility due to former unlawful and biased involvement in the conflict or due to a lack of resources – to equally provide security to all communities.[11]

While in the OSCE region, the percentage of customary and non-state security and justice providers is much lower than in other regions of the world,[12] there are still examples where, in a number of participating States, formal justice and security institutions are complemented in their roles by customary and non-state structures.

In the reform process, neglecting the customary and non-state structures that may enjoy more legitimacy than the formal state structures could therefore lead to reform efforts that are irrelevant to many parts of the population and that ignore their justice demands.

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10 Ibid, p. 12.

11 Ibid, p. 103.

12 According to UNODC, customary or non-State justice systems "are the primary means of access to justice for 80 per cent of the world's population", see UNODC/USIP, *Criminal Justice Reform in Post-Conflict States* (op. cit. note 9), p. 103.

In addition, according to a recent UNODC report, there is "substantial growth of the private security industry in most countries", responding to a trend of "'privatization' of some police functions, with the civilian private security industry filling the gaps left by the overstretched police and playing a growing role in crime prevention and community safety. The privatization of the police has occurred at a number of levels. There has been load shedding, where the police withdraw from providing certain functions and private security fill the gap; contracting out, where services are still provided by the police but a contractor is used to supply that service; and the embracement of private sector practices by the public police, such as charging for services and accepting sponsorship."[13]

The customs and practices of the customary, non-state security and justice providers must still be in line with international human rights standards and must be transparent and accountable in their work, also providing the possibility of appeal to their decisions, in order to serve as an acceptable complementary element to the formal structures. Some general guidelines will be given throughout this book on how to address customary and non-state security and justice providers.[14]

13 UNODC, *Civilian Private Security Services: Their Role, Oversight and Contribution to Crime Prevention and Community Safety*, background paper for Expert Group Meeting on Civilian Private Security Services, Vienna, 24 August 2011.

14 For a comprehensive analysis of the benefits and limitations of informal customary justice systems, see UNODC/USIP, *Criminal Justice Reform in Post-Conflict States* (op. cit. note 9), pp. 103-113.

II.3 Various Forms of Reform Settings

CJSR in Post-Conflict Scenarios, States in Transition and Mature Democracies

Since the aim of this Guidebook is to support holistic police reform activities within the framework of CJSR in the entire OSCE area, it will address general reform challenges and requirements that reform actors may face in mature democracies. It will also address more specific challenges that are often characteristic for post-conflict states or states in transition in the context of high levels of breakdown of key state CJS institutions.

In post-conflict scenarios, legal frameworks are often characterized by political distortion, and the neglect of international human rights and criminal law standards. "Emergency laws and executive decrees are often the order of the day. Where adequate laws are on the books, they may be unknown to the general public and official actors may neither have the capacity nor the tools to implement them. National judicial, police and correction systems have typically been stripped of the human, financial and material resources necessary for their proper functioning."[15] The criminal justice agencies may thus often lack legitimacy if they become instruments of repression during conflict or are involved in organized crime.

Post-conflict scenarios are also often marked by the widespread availability of arms, rampant gender- and sexually-based violence, the exploitation of children, the persecution of minorities and vulnerable groups, smuggling, trafficking in human beings and other criminal activities. "In such situations, organized criminal groups are often better resourced than local government and better armed than local law enforcement."[16]

While the reform of the CJS may commonly address the linkages between the various institutions, including the delineation and, if necessary, redefinition of roles and responsibilities, in post-conflict scenarios, these new definitions of the criminal justice and security providers may be even more crucial. For example, here, there is often the need to re-establish the separation between the military and the police (with regard to providing external and domestic law enforcement), or between the police and the

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15 United Nations Security Council, *The rule of law and transitional justice in conflict and post-conflict societies* (op. cit. note 1), Para 27, p. 10.

16 Ibid.

corrections services, and to enable the relevant actors to ensure checks and balances between the criminal justice institutions.[17]

CJSR in Different Legal Systems

A tailor-made reform approach must naturally take into consideration the national legal system, which may have consequences for defining the roles, tasks and responsibilities of the different actors of the criminal justice system.

The most common differentiation in classifying legal systems is made between the Anglo-Saxon Common Law tradition and the continental European Civil Law tradition. Common law is generally uncodified and not based on comprehensive compilation of legal rules and statutes. Although common law relies on some scattered statutes, which are legislative decisions, it is largely based on precedent, i.e. the judicial decisions that have already been made in similar cases. These precedents are maintained over time through the records of the courts as well as historically documented in collections of case law in the form of yearbooks and reports. The precedents to be applied in the decision of each new case are determined by the presiding judge. As a result, judges have an enormous role in shaping the law. The key difference in the tradition of the two law systems is, therefore, that in the common law tradition, the judiciary "creates" the national legal framework on precedents. Judges therefore serve *de facto* as lawmakers, with the legislative powers enacting the statutes creating the law.[18]

"By contrast, in the continental European tradition, the legislator is the primary lawmaker" and judges operate within a legal framework that "is laid down in major codes, containing systematized statutory provisions extending to large, well defined areas. The style of court decisions on the continents is conductive to downplaying the role of the individual judges, while magnifying the statutory framework."[19]

"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

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17 CF, UNDP, *Security Sector Reform and Transitional Justice. A Crisis Post-Conflict Programmatic Approach*, March 2003, p. 9.

18 Cf. Blank, J.L.T. (ed.), *Public Provision and Performance*. Amsterdam 2000, p. 18, cited in: Kuhry, Bob, *Public Sector Performance. An International Comparison of Education, Health Care, Law and Order and Public Administration*, Social and Cultural Planning office, The Hague, September 2004, p. 189.

19 Blank, *Public Provision and Performance* (op. cit. note 18), p. 18, cited in: Kuhry, *Public Sector Performance* (op. cit. note 18), p. 189.

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."[20]

Moreover, legal systems in various countries may differ significantly with regard to the *legality principle* and the *opportunity principle* that regulate the discretionary powers of the prosecutors. While the *legality principle* requires the prosecutor to bring charges whenever there is sufficient evidence of the guilt of a suspect, the *opportunity principle* provides the prosecutor with more discretion to decide in any individual case whether there is a public interest in prosecution.[21]

There is a classic distinction of legal systems between accusatorial proceedings and inquisitorial proceedings: in the former, the judge is traditionally more passive, playing a neutral role between the defence and the prosecutor, who is more active in presenting the case; in the latter, the judge is assumed to be more active in marshalling the evidence for and against the guilt of the defendant.[22] The role of judges may also vary notably if juries or lay judges play an important role in the court proceedings.[23]

Another aspect of certain specifics of different legal systems is that, in some countries, customary law and religious rules or law (e.g. Islamic/Sharia law) may to a certain extent complement the formal law. However, it is also possible that customary law does not complement the formal law, but rather, works in parallel, or even at odds with it.

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20 UNODC, "Policing. Public Safety and Police Service Delivery", in: *Criminal Justice Assessment Toolkit*, New York, 2006, p. 13; see also
UNODC, "Policing. Crime Investigation", in: *Criminal Justice Assessment Toolkit*, New York, 2006, p. 1; and
UNODC, "Access to Justice. The Prosecution Service", in: *Criminal Justice Assessment Toolkit*, New York, 2006, p. 7.

21 Cf. Aromaa, Kauko et al, *Crime and Criminal Justice in Europe and North America 1995-1997: Report on the Sixth United Nations Survey on Crime Trends and Criminal Justice Systems*, European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), Publication Series No. 40, Helsinki 2003, p. 15; see also:
Kuhry, *Public Sector Performance* (op. cit. note 18), p. 190.

22 Ibid.

23 Cf. Kuhry, *Public Sector Performance* (op. cit. note 18), p. 190.

The providers of criminal justice reform assistance must be aware that each criminal justice system is unique, reflecting the indigenous history of a country as well as an overlay of imported systems in the past.

Being aware of the different legal systems and traditions in the OSCE, the compilation of examples of legal provisions for enhancing the effectiveness and efficiency of the CJS and process, which are presented in this Guidebook, may either provide basic examples of law and procedure modifications, or if considered inappropriate for inclusion in the national context, may serve at least as a source of inspiration for policy makers and practitioners to change legal provisions.

II.4 Goals and Guiding Principles of CJSR

In sum, the aim of CJSR is to provide for the effective and efficient delivery of security and justice to the population as a whole in a transparent and accountable manner, under the rule of law and in compliance with human rights and fundamental freedoms.[24]

More specifically, the goal of the CJSR should be to develop a democratic CJS that meets the following principles of good governance:[25]

- The institutions of the CJS operate in accordance with the international law and domestic constitutional law.

- The institutions of the CJS are accountable to the law and the public, and their operations are overseen by the judiciary and the public, including elected civil authorities and civil society. Information on the planning, budgeting and operations of the CJS's institutions is available within the government and to the public; a comprehensive and disciplined approach to the management of all resources is adopted.

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[24] Cf. Hartog, Merijn (ed.), *Security Sector Reform in Central Asia: Exploring Needs and Possibilities*, Centre for European Security Studies, Groningen 2010, p. 8.

[25] Cf. DFID, *Security Sector Reform and the Management of Military Expenditure: High Risks for Donors, High Returns for Development*, Report on an International Symposium Sponsored by the United Kingdom Department for International Development, London, February 2000, p. 46;
Cf. United Nations, *Guidance Note of the Secretary-General. United Nations Approach to Rule of Law Assistance*, New York, April 2008, pp. 6f; and
Cf. OSCE, *Guidebook on Democratic Policing by the Senior Police Adviser to the OSCE Secretary General*, SPMU Publication Series Vol. 1, 2nd Edition, Vienna, May 2008, p. 15.

- The police and other law enforcement agencies enforce the law without discrimination and take appropriate action against alleged violations of the law; protect the fundamental rights and freedoms of the individuals and communities; prevent and detect crime; reduce fear; and provide assistance and services to the public.

- The judiciary exists as an independent body capable of rendering judicial decisions and judgments equally to all within its jurisdiction, impartial and without outside influence or interference.

- Corrections services provide for a safe, secure and humane prison and rehabilitation system, including alternatives to deprivation of liberty and diversion measures.

- The personnel working in the institutions of the CJS are adequately trained to discharge their duties in a professional manner consistent with due process and human rights requirements in accordance with professional and ethical codes and guidelines.

- Individuals are guaranteed due process, legal representation and equal treatment in a predictable, fair and transparent legal proceeding. Legal and paralegal assistance is accessible for those unable to afford it.

In order to achieve these goals, the following reform principles should be applied, which are in line with and complement the 2008 *Guidance Note of the Secretary General: UN Approach to Rule of Law Assistance* by the Secretary-General of the United Nations:[26]

- CJSR should be based on international norms and standards. The normative foundation of CJSR should be the Charter of the United Nations, together with international human rights law, international humanitarian law, international criminal law and international refugee law.

  In addition to the relevant United Nations treaties, declarations, guidelines, and bodies of principles, OSCE assistance in CJSR should also be guided by the norms, principles and standards defined by OSCE's Helsinki Final Act, the Copenhagen Document and various OSCE decisions on police-related activities.[27]

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[26] Cf. United Nations, *United Nations Approach to Rule of Law Assistance* (op. cit. note 25), pp. 1-4.

[27] CF, OSCE, *OSCE Strategic Framework for Police-Related Activities*, Permanent Council Decision No. 1049, 922nd Plenary Meeting, Vienna, 26 July 2012, Para. 10.
For a list of key international conventions, guidelines and commitments applicable for governing the work of the CJS in the OSCE area, see Appendix 1.

- Gender equality and the protection of the rights of vulnerable groups are fundamental elements of human rights and must therefore be promoted in the reform process.

- Accountability and transparency of the CJS as well as its public oversight are also constituents of the rule of law and good governance, and must be promoted in the reform process.

- CJSR must take into consideration the socio-political context and the security and justice needs in the specific context of each host country, as well as the nature and condition of the legal system, and the culture, traditions and institutions on which the system is founded.

- The approach to CJSR must be people-centred and locally owned and supported in order to adequately respond to the needs of the beneficiaries and have good prospects for sustainability. Civil society constitutes a crucial element of the national stakeholders in the reform process. Furthermore, meaningful ownership requires the legal empowerment of all segments of society.

- Sustainability of reform achievements can be further increased by developing human capacity and strengthening budgetary processes and financial management.[28]

- The reform of the CJS requires an institution-oriented as well as a process-oriented approach. Whereas the former focuses on revising laws, policies and regulations, delivering training, building infrastructure and providing material support, the latter aims at improving performance and the working relationship between the criminal justice institutions, oversight institutions, formal and non-state criminal justice systems, and the relationship between the criminal justice actors and the public. In order to achieve sustainable reform achievements, a balance needs to be struck between institution and process-oriented approaches.[29]

- Holistic CJSR will often require the involvement of multiple international and national actors who need to co-ordinate their activities and develop comprehensive strategies in order to provide complementary, synchronized, effective, efficient and sustainable assistance.

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28 Cf. OECD, *OECD DAC Handbook on Security System Reform. Supporting Security and Justice*, Paris, 2007, pp. 63-67.

29 Cf. World Bank, *World Development Report 2011, Conflict, Security, and Development*, Washington, DC 2011, p. 5.

All of the above goals and guiding principles of CJSR will be taken into consideration in the following chapters.

III. Holistic Assessments of the Criminal Justice System

The holistic reform of the police within the framework of CJSR should be based on a comprehensive analysis of the national reform context. This includes the legal framework and the relevant structures as well as actors and their performance. In particular, it is based on a comprehensive analysis of the security and justice needs of the public because improving the CJS service to the public is at the core of CJSR. Addressing the needs of the public is also a prerequisite for achieving broad-based local ownership of reform.

The thorough analysis of the socio-economic context is also needed to identify entry points and opportunities for change, as well as the potential constraints, obstacles and spoilers of the reform process. Because the reform of the CJS may impact on power relations, particularly in post-conflict societies, it is crucial to assess the potential effect of international assistance on conflict dynamics.[30]

The quantitative and qualitative information gathered in such a baseline assessment should also be used in the subsequent development of benchmarks and criteria in the operational plan to evaluate the success and/or impact of the CJSR initiatives and to prepare exit strategies based on the fulfilment/achievement of the benchmarks (see also chapter IV).

The OECD DAC differentiates between four types of assessment, depending on the local context as well as the time and resources available:[31]

- a preliminary informal analysis, which provides a broad overview of the local context and the political environment in order to allow decision making on whether or not to become engaged in CJSR;

- an initial scoping study, which identifies the current CJSR activities, including the main stakeholders and actors, their achievements and the challenges they face, and informs decision making on the added value of a new initiative as well the entry points;

- a full assessment, which provides a comprehensive assessment of the CJSR context, taking into account the developments in the reform context that followed the previous informal analysis and scoping study;

[30] Cf. OECD, *OECD DAC Handbook on Security System Reform* (op. cit. note 28), p. 41.
[31] Ibid, pp. 45-48.

- sector or problem-specific assessments, which aim at an even more in-depth analysis of specific CJS sectors identified as priority targets for reform, or of specific security and safety issues in order to identify necessary reform initiatives across relevant CJS sectors.

According to the OECD DAC, a sequenced implementation of the different assessments would provide a broad overview of relevant information that is required to conduct a comprehensive CJSR programme.

A detailed description of various assessment steps, including the pre-assessment and initial assessment phases, is provided by the OECD, the International Security Sector Advisory Team of DCAF, and the Swedish Folke Bernadotte Academy, among others.[32] This Guidebook will therefore concentrate on key aspects of the in-depth assessment phase with a particular focus on those assessment aspects that are relevant for the holistic analysis of the interfaces and the interaction of the police with the other relevant institutions of the CJS and non-state actors.

[32] See, for instance, OECD, *OECD DAC Handbook on Security System Reform* (op. cit. note 24), pp. 42-52;
DCAF, *Operational Guidance Note: Processing a Security & Justice Assessment Proposal*, The International Security Sector Advisory Team (ISSAT), ISSAT Operational Guidance Notes (OGNs), Supporting the International Community's SSR Capacity, Geneva, 2010; and
Folke Bernadotte Academy/Swedish Contact Group, *Security Sector Reform. Assessment Framework*, Stockholm.

III.1 Planning the Assessments

III.1.1 Composition of the Assessment Team

The holistic approach to police reform within the framework of CJSR naturally requires a multidisciplinary assessment team of experts in the different fields of the CJS as well as in social sciences, management, finance and government. Furthermore the assessment team must have the language skills to communicate with the national stakeholders, including wide sections of civil society. The team should be led by a senior Criminal Justice Expert who will be respected and acknowledged by high-level counterparts in the host State. In order to build and ensure local ownership, it would be preferable to have a qualified expert from the host State leading the team.

In view of the vast assessment areas of holistic CJSR that require large multidisciplinary teams of experts, consideration should be given to the deployment of joint assessment teams composed of representatives from various national and international reform stakeholders. This can provide "a unique opportunity to build a common understanding about the specific security and justice challenges and the appropriate response, as well as to enhance co-operation."[33] The work of these joint assessment teams could, however, be hindered by the interests of the different members who do not concur and whose competencies are not complementary.

III.1.2 Assessment Target Groups

State Justice and Security Providers

The holistic approach to police reform within the framework of CJSR also requires that not only the law enforcement agencies be consulted, but also other relevant institutions of the CJS with whom the law enforcement agencies are interlinked in the criminal justice process, such as defence lawyers/bar associations, prosecution offices, courts and prison institutions. As regards security-providing institutions, the military and the border services may also need to be consulted.[34]

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33 DCAF, *Processing a Security & Justice Assessment Proposal* (op. cit. note 32).

34 Cf. OECD, *OECD DAC Handbook on Security System Reform* (op. cit. note 28), p. 48.

Customary/Non-State Security and Justice Providers

In countries where they play a relevant role in the delivery of security and justice, customary and non-state security and justice providers also need to be assessed. These may include, for instance, neighbourhood watch groups, vigilant groups and civilian private security companies; as well as traditional courts, alternative dispute resolution mechanisms, and paralegal services,.[35]

Governmental and Parliamentary Structures

In addition to the Ministries of Interior and Justice that have a direct role in the governance of the CJS, holistic assessments would also cover other relevant ministries, such as the Ministries of Defence, Finance, Health, and Foreign Affairs. Moreover, relevant legislative and policy-making institutions as well as public oversight and administrative institutions, including parliaments, parliamentary committees, political parties, individual politicians and administrative structures at the national, regional and local level, should be interviewed.

Civil Society

As previously mentioned, civil society actors play a crucial role in providing a comprehensive and representative insight into the security and justice needs of the public and the public perception of the performance of the CJS, as well as in ensuring local ownership and sustainability of reform. Civil society will also be helpful in gaining insight into customary and non-state justice and security structures. Accordingly, a wide spectrum of organizations and actors need to be consulted who represent various sections of society, including in particular, representatives from vulnerable groups such as minorities or marginalized groups. The gender perspective in the assessment would address, in particular, the security and justice needs of women and girls, and marginalized men and boys. Civil society actors would also comprise public oversight organizations, religious organizations, academic institutions, the private business sector and the media.[36]

35 Ibid.

36 Ibid, pp. 48f.

Other International Actors

In order to determine the added value of one's own CJSR initiative and to avoid a duplication of the efforts of other international actors, a thorough analysis of CJSR initiatives of other international actors is required. This will also prevent the delivery of conflicting and contradictory reform concepts that may lead to confusion among the recipients of the assistance. The assessment should also aim to inquire whether international assistance could be co-ordinated, sequenced or even combined to build synergies and safe resources. In view of the huge efforts required to reform the entire CJS, one international organization alone will hardly be able to shoulder this huge task. Ideally, potential international partners would conduct the assessment jointly.[37]

In all of the target groups mentioned above, it is important to consult with women and representatives of minorities and marginalized groups, if available, in order to receive the broadest possible views and perspective from a variety of stakeholders; otherwise, the perspectives of vulnerable and marginalized groups might be overlooked or ignored.

III.1.3 Major Areas of the Assessment

Socio-economic, Cultural and Political Context

The analysis of the socio-economic, cultural and political context will allow to develop a profile of the country, covering, *inter alia*, the security situation, the ethnic composition and demographics of the population, the role of civil society, the political system and the governance of the CJS, and the legitimacy of the state and of the CJS institutions. In addition, in the case of post-conflict scenarios, conflict history will be analysed, including the root causes of tensions and triggers for violent conflict with a particular focus on the role of the CJS in the conflict. In the case of post-conflict scenarios, assessments should help ascertain how CJSR can avoid exacerbating tensions between the CJS and the population, or within the CJS in order to achieve sustainable post-conflict rehabilitation. This approach requires identifying potential spoilers of the reform process as well as incentives for them not to obstruct reform.[38] A number of illustrative questions in this area of assessment can be found in the *OECD DAC Handbook on Security System Reform* (pp. 52f).

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37 Ibid, p. 49.

38 Ibid, p. 50.

Security and Justice Needs of the Public

The analysis of the security and justice needs of the public will allow to identify the major security and safety concerns of the public, including those of marginalized groups, their perception of the performance of the CJS institutions and thus the main shortcomings of the CJS, all of which reveal the needs for reform and potential entry points for reform.[39] An analysis of the motivation of the population on why they turn or do not turn to specific security and justice providers will also reveal which of the formal CJS institutions and non-state security and justice providers are most relevant for the public and therefore need specific attention in the reform process. The focus on the motivation of certain sections of society not to turn to specific security and justice providers may also reveal perceptions in relation to gender, ethnicity and other social categories.

Governance and Capacity of the CJS

The analysis of governance and capacity of the CJS will address the relevant legal framework, policies and regulations, as well as the organizational, managerial, operational and training structures of the various CJS institutions. It will also address the internal and external oversight structures that ensure the accountability of the CJS to the people they serve.

The legal framework of the CJS mandate includes the constitution, specific laws and acts under the jurisdiction of the relevant CJS institutions, as well as the criminal codes and criminal procedure codes. The review of the legal framework should also focus on the degree to which the laws, acts and codes comply with international conventions. The analysis of the legal framework will also provide insight into the roles, duties, responsibilities and rights of the different CJS institutions.

The analysis of the policies and regulations will further determine how the roles, duties, responsibilities and rights are rendered operational within the CJS, including the question of how co-operation between the different CJS institutions is regulated in the criminal justice process.

The analysis of the structures of the CJS will address the setup, the size, and the human, physical and financial resources, as well as lines of communication and command of the various institutions of the CJS.

Given the coercive powers of the CJS institutions and actors, there is a crucial need for an independent oversight of the performance of the CJS. Closely related to the analysis of the CJS structures is, therefore, the

[39] Ibid, p. 51.

analysis of the internal and external oversight structures aiming to ensure the control and accountability of the CJS.

An important cross-cutting element in the assessment of the various areas mentioned above should be the focus on human rights and gender aspects.

Finally, as mentioned in chapter III.1.2, the assessment should also map the CJSR initiatives of other international and national actors as well as other political, social or economic development programmes in the host country that could be linked with CJSR. This would allow to achieve mutually supporting outcomes and sustainability of different reform initiatives.

III.1.4 Assessment Methodology

Desk Studies

In order to prepare assessment surveys and interviews, a comprehensive desk study should be carried out first to gain relevant background information on the different assessment areas. The desk study will be based on the analysis of a variety of open sources and, if possible, on confidential data by the government.

Relevant documents to be analysed include, *inter alia*: the constitution of a country; police laws and acts; criminal codes and criminal procedure codes; national CJS strategies; national strategies for the different CJS institutions; policies, regulations and standard operating procedures (SOPs); organizational charts; training curricula and manuals; crime statistics;[40] victimization studies; clear-up rates; number of unsolved criminal cases; conviction rates; statistics such as the number of prisoners and duration in police custody and of pre-trial detention, the ratio of prisoners compared to total number of citizens, and the ratio of juvenile and female prisoners compared to prisoners in general; police inspectorate and external oversight body reports; and NGO, media and donor country reports as well as reports by other international organizations.

[40] When using crime statistics, one should always be aware of the problem of reliability and integrity, since they may be falsified or may be difficult to be interpret correctly. For instance, low crime rates can either indicate that few crimes are committed or that only few crimes are reported. The latter could then indicate that people do not trust the police or do not see any use of informing the police because of the poor police response. Due to the problem of accuracy and the challenges in interpreting statistics, statistics from one source should be compared with corresponding statistics from another source, if available.

Interviews and Surveys

Interviews should be conducted with individuals who represent key stakeholders of the reform process representing the state (i.e. institutions) and civil society. Questions should be based on the findings of the desk study and should be used to corroborate them or to clarify relevant outstanding issues. Interviews are usually loosely structured, based on semi-structured questionnaires. Interviews should be kept flexible enough to spontaneously and sensitively address the most pressing issues and probe for information. Conducting interviews with a range of action facilitates cross-checking and triangulating information. Groups of individuals can also be questioned in focus groups interviews.

Information from large sample groups will be gathered through public opinion surveys, which are most often administered in written and structured form. Public opinion surveys should be based on a representative sample of people from different sections of society, including vulnerable and marginalized groups, in order to gather the "complete" and representative picture of the different views of society. Specific tools for conducting surveys are, for instance, local safety audits[41] and victimization surveys.[42]

Mapping of CJS Institutions/Actors

A crucial element in the holistic identification of the statutory responsibility of the different CJS institutions to deliver specific security and justice services is to determine the existing interfaces between actors and how they are set up in relation to legislations, policy regulations, organizational and operational issues, as well as training.

In addition to identifying the statutory responsibility of the different CJS institutions, the mapping should particularly focus on who is actually delivering these services in practice, and how. For instance, while the police are formally the sole providers for internal security according to the law, vigilant groups may have taken over the provision of security in areas where the police are not present or where police response is very poor. An example of how the delivery of security and justice may actually divert from the formal rules are cases in which the police arrest the alleged thief and hold him/her in custody until he/she pays compensation to the victim, without involving the prosecutor's office, for various reasons such as its being too far away.[43]

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41 See European Forum for Urban Safety, *Guidance on Local Safety Audits – Compendium of International Practice*, Paris 2007.

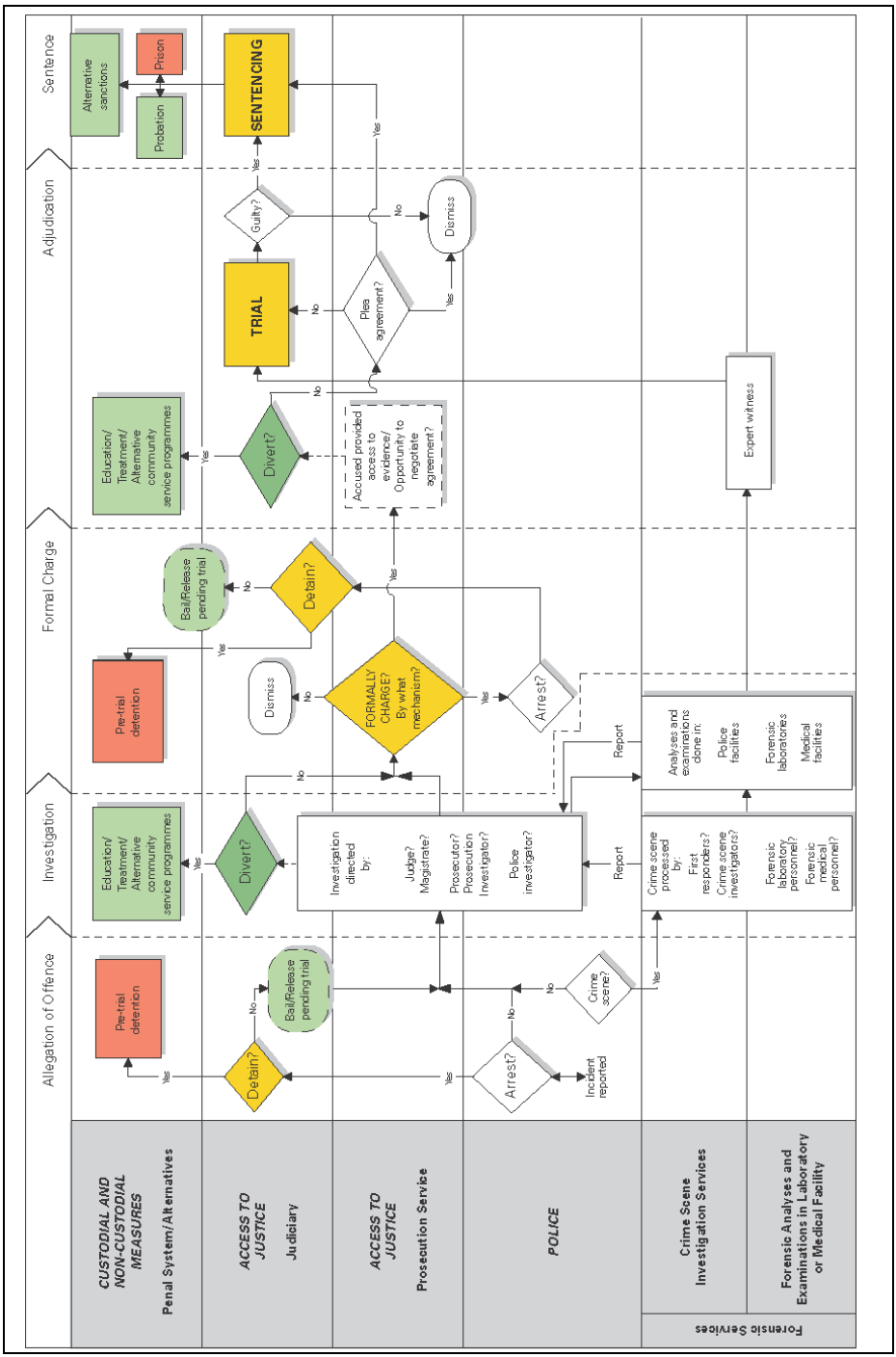
42 See UNODC/UNECE, *Manual on Victimization Surveys*, Geneva 2010.

43 Downes, Mark, *Paper for OSCE Meeting on 'Police Reform within the Reform of the Wider Criminal Justice System'*, OSCE, Vienna, September 2011, p. 3.

The information gained from the various actors of the CJS and from civil society in this mapping can be compared against official organizational charts as well as regulations on co-operation. As a result, suggestions may then be provided on room for improvement in co-operation and on entry points for reform.

UNODC's *Criminal Justice Assessment Toolkit* provides a useful illustration of the complex interaction between the different CJS institutions that can be used for mapping the sectoral relations in the CJS (see Figure 1 on p. 54).

Figure 1. Decision Points in the Criminal Justice Process



Source: UNODC, "Policing. Forensic Services and Infrastructure", in: UNODC, *Criminal Justice Assessment Toolkit*, New York, 2010, p. 57.

In view of the future reform process, the mapping should not simply create a static picture of how actors interact, but should also acknowledge that relations between actors can change, and that actors themselves can take on different roles while reform initiatives are being rolled out.

With regard to the issue of oversight within the CJS, the mapping should also aim at identifying who has the authority to supervise whom, and what possible correction and/or sanctions mechanism are in place.[44]

Once all CJS actors and non-state security and justice providers and their interrelationships and interfaces have been mapped, their performance should be evaluated, and the causes identified that lie at the root of the perceived shortcomings.

The Geneva Centre for the Democratic Control of the Armed Forces (DCAF) proposes to analyse the performance of the CJS institutions and actors through two main lenses: capacity and integrity, acknowledging that capacity building would not be sustainable without accountability and integrity. For this exercise, DCAF, on the basis of a model presented in the *OHR Report on a Police Follow-on Mission to UNMIBH and the United Nations International Police Task Force*,[45] developed the Capacity and Integrity Framework (CIF) that groups together relevant questions from a capacity and integrity viewpoint:

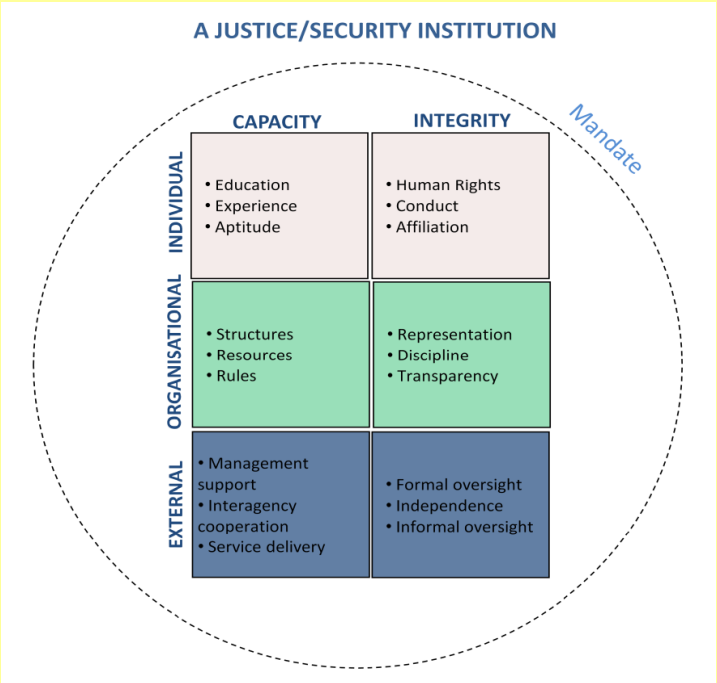
1. The three organizational levels of an institution:
   - 1.1. individual: education, aptitude
   - 1.2. organizational: its mandate, resources, structures, policies and procedures
   - 1.3. external: its relations with other institutions

2. The two quality levels of an institution:
   - 2.1. capacity: the existing resources (human, physical and technical), structures and procedures
   - 2.2. integrity: respect for basic norms and values when exercising its functions.

[44] Ibid, pp. 4f.

[45] Cf. Holm, Tor Tanke/Monk, Richard/Rumin, Serge, *OHR Report on a Police-Follow-On Mission to UNMIBH and the United Nations International Police Task Force*, Sarajevo, November 2001.

Capacity and Integrity Framework



The CIF can also be used for analysing the gaps and overlaps in service delivery between the actors of the same criminal justice sector − i.e. between different branches of a police agency, or between the same police branches at the local, regional or state level – and between different criminal justice system institutions, including unclear hierarchies and lines of communication between the different actors. This also includes different institutional cultures that may hamper co-operation. In addition to the CIF dimensions, the findings of the analysis of the socio-economic context will also come into play to explain some of the shortcomings in the CJS performance.

Generic questions for the application of the CIF are listed in Appendix 2.

Once the information has been gathered from the governance and capacity analysis, and the mapping exercise, it should be compared, cross-checked and triangulated[46] with the results from the public needs and perception analysis. Political, economic, social, ethnic or other interests and motivations of assessment sources should also be taken into account.

III.2 Assessment Questions to Analyse the Interaction between the Different CJS Institutions, Other Governmental Agencies and Non-State Actors

UNODC, OECD and other organizations[47] have developed a comprehensive set of assessment questions for the different institutions of the CJS. The following section will draw on this set of questions and provide a compilation of those questions that address the various areas of the assessment. A focus will be placed on the interfaces in the criminal justice chain between the police and other relevant state-and non-state institutions, as well as cross-cutting issues such as human rights, gender aspects and oversight. These questions may be amended to suit specific national contexts.

III.2.1 Questions on the Socio-economic, Cultural and Political Context

- At what phase is the socio-economic and political development of the country?
- What is the historical context of the country, particularly in view of the applied law and the traditions of formal and non-state security and justice provision?
- Is there a separation of powers between the legislature, the executive and the judiciary?

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46 Triangulating information means that two opposing perspectives are balanced by a third, preferably independent perspective that can explain the two opposing perspectives. Cf. Downes, *Paper for OSCE Meeting on 'Police Reform within the Reform of the Wider Criminal Justice System'* (op. cit. note 43), p.8.

47 In addition to UNDOC and OECD lists of assessment questions, comprehensive sets of questions are also provided by: Folke Bernadotte Academy/Swedish Contact Group, *Security Sector Reform. Assessment Framework* (op. cit. note 32); Bureau for International Narcotics and Law Enforcement Affairs, U.S. Department of State, *Criminal Justice Sector Assessment Rating Tool*, Washington, D.C., June 2006; and Rausch, Colette (ed.), *Combating Serious Crimes in Post-Conflict Societies. A Handbook for Policy Makers and Practitioners*, United States Institute of Peace Press, Washington D.C., 2006, pp. 17-38.

- What is the level of political control of the CJS institutions?
- Are formal security and justice providers involved in politics?
- What is the level of legitimacy of the political system among the population?
- Is there a general common understanding of the concept of rule of law in society, and do people feel that the rule of law is being respected?
- What is the level of legitimacy of the different CJS institutions and non-state security and justice providers among the population (see also chapter III.2.2)?
- How does corruption affect the CJS?
- How are different ethnic communities represented in the CJS?
- How are women represented in the CJS?
- Who are the potential spoilers of CJSR?
- What are the different values, ideologies and perceptions across major reform stakeholders?
- What are the potential incentives and disincentives for the various stakeholders to support reform?

III.2.2 Questions on the Security and Justice Needs of the Public

- What are the most frequent and serious types of security risks and injustice?
- Are certain groups more affected than others?
- Are any identifiable groups victim of hate crime?
- Are women, men and children vulnerable to different types of security risks and injustices?
- What is the public perception of the CJS? Is it considered fair, effective and efficient? Do people trust the CJS? If not, why? What are the perceived key issues facing the CJS? Do certain groups feel that they are being discriminated by the CJS?
- How does the public view the different institutions of the CJS? Which institution receives the highest credit for being fair, effective, efficient and competent?
- Does the public consider that the CJS effectively deals with public corruption?
- Is the public aware of the functions that the different CJS institutions perform?
- Is the public aware of community outreach activities of the CJS?
- Does the public feel that they are involved in the CJS in addressing criminal justice priorities? What about minority and marginalized groups?
- Are members of civil society put at risk by interacting with security and justice institutions? Should they be concerned about the following: human rights violations by CJS actors; revenge attacks of

criminals; acts of reprisal from society at large if the CJS has no legitimacy; and a lack of protection by the CJS against such revenge attacks or societal acts of reprisal?
- Does the public have access to public information about criminal cases?
- Is the public involved in the oversight of the CJS?
- What CJS institutions do the people want to have more control or influence over?
- To what extent does the population rely on non-state security and justice providers? What is the reason for doing so (e.g. proximity, low cost, tradition, religious faith, lack of access to formal CJS, lack of trust in formal CJS)? Do certain non-state security and justice providers have control over certain communities, territories and resources?

III.2.3 Questions on the Governance and Capacity of the CJS

a) The Legal Framework of the CJS

General Aspects

- Is there legislation (constitution, laws, police, justice, prison and probation acts, criminal code, criminal procedure code, court rules) defining, *inter alia*, the core responsibilities and powers of different CJS institutions with regard to arrests, pre-trial detention, investigations and trial procedures, as well as with regard to victim assistance and the rehabilitation and reintegration of convicts? Is the legislation in line with relevant international conventions and regulations?[48]
- Does the legislation recognize the existence of non-state/customary security and justice providers? Are there limitations on the types of crimes to be dealt with by the non-state security and justice providers, as well as on the types of punishments or penalties imposed by the customary/non-state justice providers?
- When was the legal framework or when were its elements last reviewed?

[48] For a list of key international conventions, guidelines and commitments applicable for governing the work of the CJS in the OSCE area, see Appendix 1.

Criminal Proceedings

- Does a code or law define the way in which criminal investigation should be conducted and by whom?
- According to the law, does the CJS include investigating judges? What is their role? How many have been appointed and at what level of the court system?
- Is there an overlap of responsibilities with prosecutors, or gaps that create legal uncertainty?
- Does the prosecutor's office reside within the executive branch of government or the judiciary?
- To what extent is the prosecuting function independent from the executive branches and the judiciary?
- Who leads an investigation?
- Does the law provide for the diversion of cases to alternatives to criminal prosecution, such as mediation, treatment and/or community service?
- Is there a difference perceived between the pre-investigation (or 'intelligence') phase of a case and the investigation phase?
- Does the law include any provision on the use of physical evidence and forensic services?
- Does the law regulate the establishment, functioning and funding of forensic services, as well as the use and admissibility of physical evidence in court proceedings?

Human Rights Aspects

- Is the concept of human rights and fundamental freedoms found in national legislation?
- Is the CJS required to protect and respect human rights and fundamental freedoms?
- What obligations under the law do the CJS institutions have toward crime victims and witnesses in criminal cases? Does the law provide for witness protection measures such as physical protection, voice-distortion, use of video-conferencing, closed court and relocation, etc.?
- Are indigent defendants guaranteed access to counsel?
- What are the grounds for pre-trial detention as provided by law?
- Are time limits for detention in police custody and pre-trial prisons set down in legislation? Are they the same for juveniles as for adults?
- Are there time limits within which a criminal case must begin trial and be resolved (i.e. reach a verdict or sentence)?
- Does legislation explicitly prohibit re-arrest on the same charges (in the case that police custody time limits required the previous release, or the court had discharged an accused person)?

Accountability and Oversight

- Are there any ethics codes for the staff of the different CJS institutions?
- Does the law establish mechanisms for the monitoring and oversight of the conduct of the CJS institutions?
- Can human rights violations committed by CJS officials be brought to an independent court?
- Is there a specific reference to corruption with regard to the CJS institutions?
- Does the prosecution service have supervisory power over other branches of government?

b) Policies and Regulations:

General Aspects

- Is there a written national criminal justice strategy and action plan?
- Are there national strategies and action plans for the different CJS institutions?
- When were policies and regulations last reviewed?

- Is state security a responsibility of a police agency or is it a separate function? If it is a separate function, are investigations governed by the same rules as for the police?

- Do operational procedures enhance co-operation between the different CJS institutions or slow down co-operation?
- Are there regular co-ordination meetings at a senior level between prosecutors and the police?
- How does the formal CJS interact procedurally with the non-state security and justice providers? Do they refer specific cases to each other?

- Is gender mainstreamed in the policies and regulations and organizational culture with regard to recruitment, career advancement, working conditions and retention of staff, especially women and ethnic minorities?

Criminal proceedings

- How does a criminal case proceed – from the allegation or suspicion of a criminal offence and the provision of advice to investigators, to formal charging, adjudication and disposition?
- Who actually leads an investigation – a senior police officer, prosecutor or judge?
- Is the prosecution service philosophy on criminal investigations consistent with the approach employed by the police?
- How are investigations assigned to the investigators?
- What kind of cases are assigned vertically to the prosecutors, i.e. the prosecutor is responsible for a case during the entire criminal justice process, from the investigation to filing formal charges, to trial and sentencing.
- In systems where there is an investigating judge, at what point does this 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 the investigating judge?
- Who allocates new work?
- Who prepares case files?
- What kind of data do the case files contain?
- Who supervises case files?
- What kinds of evidence gathering require a warrant being requested from a judge? Do the police or the prosecutor request warrants?
- Does the prosecutor give advice to the police on when to seek a warrant?
- Who has the authority to arrest people?

- What are the responsibilities of first responders (police officers) when arriving at crime scenes?
- Is there a proper understanding among the CJS institutions of the contribution that can be made by a forensic approach adopted from the crime scene to the court room?
    - Are there any requirements in the policy framework to ensure that first responders to crime scenes, police investigators and prosecutors understand the potential and limitations of forensic evidence and crime scene investigations, and that justice institutions understand the weight of forensic evidence?
    - Are there also any requirements in the policy framework to ensure that forensic scientists understand the use of forensic data in the criminal justice process and the implications of conclusions based on forensic analyses and examinations?

- Do operational procedures regulate the proper handling of evidence gathered (collection, preservation, labelling, packaging and storage) and the proper chain of custody[49] of such evidence?
- How do investigators log, label, and package evidence and exhibits?
- How is work co-ordinated – between crime investigators, prosecutors and forensic laboratories?
- Do laboratories have access to the necessary reference materials and/or reference collections for casework? Who is authorized to use reference materials? Does this resource-intensive approach lead to case delays?

- Are prosecutors legally bound by the results of a police investigation?
- Do police and prosecutors have the discretion to divert cases from the criminal justice process or to grant bail? (This may have a significant impact on caseloads and the size of the prison population/conditions in prison.)
- What authority do the police, prosecutors or other criminal justice agents have to release a person who has been detained for questioning prior to filing charges?
- Is there a legal presumption in favour of bail or other alternatives to pre-trial detention such as supervision/restriction?
- Does the prosecutor have the legal authority to divert cases to alternatives to criminal prosecution such as mediation, treatment or community service? If so, does it require judicial approval? Are such alternatives limited to certain categories of offenders and offences (e.g. juveniles, mental health, drug offences and domestic violence)?
- Does the prosecutor have the legal authority to negotiate plea agreements, and what does the regulatory framework look like?

- What kinds of offences are dealt with by non-state/customary justice providers?

- Who can propose the inclusion of a witness in a witness protection programme, and who is responsible for admitting a witness to such a programme and for its termination?
- Who is responsible for conducting threat assessments and for providing protection measures for witnesses in a criminal proceeding?
- Who is responsible for providing court security?

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[49] The "chain of custody" refers to the 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. Two other terms used are "chain of evidence" and "traceability" – see UNODC, "Policing. Forensic Services and Infrastructure", in: UNODC, *Criminal Justice Assessment Toolkit*, New York, 2010, p. 53.

- Who is responsible for the transport of prisoners to court, and who provides security during the transfer?

Human Rights Aspects

- Can the time limits for detention in police custody and pre-trial prisons be extended?
  Who decides and on what basis?
- Does the prosecutor have the legal authority to order continued detention of a suspect? (This may raise human rights concerns in cases where prosecution is also investigating a crime.)

Accountability and Oversight

- Do the prosecution and courts have a policy on illegally obtained evidence, and what does it look like in ethical, legal and procedural terms? Is illegally obtained evidence still admissible?
- What policy and procedures are in place for the review of claims of miscarriages of justice such as wrongful convictions or abuse of prosecutorial discretion/power? Is DNA testing available in such cases? Is physical evidence preserved to be used in such cases?
- What provisions relate to internal and external inspection procedures of temporary places of detention?
  - Do procedures and/or regulations allow for the establishment of an independent monitoring mechanism for police custody and pre-trial detention facilities?
  - Do procedures and/or regulations allow external monitors to pay unannounced visits?

- Once charges are filed, is this information made public and available to the media?

- Is the preparation of files supervised for quality assurance?
- Are the police obliged to keep custody registers for all suspects detained? What information is included in custody registers?

- Do procedures/regulations allow for the establishment of an independent trial-monitoring mechanism?

c) Structures

General Aspects

- If there is a federal system, how does the federal CJS complement the CJS at the local or regional level?
- At what level do the CJS institutions co-ordinate their activities – national, regional, local? What form does it take, i.e. ad hoc working groups or formal commissions?

- Are internal management systems of the CJS (management structure, information systems, decision making process, performance management, etc.) and communication structures available? Do they facilitate or hamper effectiveness and the efficiency of the criminal justice process/co-operation between the different CJS institutions?
- Do police investigators and prosecutors hold co-ordination meetings to discuss ongoing cases?
- Is the leading investigator (prosecutor or judge) co-located with the police or located nearby?
- Are there any partnership structures with other public service departments, with non-state security and justice providers, and with civil society groups?
- What is the functional relationship and division of responsibilities between public and private security providers?
- How are state security providers involved in training, licensing and support of private security providers?
- Are there any co-operation mechanisms in place with social services or the probation service when provided?

- Are the resources and workload appropriately and optimally distributed among the different CJS institutions to facilitate an effective and efficient criminal justice process?
- What is the ratio of prosecutors/investigating judges to police investigators?

Criminal Proceedings

- Is there a crime reporting system in place?

- Is there a database on criminal convictions? If so, does it include cross-referenced personal data on the offender? Can criminal records be expunged, especially records of juveniles?

- Is there a forensic database of fingerprints, DNA, ballistics and/or other data (e.g. shoe marks, tyre marks, glass, paint, fibres, chemical profiles of explosives or illicit drugs and precursors)?[50]
  - Is this database shared between the different CJS institutions?
  - Who is responsible for maintenance, backup, uploading and updating, completeness, integrity, and access authorization to forensic databases?
- Are crime scene investigation services part of the police agency, or part of a broader forensic institution?
- Under what agencies are forensic services provided – public (under which ministries) or private?
- What facilities are in place for the forensic examination of a crime scene? Do the police and prosecution share such facilities?
- Are forensic laboratories independent of the police?

- Are there electronic case file management systems available for managing major investigations? Do the case file management systems include police information, courts schedules, final case dispositions and detention information?

- What information is shared between the different CJS institutions and to what level is confidential case information protected? Can the defence file a motion of discovery to review the evidence that the prosecution intends to use?
- Are there sufficient staff trained to use electronic case file management systems?
- Have there been any measures introduced in recent years to improve case flow management (e.g. attempts to reduce the number of people awaiting trial in custody, or awaiting a decision by an inspection mechanism)?
- Is there a reliable way of knowing when a particular time period in the investigation and trial of a criminal case is reached?

[50] For a comprehensive overview of the potential scope of forensic services, see: UNODC, "Policing. Forensic Services and Infrastructure" (op. cit. note 49), p. 48.

Training

- Is there joint specialized training available for police, prosecutors and judges with regard to the investigation of (organized) crime?
- Are cross-cutting issues, such as human rights and fundamental freedoms, gender mainstreaming, and CJS ethics and accountability included in the relevant topics of (joint) basic and advanced training curricula of the various CJS institutions?

Human Rights Aspects

- Are human rights guarantees supported by viable implementation mechanisms, or do they tend to remain declaratory?
- Are there separate police custody, pre-trial detention and prison cells available for children and juveniles, and men and women?
- Is defence counsel provided for indigents?
    - What are the safeguards to ensure independence of the appointed counsel?
    - Are there any categories of defendants that cannot waive their right to counsel?
    - Can juveniles waive their right to counsel?
- Are data protection regulations in place governing the proper handling of data of suspects and convicts by CJS officials in accordance with international data protection principles. In addition, do they limit the use of personal data to the extent necessary for the performance of lawful, legitimate and specific purposes?

Accountability and Oversight

- Where police exceed their jurisdiction in holding a suspect in police custody, what justification do they provide for doing so?

- What are the mechanisms and structures for the monitoring and oversight of the conduct of the CJS institutions? Is civil society involved in the monitoring of CJS institutions?
- Have they been implemented?
- Are there policies in place to protect whistle blowers within the criminal justice system who file complaints about misconduct of CJS officials?
- Is there a complaints system in place that allows the public to complain about access to the CJS, the delivery of CJS services, and the behaviour of individual actors of the CJS? How does it operate?
- Is the media permitted to attend trials?

d) Performance of the CJS Institutions

Criminal Proceedings

- Do co-ordinating bodies work well together?
- Is there a conflict between formal rules of co-operation and cultural norms within the different CJS institutions?
- Do investigators cross-reference their active cases with historical cases?

- Once forensic examinations and analyses are performed, are reports/results provided? If so,
  - to whom? (e.g. police, crime investigators, prosecutors, judges, suspects, defence lawyers, victims, and/or others)?
  - simultaneously or at different times, and in which order?
- What is the number of cases submitted to forensic laboratories per year and the turnaround time?

- Do police or other law enforcement agencies use their authority to arrest indiscriminately and arbitrarily?
- Do the police keep custody registers? What is the quality of information recorded?

- Is there a backlog of pending cases? How many criminal cases are pending appeal?

- How often do 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?

Human Rights Aspects

- Are police cells used for long periods due to a lack of space in pre-trial detention (remand) prisons/or a lack of remand prisons?
- Are juveniles in police custody and pre-trial detention always separated from adults?

- What is the percentage of juvenile and adult detainees in police custody and pre-trial detention that have legal representation?
- Are the appointed counsels perceived as independent?

- Are the time limits for detention in police custody and pre-trial detention adhered to?
  If not, how often are detainees held beyond the limit set by law?
  What are the reasons for exceeding time limits?
- When there is a custody time limit and the court releases a

detainee on this basis, or when the court discharges an accused person, do the police re-arrest the accused and re-charge him/her for the same crime? If so, how often?

- Do non-state security and justice providers use practices that violate formal laws and international norms?

Accountability and Oversight

- What are the CJS activities with regard to educating the public on its functions and how well it performs them? Does the CJS conduct community outreach? Does the CJS 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?
- Does the CJS 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?
- Are there CJS staff available to answer the public's questions on criminal law?
- Do police investigators regularly update victims on progress in their cases?

- Do the different CJS institutions have performance indicators for their staff? If so, what are they? Do they also address the interaction of the CJS institutions?

III.2.4 Questions on Other International CJSR Initiatives

- What CJSR activities are already underway?
- Which international and national reform agencies are involved?
- Do the different international actors agree on a common objective of CJSR?
- Do all reform agents understand the objectives and their responsibilities? Do the reform activities follow a holistic and multidisciplinary whole-of-government approach, including political and development initiatives? Do they address the interfaces between various CJS institutions? Are these activities co-ordinated? Is there a co-ordination mechanism? Is there a lead agency?
- Are mechanisms in place that ensure the sustainability of any joint activity and donation?

IV. Developing a Reform Strategy and Implementation Plans

When developing the strategy for a CJSR initiative, the gathered findings of the baseline assessment should be consolidated in such a way that the public needs and perception findings could be used to identify entry points. Entry points should be chosen that have immediate benefits for citizens. In view of the required long-term approach to CJSR, a holistic view should still be kept in mind. Strategies should thus define long-term programmes and short-term/annual projects that would provide all stakeholders with a clear understanding of the planned activities. This is particularly important in view of unavoidable staff rotations in the mission and among other international and national stakeholders.[51]

Based on the quantitative and qualitative information gathered in the assessment process, the reform strategy should define realistic and achievable objectives, benchmarks and criteria of success to be achieved within a realistic timeframe. These benchmarks should be used later to evaluate the success and/or impact of the implementation of CJSR programmes, and if met, to trigger the exit phase. The strategy for the exit phase should be flexible enough to be adaptable to any future developments.

The timeframes should reflect the local state of the CJS and provide for more time in an environment where conditions for implementations are difficult. A minimum of three to five years might be appropriate in a challenging environment.

Furthermore, reform strategies need to be complemented with concrete action plans for implementing the strategy. These action plans must provide detailed action or operational plans detailing how the different steps of implementation are put into practice.

These plans should identify the required organizational changes and resources (personnel, material and financial) for the different steps. Emphasis should be placed firmly on the most efficient use of available resources, rather than the provision of new equipment. While many CJS institutions will have legitimate requirements for infrastructure and

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[51] For a comprehensive overview of practical steps in reform strategy development, see also
Hansen Annika S./Wiharta, Sharon/Claussen, Bjorn R./Kjeksrud, Stian, *The Transition to a Just Order – Establishing Local Ownership after Conflict. A Practitioners' Guide*, Folke Bernadotte Academy Publications, Stockholm 2007, pp. 29-36; and
Harris, Frank, *The Role of Capacity-Building in Police Reform*, OSCE Mission in Kosovo, Department of Police Education and Development, Pristina 2005, pp. 23-29.

equipment to support capacity building, such equipment should only be supplied to meet requirements clearly identified in a needs assessment and an accompanying development plan. This should be clearly communicated at the outset of any reform programme or the promise of material resources may detract from or undermine the more pressing business of institutional reform.[52]

Whenever the OSCE is involved in the reform activities, action plans should closely refer to the annual "Performance Based Programme Budgeting" process that requires the clear definition of outputs, outcomes and impact of the programmes as well as the indicators for measuring progress.[53]

As mentioned above, in order to gain full buy-in and local ownership of the reform by all relevant national stakeholders, it is crucial to involve relevant representatives from the state institutions as well as from civil society in the strategy development right from the beginning and to reflect the interests of all stakeholders in the reform programme. However, reaching a consensus among all of the stakeholders on the reform steps might be difficult due to the typically heterogeneous composition of civil society, which is likely to result in diverging interests among these representatives as well as the varying interests among the different CJS institutions.

Nevertheless, it is still necessary to find common agreement on reform priorities and the sequences of implementation by all stakeholders in view of the usually limited resources and capacity of international and national stakeholders to implement reform. These challenges also require that all stakeholders commit themselves to honour the agreements.

In this context, it is important to take into consideration the political nature of reform, including potential benefits for different actors at the local, regional and national level. Reinforcing one CJS actor at the perceived or actual expense of another actor could destroy the delicate political balance between the institutions and cause resistance from the "losing" side.

Furthermore, if the public do not perceive any immediate benefits for themselves, having the feeling that the reform does not and will not

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[52] OSCE, *Implementation of Police-Related Programmes. Lessons Learned in South-Eastern Europe*, SPMU Publication Series Vol. 7, Vienna, December 2008, pp. 25-27 a. 39-41; see also
UNODC/USIP, *Criminal Justice Reform in Post-Conflict States* (op. cit. note 8), pp. 27-35.

[53] For a comprehensive introduction to project evaluations and the PBPB, see:
OSCE, *Performance-Based Programme Budgeting*, Vienna, 2007;
OSCE, *A Guide to Using Performance Indicators in the OSCE*, Programming and Evaluation Support Unit, Vienna, March 2009; and
OSCE, *Project Management in the OSCE. A Manual for Programme and Project Managers*, Vienna, 2010.

improve their safety and security, they will not support the reform process, which will make sustainability of reform impossible. “Quick Impact Projects” that are completed within few months after the start of the reform process may produce some immediate visible improvements of the safety and security situations.[54]

Other aspects to be kept in mind are technical issues such as: the absorption capacity of a country for receiving aid; the need to accept uncertainty, thus requiring a flexible “process approach”; and the need to be realistic in terms of what could be achieved.

[54] Quick impact projects can include infrastructural components such as: the creation or renovation of police stations or courts to enhance access to security or justice; the donation of basic equipment to enhance the performance of the security and justice practitioners; the accelerated training of law enforcement or corrections officers in human rights or the treatment of vulnerable groups; and the support of independent commissions that track the treatment of people in detention, or the general treatment of vulnerable groups. For more examples, see UNODC/USIP, *Criminal Justice Reform in Post-Conflict States* (op. cit. note 9), pp. 33 and 84.

V. Reforming the Legal Framework

In line with the principles of the Rule of Law, that "all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated,"[55] the reform of CJS-related law is a precondition for enhancing the effectiveness and efficiency of the CJS, and therefore the first step in implementing CJSR.

In many post-conflict territories, legal reform is also needed because there is no clarity on which law is applicable. This was a major problem for the United Nations Interim Administrative Mission in Kosovo, where ethnic Albanian judges refused to recognize the Yugoslav law of 1999 because they felt discriminated and oppressed by it.[56] The practice to designate a particular body of pre-conflict existing law "as the applicable law, with the caveat that it should be read in compliance with international human rights norms and standards", however, has often created less legal certainty, not more.[57]

In general, the criminal law in force in a country may need to be updated to adapt the law to the changing environment of social norms and customs as well as to address new threats emanating from new forms of terrorism and crime, in particular organized crime. New criminal laws may therefore address new criminal offences as well as new investigative tools. New offences may include domestic or gender-based violence, hate crimes and corruption, as well as new organized crime patterns, such as money laundering, the financing of terrorism, trafficking in human beings. It may also include trafficking of certain goods, e.g. drugs or precursors, and weapons.

These offences need to be included in the law in order to allow the CJS institutions to respond to them. In order to enable the CJS to effectively and efficiently respond to these offences, new crime prevention and investigative tools may also need to be included into the law. Such new tools could include new investigation techniques (e.g. electronic surveillance, undercover operations, controlled deliveries and forensic analysis), witness protection measures and new case file management systems.

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55 United Nations Security Council, *The rule of law and transitional justice in conflict and post-conflict societies* (op. cit. note 1), Para. 6.

56 Cf. Stodiek, Thorsten, "International Police Forces in Peace Operations", in: Harvey Langholtz/Boris Kondoch/Alan Wells (eds.), *International Peacekeeping: The Yearbook of International Peace Operations*, Vol. 9 (2005), p. 97; and
Cf. Rausch, *Combating Serious Crimes in Post-Conflict Societies* (op. cit. note 47), p. 51.

57 Cf. UNODC/USIP, *Criminal Justice Reform in Post-Conflict States* (op. cit. note 9), p. 63.

With regard to the holistic reform approach, it needs to be taken into consideration that changes in one area of the law usually have effects in other areas of the law. New provisions have to be checked with regard to their impact on the relations between the different CJS institutions and the interfaces between them. With the introduction of new tasks, responsibilities and tools for the CJS, the newly defined distribution of powers among the CJS institutions may therefore need to be clarified in the new law.

Furthermore, the financial implications of new laws must also be taken into consideration in order to weigh the theoretical merits of new laws against their practical viability.

The following sections will first elaborate on the applicable laws that need to be reviewed in the reform process, and then focus on a number of legal provisions that address the collaboration of the CJS institutions to respond effectively and efficiently to criminal offences.

V.1 Applicable Laws to be Reviewed

The applicable laws of a country "include both the country's domestic laws and international laws that set out its obligations at the international level that must be adhered to domestically".[58]

According to the United Nations, the general normative foundation for law reform should be the *Charter of the United Nations*, international human rights law, international humanitarian law, international criminal law and international refugee law. These laws represent universally applicable human rights and criminal justice standards adopted under the auspices of the United Nations. Moreover, criminal justice law reform in the OSCE area should also be in accordance with the OSCE commitments to human rights, fundamental freedoms and the rule of law, as being enshrined in the *Helsinki Final Act*, the *Copenhagen Document*, the *Code of Conduct on Politico-Military Aspects of Security*, and various OSCE decisions on police-related activities.[59]

[58] Ibid, p. 57.

[59] For a list of key international conventions, guidelines and commitments applicable for governing the work of the CJS in the OSCE area, see Appendix 1.

Laws to be reviewed during holistic CJSR are:[60]

- State constitutions;
- presidential or royal decrees in states that issue them;
- criminal codes;
- criminal procedure codes;
- special laws on specific types of crime;
- minor offences/misdemeanour codes that include offences and powers related to public order;
- juvenile justice codes;
- any legislation relevant to criminal procedure in states that have not enacted a criminal procedure code;
- laws on the execution of penal sanctions (if not included in the criminal procedure code);
- the laws on courts and the selection, appointment, and removal of judges;
- laws on prosecutors and the selection, appointment, and removal of prosecutors;
- police laws;
- laws on prisons and probation services;
- laws governing intelligence services and the secret police;
- laws on data protection and digital information systems;
- laws governing domestic military forces when they relate to issues such as public order, detention, or investigations related to civilian criminal matters;
- laws relating to legal practice in the country, including legal aid laws and laws on bar associations;
- laws on victim and witness protection and assistance;
- anti-discrimination laws;
- relevant codes of ethics for judges, prosecutors, lawyers, and police;
- laws on oversight institutions (e.g. the law on ombudsman);
- laws on legal education;
- laws on non-state justice and security providers and the relationship between these systems and the formal state system;
- customary or traditional law in criminal matters, if applicable according to the law;
- laws on private security providers;
- laws on immunities of state figures and public servants;
- laws on associations (including NGOs); and
- laws establishing special courts or transitional justice mechanisms.

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60 Cf. UNODC/USIP, *Criminal Justice Reform in Post-Conflict States* (op. cit. note 9), p. 58; and
Rausch, *Combating Serious Crimes in Post-Conflict Societies* (op. cit. note 473), pp. 43-45.

For post-conflict states, the legal framework may also include provisions defined in peace agreements and United Nations Security Council resolutions/mandates.[61]

As mentioned above, in some OSCE participating States, the legal framework may comprise, in addition to the formal written laws, a variety of customary and religious-based traditions and laws that may impact on the provision of security and justice.

In addition to determining the adequacy of the above laws for the facilitation of an effective and efficient criminal justice process, the review of the law would also determine whether and to what extent a state's legal international treaty obligations have given legal effect to the criminal justice process. For instance, if a country has signed and ratified UNTOC, has it legislated for the substantive criminal offences and procedural provisions required under the Convention, also including the creation of frameworks for extradition, mutual legal assistance and law enforcement co-operation at the international level?[62]

In addition to international treaties, a state may also have signed and ratified binding regional or bilateral treaties with other states or organizations, which may have legal effects on the national and transnational criminal justice process.

Finally, applicable formal and informal laws need to be reviewed with regard to their compliance with the above-mentioned international human rights and criminal justice standards in order to address cross-cutting issues such as human rights compliance of CJS activities, including the protection of vulnerable groups, gender mainstreaming, and the promotion of CJS accountability and oversight.

In addition to these cross-cutting issues, the following section will primarily address legal reform aspects that address measures to improve collaboration between the different CJS institutions, other governmental agencies, non-state security and justice providers, and civil society in order to render the criminal justice process more effective and efficient.

[61] Ibid, p. 43.
[62] Ibid, p. 40.

V.2 Review of Legal Provisions to Enhance CJS Response

V.2.1 Enhanced Collaboration among CJS Institutions

The reform of the legal framework for the CJS should aim to facilitate the establishment of integrated policies and procedures for the ministries, agencies and functions involved in the criminal justice process.

Since the reform of the legal framework needs to be tailored to the national context and since the relationship between different CJS institutions may vary in different countries, the following areas of concern are general in character and applicable in different national contexts.

Furthermore, the examples of legal provisions for enhancing the collaboration of the CJS are primarily taken from the *Model Criminal Code* (MCC) and the *Model Code of Criminal Procedure* (MCCP), which have been developed by the United States Institute of Peace and the Irish Centre for Human Rights, in co-operation with UNODC and the United Nations Office of the High Commissioner for Human Rights. These provisions could be adapted and incorporated in the new national law or at least used as a source of inspiration in the law reform process.[63]

Moreover, it is recommended that the reviewers and drafters of new laws make use of the *Reference Guide to Criminal Procedure*,[64] which was initiated and supported by the Belgian and Spanish OSCE Chairmanships, and developed between 2006 and 2007 by the OSCE Strategic Police Matters Unit in close co-operation with a High Level Working Group on Criminal Procedure. The Working Group comprised criminal justice experts from various international organizations and OSCE participating States representing different criminal justice systems within the OSCE area and guaranteeing the acknowledgement of internationally adopted criminal justice norms and standards. The *Reference Guide to Criminal Procedure* lists some generic provisions that the representatives of different criminal justice systems agreed upon.

Since the distinction between civil law and common law is often blurred in national legislation due to borrowing across systems in previous law reforms, national laws often have a hybrid character; drafters of new law

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63 Cf. United States Institute of Peace, *Model Criminal Code*, Model Codes for Post-Conflict Criminal Justice, Volume I, Washington, D.C., 2007; and
United States Institute of Peace, *Model Code of Criminal Procedure*, Model Codes for Post-Conflict Criminal Justice, Volume II, Washington, D.C., 2008.

64 Cf. OSCE, *Reference Guide to Criminal Procedure*, SPMU Publication Series Vol. 2, Vienna, December 2006.

may therefore choose and blend features and legal provisions from various traditions that work best in the national context.[65]

The Relationship between the CJS Institutions

In general, the reform of the legal framework should ensure that national legislation clearly defines the core responsibilities, powers and duties of different CJS institutions with regard to arrests, pre-trial detention, investigations, and trial procedures, as well as with regard to victim assistance and the rehabilitation and reintegration of convicted persons.

This reform step should also aim at removing legal uncertainty over responsibilities by eliminating overlaps of responsibilities among different CJS institutions, on the one hand, and closing gaps of responsibilities between the different CJS institutions, on the other. In federal states, this would also require clear provisions regarding the responsibilities of the CJS institutions of the same branches at the central/national and the regional level.

Furthermore, criminal procedure codes or relevant laws should define the way in which criminal investigation should be conducted, for instance, who leads an investigation. The codes and laws should also clearly promote close co-operation between the various CJS institutions.

The reform of the legal framework should also ensure that national legislation guarantees the independence of the judiciary from the law enforcement branches; and clearly defines the responsibilities of customary and non-state security and justice providers as well as the co-operation and co-ordination between them, and the formal CJS institutions.

With regard to the responsibilities of the different CJS institutions in the criminal justice process, the MCCP provides a number or provisions:[66]

- Art. 45, MCCP, describes the duties of the prosecution;
- Art. 46, MCCP, describes the duties of individual prosecutors;
- Art. 53, MCCP, describes the duties of the police;
- Art. 91, MCCP, describes the conduct of criminal investigations; The MCCP acknowledges that in some CJSs, the police are responsible for the entire investigation of an alleged criminal offence

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65 Cf. United States Institute of Peace/United States Army Peacekeeping and Stability Operations Institute, *Guiding Principles for Stabilization and Reconstruction*, Washington D.C., 2009, p. 73.

66 Since it would be out of the scope of this Guidebook to present all the relevant provisions from the MCCP, readers are encouraged to study the MCCP.

and the storage of evidence before the case is handed over to the prosecution, who then decides whether there is enough evidence to mount a prosecution; in contrast, in other systems, the prosecution also directs the investigation and is responsible for the creation of a case file and storage of evidence.[67]

- Art. 93, MCCP, describes investigative measures by the police prior to the formal initiation of an investigation.
- The *United Nations International Drug Control Programme (UNDCP) Model Witness Protection Bill 2000* provides model legislation on the responsibilities of CJS institutions on the initiation, implementation and termination of witness protection programmes.[68]

Examples of Legal Reforms of CJS Responsibilities

Introduction of Prosecutor-led Investigations

In Bosnia and Herzegovina, prosecutor-led investigations were introduced in 2003/04.[69] The aim of transferring investigation responsibilities from the courts to the prosecution was to make local criminal justice more efficient and competent to prosecute crimes, including war crimes.[70] The new criminal procedures provided the prosecutor with extended responsibilities and powers in planning, managing and directing investigations. The prosecutor was also able to transfer his/her powers to other "authorized public officials". On the one hand, this strengthened the role of the authorized public officials; on the other hand, it required more initiative by them. The courts no longer investigated, but controlled whether actions and measures restricting human rights and fundamental liberties during the investigation were justified.[71]

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67 USIP, *Model Code of Criminal Procedure* (op. cit. note 63), p. 103.

68 United Nations International Drug Control Programme, *UNDCP Model Witness Protection Bill 2000*, 2000.

69 Criminal Procedure Code of Bosnia and Herzegovina (BiH), effective from 1 March 2003, Official Gazette of BiH, No. 36/2003. See also: Radulovic, Drago, "The Concept of Investigation in Criminal Proceedings in the Light of the New Criminal Procedure Legislation", in: Petrovic, Ana/Jovanovic, Ivan, *New Trends in Serbian Criminal Procedure Law and Regional Perspectives. Normative and Practical Aspects*, OSCE Mission to Serbia, Belgrade, 2012, p. 14; and
Dodik, Bozidarka, "Prosecutorial Investigation – the Experiences of Bosnia and Herzegovina", in: Petrovic /Jovanovic, *New Trends in Serbian Criminal Procedure Law and Regional Perspectives* (ibid), p. 26.

70 Cf. DeNicola, Christopher, "Criminal Procedure Reform in Bosnia and Herzegovina: Between Organic Minimalism and Extrinsic Maximalism", 2010, p. 32.

71 Cf. Dodik, Bozidarka, "Prosecutorial Investigation – the Experiences of Bosnia and Herzegovina", in: Petrovic/Jovanovic, *New Trends in Serbian Criminal Procedure Law and Regional Perspectives* (op. cit. note 69), p. 37.

In Serbia, a new *Criminal Procedure Code* was adopted in 2012, which introduced the new criminal procedure of prosecutor-led investigations. The aim was to give prosecutors a leading role in investigations and finding evidence. They were also assigned a more active role in trial proceedings tasked to establish facts at trial. This new procedure also impacted on the role of the police in the investigation process, especially with regard to conducting interviews of suspects, witnesses and victims, etc. It remained to be seen whether the prosecutors would proactively seek evidence and direct the police to take specific investigative actions, or whether they would primarily rely on the actions initiated by the police. Since the application of the new procedures only started in 2012, limited initially to the specialized prosecution offices and court departments dealing with organized crime, the outcome and impact of the new procedures were not assessable in 2013.

In Switzerland, changes were made to the Swiss Criminal Procedure Code in 2007 (in force since 1 January 2011) in order to unify criminal procedures at the national (Bund) and regional (Kantone) level. Subsequently, the institution of investigative judges was abolished, and all investigative responsibilities (including pre-investigations) transferred to the prosecutors. By assigning all responsibilities to the Prosecutor's Office, from the pre-investigation to the preferral of charges, the aim was to render the criminal procedure process more efficient.[72]

When changing competencies of relevant criminal justice institutions in the criminal justice process, the agency assigned with new responsibilities must be given sufficient time, training and resources to adapt to the new tasks and responsibilities. With regard to the introduction of prosecutor-led investigations, a lesson learned in several participating States was that prosecutors were overwhelmed with their new roles and responsibilities, since they were opening the investigations, carrying out all the investigating work, writing indictments, presenting the cases at court and undertaking cross-examination at trial. The police often became very passive and blamed the prosecution on not having allowed them to carry out investigative work on their own.[73]

[72] *Schweizerischer Bundesrat, Botschaft zur Vereinheitlichung des Strafprozessrechts* (StPO), 21. December 2005, pp. 1105ff.

[73] This is based on interviews with reform advisers from different participating States.

Example of Legal Reform to Speed up Criminal Proceedings

Fast Investigation Procedures in Bulgaria

In order to speed up criminal proceedings, Art. 356 of the Bulgarian Criminal Procedure Code introduces "fast investigation procedures". According to these procedures, which were modified in 2006, investigations have to be completed by the investigators within seven days, and the Prosecutor has to decide on the next steps within three more days.

Art. 356(1) calls for fast procedures in cases where:
- a person has been detained at or directly after the commitment of the crime;
- there are, on the body or on the clothes of the person, obvious vestiges of the crime;
- the person appeared before the respective bodies of the Ministry of Interior, the investigating body or the prosecutor with a confession of the committed crime;
- a witness identifies the person as the perpetrator of a crime.

According to Art. 357(1), the supervising prosecutor shall decide within three days after the finalization of the investigation whether to:
- discontinue the penal procedure (on the grounds of Art. 24, Paragraph 1 of the CPC);
- suspend the penal procedure (under the conditions of Art. 25 and 26 of the CPC);
- bring indictment and table the case for trial at the court;
- table the case with a decree of discharging from penal liability with the imposition of administrative penalty or with a proposal for agreement on the settlement of the case; or
- render additional investigation to collect new evidence or to remove admitted significant breaches of procedural rules, and shall determine a period not longer than seven days.

In the first half of 2012, Fast Investigation Procedures were ordered in around 4,900 cases, which constituted approximately 8 percent of all investigations in that period. In 1,180 out of the 4,900 cases, the prosecutor rendered additional investigations under normal investigation procedures.[74]

[74] Prosecutor's Office of the Republic of Bulgaria, Summary Report of the Work of the Prosecutor's Office for the first half of 2012 [ОБОБЩЕНА ИНФОРМАЦИЯ, ЗА ОБРАЗУВАНЕТО, ДВИЖЕНИЕТО И РИКЛЮЧВАНЕТО НА ПРЕПИСКИТЕ И ДЕЛАТА В ПРОКУРАТУРАТА НА РЕПУБЛИКА БЪЛГАРИЯ, за I шестмесечие на 2012 г. /Изготвена на основание чл. 142, ал. 3 ЗСВ].

Technical aspects of criminal procedures

In general, the reform of the legal framework should ensure that national legislation:

- defines the establishment of databases for managing case files as well as the use of these databases among various CJS institutions;
- defines information/intelligence sharing/exchange among various CJS institutions;
- defines the use of physical evidence and forensic services;
- regulates the establishment, functioning and funding of forensic services, as well as the use and admissibility of physical evidence in court proceedings.

With regard to the management of case files:

- Art. 102, MCCP, describes the requirements of the police and prosecution to keep written records of each action undertaken in the criminal investigation and for the written record of those actions to be put in the case file.

  The *Reference Guide to Criminal Procedure* further elaborates on the content of case files.[75]
- Art. 101, MCCP, proposes that case files should be in the possession of the prosecutor who would be "responsible for the retention, storage, and security of all information, evidence, and physical material obtained in the course of an investigation until it is formally tendered into evidence in court".[76] According to the MCCP, any evidence that is adduced during the investigative action by the police should be submitted to the prosecutor under Art. 91. MCCP.[77]
- Art. 37, MCCP, describes the responsibilities of the courts to handle records of court proceedings and the transfer of court proceeding records to the prosecution, defence, and "in appropriate cases to counsel for the victim".[78]

With regard to the gathering and utilization of evidence at court:

Arts. 106-146; MCCP, describe in great detail the circumstances and procedures that are required to collect evidence that is admissible at court. Articles that address new investigative measures and tools are:

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75 Cf. OSCE, *Reference Guide to Criminal Procedure* (op. cit. note 64), p. 19.
76 Cf. USIP, *Model Code of Criminal Procedure* (op. cit. note 63), p. 166.
77 Ibid, pp. 166 and 168.
78 Ibid, p. 82.

- Arts. 116-117, MCCP, which concern the gathering information from suspects, victims and other persons, including the taking of photographs and fingerprints of arrested persons and other persons;
- Arts. 128-130, MCCP, which concern the preservation and access to computer data and telecommunications traffic data;
- Arts. 134-140, MCCP, which describe covert or other technical measures of surveillance or investigation;
- Arts. 142-145, MCCP, which describe forensic investigative measures.

Arts. 106-146, MCCP, are complemented by:

- Arts. 228-237, MCCP, which define the rules on the use and exclusion of evidence at trial.
  More generic provisions on the use and exclusion of evidence are contained in the *Reference Guide to Criminal Procedure*. [79]

V.2.2 Enhanced Collaboration between CJS Institutions, Other Governmental Agencies, Non-State Security and Justice Providers, and Civil Society

The reform of the legal framework should also aim to facilitate better co-operation between the CJS institutions, other governmental agencies (e.g. health, education and development), non-state justice and security providers, and civil society in general in order to enhance access to and the provision of security and justice. The United Nations Member States, in the *Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and their Development in a Changing World*, emphasized that "through the mutual and effective sharing of information, knowledge and experience and through joint and coordinated actions, governments and businesses can develop, improve and implement measures to prevent, prosecute and punish crime, including emerging and changing challenges."[80] The ECOSOC Resolution 2002/13, which is closely connected with the Salvador Declaration with respect to effective crime prevention, also promotes "cooperation/partnerships working across ministries and between authorities, community organizations, non-governmental organizations, the business sector and private citizens". Furthermore, co-ordination between justice agencies and other professionals such as

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79 Cf. OSCE, *Reference Guide to Criminal Procedure* (op. cit. note 64), pp. 31ff.

80 United Nations, *Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World*, The Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Annex, Resolution A/RES/65/230, Sixty-fifth session, 1 April 2011, Para. 34.

health and social services is also requested by the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*.[81]

V.2.3 Human Rights Aspects

With regard to human rights, the reform of the legal framework should ensure that national legislation:

- appropriately and comprehensively implements the concept of human rights and fundamental freedoms according to international standards and obligations;
- explicitly requires the CJS institutions to protect and respect human rights and fundamental freedoms;
- explicitly requires the CJS institutions to take into account gender issues as well as the rights and lawful interests of vulnerable groups, including children and minorities;
- defines the time limits for detention in police custody and pre-trial prisons;
- defines the obligations of the CJS institutions towards crime victims and witnesses in criminal cases.

Challenges may arise when respecting the rights of the witness to have anonymity while respecting the rights of the accused to call, examine or have examined witnesses against him/her.[82]

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[81] United Nations, *Guidelines for the Prevention of Crime*, Annex, ECOSOC Resolution 2002/13, *Action to promote effective crime prevention*, New York, 24 July 2002, Para. 9; and
United Nations, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,* Vienna, 25 April 2012, Para 55 (c), p. 16.

[82] See, for example, United Nations, *International Covenant on Civil and Political Rights*, New York, 16 December 1966*,* article 14 (3) (e); the *Statute of the International Criminal Court,* Article 67 (1) (e); or
Council of Europe, *European Convention on Human Rights/Convention for the Protection of Human Rights and Fundamental Freedoms* (1950), Article 6 (3) (e).

V.2.4 Accountability and Oversight

National legislation should also establish democratic political control of the CJS institutions, and the integration of the CJS with civil society.

In general, the reform of the legal framework should ensure that national legislation:

- provides for the development of appropriate codes of ethics and conduct for the staff of the different CJS institutions;
- addresses the fight against corruption in the public sector, including the CJS institutions;
- ensures that the judiciary/prosecution services have supervisory power over other branches of government; and
- establishes CJS mechanisms for ensuring its transparency and accountability, including internal and external mechanisms to monitor and oversee the conduct and funding of the CJS institutions.

  Relevant oversight institutions to be established by the law can be the executive (policy control, financial control and horizontal oversight by government agencies), the legislature (members of Parliament, Parliamentary Commissions of Enquiry), the judiciary,[83] as well as human rights commissions, civilian complaint review boards or independent ombudspersons. Furthermore, the media can play an important role in providing the public with information on police activities. It is crucial, however, that the media work according to a professional code of conduct and the information provided does not compromise police investigations and confidential information relevant for maintaining public security or the presumption of innocence.[84]Internal oversight institutions that should complement the work of external oversight institutions may include internal investigation units, or ad hoc disciplinary committees composed of senior criminal justice officials.

Accountability and oversight-related legislation could make reference to, and should be in line with, relevant internationally adopted codes of conducts for CJS officials (see also chapter VI.4)

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83 Cf. Council of Europe, *Recommendation Rec(2001) 10 of the Committee of Ministers to Member States on the European Code of Police Ethics* (2001), §§ 60 and 62.

84 Cf. OSCE, *Guidebook on Democratic Policing* (op. cit. note 25), pp. 39 and 43.

In Switzerland, a new *Law on the Organization of the Criminal Justice Institutions*, adopted in 2010, which came into force together with the Criminal Procedure Code in 2011, assigned the Federal Parliament (*Bundesversammlung*) the sole responsibility for overseeing the work of the Federal Prosecution. The Parliament was assigned the responsibility of electing and overseeing the Federal Office of the Attorney General. This change was introduced in order to guarantee the Office's independence from the executive body.[85]

Following the review of the legal framework, the next reform steps will be to: translate the law into policies and procedures; provide the organizational and structural mechanisms for implementing the law; prepare the CJS staff through training and professional development on how to implement the law; assess how the new law, policies and regulations are implemented in practice by the CJS institutions; and based on the assessment, modify the reform process with a view to increase its effectiveness, efficiency and sustainability.

All of these reform steps will be described in the following chapters.

[85] Ständerat, *Bericht der Kommission für Rechtsfragen vom 3. Juni 2009: 08.066 s Strafbehördenorganisationsgesetz; Wahl des Bundesanwalts oder der Bundesanwältin und Aufsicht über die Bundesanwaltschaft*, Para 3, pp. 2-5.

VI. Development/Reform of Policies, Procedures, Rules and Regulations

In order to translate legislation into action and apply it in practice, policies need to be adopted that define how the law shall be applied. Furthermore, the policies and the measures required to implement them need to be expressed in clear formal "policy statements". Policy statements should also include a vision and a mission statement, which would explain, in a few succinct words, the goals that the state and the CJS are trying to achieve with the introduction of the policies. The vision and mission statements would also have a normative character.[86] Policies and implementation measures need to be publicly supported by political leaders and the leadership of the CJS institutions.[87] Moreover, the leaders of the CJS institutions will need to encourage all actors of the CJS to implement the policies and assure their support (see also chapter IV).

Strategies and action plans to implement these policies and corresponding procedures, rules and regulations, and to monitor their implementation should be developed by state authorities and the CJS in close co-operation with civil society and non-state security and justice providers. The strategies and action plans would need to refer to the findings of the underlying assessment of the CJS and the corresponding critical assumptions for enhancing the criminal justice process. These assumptions would include clear statements on the required capabilities of each criminal justice institution, the way in which the different institutions need to be structured or re-structured, and the amount of financial and personnel resources required to develop and maintain these capabilities[88] (see also chapters IV and VII).

In the context of the holistic reform of the police within the framework of CJSR, policies should explicitly acknowledge the importance of communication and close collaboration between the different CJS institutions, and between the formal CJS and non-state structures as well as civil society with regard to enhanced effectiveness and efficiency of the criminal justice process.

Therefore, policies should also promote and facilitate the necessary implementation of organizational and structural reform steps for providing

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86 Cf. OSCE, *Good Practices in Building Police-Public Partnerships by the Senior Police Adviser to the OSCE Secretary General*, SPMU Publication Series Vol. 4, Vienna, May 2008, pp. 36 and 38.

87 Cf. OSCE, High Commissioner on National Minorities, *Recommendations on Policing in Multi-Ethnic Societies*, The Hague 2006, p. 10.

88 Cf. Ball, Nicole/Fayemi, Kayode (eds.), *Security Sector Governance in Africa: A Handbook*, Centre for Democracy and Development, chapter 4. Policy Development and Implementation (2004).

the environment for improved communication and collaboration. This may include, *inter alia*: the creation of multi-agency CJS steering groups and specific mechanisms of collaboration and co-ordination in the criminal justice process; the introduction of new case file management systems; and the development and provision of joint training courses for all relevant actors at the operational interfaces of the CJS. These courses would address managerial aspects of the criminal justice process and provide general investigative training and specialized investigative training on various specific forms of new crimes that require the application of new investigation techniques and tools, and the use of new forms of evidence at courts/trials.

Furthermore, policies on the organizational and structural reform of the CJS should address cross-cutting issues, such as: the protection of human rights; gender mainstreaming in the criminal justice process; and the creation or enhancement of accountability procedures and mechanisms for the entire CJS and for the independent monitoring and reviewing body of police policies and practices.

The implementation of policies, procedures, rules and regulations could be best supervised and co-ordinated by a Core Implementation Group that would create mechanisms for communication, supervision and evaluation, and that would bear the overall responsibility for implementation. This core group should comprise representatives from the CJS and civil society and be gender mainstreamed. It should be headed by senior CJS officials and mandated with sufficient authority to initiate, design and carry out the required institutional changes in the face of inevitable resistance. (For a brief description of the challenges in change management, see chapter VII.6). The Core Implementation Group should also periodically evaluate the practical application of the content of the policies by the CJS institutions in order to identify possibilities for improving their performance.[89]

At the operational level, rules and regulations, standard operating procedures and guidelines would need to be introduced that govern the operationalization of the law and policies among the CJS institutions during the criminal justice process.

[89] Cf. OSCE, *Good Practices in Building Police-Public Partnerships* (op. cit. note 86), p. 39.

VI.1 Enhanced Collaboration among CJS Institutions

Examples of model rules and regulations covering various aspects of investigations as well as pre-trial and trial proceedings are provided by the MCCP. The following section will present a number of model rules and regulations that address the work at the interfaces of the CJS:

- Art. 91, MCCP, proposes procedures for communication between the prosecution and the police, providing "for a more flexible system of communication, where the prosecutor can issue orders in writing, orally, or even by e-mail. To ensure that this system works, institutional co-operation between the office of the prosecutor and the police needs to be nurtured and mechanisms need to be set in place to facilitate inter-institutional co-operation. It may be necessary to draw up protocols, standard operating procedures, codes of conduct, or other agreements to build an effective institutional relationship such as is outlined in the MCCP."[90]

- Art. 102, MCCP, provides some generic descriptions on how the records of criminal investigations should be handled by the police and prosecution. These descriptions could be "supplemented by standard operating procedures or memorandum of agreement between the police and the prosecutor on the recording of investigative acts and the transmission and storage of written records and evidence obtained in the course of these acts".[91]

  "Specific provisions for the reporting of domestic violence are provided by the *Framework for Model Legislation on Domestic Violence,* drafted by the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences (United Nations document E/CN.4/1996/53/Add.2). It provides specific guidance on the preparation of a domestic violence crime report (paragraphs 22–25). The framework document also contains useful guidance on the duties of police officers with regard to domestic violence (paragraphs 13–17) and the rights of victims of domestic violence (paragraph 21)."[92]

- Arts. 106–146, MCCP, on the collection of evidence, contain such a high level of detail, that they could be used for developing SOPs or other clarifying regulation that accompany a criminal procedure code.[93]

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90 USIP, *Model Code of Criminal Procedure* (op. cit. note 63), p. 155.
91 Ibid, p. 168.
92 Ibid, p. 157.
93 Ibid, p. 175.

VI.2 Enhanced Collaboration between CJS Institutions, Other Governmental Agencies, Non-State Security and Justice Providers, and Civil Society

With regard to the CJS's cooperation with other government agencies, non-state security and justice providers and civil society, policies, procedures, and rules and regulations should govern:

- issues of CJS supervision of non-governmental security and justice providers as well procedures for sharing certain tasks of security and justice provision;
- measures to protect collaborators with the CJS (see also chapter VI.3);
- co-operation procedures of police-public partnership structures that cover the responsibilities, rights and tasks of the various actors (e.g. in police-public advisory/working groups, or diversion programmes); and
- procedures for informing the media/public about CJS activities.

VI.3 Human Rights Aspects

Policies, procedures and rules and regulations with respect to human rights-related aspects in the criminal process that have relevance for co-operation between the different CJS institutions should address the following issues:

Juvenile justice:

- Art. 322, MCCP, defines the composition and duties of Special Panels for Juveniles;
- Art. 323, MCCP, defines the jurisdiction over children and juveniles;
- Art. 325, MCCP, describes the aim of juvenile justice: "The juvenile justice system must emphasize the well-being of the juvenile and must ensure that any reaction to juvenile persons must always be in proportion to the circumstances of both the juvenile and the criminal offence."[94]
- Art. 326, MCCP, describes the principles applicable to juvenile justice;
- Art. 328, MCCP, defines the contact with the police and the prosecutor; and
- Art. 338, MCCP, defines the conditional release from juvenile imprisonment.

Detention application procedures and time limits:

- Art. 172, MCCP, describes procedures upon arrest, including the provision that an arrested person "be brought promptly before a judge no later than seventy-two hours after arrest in order for the judge to assess the legality of arrest";[95]
- Art. 175, MCCP, concerns initial hearings before a judge after arrest in order to review the lawfulness of the arrest and to determine whether there are grounds for detention, bail, or restrictive measures other than detention or bail;
- Art. 185, MCCP, discusses prosecutorial applications for detention, bail or restrictive measures other than detention;
- Art. 186, MCCP, concerns the determination of an application for detention, bail, or restrictive measures other than detention at the initial hearing under Article 175;

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94 Ibid, p. 466.
95 Ibid, p. 287.

- Art. 188, MCCP, concerns hearings on continued detention or continued house arrest, describing procedures for seeking continued detention or continued house arrest of a suspect or an accused;
- Art. 189, MCCP describes the time limits for detention or house arrest; and
- Art. 190, MCCP, describes the procedure for extending the time limits for detention or house arrest.

Obligations of the CJS regarding the victims of crime are defined by:

- *Recommendation No. R (85)11* of the Council of Europe, *on the Position of the Victim in the Framework of Criminal Law and Procedure* (1985), Arts. 1-4;
- *Rec(2006) 8* of the Council of Europe, *on Assistance to Crime Victims* (2006), Arts. 2 and 3;
- the United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, New York, 29 November 1985;
- the United Nations *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime*, Vienna, 25 May 2005;[96] and
- Arts. 72-74, MCCP, that describe the responsibilities of the courts, prosecutors and the police with regard to victims in criminal proceedings.

Provisions on the protection of witnesses are defined by:

- *Recommendation No. R (97) 13* of the Council of Europe, *concerning Intimidation of Witnesses and the Rights of the Defence*, 1997, Arts. 14-15 and 51;
- *Rec(2005) 9* of the Council of Europe, *on the Protection of Witnesses and Collaborators of Justice* (2005), Arts. 1, 2, and 8-28;
- the United Nations *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, Vienna, 25 May 2005[97]; and by

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96 Cf. Council of Europe, *Recommendation No. R (85) 11 on the Position of the Victim in the Framework of Criminal Law and Procedure* (1985), Arts. 1-4;
Council of Europe, *Rec(2006) 8 on Assistance to Crime Victims* (2006), Arts. 2 and 3;
United Nations, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, New York, 29 November 1985; and
United Nations Economic and Social Council, *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, Vienna, 25 May 2005.

97 Cf. Council of Europe, *Recommendation No. R (97) 13 concerning Intimidation of Witnesses and the Rights of the Defence*, 1997, Arts. 14-15; see also Art. 51; and
Council of Europe, *Rec(2005) 9 on the Protection of Witnesses and Collaborators of Justice* (2005), Arts. 1, 2 and 8-28.

- Arts. 147-161, and Arts. 254-259, MCCP, that describe protective measures that may be ordered by a judge in favour of a witness under threat, or a "vulnerable witness", including witness protection during trial hearings, as well as the grounds and procedures for seeking an order for protective measures.

VI.4 Accountability and Oversight

With regard to accountability, codes of ethics and conduct for the police, prosecutors, judges, courts staff, the defence counsel and prison staff should specify acceptable and unacceptable conduct and spell out the principles to which the CJS staff must adhere.

Useful guidance for the development of such codes is provided, *inter alia*, by:

- the United Nations *Code of Conduct for Law Enforcement Officials* and the *Guidelines for the Effective Implementation of the Code of Conduct;*
- the United Nations *Bangalore Principles of Judicial Conduct;*
- the United Nations *Guidelines on the Role of Prosecutors;*
- the United Nations *Basic Principles on the Independence of the Judiciary;*
- the United Nations *Convention against Corruption;*
- the OSCE *Code of Conduct on Politico-Military Aspects of Security;*
- the Council of Europe *Recommendation No. R (2000) 10 of the Committee of Ministers to Member States on Codes of Conduct for Public Officials;*
- the Council of Europe, *Recommendation Rec(2001) 10 of the Committee of Ministers to Member States on the European Code of Police Ethics;*
- the Council of Europe, Parliamentary Assembly, Recommendation 1713 (2005), *Democratic Oversight of the Security Sector in Member States*, Strasbourg, 23 June 2005.

In countries where customary and non-state security and justice providers, including private security services, play a complementary role to the formal security and justice institutions, they also need to follow codes of ethics and conduct. States may also consider establishing standards of operations for civilian private security service providers that set the

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United Nations, *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* (op. cit. note 96).

minimum standards of eligibility for those who provide civilian private security services, including due diligence checks on owners of such services to prevent criminal control of civilian private security services.

Incentives and punishment to promote integrity and competence in every aspect of the CJS should be embedded in every policy and procedure.[98]

[98] Cf. UNODC/USIP, *Criminal Justice Reform in Post-Conflict States* (op. cit. note 9), p. 79.

VII. Structural and Organizational Reform

Based on the legal foundation of reform, the structural and organizational measures in the holistic reform of the police within the framework of CJSR aim at enhancing the effectiveness and efficiency of the criminal justice process.

Major shortcomings of the criminal justice process that are visible in many countries are:

- in general, a lack of communication and co-operation between the different institutions of the CJS; and
- in particular:
  - a large backlog of pending investigations and prosecution cases, resulting in
  - unnecessarily prolonged pre-trial detention times, which thereby violates human rights of the detainees as well as the rights of victims; and
  - dysfunctional reporting and case-management systems, which lead to duplications of work, non-complementarity of information, and delays in information processing, which result in delayed and sometimes weakly prepared cases, as well as the violations of the rights of defendants and their lawyers to have access to information for defence purposes.

Particularly Challenging Relationships Between the Police and the Intelligence Services

In many states, the police as well as military and civilian intelligence services may have overlapping intelligence capacities and roles. Defining the role of different services and the framework for co-operation, and ensuring that all intelligence provision is under independent civilian/parliamentary control is a common challenge. According to the *OECD DAC Handbook on Security Sector Reform,* the "principle should be that only agencies with police powers have the responsibility and prerogative to carry out criminal investigations, and for this reason their authority − in particular with regard to proactive investigation techniques such as wiretapping – should be more limited and under strict control".[99] Furthermore, sensitive issues of sharing information between the police and intelligence services, the use of the information from the intelligence services or from third sources cooperating with them during police investigations and at court, and the protection of victims and witnesses and their identity often lead to challenges in the

[99] OECD, *OECD DAC Handbook on Security System Reform* (op. cit. note 28), p. 164.

relation between the police, judiciary and the intelligence services.

Addressing this extremely complex environment is beyond the scope of this Guidebook.

In line with the guiding principles of CJSR (see also chapter II.4), this chapter will focus on structural and organizational changes in the various CJS institutions, in particular, at the interfaces between the different CJS institutions that aim at:

- ensuring efficient and effective co-ordination and co-operation between the police and their partners in the CJS, and between the CJS and customary and non-state security and justice providers as well as civil society;
- rationalizing available resources;
- establishing shared services and facilities, where relevant;
- promoting respect for and the protection of the rule of law, human rights and fundamental freedoms; and
- establishing and ensuring democratic accountability and oversight of the CJS institutions.

In addition to the infrastructural changes needed to achieve the above goals, this chapter will also address measures to establish an organizational and operational culture in the CJS that promotes and supports co-operation, co-ordination and accountability among the various CJS institutions, and between them and other relevant actors in the criminal justice process. The following discussion of these measures will differentiate between reform steps at the managerial, operational and training level.

VII.1 Enhanced Collaboration among CJS Institutions

"Joint working requires cross-agency co-operation, a shared vision of an effective criminal justice system, respect for each partners' independent remit […] and inspirational leadership."[100] While the overall political accountability for the investigation, prosecution and adjudication institutions should remain separate, there is still the need for a mechanism of securing some central direction and joint management of the process to achieve shared objectives.[101]

VII.1.1 Establishment of Co-ordination and Co-operation Mechanisms at the Strategic/Policy Level

At the strategic and managerial level, multi-agency CJS steering groups should be established that co-ordinate and monitor the implementation of holistic CJSR strategies and work plans. They would also have to take into consideration the effect that changes in one agency would have on other agencies. Building and changing rules and ways of working in one organization without checking for consistency with the standards and way of operation in the other CJS institution may significantly damage co-operation and co-ordination (see also chapter IV).

Furthermore, in order to institutionalize co-ordination between the various CJS institutions, cross-agency co-ordination forums (i.e. standing committees, liaison committees and criminal justice boards, comprised of high-level representatives of the different CJS institutions) could be created at the ministerial level and the agency management level. They would be tasked to provide overall direction of the CJS. This guidance would be based on the previously identified co-ordination and co-operation needs as well as on the previously defined strategies to improve co-operation and co-ordination, including the allocation of cross-cutting budgets for empowering the interfaces between the different agencies.

If the degree of co-ordination is well advanced, these forums would even be able to prepare implementation plans for the integration of administration functions across criminal justice partners.[102]

A high level of integration also allows for using cross-cutting budgets and pooling resources. The key question is how to create the right sort of

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100 Berry, Jan. *Criminal Justice Units and Case Building. Reducing Bureaucracy in Policing* Advocate*,* March 2010, p. 1.

101 Auld, Sir Robin Ernest, "The Criminal Justice System", in: Auld, Sir Robin Ernest, Review of the Criminal Courts of England and Wales, Ministry of Justice, Chapter 8, pp. 315-366, September 2001, pp. 320 and 331.

102 Cf. Berry, *Criminal Justice Units and Case Building* (op. cit. note 100), p. 2.

incentives for departments to spend money on programmes that are central to the overall aims and objectives of a more effective CJS.[103]

At the local level, the national criminal justice co-ordination forums should be replicated by local forums. Their membership could include, *inter alia*, the local police chief, the local chief prosecutor, local managers of the criminal court, the prison service, the health service, chief probation officers, representatives from juvenile delinquency boards, local bar associations, other municipality agencies, non-state security and justice providers, as well as representatives from civil society, including oversight structures.[104]

Examples of CJS Co-ordination and Co-operation Mechanisms at the Strategic/Policy Level

Office for Criminal Justice Reform, the National Criminal Justice Board, and Local Criminal Justice Boards in the United Kingdom

The Office for Criminal Justice Reform (OCJR) is a cross-departmental group that facilitates communication and co-operation between the Ministry of Justice, the Home Office, the Attorney General's Office and other Criminal Justice agencies in order to work in partnership. At the national level, the OCJR is supported by the National Criminal Justice Board (NCJB), and at the local level, by Local Criminal Justice Boards (LCJBs).[105] The NCJB consists of the CJS Ministers, heads of CJS agencies, permanent secretaries and senior policy officials, and supports a Cabinet Committee. The NCJB's role is to ensure that "central government departments, politicians and officials who are involved in delivering criminal justice act as one and drive and facilitate change".[106] At the local criminal justice level, chief officers from the main local CJS agencies make up the core membership of the LCJBs, covering the police, the Crown Prosecution Service, probation, and magistrates' and crown courts. The LCJBs also include senior representatives from the Prison Service and youth offending teams (one representative per LCJB) and have the option to co-opt members from other agencies. LCJBs are also accountable to the NCJB. Shared delivery plans set out how they will achieve all of their targets and identify lead officers for different objectives, as well as key actions and milestones.[107] The main purpose of the LCJBs is to deliver the CJS Public Service Agreement (PSA) targets, improve the delivery of justice and the service provided to victims and witnesses, and secure public confidence. These targets are set for all CJS agencies and are jointly owned by the Home Office, the Lord Chancellor's Department and the Attorney General. (It is important to note that the judiciary cannot have targets such as a set number of convictions). Although the PSA targets are set nationally, subject to approval by the Government, LCJBs decide how they will achieve them

103 Cf. Auld, "The Criminal Justice System" (op. cit. note 101), p. 332.
104 Ibid, p. 333.

and, in most cases, also agree on the level of improvement.[108]

In 2007, the OCRJ published *the Criminal Justice Strategic Plan 2008-2011*, setting out how the CJS in England and Wales would work together in bringing offences to justice and meeting the needs of victims, engaging the public and improving public confidence in the fairness and effectiveness of the CJS, while making best use of resources expertise and technology.[109]

Standing Committee of the Criminal Justice System Chief Executive Officers in New South Wales, Australia

In New South Wales, *a* Standing Committee of the Criminal Justice System Chief Executive Officers was established, comprising the Attorney General's Department, the Department of Corrective Services, the Department of Courts Administration, the Police Service, and the Office of Juvenile Justice. It also included observers from the Cabinet Office, the Premier's Department, and the Bureau of Crime Statistics and Research. Its purpose is to improve communication and better coordinate activities of the various agencies.[110]

Criminal Justice Co-ordination Committees (CJCCs) in the United States

CJCCs are informal or formal forums convening representatives of the different CJS institutions, non-justice institutions, the administration, and the community in order to analyse problems of crime and to improve the joint response of the CJS. CJCCs can be established at the national, state/regional and at the local criminal justice agency levels.

The planning of these forums can focus on policy planning (long-term goals and objectives), programme planning and operational planning.

The United States National Institute of Corrections developed guidelines of the ideal structure, tasks and responsibilities of CJCCs as well as guiding principles for the working/functioning of CJCCs.[111]

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105 Cf. Berry, Jan, *Reducing Bureaucracy in Policing. Full Report*, November 2009, p. 16; and
Office for Criminal Justice Reform, Homepage, at: http://www.ocjrcommsjobs.co.uk.

106 Audit Commission, *Local Criminal Justice Boards. Supporting Change Management*, London 2003, p. 4.

107 Cf. Ibid, pp. 5-7.

108 Ibid, p. 8

109 Cf. Office for Criminal Justice Reform, *Working Together to Cut Crime and Deliver Justice. A Strategic Plan for 2008-2011*, November 2007, pp. 7ff.

110 Cf. Glanfield, Laurie, "Strategic Planning for the Criminal Justice System", in: Biles, David/McKillop, Sandra (eds.), *Criminal Justice Planning and Coordination*, Proceedings of a conference held on 19-21 April 1993, Canberra, Australian Institute of Criminology, Canberra 1994, p. 27.

111 Cf. Cushman, R.C., *Guidelines for Developing a Criminal Justice Coordinating Committee*, U.S. Department of Justice, National Institute of Corrections, January 2002, Washington DC.

The Justice and Police Co-ordination Conference in Switzerland

This Conference regularly takes place, convening all national and regional authorities and stakeholders involved in security matters and the co-ordination of CJS issues. Questions of co-operation, common financing of infrastructure, and difficulties with the federal authorities are also addressed. A permanent Conference Secretary ensures that topics raised at, or brought to the Conference are constantly addressed.

National Council on Fighting Trafficking in Human Beings in Serbia

In Serbia, a *Strategy* and *Action Plan against Trafficking in Human Beings and the Protection of Victims* was developed in 2012. According to the plan, a National Council at the ministerial level acts as a steering group, and a National Co-ordinator with an implementation team is responsible for the implementation of the strategy at the operational level. Non-governmental organizations were involved in the development of the Action Plan and will also participate in the implementation team. Among other issues, the Action Plan foresees the establishment of interagency working groups for the fight against Trafficking in Human Beings (THB) and the protection of THB victims, to be led by the Prosecutor's Office.

The National Counter Terrorism Coordination Centre (CNCA) in Spain

CNCA was created in Spain on the basis of a Spanish Ministerial Council Decision of 28 May 2004. The Centre, which reports to the Ministry of the Interior, is an intelligence, co-ordination and strategic body tasked to receive, process and assess terrorism-related strategic information, and conduct risk-assessments and counter-terrorism planning. In this respect, it co-ordinates operational information gathered during anti-terrorism investigations.

The Centre also defines and develops the Spanish comprehensive strategy on counter-terrorism and radicalization. It provides advice to the political level for future threats and situations using horizon scanning techniques that serve to implement the four pillars of the strategy: Prevent, Protect, Pursue and Respond.

In order to accomplish its tasks, CNCA is staffed with experts from Law Enforcement (Guardia Civil and National Police), the National Intelligence Centre and the Prison Service.

VII.1.2 Establishment of Co-ordination and Co-operation Mechanisms at the Operational Level

At the operational level, the co-ordination of activities and co-operation in case investigations/processing can be significantly improved if the physical infrastructure is set up for meeting, discussing and exchanging information and views among the actors of the different CJS institutions.

Some of the most far-reaching interventions in setting up physical infrastructure would be to: merge the offices of the police and the prosecution; co-locate prosecutors in the police offices; and/or to establish joint special investigation teams or task forces located in one office.

In order to ensure smooth collaboration in such joint teams, common working conditions and standards would need to be developed.[112]

Examples of CJS Co-ordination and Co-operation Mechanisms at the Operational Level

Integrated Prosecutorial and Police Work/"Two-track Investigations" in Norway

In Norway, police and prosecutorial work are highly integrated at the local/district level. In the 27 police districts in the country, the Chiefs of Police, who also hold a law degree, have both police and prosecuting authority. The Chiefs of Police therefore have the authority for criminal proceedings in the police at the district level.[113] They can delegate their prosecuting authority to other police officials with law degrees, such as the deputy chiefs of police, assistant chiefs of police and police intendants (police lawyers).[114] The prosecution authority in the police, in co-operation with the police investigators, decide on the initiation and continuation of an investigation. Either the prosecution authority in the police or the courts decide on the use of coercive means; however, the police authority can decide on this only in urgent matters.

In prosecution matters, the Chiefs of Police, however, are still under the leadership of the District Public Prosecutor (one level higher in the hierarchy) and of the Director of Public Prosecutions (two levels higher in the hierarchy). The Director of Public Prosecutions and the District Public Prosecutors of the ten regional District Public Prosecution Offices have instructional authority for criminal proceedings in the police and can make judicial reviews.

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112 Cf. Berry, *Criminal Justice Units and Case Building* (op. cit. note 100), p. 1.

113 Cf. Criminal Procedure Act, § 55, Norway, 22 May 1981. In a few cases, Chiefs of Police do not hold a law degree but have at least studied certain judicial subjects. In combination with their extensive policing experience, this still entitles them to have prosecuting authority.

114 Cf. Criminal Procedure Act, § 67, Norway, 22 May 1981.

Following several debates on separating the police and prosecution authorities, the Government appointed a Committee in 1988 to examine the system and to compare it with those of other countries. The conclusion of the Committee was that the system should be maintained, which was supported by the Government and Parliament.

Establishment of Communication Mechanisms

Even if the establishment of the above physical infrastructure is not an option in a given country, there are often at least opportunities to significantly improve communication at the interfaces between the different CJS actors, for instance, by establishing regular meetings, in particular, electronically storable communication tools that prevent a loss of information or the misinterpretation of information.[115]

Measures to improve accurate and efficient record keeping and case file management, which are of fundamental importance for preparing strong cases, can lead to high conviction rates, a reduction of case backlogs, and shortened pre-trial detention of suspects (thereby fostering the credibility of the entire criminal justice system).[116]

Record Keeping

Keeping accurate records is not only important for efficiently compiling strong cases against accused persons, but also for protecting the rights of defendants to defend themselves and their right to adequate facilities to do so. They need to have "access to records of actions taken during the investigation, the findings of these actions, and evidence that may have been gathered, subject to the exceptions to disclosure"[117] as defined by the law.

In order to efficiently and effectively manage these records, they should be gathered and organized in electronic databases. Crime-related data can include, *inter alia*, incident reports, offender-case information; criminal history records of individuals including indictment charges, conviction charges, dates and results of appeals as well as DNA samples, ballistic

115 Cf. USIP, *Model Code of Criminal Procedure* (op. cit. note 63), p. 155; and Kosovar Institute for Policy Research and Development, *The Fragile Triangle. Police judges and prosecutors coordination during criminal proceedings response in Kosovo*, Policy Research 2010/01, Pristina, February 2010, p. 17f.

116 Cf. International Crisis Group, *Haiti: Justice Reform and Security Crisis*, Policy Briefing, Latin America/Caribbean Briefing No. 14, Port-au-Prince/Brussels, 2007, p. 2; and USAID Office of Inspector General, Audit of USAID/Haiti's Justice Program (op. cit. note 113), p. 11.

117 USIP, *Model Code of Criminal Procedure* (op. cit. note 63), p. 168.

data, fingerprints and other forensic data/evidence (e.g. tyre marks, glass, paint, fibres, as well as chemical profiles of explosives or illicit drugs and precursors). The use of this data can notably enhance criminal investigations.

Examples of Crime-related Databases

The Crime-related Database System in the United States of America

The Connecticut State's Criminal Justice Information System consists of the following major applications:[118]

- the Offender Based Tracking System;
- the Automated Fingerprint Identification System;
- the Connecticut On-Line Law Enforcement Communications Teleprocessing System; and
- the Mobile Data Communications System.

Interpol Databases

At the international level, Interpol has established a wide range of criminal databases to which its member states have instant, direct access. Information is shared through the I-24/7 secure police communications system, which is flexible and can be customized. The databases include the following:

- *Nominal data* – more than 155,000 records on known international criminals, missing persons and dead bodies, with their criminal histories, photographs, fingerprints, etc.;
- *DNA profiles* – around 136,000 DNA profiles from 67 countries. DNA profiles are numerically coded sets of genetic markers of individuals that can be used to help solve crimes and identify missing persons and unidentified bodies;
- *Fingerprints* – more than 171,000 sets of fingerprints contributed by 172 countries managed by Interpol through an Automated Fingerprint Identification System;
- *Child sexual exploitation images* – at the end of 2012, nearly 2,900 victims from more than 40 countries and 1,579 offenders had been identified;
- *Firearms* – more than 250,000 firearms references and 57,000 high-quality images managed through the Interpol Firearms Reference Table, which allows investigators to properly identify a firearm used in a crime (its make, model, calibre, etc.). The Interpol Ballistic Information Network is a platform for the large-scale international sharing and comparison of ballistics data, holding more than 130,000 records;
- *Fusion Task Force* – a database of more than 11,000 persons

[118] Cf. Office of Policy and Management/Criminal Justice Policy Development and Planning Division, *Comprehensive Plan for the Connecticut Criminal Justice System*, March 2007, p. 52.

suspected of being linked to terrorist activities; currently, 105 member countries contribute to terrorism-related matters.

Other Interpol databases contain information on stolen and lost travel documents, stolen administrative documents, stolen motor vehicles and stolen works of art.[119]

Data-sharing for Violence Prevention – Partnerships between the police and healthcare institutions in the United Kingdom

According to UNODC's *Training Manual on Policing Urban Space, Criminal Justice Handbook Series*, the Cardiff Violence Prevention Programme (CVPP), centralized in the City of Cardiff in the United Kingdom, originated to explore whether a partnership between health, the police and city government officials to share data would prevent violence, as opposed to city-based partnerships, where data from emergency departments are not collected and used. An analyst combined all of the data and police intelligence to produce ongoing updates of violence hotspots, weapon use and violence type. The partners, including education and transport, met on a regular basis to discuss the data, share prevention strategies and modify policing strategies. "The programme led to a significant reduction in violent injury and was associated with an increase in police recording of minor assaults in the city.[120]

The analysis of these data by the CJS administrators, managers and civil society representatives/research institutions may allow for: the identification of crime trends and patterns; the identification of the shortcomings in the response of the various CJS institutions; the development of new policies and regulations for enhanced co-operation and co-ordination; the development of forecasts predicting future operational requirements from the CJS; the development of relevant training and professional development strategies/measures; and a more appropriate/effective allocation of resources to the various CJS institutions to improve response.

Modern information and communications technology and digital evidence provide the CJS with opportunities to rationalize and streamline administrative systems and processes. The new technologies can transform how each CJS agency undertakes its function in terms of the

119 Cf. Interpol, *Databases Fact Sheet*, COM/FS/2012-02/GI-04, pp. 1f.

120 Cf. UNODC, *Training Manual on Policing Urban Space*, Criminal Justice Handbook Series, New York 2013 (forthcoming), p. 25. For more information, see: Florence, Curtis, et al. *Effectiveness of Anonymised Information Sharing and Use in Health Service, Police, and Local Government Partnership for Preventing Violence Related Injury: Experimental Study and Time Series Analysis,* BMJ Research, 2011.

speed, reliability and efficiency with which data are processed from charge to disposal.[121]

However, the different CJS institutions often maintain their own databases and files although "many of the items of information that they contain are, or should be, identical".[122] In non-integrated data processing systems, information collection efforts may therefore be duplicated. Moreover, fragmented data from different institutions might not be compatible.[123] Different systems in the different CJS institutions may not even allow to directly communicate its electronically stored information to other agencies that need it. Even within certain CJS institutions, there may be different systems in use, particularly in federal states.[124]

In non-integrated systems, "the progress of a case can be monitored only within each agency, and only by that agency for as long as it has it. Responsibilities for case management are dispersed, creating obvious discontinuities at the point of transfer, and for buck passing when things go wrong. And there is no possibility of aggregating information about defendants, victims, outcomes or anything else across the system as a whole, because each agency uses its own definitions of the contents of its files."[125] This may lead to cases where judges issue verdicts without being aware of whether certain defendants are recidivists.[126]

As a case passes from one procedural stage to the next, data are copied manually or electronically from the records of one agency and passed on to the next. "There is often no single body monitoring or assuring the quality or consistency of the transfer, nor even managing the overall progression of the case from charge to disposal. In addition, the way work flows through the system is dictated largely by the structure of each department and agency. Data passing through it will be subject to constant change, either through the action of one of the agencies (e.g. the defendant is re-arrested on a fresh charge) or due to an external event (e.g. a witness changes address). Such a change will typically come to the notice of only one of the agencies, which must then ensure that it is

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121 Cf. Auld, "The Criminal Justice System" (op. cit. note 101), p. 353.

122 Ibid, p. 355.

123 Cf. Hudzik, John K., "Comprehensive Criminal Justice Planning: Successes, Failures and Lessons from the American Experience", in: Biles, David/McKillop, Sandra (eds.), *Criminal Justice Planning and Coordination*, Proceedings of a conference held on 19-21 April 1993, Canberra, Australian Institute of Criminology, Canberra 1994, p. 1-16, here p. 10.

124 Cf. Auld, "The Criminal Justice System" (op. cit. note 101), p. 353; and Moskowitz, Albert, *Challenges and Priorities in Prosecuting and Adjudicating Trafficking in Person Cases,* paper presented at the "Trafficking in Persons Research and Data Forum", November 2008, p. 6.

125 Auld, "The Criminal Justice System" (op. cit. note 101), pp. 355f.

126 Kosovar Institute for Policy Research and Development, *The Fragile Triangle. Police judges and prosecutors coordination during criminal proceedings response in Kosovo* (op. cit. note 114), pp. 8f.

effectively communicated to all of the others who may be involved. Each of the other agencies needs a separate verification procedure and a means of ensuring that verified changes are effected to its own file in a timely manner. At best the system is inefficient and wasteful; at worst it leads to the key agencies holding inconsistent information.[127]

Such dysfunctional relations between the various criminal justice institutions require efforts to establish and manage case file management systems between the police, the prosecution, the courts, the defence, and also the prison system. Effective case tracking and management systems not only speed up the prosecution process, but also allow to better assess the work of the investigators and prosecutors (see also chapter VII.5.6).

Case File Management Systems

The most effective and efficient way of organizing a case file management system would be to develop a common database among the CJS institutions that would allow the "sharing of data in an electronic file, rather than passing it between agencies. Once created, such a file should contain and record all documents and information about each particular case and be able to flow quickly and cheaply through the entire criminal justice system. Once one part of the system had finished its work on the case, the file would be accessible in electronic form to the next part – as an accurate, complete and up-to-date record, ready for attention by the next set of professionals. Each agency would use the shared file in its own work, updating it to reflect the changes initiated by others and amending it to reflect changes it initiated, or of which it became aware. Each piece of information would need to be entered only once."[128]

With the permission to access certain non-confidential parts of the files to which they are entitled, witnesses, victims, and defendants/lawyers could receive such relevant information quickly during the pre-trial case management phase. Security technology must be in place to control proper access to the case files.

In developing a common IT database, the system must meet common and not necessarily individual requirements. Common definitions need to be developed for the relevant data to be included in the case files, such as standardized forms of entries about incidents, suspects, victims and witnesses. Protocols for entry and standards of data should be agreed and signed by all agencies.[129]

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127 Auld, "The Criminal Justice System" (op. cit. note 101), p. 355.

128 Ibid, p. 358.

129 Ibid, p. 360; and
Berry, *Criminal Justice Units and Case Building* (op. cit. note 100), p. 3.

In addition to the provision of the technical infrastructure (hardware and software), a key requirement for the successful creation of such a common integrated system would be to deliver training for all CJS staff for properly filling the case files in a manner that complies with administrative standards and provides the information that all CJS institutions require, based on the knowledge about the context in which the other CJS institutions operate (see also chapter VII.7). Another key requirement would be to develop a work culture within the CJS that encourages all actors to share case-related information, irrespective of the intention of the judiciary to act independently.

Integrated case files management systems can be created simultaneously or sequentially, depending on the availability of financial, training and change management resources.[130]

Example of an Alternative Approach to Integrated Systems

Alternative Approach to Integrated Systems in the United Kingdom

Rather than trying to deliver one system across 43 police forces and associated agencies, the National Policing Improvement Agency in the United Kingdom has been developing a set of national standards that IT systems should meet. The standards include single-entry data input and single sign-on, requirements on compatibility and flexibility, and the ability to expand. "All of these will be welcomed by front-line officers, who frequently battle to have use of a computer, get frustrated by having to input the same information on numerous databases and need to remember numerous passwords, which, for security reasons, need to be changed on a regular basis".[131]

[130] Cf. Auld, "The Criminal Justice System" (op. cit. note 101), p. 361.
[131] Berry, *Reducing Bureaucracy in Policing* (op. cit. note 105), p. 25.

VII.1.3 Forensics

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, they are used by police to identify suspects in the investigative phase of the criminal justice process and 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."[132] It is therefore essential that forensic services are provided by a highly qualified and impartial entity in an effective and efficient way. This requires well-educated criminal justice institutions and scientific experts as well as good co-operation between all the relevant institutions involved in recognizing, collecting, analysing, interpreting and presenting forensic evidence in the criminal justice process.

Forensic services are mostly provided by laboratories, which can be part of the public sector under the Ministries of the Interior, Justice, Health, Education, and Research, or of the private sector on a commercial basis. The holistic approach to CJSR must therefore address all relevant public and private actors involved in forensic services.

Since communication between non-scientists (e.g. investigators, lawyers, prosecutors, attorneys and judges) and forensic scientists in dealing with forensic evidence may prove to be difficult due to the scientific vocabulary often used, non-scientists depend on laboratory personnel to provide information and answer questions in an easily comprehensible manner.

Investigators, prosecutors, judges and defence lawyers 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 the police, attorneys and other members of the judiciary so that the laboratory can provide appropriate services. To avoid potential communication gaps, it is important that mechanisms be established that enable all stakeholders in the CJS to work in partnership. This would include the creation of a forensic database and physical evidence storage facilities to which the relevant CJS institutions would have access, as well as the proper inclusion of forensic evidence in the case files. Laboratories may further enhance communication between the different CJS institutions, for instance, by providing training to police officers, defence lawyers, prosecutors and judges on new technology and its potential use (see also chapter VII.7). Laboratories may also provide an

[132] UNODC, "Policing. Forensic Services and Infrastructure" (op. cit. note 49), p. 1.

opportunity for investigators to consult with laboratory personnel during investigations and/or make laboratory personnel available to participate on investigative teams. Irrespective of the mechanism used, it is essential that the laboratories take an active role in helping all members of the CJS to use scientific evidence properly.

Holistic reform steps should focus on:

- the procedures to ensure integrity and identity of evidence throughout the forensic process;
- the quality level of forensic services and work towards accreditation;
- the availability of adequate, fit-for-purpose laboratory equipment, reference collections and databases, and commitment and resources for their maintenance;
- effective communication between CJS practitioners and forensic scientists;
- education and training opportunities for scientists, police officers and other criminal justice practitioners;
- the capacity to generate and integrate forensic information ("forensic intelligence") into crime prevention frameworks.[133]

Example of Enhancing Forensic Capacity

OSCE's Assistance to the Republic of Serbia in Enhancing Forensic Capacity

In the Republic of Serbia, the OSCE Mission to Serbia, often in co-operation with external partners such as the Governments of Norway and Sweden, implemented a Crime Scene Forensic Programme in 2004-2009 "to strengthen the capacity to conduct highly professional and advanced forensic investigation, in order to secure good quality evidence to support fair legal proceedings and the rule of law in Serbia".[134]The programme consisted of four major pillars: equipping forensic laboratories and CSI officers; training laboratory personnel and CSI officers; establishing the Quality Management System (QMS) for laboratory analysis and CSI work; and establishing international co-operation of Serbian forensic institutions with forensic institutions abroad.

Within the framework of the programme, two regional and one national forensic laboratories were created or significantly upgraded, and their staff trained in the use of newly received equipment to undertake crime scene investigations as well as laboratory examinations, such as molding imprints, fingerprint analyses, graphoscopic, mechanoscopic and physiochemical

133 Ibid, pp. 2f.

134 OSCE, *OSCE Support to Enhancement of Forensic Capacities within the Serbian Police in the Period 2004-2009. Closing Report. Crime Scene Forensic Programme*, OSCE Mission to Serbia, Law Enforcement Department, Belgrade 2010, p. 5.

analyses, trace element examination and chemical analyses. Training was delivered and facilitated for crime scene investigators, laboratory staff and forensic doctors.

The programme also focused on developing comprehensive crime scene investigation policy as well as the introduction of the QMS quality management system, namely the ISO 17025 standard, in order to enable an unbroken chain of evidence custody, starting from the crime scene, and all the way to the court presentation of evidence. The preparation of the QMS establishment project included the assessment of laboratories to verify their capacity to introduce the ISI 17025 standard, as well as the integration of Serbian forensic institutions into the European Network of Forensic Science Institutions (ENFSI), which was considered crucial for ensuring continuous professional development by sharing up-to-date information and knowledge. At the end of the programme, the full implementation of the QMS was not completed. In a bilateral programme, Sweden continued with the implementation of the QMS introduction.

VII.2 Enhanced Collaboration between CJS Institutions and Customary/Non-State Security and Justice Providers

As mentioned above, there is a need to create co-ordination and co-operation mechanisms between the formal CJS institutions and customary/non-state security and justice providers in order to improve the effectiveness and efficiency of the criminal justice process.

With regard to security providers, these mechanisms need to address in particular the supervisory measures of the police as well as the creation of mechanisms/networks for sharing information, specifying the different types of information and level of access to this information for non-state security providers.

VII.2.1 Vigilant Groups/Neighbourhood Watch Schemes

“Vigilante-type organizations often emerge where there is a perception of increased criminality or social deviance which threatens social disorder. These groups flourish not only in places where states lack capacity to

protect citizens from crime, but also where the state is believed to be corrupt or untrustworthy." [135]

However, the police in certain countries have found themselves in situations where it made tactical sense to develop ongoing relationships with these groups in efforts to enforce order. While this can provide the police with connections in the areas dominated by such groups, the police face substantial challenges in this regard, including having their legitimacy undermined and building up organizations that could become involved in other illegal activities.[136]

Neighbourhood watch schemes may be appropriate instruments for involving communities in problem-solving, since they could contribute to supporting the police, fostering routine communication between the public and the police, and enhancing the communities' spirit of responsibility for their own safety. In order to avoid the risk that members of a neighbourhood watch scheme might try to take the law into their own hands and turn to vigilantism, or be exploited by influential community groups for their own purposes, it must always be clear that they only have a reporting role to play and that the monopoly of the use of force remains in the hands of the police. It would therefore be advisable to have clear and strict regulations in place on neighbourhood watch schemes and a police officer on site who would act as their supervisor and co-ordinator, taking responsibility for their actions.

Example of a Co-operation and Co-Ordination Mechanism between Formal CJS Institutions and Non-State Security Providers

Co-operation between the police and civilian patrols ("druzhiny") in Kyrgyzstan

During the 2010 April Revolution in Kyrgyzstan, when the police were not capable of providing public order and security on the streets, civilian patrol structures, called "*druzhiny*" (singular, *druzhina),* which were already in place in Soviet times, were revitalized by a number of civilians in order to protect state buildings, private businesses and private properties in residential areas from further looting in the capital of Bishkek.

During Soviet times, *druzhiny* represented small groups of people who co-operated with the police by monitoring streets and reporting security incidents to the police. Through their presence they had an effect of social

135 Kantor, Ana/Persson, Mariam, *Understanding Vigilantism. Informal Security Providers and Security Sector Reform in Liberia*, Folke Bernadotte Academy, Stockholm, 2009, p. 12.

136 UNODC-UNHABITAT, *Introductory Handbook on the Policing of Urban Space*, United Nations Publication, New York 2011, pp. 22f.

control on many kinds of troublemakers. *Druzhina* members were provided with identification documents and a special badge.[137] During the March 2005 revolution, similar civilian patrol groups had already been formed to stop the looting in Bishkek, but afterwards seized their activities.

In April 2010, the *druzhina* movement became a mass phenomenon. Dozens of *druzhiny* were founded in Bishkek, some of whom were affiliated with political parties, and others had a common background, such as living in the same geographical area or being members of the same sports club. The largest group was the "Patriot" *druzhina*, consisting of members of different social backgrounds, gender and age, and from different residential areas. Within one day, the group had gathered 8,000 members. They protected the streets together with police officers, many of whom were plain-clothed for their own security.[138]

In contrast to 2005, many groups remained active after the revolutionary days of April and provided security in particular during various election events. Some *druzhiny* had also played an important role in preventing violence in a number of cities in the south of Kyrgyzstan during inter-ethnic clashes in June 2010.[139]

Replacing an older Government Decree of 1994, in June 2012, the Provisional Kyrgyz Government, released a *Decree on the Regulation of Druzhiny*. The Decree defined the purpose, tasks, functions, composition, and organizational and leadership structures of *druzhiny* as well as the rights and responsibilities of *druzhina* members. The identified tasks included: patrolling streets, squares and other public sites; assisting police officers; conducting explanatory work with citizens; and using media outlets to prevent minor offences and crimes. The Decree also included a provision that allowed for the armament of *druzhiny* in the case of an emergency. In addition, the Decree emphasized the necessity of close co-operation between the *druzhiny* and the police, and the primary guidance of the *druzhiny's* activities by the police.[140]

Despite these regulations, Kyrgyz legal experts still recommended to adopt a framework law that would provide for the normative and legal basis of the work of the *druzhiny*. Police officials also recommended to have more precise regulations and limits of the powers of the *druzhiny* in order to avoid abuse and to ensure that, under no circumstances, *druzhiny* members would be given the right to carry and use weapons.[141] The OSCE also

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137 Cf. Sharshenova, Aijan, *Non-state Security Providers in Kyrgyzstan: Druzhina*, Research Fellow Working Paper, Social Research Center, American University of Central Asia, May 2011, Kyrgyzstan, p. 6.

138 Ibid, note 142, pp. 7f; and
UNHCR, *CORI Country Report, Southern Kyrgyzstan*, commissioned by the UNHCR, December 2010, pp.62f.

139 Cf. Sharshenova (op. cit. note 137), p. 8.

140 Ibid, pp. 8f.

141 Ibid, p. 9.

recommended to have a law drafted and provided the Government with a draft regulatory framework text.

The OSCE also proposed to create a co-ordination body with the state sectors, including, in particular, officials from the Ministry of Interior (MoI), who would bear the responsibility for the overall co-ordination of *druzhiny* throughout the country. The Government approved the idea and created a Co-ordination Unit within the MoI led by the Deputy Minster of Interior

The OSCE also emphasized the need for capacity building of *druzhiny* members and supported a series of two-day basic training courses for *druzhiny* throughout the country. The training comprised sessions on, *inter alia*: the legal framework of the entity of citizen patrols; negotiation and mediation skills; human rights; conflict resolution; and first aid. Courses were delivered by trainers from the MoI, the Police Academy and the NGO sector. In total, 1,200 *druzhiny* members completed the training in 2010. Furthermore, the OSCE conducted a seminar for the senior and middle management of the Osh City and Provincial Police Departments to ensure that the police understood the modalities of police-*druzhiny* co-operation and to establish more effective co-ordination and communication between the police, community policing structures such as local crime prevention centres, and the *druzhiny*.

In 2012, the positive role of the *druzhiny* was generally acknowledged by local and international stakeholders, but there was still the need to develop a strong regulatory framework and mechanisms of control and to raise awareness among *druzhiny* members of patrol strategies and tension indicators. In addition, skills needed to be developed to deal with communities and address challenges such as public disorder, discrimination and corruption.

VII.2.2 Civilian Private Security Services

According to a report by the Expert Group on Civilian Private Security Services, established by the Commission on Crime Prevention and Criminal Justice, Civilian Private Security Services (CPSS) are "legal [private] entities or individuals supplying services for payment. […] They may include commercial firms and non-profit organizations, as well as individuals." CPSS "provide security-related services with the overall objective of protecting or securing people, goods, sites, locations, events, processes and information from predominantly crime-related risks. […] Services provided by civilian private security services may be preventive, may support public law enforcement agencies and, where permitted, may be complementary to public law enforcement agencies."[142]

[142] UNODC, *Report on the Meeting of the Expert Group on Security Services held in Vienna on 12–14 October 2011*, Vienna, 28 October 2011, pp. 2f.

"In some States, State or local authorities incorporate CPSS into their response to disasters, and assign to CPSS the duty to cooperate and assist public law enforcement officials." In certain states CPSS are fully integrated in partnerships at all levels and in all sectors where they make a significant contribution. In the United States of America, relevant guidance encourages such an approach. In addition to promoting CPSS contribution to crime prevention, close cooperation with the police also allows for better monitoring of CPSS by the police, thereby strengthening oversight."

In a number of states, CPSS are "obliged to cooperate with and/or assist the police in various other forms, such as passing on information of criminal activities and helping with gathering evidence. […] Information-sharing is an important aspect of cooperation between State security actors and CPSS. CPSS often have an obligation to provide public security organs with information about threats and vulnerabilities they become aware of." In some states, "the public security organs can share information obtained with CPSS."[143]

Problems that have been associated with the role of the CPSS in some countries to a varying extent "have included, among others: the criminal infiltration and involvement of organized crime in the industry; corruption; little or no training for civilian private security guards; the abuse of authority and excessive use of force by personnel; generally low professional standards; inadequate legal accountability mechanisms; and non-compliance with the law".[144]

In order to clarify the roles and responsibilities of CPSS and their relationship with the police, and to ensure accountability and oversight of CPSS, legislation needs to be developed (see also chapter V.2). Furthermore, CPSS staff need to be trained on the proper implementation of their roles, tasks and responsibilities.

143 UNODC, *Civilian Private Security Services* (op. cit. note 13), p. 12.

144 Ibid, p. 3; see also
UNODC-UNHABITAT, *Introductory Handbook on the Policing of Urban Space* (op. cit. note 137), p. 22.

VII.2.3 Customary/Non-State Justice Providers

In a number of states, customary/non-state justice providers have a high legitimacy within the population, particularly in rural areas, due to their perceived lower level of corruption as well as their focus on restorative justice and reconciliation.

A common dilemma in the relation between formal and customary justice systems is the appropriate degree of integration of the two systems that may include:

- a limited jurisdiction for customary justice systems, usually limited to petty crime;
- the recognition of customary resolutions as a legitimate form of out-of-court settlement; or
- the incorporation of customary courts at the lowest tier of the formal judiciary.

With regard to the relation between customary/non-state justice providers and the formal justice institutions, the United Nations Human Rights Committee, in its *General Comment No. 32 on Article 14 of the International Covenant on Civil and Political Rights*, stated that "where a State, in its legal order, recognizes courts based on customary law, or religious courts, to carry out or entrusts them with judicial tasks […] it must be ensured that such courts cannot hand down binding judgments recognized by the State, unless the following requirements are met: proceedings before such courts are limited to minor civil and criminal matters, meet the basic requirements of fair trial and other relevant guarantees of the Covenant, and their judgments are validated by State courts in light of the guarantees set out in the Covenant and can be challenged by the parties concerned in a procedure meeting the requirements of Article 14 of the Covenant. These principles are notwithstanding the general obligation of the State to protect the rights under the Covenant of any persons affected by the operation of customary and religious courts."[145]

"While resolving the relationship between the customary and the formal criminal justice systems is a question for the longer term, it may be possible to improve matters on a local level in the immediate term. Programmatic options might include:

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145 United Nations Human Rights Committee, *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, U.N. Doc. CCPR/C/GC/32 (2007), Geneva 2007, Para 24; see also
United Nations, *Policy on Justice Components in United Nations Peace Operations*, UNDPKO, Department of Field Support, Ref. 2009.30, 1 December 2009, p. 9.

- working with customary authorities and State actors on a local level to set out appropriate criteria for determining when criminal matters might be left to customary authorities so as to avoid overlapping jurisdiction and double jeopardy;
- working with customary authorities, State actors, and civil society to incorporate restorative principles of compensation and reconciliation in State-prosecuted criminal cases."[146]

Customary justice resolutions would also need to be documented and filed in order to prevent further investigation or prosecution where matters had already been settled locally.

In cases where customary practices violate human rights norms and standards, reform activities should aim at "protecting the vulnerable and promoting change from within, such as by:

- working with communities to encourage the development of culturally acceptable alternatives to harmful practices; and
- developing meaningful alternatives to customary justice for those who are victims of harmful practices and violations of international standards by these systems, for example, by providing legal aid and additional resources to enable them to access the formal system."[147]

In order to establish a constructive relationship between the formal and customary/non-state justice systems, dialogue between customary authorities, the local population, and formal justice actors should be facilitated and maintained to promote mutual understanding and respect, identify problems in the relationship between the formal and customary system, and design potential solutions.[148]

The relationship between the formal and customary/non-state justice institutions needs to be defined in the legislation (see also chapter V.2). In addition, training should be provided for representatives of the customary/non-state justice institutions on the proper implementation of their roles, tasks and responsibilities in line with the legal justice framework.

146 UNODC/USIP, *Criminal Justice Reform in Post-Conflict States* (op. cit. note 9), p. 111.
147 Ibid, p. 112.
148 Ibid, p. 113.

VII.3 Enhanced Collaboration between CJS Institutions and Civil Society

In addition to the involvement of civil society in the development and reform of the various CJSR steps and the development of external oversight of the CJS (see also chapter VII.5), there are a number of specific justice-related areas where co-operation of the CJS with civil society can significantly improve the delivery of criminal justice. Some characteristic examples presented below include issues of crime prevention within the field of community policing, support by the private sector or civil society in the prevention and investigation of online child sexual abuse, and civil society involvement in the criminal justice administration areas such as diversion or mediation programmes. Additional essential areas of civil society involvement, such as access to justice and the provision of legal help, victim and witness assistance, and juvenile justice will be discussed within the Human Rights section of chapter VII.4.

VII.3.1 Community Policing

Successful crime prevention greatly contributes to the reduction of fear of crime and can improve the quality of life in a community. Crime prevention requires shared commitment and ownership of the police and the public. This can only be achieved by establishing trustworthy police-public partnerships, where the entire police organization, all government agencies and all segments of the society actively co-operate in identifying and solving problems. Community policing is a philosophy and organizational strategy that promotes such a partnership-based, collaborative effort between the police, other governmental agencies and the community.

Interaction with the community implies that the police are accessible to the public where and when needed. The police must have a certain level of readiness and sufficient resources to adequately respond to public needs as regards accidents, crimes and other emergencies. The most immediate means of communication to provide protection of life and property are emergency telephone lines that citizens may use to call for assistance.[149]

Interactive community outreach programmes, such as the creation of formal or informal forums for open discussions between the police and representatives of all communities, are particularly valuable for eliciting

[149] Cf. OSCE, *Guidebook on Democratic Policing*, (op. cit. note 25), p. 43; and
Cf. OSCE, *Good Practices in Building Police-Public Partnerships* (op. cit. note 86); p. 5.

the views of the public and for promoting the exchange of views and co-operation. This can lead to community involvement in crime prevention programmes, including by developing problem-solving coalitions, and to the development of a sense of mutual responsibility for enhancing public safety. Special attention should be paid to ensure that a wide section of society, including minorities and vulnerable groups are also represented in these forums. In addition to the support of the residents in local communities, the police will need the support of local authorities to be successful in their work. In certain cases, other departments may be better suited than the police to solve social problems in a community.[150]

Examples of such interactive means of communication are community advisory boards, joint police-community workshops, public meetings, open police days and community contact points at police stations. These interactive forums help to educate the public on official procedures and policies, as well as the community's rights and responsibilities. They permit police actions to be discussed (including sharing of personal experiences by police officers and members of the public) and empower the population to actively engage in the issues that relate to their sense of safety and security. In addition, the forums allow the public to voice their concerns on how they think their neighbourhood should be policed – for example, where and when police patrols are necessary. In these forums, patterns of crime and problems of disorder can be identified and lists of common concerns can be compiled, thus giving the police the opportunity to deal with these problems proactively.[151]

VII.3.2 Diversion Programmes

As an element of the concept of *restorative justice*, which aims at "resolving crime by focusing on redressing the harm done to the victims, holding offenders accountable for their actions and, often also, engaging the community in the resolution of the conflict",[152] a criminal justice diversion programme is an alternative and/or complementary procedure to normal criminal case processes. Diversion programmes provide the accused with the opportunity to avoid an accessible criminal record and receive appropriate assistance through rehabilitation, counselling and/or

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150 Cf. OSCE, *Guidebook on Democratic Policing*, (op. cit. note 25), p. 44.

151 Ibid, p. 45. For more detailed information on the development and maintenance of police-public partnership interfaces, see
OSCE, *Good Practices in Building Police-Public Partnerships* (op. cit. note 86); in particular, pp. 48-55;
OSCE, *Police and Roma and Sinti: Good Practices in Building Trust and Understanding*, SPMU Publication Series Vol. 9, Vienna, April 2010; and
OSCE**,** *Trafficking in Human Beings: Identification of Potential and Presumed Victims. A Community Policing Approach*, SPMU Publication Series Vol. 10, Vienna, June 2011.

152 UNODC, *Handbook on Restorative Justice Programmes*, Criminal Justice Handbook Series, New York, 2006, p. 6.

treatment, while the victim or the community as a whole benefit from donations or unpaid community work to various charities or local community projects.[153] Moreover, diversion programmes can provide the CJS's prison sector relief in coping with the overcrowding of prisons.

Juvenile diversion programmes are particularly common among diversion programmes. They have been created to divert youth from their early encounters with the juvenile court system. These programmes involve the suspension of formal criminal or juvenile justice proceedings against an alleged offender and his or her referral to a treatment or care programme.[154]

Specific criteria need to be developed to assess whether or not a case is suitable for diversion. Criteria might include: the nature of the offence (whether it is subject to a minimum of fixed sentence or penalty); whether the accused has admitted guilt and shown remorse; his or her age; whether the accused possesses any special skills that could benefit the community; whether the victim has agreed to some form of mediation or conciliation, and that the prosecution consents for the matter to proceed by way of diversion. Any diversion procedures must comply with international human rights standards.[155]

"Recourse to a diversion programme can be decided before or after the disposal of the case. Before the matter comes to court, the police or the prosecutor will decide on the diversion programme. After the matter has been adjudicated, the judge or magistrate will make a diversion order as an alternative to a prison term. In most cases, it is the police or prosecutor who exercise discretionary power and deals with a case through a diversion programme. In some cases, diversion may be administered through the informal or customary justice system or by an NGO."[156]

Support for the implementation of diversion programmes must come from the community, businesses, law enforcement and the judicial system. Successful diversion programmes depend on supportive working relationships and the long-term involvement and commitment of stakeholders.[157] Civil society actors can play an important role in implementing diversion programmes since they may work with,

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153 Cf. Magistrates' Court of Victoria, *Criminal Justice Diversion Program.*

154 Cf. Russell, Stephen T. et al., *Establishing Juvenile Diversion in Your Community*, University of Nebraska – Lincoln, p. 1.

155 Cf. UNODC/USIP, *Criminal Justice Reform in Post-Conflict States* (op. cit. note 9), p. 86; and
Cf. Magistrates' Court of Victoria, *Criminal Justice Diversion Program* (op. cit. note 153).

156 Cf. UNODC/USIP, *Criminal Justice Reform in Post-Conflict States* (op. cit. note 9), p. 86.

157 Cf. Russell, Stephen T. et al., *Establishing Juvenile Diversion in Your Community* (op. cit. note 154), p. 3.

rehabilitate and reintegrate offenders, and monitor and provide support to the diversion programme participants.

VII.3.3 Mediation in Penal Matters

Taking note of the use of mediation in penal matters as "a flexible, comprehensive, problem-solving, participatory option complementary or alternative to traditional criminal proceedings", in 1999, the Committee of Ministers of the Council of Europe (CoE) adopted a recommendation concerning mediation in penal matters. They highlighted some general principles of mediation, including the rights of both victims and offenders, as well as the legal basis, the involvement of criminal justice authorities in mediation, the role, requirements, responsibilities and tasks of mediation services. According to the CoE recommendation, NGOs and local communities can make potentially substantial contributions in mediation in penal matters; efforts of public and private initiatives should be combined and co-ordinated, "Mediators should be recruited from all sections of society and should generally possess good understanding of local cultures and communities". They should also receive initial and in-service training to gain "a high level of competence, taking into account conflict resolution skills, the specific requirements of working with victims and offenders and basic knowledge of the criminal justice system."[158] With regard to the relationship between mediators and criminal justice authorities, the recommendation states that:

- "a decision to refer a criminal case to mediation, as well as the assessment of the outcome of a mediation procedure, should be reserved to the criminal justice authorities […];
- discharges based on mediated agreements should have the same status as judicial decisions or judgements and should preclude prosecution in respect of the same facts (*ne bis in idem*) […];
- mediation service should have sufficient autonomy in performing their duties;
- mediation services should be monitored by a competent body […];
- notwithstanding the principle of confidentiality, the mediator should convey any information about imminent serious crimes, which may come to light in the course of mediation, to the appropriate authorities or to the persons concerned […];
- the mediator should report to the criminal justice authorities on the steps taken and on the outcome of the mediation. […];

[158] Council of Europe, *Recommendation No. R (99) 19 of the Committee of Ministers to Member States concerning mediation in penal matters,* pp. 1f.

- there should be regular consultation between criminal justice authorities and mediation services to develop common understanding […]."[159]

Examples of Mediation Schemes

Diversion of Minor Cases through Mediation

As discussed in UNODC/United States Institute of Peace (USIP)'s Criminal *Justice Reform in Post-Conflict States*, the Danish Institute for Human Rights started a Village Mediation Programme in three districts in Malawi in 2008. The programme trained a corps of teachers, who in turn taught 350 literate and semi-literate village mediators fluent in the local language to assist their immediate communities with day-to-day disputes and build their capacity to divert minor cases out of the formal system. Paralegals link village mediators with the courts, police and prison services to facilitate mutual referrals. Cases that are not resolved through mediation can still be taken to informal arbitration with chiefs or adjudication in the magistrate's court.

This programme is being replicated in Sierra Leone, in response to recommendations by the government and the Truth and Reconciliation Commission to deliver primary justice to its post-conflict communities by enabling them to handle their own disputes.[160]

Mediation Schemes in OSCE Participating States

In France, penal mediation has been institutionalized by the law in 1993 and amended in 2004.[161] It is an alternative measure to penal proceedings. Mediation is only applied in cases of minor offences. Mediation suspends the provision of public action.[162]

The aim of the mediator – a judicial police officer, a delegate or mediator of the prosecutor, usually a retired officer of the gendarmerie and national police, or a member of the National Institute of Aid for Victims and Mediation) – is to bring together the parties in order to ensure the compensation of injuries suffered by the victim, stop the nuisance caused by the offence and contribute to the reclassification of the offender. The parties are allowed to be assisted by a lawyer if they wish. With the help of the penal mediator, the parties will try to reach an amicable settlement (payment of damages and interest, apologies, etc.). The parties are allowed to refuse the mediation

159 Ibid, pp. 1f.
160 UNODC/USIP, *Criminal Justice Reform in Post-Conflict States* (op. cit. note 9), p. 87.
161 Cf. Legifrance, *Loi n° 93-2 du 4 janvier 1993*, *portant réforme de la procédure pénale*; and
Legifrance, *Loi n° 2004-204 du 9 mars 2004*, *portant adaptation de la justice aux évolutions de la criminalité* (1) ; and
WikiMediation, *Penal Mediation in France*.
162 Cf. Legifrance, *Code de procédure pénale*, Arts. 41 and D.15-1.

attempt.

Only the prosecutor can initiate a penal mediation before any judicial proceedings. The mediator acts as a "delegate of the prosecutor", and as such, can establish and sign the “official minutes" ("requisition") with the parties. The official minutes are recognized as an official decision or judgment, and are enforceable.

The mediator verifies the compliance of the agreement terms and provides to the prosecutor a report regarding the outcome of mediation. The positive outcome of mediation enables to close the case without termination of public prosecution.

In case of refusal of proceeding or disagreement regarding the modalities of compensation, the prosecutor decides on following judicial action regarding the complaint: judicial proceeding or closure of the case.

In Italy, mediation was initially only available to juvenile offenders (1988), but the eligibility criteria were later extended to adults facing charges for lesser crimes (punishable by less than four years of imprisonment). A number of conditions have to be met in order for the outcome of mediation to be accepted by the judge, including full restoration and compensation for the damage inflicted. Mediation services are provided by non-profit organizations, which are required to sign a memorandum of understanding with the relevant local self-government body. In practice, recourse to mediation in Italy remains rather limited.

In Romania, national legislation has applied mediation to Criminal Law. Articles 67-70 of Law 192/2006 include specific provisions on mediation in criminal cases. Mediation can be initiated in the criminal prosecution phase or during trial. It can also be applied before a complaint has been filed, since mediation law stipulates that one can always turn to this alternative means of conflict-solving. Mediation can be authorized by criminal prosecution authorities and the First Instance Court.

Mediation is particularly applicable in criminal cases with regard to criminal offences, for which, according to the law, the withdrawal of the preliminary complaint or the reconciliation of the parties remove the criminal liability. However, mediation is not ruled out in other criminal cases, in particular when addressing civil action within the criminal trial.

Since mediation is an optional procedure, the injured party, the perpetrator or any other participant in the criminal trial cannot be forced to resort to it. During mediation, each party must be granted the right to legal assistance and to using the services of an interpreter. The rights of minors, as stipulated within the Criminal Law, must also be provided.

If mediation is initiated after the start of criminal prosecution or a criminal trial, the criminal investigation is suspended. The suspension cannot exceed a period longer than three months from the date of the signing of the mediation contract. The suspension ends at the moment in which the mediation procedure closes by any of the means stipulated within the law, even if the three-month period has not been completed. The three-month term is applicable for cases in which mediation has not been finalized within the respective term.[163]

In Tajikistan, mediation is carried out by the traditional councils of elders. The main condition for the application of reconciliation in the Criminal Procedure Code is the readiness of the offender to fully compensate the damage inflicted upon the victim.[164]

UNODC's *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment* is a useful resource on pre-trial diversion. Pre-trial diversion may be particularly appropriate for children as per international human rights law, which states that "detention should be a measure of last resort".[165] Another approach to reduce the burden on the CJS, to divert cases out of the system and to provide the system with a range of constructive sanctions is the introduction of restorative justice programmes. A comprehensive synthesis of the lessons learned during the implementation and evaluation of various new models and programmes of restorative justice is provided by UNDOC.[166]

VII.3.4 Prevention, Investigation and Prosecution of Online Child Sexual Abuse

Collaboration between criminal justice institutions, civil society and the private sector, such as the internet industry, has become very important in the context of preventing, investigating and prosecuting child sexual abuse on the Internet. Internet hotlines have been created in a number of participating States, where internet users can anonymously report on internet content that they suspect to be illegal. The illegality of reported sites is then usually assessed and traced by specialized analysts who forward relevant information on suspicious sites and content to law

163 Cf. Sustac, Zeno Daniel, *Mediation in the Criminal Law*, 2008.

164 Cf. OSCE ODIHR, *III Expert Forum on Criminal Justice for Central Asia. 17-18 June 2010, Dushanbe, Tajikistan, Final Report*, 2010, pp. 22f.

165 UNODC/USIP, *Criminal Justice Reform in Post-Conflict States* (op. cit. note 9), p. 86.

166 For more information on restorative justice programmes, see: UNODC, *Handbook on Restorative Justice Programmes* (op. cit. note 152).

enforcement agencies. Internet hotlines also help Internet service providers and hosting companies to combat the abuse of their networks through their 'notice and takedown' service, which alerts them to criminal content so they can remove it from their networks.

Examples of Private Sector Involvement in Fighting Online Sexual Abuse

Internet Watch Foundation in the United Kingdom

The Internet Watch Foundation (IWF) was established in 1996 by the Internet industry to provide the UK internet hotline for the public and IT professionals to report criminal online content in a secure and confidential way if they stumble over such criminal content. Reports can be filed on the IWF website. A Service Level Agreement between the Association of Chief Police Officers (ACPO) and the IWF outlines the processes for managing United Kingdom-hosted criminal internet content.[167] Furthermore, IWF's status as a relevant authority as regards reporting, handling and combating child sexual abuse images on the internet is set out in a Memorandum of Understanding between the Crown Prosecution Service and ACPO. "Reports made to the IWF in line with its procedures can be referred to in criminal prosecution […] If potentially criminal content is apparently hosted in the United Kingdom, the IWF will work with the relevant service provider and the United Kingdom police to have the content evidentially preserved and then 'taken down' and to assist wherever operationally possible to have the offenders responsible for distributing or possessing the offending content detected […] The police service will at all times retain responsibility for the investigation of suspected criminal offences/allegations."[168]

Virtual Global Task Force

Since online child sexual abuse is a global crime, it is vital that it is fought at the global level. Nine law enforcement agencies from around the world have therefore created the Virtual Global Task Force (VGT) to combat online child sexual abuse worldwide. They also seek to build an effective, international partnership of law enforcement agencies, non-governmental organizations, academia and industry to help protect children from online child sexual abuse. Internet users can report on inappropriate or illegal internet activity directly to the VGT or to several law enforcement agencies whose Internet links are also made available on the VGT website.[169]

167 For more information on the IWF, see: http://www.iwf.org.uk/

168 Cf. ACPO/IWF, Service Level Agreement between the Association of Chief Police Officers (ACPO) and the Internet Watch Foundation (IWF), 2010, pp. 4f.

169 For more information on the VGT, see: http://www.virtualglobaltaskforce.com/

VII.4 Human Rights Aspects

In general, a fair, effective and efficient criminal justice system protects the rights of the individuals to personal security, life and liberty, and provides access to justice and equality before the law. Moreover, it respects the fundamental rights of victims, witnesses as well as those of suspects and offenders, including in particular the rights of juveniles and other vulnerable groups. Particular areas of human rights protection where effective co-operation between various CJS institutions and with civil society is required are described below.

VII.4.1 Access to Justice/Provision of Legal Aid

A key element of the human rights aspect of access to justice is the right to effective legal aid for persons detained, arrested, and suspected or accused of or charged with a criminal offence. A functioning legal aid system may:

- protect them from arbitrary or illegal arrest or detention as well as torture;
- reduce the time detained in police stations and detention centres; and
- ensure their right to effective defence and assistance in understanding the criminal justice process and the right for fair trial, including their procedural rights (e.g. right to silence, right to information, procedure before a judge).

“The investigation phase, and especially the first hours and days of police custody, is a crucial period for the criminal justice process as a whole, since it determines the extent and quality of the evidence collected against the suspect and his/her ability to conduct his/her defence, whether or not pre-trial detention will be applied, whether diversion measures will be applied and when the case will be scheduled for trial. These determinations can have a significant impact on the individual and the outcome of the process. For example, whether an individual is helped in pre-trial detention can affect his/her social, economic and health circumstances as well as that of his/her family and community.

Furthermore, abuses are most likely to occur at this stage – coerced confessions, requests for bribery or simply neglect to follow legal procedures that results in illegal detentions. It is also the point where victims and witnesses first encounter the criminal justice system. The manner with which they are treated and informed of their rights can determine their and others’ willingness to cooperate with the police in the specific case at hand and to report on crimes generally. The right promptly

to receive independent legal assistance is recognized as one of the procedural safeguards that aim to reduce the risk of torture and ill-treatment in places of detention."[170]

Police, prosecutors, and judges must ensure that the right to legal aid is ensured and not arbitrarily restricted. Police supervisors, prosecutors and judges must take appropriate action in respect of failure of police and judicial authorities to comply with their obligations and to observe the suspect's rights. In the context of the applicable law, prosecutors and judges will also have to determine whether evidence obtained in breach of the obligations of the police and/or the rights of the persons detained, arrested, suspected or accused of, or charged with a criminal offence, should be admitted and taken into account in determining pre-trial detention or guilt/innocence.

Access to legal aid is also crucial for victims and witnesses in criminal procedures to receive adequate information and support, and understand the criminal justice process, including their own procedural rights[171] (see more detailed information on pp. 130-137).

States should take measures to request bar or legal associations and other partnership institutions to establish a roster of lawyers and paralegals to support a legal aid system. Legal aid systems may involve public defenders, private lawyers, pro bono schemes, bar associations and paralegals.

"It is the responsibility of police, prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are provided access to legal aid."[172]

States should also allocate the necessary human and financial resources to the legal aid system and should enhance people's knowledge of their rights and obligations under law through appropriate means, in order to prevent criminal conduct and victimization.

"States should not interfere with the organization of the defence of the beneficiary of legal aid or with the independence of his or her legal aid provider",[173] but "ensure and promote the provision of effective legal aid at all stages of the criminal justice process for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal

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170 UNODC/UNDP, *Concept Note. A Handbook and Training Curriculum for Policymakers and Practitioners on Early Access to Legal Aid*, 2012, p. 3.

171 For more information see: United Nations, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (op. cit. note 81), Guidelines 7 and 8, pp. 13f.

172 Ibid, Para 23, p. 7.

173 Ibid, Para 16, p. 6.

offence and for victims of crime".[174] Therefore, states should "promote coordination between justice agencies and other professionals such as health, social services and victim support workers in order to maximize effectiveness of the legal aid system, without prejudice to the rights of the accused"; and "establish partnerships with bar or legal associations to ensure the provision of legal aid at all stages of the criminal justice process".[175]

VII.4.2 Victim Assistance

The CJS needs to prevent victimization, to protect and assist victims, and to treat them with compassion and respect their dignity. In preparing the case files, the police should give as clear and complete a statement as possible of the injuries and losses suffered by the victim.

Victims should be able to obtain information in a timely manner on decisions made with regard to their case and on the outcome of the investigation. Further, victims should also have access to judicial and other mechanisms to seek remedy for the harm they suffered and obtain prompt redress through formal or informal procedures that are expeditious, fair and accessible.

The CJS needs to take 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 (see the *witness protection section* below).The CJS also needs to provide access to specialized assistance in dealing with any emotional trauma and other problems caused by victimization, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity.[176]

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174 Ibid, Para 55 (a), p. 16.

175 Ibid, Para 55 (c) and (d), p. 16

176 Cf. OSCE, *Guidebook on Democratic Policing*, (op. cit. note 25), pp. 30f.;
Council of Europe, *Position of the Victim in the Framework of Criminal Law and Procedure* (op. cit. note 96), Arts. 1-4;
Council of Europe, *Assistance to Crime Victims* (op. cit. note 96), Arts. 2 and 3.
United Nations, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (op. cit. note 96); and
United Nations, *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* (op. cit. note 96).

Examples of Victim Assistance Schemes

Support to Victims of Sexual Violence in the United Kingdom

In the United Kingdom, Independent Sexual Violence Advisors (ISVAs) work in a multi-agency setting to provide specialist advice and practical and emotional support to victims of sexual violence. They play an important role in supporting victims through the criminal justice process, as well as helping them to access the health care and services to which they are entitled. ISVAs support victims during the interview process, inform victims about developments in their cases and accompany them when the they give evidence in court. The involvement of the ISVAs frees up valuable time for the police and prosecution to build strong cases and also to foster the victims' confidence to face the offenders and/or not to retract their witness statements.[177]

National Referral Mechanisms (NRMs) for Victims of Trafficking in Human Beings (THB)

In the context of the fight against THB, an important co-operation structure for the CJS and civil society are NRMs. An NRM is defined as a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society. The basic aim of an NRM is to ensure that the human rights of trafficked persons are respected and to provide an effective way to refer victims of trafficking to needed services. At the core of every NRM is the process of locating and identifying likely victims of trafficking who are generally known as 'presumed trafficked persons'. This process includes all the different organizations involved in an NRM that should co-operate to ensure that victims are offered assistance through referral to specialized services. In 2004, the OSCE ODIHR published a Handbook on *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons,* which provides guidance on developing NRMs. The creation of NRMs in the OSCE participating States is a key element of OSCE's anti-THB initiatives.[178]

177 Office for Criminal Justice Reform, *Working Together to Cut Crime and Deliver Justice* (op. cit. note 109), p. 39.

178 OSCE**,** *Trafficking in Human Beings: Identification of Potential and Presumed Victims* (op. cit. note 151), p. 36.
Cf. OSCE ODIHR, *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook,* Warsaw, 2004, pp. 15f.; and
OSCE ODIHR, *Current NRM Developments in the OSCE Region*, Warsaw, October 2008, p. 2.

Since 2007, the OSCE Project Co-ordinator in Ukraine (PCU) has been supporting the efforts of the Government of Ukraine to improve the normative and legislative anti-trafficking framework, including the provisions on assistance to trafficked persons. Through the Ukrainian law on combating trafficking in human beings, developed with PCU support and adopted by the Ukrainian Parliament in September 2011, the Government established a state-led NRM. The multi-agency NRM, which is tasked to facilitate the identification of trafficking victims and improve their access to assistance, was developed and tested in two pilot regions of Ukraine (Donetsk, Chernivtsi) in the framework of a PCU project. In 2013, the PCU, in co-operation with the Ministry of Social Policy of Ukraine, which assumed the role of the National Anti-Trafficking Co-ordinator in 2012, continued efforts to ensure proper NRM rollout at the national level.

Child Abuse Reporting

Many participating States to date have mandatory reporting mechanisms for child abuse in place, where mandated reporters – typically professionals such as medical practitioners and educators who come into frequent contact with children in the course of their work – are required by law to report suspected cases of child abuse and neglect to a designated authority (in most jurisdictions, a local police department and/or child protection services). The designated authority must screen a report following its completion, and if abuse is likely to have occurred, a caseworker is assigned to assess the situation and decide if the child can be safely left at home or needs to be removed from the household. It is therefore a multi-actor scheme that requires smooth cooperation among all those involved. The role of law enforcement would include, for instance, developing a safety plan and investigating suspected abuse.

In the United States of America, almost all the states designate professions whose members are mandated by law to report child maltreatment. These individuals may include: social workers; teachers and other school personnel; physicians and other health-care workers; mental health professionals; childcare providers; medical examiners or coroners; commercial film and photograph processors; substance abuse counsellors; probation and parole officers; domestic violence workers; members of the clergy; and law enforcement officers. In addition, many states require all persons to report such abuse or neglect, regardless of profession. Mandatory reporters must submit reports if they suspect or have reasons to believe that a child has been abused or neglected. “Privileged communication”, that is, the statutory recognition of the right to maintain confidential communication, is usually only affirmed for the attorney-client

and clergy-penitent communications. Physician-patient and husband-wife privileges are most commonly denied by states.[179] These reports are generally received and screened by child protection services, and if they meet the state's legal definition of abuse or neglect, the persons reporting are referred to other community services or law enforcement for additional help. Court action is initiated if the authority of the juvenile court is necessary to keep the child safe.[180]

Assistance to victims may also include the provision of victim consultation mechanisms affording victims the opportunity to consult with the prosecuting authority prior to the conclusion of any plea negotiations or disposition decisions such as the dismissal or dropping of cases or reduction of charges. Victim consultations are also important in the larger context of victim/witness protection from intimidation and harassment, for instance, prior to parole decisions or the issuance of "no contact" orders. The right of victims to consult the prosecution prior to any plea negotiations or disposition decisions does not, however, limit or alter the authority or discretion of the prosecution to enter into any agreement.

"Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid (see also chapter VII.7)."[181]

VII.4.3 Witness Assistance/Protection

Safeguarding the life and personal security of witnesses of a crime, their relatives and other persons close to them is an essential element of human rights protection. Furthermore, it is a prerequisite for effective criminal proceedings, since witnesses will be highly reluctant to provide relevant information during an investigation and at court if they fear any acts of revenge or intimidation.

In order to protect witnesses of a crime from acts of intimidation or revenge, appropriate legal measures and specific witness protection programmes should be set up by the judiciary in co-operation with the police.[182] "Witness protection programmes should offer various methods

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179 Cf. United States Department of Health and Human Services et al., *Child Welfare Information Gateway. Mandatory Reporters of Child Abuse and Neglect: Summary of State Laws*, Washington, DC, April 2010.

180 For specific court actions and law enforcement involvement in cases of certain types of abuse, such as sexual abuse or serious physical abuse, see U.S. Department of Health and Human Services et al., *Child Information Gateway, How the Child Welfare System Works*, Washington, DC, May 2012, pp. 4-7.

181 United Nations, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (op. cit. note 96)*, Art. 16.

182 Cf. OSCE, *Guidebook on Democratic Policing*, (op. cit. note 25), pp. 30f.

of protection: these may include giving witnesses and their relatives and other persons close to them an identity change, relocation, assistance in obtaining new jobs, providing them with body-guards and other physical protection."[183]

Witness protection programmes may be in place at the national and/or regional level. In countries with programmes at both levels, "the responsibilities of the respective protection agencies need to be clearly delineated but, ideally, their decision making process should be centralized at the national level to ensure consistency of admittance criteria and applied measures."[184]

"The power to admit witnesses to or remove them from a witness protection programme is usually vested in an authority outside the witness protection unit. That authority […] is mandated to oversee the implementation of the programme, decide on budget allocations and provide policy guidance."[185]

"Organizational autonomy is a fundamental principle for the successful implementation of a witness protection programme. The protection unit should be separate from investigation agencies and the prosecuting authority and it should enjoy operational "isolation" from police services. Only in exceptional circumstances – and at the initiative of the unit – should information be shared with other police units. That may happen, for example, in a case where the police are requested to provide logistical support in operations of the unit or to contribute to the assessment of the seriousness of the threat against a witness's life."[186]

Successful witness protection programmes also require close co-operation between government agencies and the private sector to provide witnesses with the wide range of services required (e.g. new identification documents, housing, financial support, medical care, education for children).[187]

In addition to witness protection programmes, the assistance of witnesses may also include non-security related aspects such as the support to

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For a comprehensive study on witness protection measures see also: UNODC, *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime*, New York, 2008.

183 Council of Europe, *Intimidation of Witnesses and the Rights of the Defence* (op. cit. note 96), Arts. 14-15; see also Art. 51; and
Council of Europe, *Protection of Witnesses and Collaborators of Justice* (op. cit. note 97), Arts. 1, 2, and 8-28.

184 UNODC, *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime* (op. cit. note 182), p. 46.

185 Ibid, p. 60.

186 Ibid, p. 53.

187 Ibid, pp. 54f.

vulnerable groups (e.g. children, the elderly and people with mental health problems) and to foreigners who do not speak and understand the language in the host country. The aim is to prepare them for giving credible testimonies during investigation and at court while "taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity"[188]. In certain cases, special services and support will need to be instituted to take into account the gender and age of the witness and the different nature of specific offences dealt with in criminal proceedings, such as sexual abuse.[189]

Examples of Witness Protection Schemes

Key Elements of the Italian Witness Protection System

If standard measures of protection for witnesses (e.g. home/workplace surveillance and escorts) are inadequate, and the individual is at risk of serious endangerment, a programme of special measures can be implemented.

The protection programme is determined by a Central Commission (the Deputy Minister of the Interior, two judges and five police officers) upon request of a public prosecutor, for a period of six to 60 months. The special protection measures can be extended to persons living permanently with the witness, or persons at risk because of their relationships with the witness.

The protection system is based on the principle of "camouflage", i.e. the achievement of complete anonymity. The subjects relocate to a new, secure place of residence and are given a provisional identity document, which is valid during the protection term only. In particularly sensitive cases, regulations also provide for a permanent change of identity. Assistance measures can also be prescribed to facilitate social reintegration and provide material support (e.g. accommodation, transfer fees, health care, legal and psychological assistance, and allowances for those who are unable to work).

The Central Protection Service and 19 local operational units are responsible for the implementation of the programme through, *inter alia*: direct assistance to the protected persons; contacts with agencies to facilitate their human relationships (school, health, work, etc.); and assistance to the local police in ensuring the safety of the protected persons.

The protected persons commit themselves to: observing security rules and co-operating actively in carrying out the protection measures; be questioned and examined, or to be available for any acts to be carried out; not disclose

188 United Nations, *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* (op. cit. note 96), Art. 10.

189 Ibid, Art. 17.

facts of the proceedings to anyone other than law enforcement and judicial authorities and their defending counsel; and not contact any person involved in criminal activities.

The programme is terminated when the conditions that called for it no longer exist or in the case of: non-compliance with the obligations; perpetration of offences; unauthorized return to the place of origin; or when the new identity or place of residence is revealed. The protected person can also quit the programme with a written renunciation.

The programme may include measures to facilitate social reintegration when co-operation is completed. For witnesses, these measures cover a period up to ten years and guarantee the person's standard of living prior to admission to the programme. Witnesses receive a sum of money as a reimbursement for lost income, can obtain secured loans and sell their real estate to public revenue bodies at market price; if they are civil servants, they preserve their job on paid leave.[190]

Witness Protection Structures in the United Kingdom

At the national level, the Serious Organised Crime Agency (SOCA), established under the Serious Organised Crime and Police Act 2005, has a Witness Protection Unit. In addition, a Witness Protection Bureau was established within the Home Office of the United Kingdom. This Bureau does not have operational capacity, but provides support and central services to the Witness Protection Unit, such as access to social housing, benefits and medical care for protected witnesses. The Bureau is also the single point of contact for international relations and operations.

At the regional level, the Scottish Crime and Drug Enforcement Agency provides witness protection for all police forces in Scotland. In England, Northern Ireland and Wales, witness protection is implemented at the local level, and dedicated programmes have been established in a number of police forces. The forces that do not have their own witness protection programmes outsource the function to neighbouring forces.[191]

Initiating and Decision Making Authorities

In the United Kingdom, applications can be made by investigators directly to the protection authority, which then determines whether to admit the witness to the programme.

190 Cf. UNODC, *Digest of Organized Crime Cases. A Compilation of Cases with Commentaries and Lessons Learned*, New York, October 2012, pp. 50f.

191 CF. UNODC, *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime* (op. cit. note 182), p. 47.

In Germany, at the federal and state levels, the decision to admit witnesses to, or remove them from the programme is made jointly by the Witness Protection Unit and the Public Prosecutor.

In Slovakia, a written proposal for including a person in the Witness Protection Programme and implementing urgent measures may be elaborated and submitted to the protection unit by the criminal investigator or the prosecutor. Once the trial begins, the presiding judge may also take the initiative. Witness Protection Act No. 256/1989 allows the witness protection authority to reconsider its own decisions regarding admission to or rejection from the witness protection programme. The process is seen as a compromise between a total absence of legal remedies and a formal appeal, and may be initiated at the request of the criminal investigator, prosecutor or judge.[192]

Support to Witnesses with a Learning Disability, in the United Kingdom

In Liverpool, "a social worker with Liverpool City Council's Investigations Support Unit works with witnesses who have a learning disability. The Unit works closely with the Merseyside Police and the Crown Prosecution Service to ensure that people with learning disabilities are seen as credible witnesses. Since 1998, the Unit's Witness Support, Preparation and Profiling model has helped 25 prosecution witnesses, usually victims of sexual abuse, to give evidence. The Witness Support Preparation and Profiling model involves working closely with a witness over a period of some 10-12 weeks. During this time, the witness learns new skills and develops an understanding of the processes of giving evidence. At the end of this preparation stage, a Witness Profile is produced and served on the court."[193] Following its successful implementation in Liverpool, the model has been implemented in different areas of the country. It has also been adapted for elderly people and for people with mental health problems.

VII.4.4 Integrated Offender Management

Information sharing under Integrated Offender Management schemes must comply with international standards, i.e. be shared lawfully for specified purposes, be adequate, relevant and not excessive, and cannot be kept longer than necessary. The basic concept of Integrated Offender Management is to work with those offenders who have the motivation to stop offending so that criminal justice agencies can free up space in the system to focus their efforts on catching and convicting the offenders who pose a greater risk to the respective communities.

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192 Ibid, pp. 59f.

193 Office for Criminal Justice Reform, *Working Together to Cut Crime and Deliver Justice* (op. cit. note 109), p. 40.

The scheme involves work jointly carried out between the police, probation officers and other key partners to provide a combination of rehabilitative interventions, compliance support and robust enforcement in order to reduce reoffending and the harm caused to the communities by a selected group of persistent offenders.

VII.4.5 Juvenile Justice

Juvenile justice is another area of the criminal justice process where various actors of the CJS are required to co-operate closely to fulfil their human rights obligations. The key players and stakeholders concerned with juvenile justice usually include the police, the prosecution and the courts. In addition, they may involve a range of other agencies and actors, such as: 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); and community workers. Moreover, insofar as restorative justice processes and lay panels are concerned, ordinary citizens may be involved in criminal justice processes where children are acused of an offence.[194]

Key principles that should guide the development and application of juvenile justice are as follows:

- Children should be kept separately from adults when deprived of their liberty.
- The deprivation of liberty should be used only as a last resort, and then only for the shortest period of time.
- Children in conflict with the law should be treated in a manner consistent with the promotion of the child‘s sense of dignity and worth, which reinforces the child‘s respect for human rights and fundamental freedoms of others. Consideration should be given to the child‘s age and the importance of promoting his or her reintegration and encouraging him or her to assume a constructive role in society.
- Measures for dealing with children without resorting to judicial proceedings (diversion, see also chapter VII.3.2) should be established provided that human rights and legal safeguards are fully respected.[195]

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194 Cf. UNODC, “Cross-Cutting Issues. Juvenile Justice” (op. cit. note 20), p. 1.

195 Ibid, pp. 4 and 9.

VII.5 Accountability and Oversight

Accountability means that CJS institutions – ranging from the behaviour of single CJS practitioners to the strategies for managing the criminal justice process; appointment procedures or budget management –, are open to observation by a variety of oversight institutions.

The legislature is responsible for defining the boundaries of the framework in which the CJS institutions operate; the Executive (the President and/or Prime Minister, relevant ministries, National Security Advisers, Parliamentary Commissions) is responsible for implementing the CJS framework; and the judiciary and legislature are responsible for assessing whether the framework has been implemented correctly.

In addition to these three state pillars of oversight, there are various external non-state structures that can play a crucial role in the oversight of the CJS, such as human rights commissions, civilian complaint review boards, independent ombudspersons, advocacy groups and the media. [196]

Civil society organizations can conduct various kinds of oversight activities, such as: compiling information and reporting on violations of human rights and other forms of misconduct by CJS institutions; reviewing caseloads; monitoring and reporting on conditions in pre-trial detention and prison conditions; attending and commenting on trials; and analysing and reporting on criminal justice performance trends. (Examples of such activities are provided in the following paragraphs.)

VII.5.1 Accountability and Oversight of the Police

In addition to internal police inspectorates, police oversight institutions may include: the Executive (policy control, financial control and horizontal oversight by government agencies), the Legislature (members of Parliament, Parliamentary Commissions of Enquiry) and the Judiciary as well as Human Rights Commissions, Civilian Complaint Review Boards and independent ombudspersons.

Structural and organizational reform steps at the strategic and managerial level to enhance police accountability may include: developing

[196] Cf. OSCE, *Guidebook on Democratic Policing*, (op. cit. note 9), p. 39; and UNODC, *Handbook on Police Accountability, Oversight and Integrity*, Criminal Justice Handbook Series, New York, 2011, here in particular, p. 93. For a comprehensive overview on oversight aspects, see also:
England, Madeline I., *Security Sector Governance and Oversight: A Note on Current Practice*, Henry L. Stimson Center, Washington D.C., 12 December 2009.

organizational charts and defining duties and responsibilities; providing equipment (such as basic office, IT, interviewing, and surveillance equipment and cars); improving the selection and recruitment of staff; and training investigators on the applicable law, interviewing and surveillance, proper handling, storing and safekeeping of confidential files and records, as well as report writing and case file preparation (see also chapter VII.1).

In order to fulfil their oversight mandate effectively, internal and external oversight institutions need sufficient resources, legal powers and independence from executive influence.[197]

The following major structural requirements are needed for efficient and effective external oversight mechanisms:

- The external oversight mechanisms are authorized by legislation to receive complaints from any person.
- The police are required by law to report to the respective external oversight mechanism all deaths of individuals in police custody and deaths due to police action, penalties should be applied for non-reporting and delays in reporting.
- The mechanism is required to record and track complaints and abuses and keep comprehensive records.
- The respective mechanism is authorized to undertake investigations into complaints received.
- The respective mechanism has the power to compel police co-operation with its investigations and has full investigatory powers, similar to those of a police investigator.
- The respective mechanism has the power to refer cases for criminal prosecution to the public prosecutor and suggest disciplinary measures to the police department. The prosecutor would have to respond to the mechanism within a certain timeframe. In cases where the prosecutor would not press charges, he/she would have to give a written explanation to the mechanism.
- The mechanism is able to provide or refer witnesses to witness protection where necessary.
- The mechanism is able to propose general reform measures on policing to the police force and the government.[198]

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197 Cf. OSCE, *Guidebook on Democratic Policing*, (op. cit. note 25), pp. 39-42; UNODC, *Handbook on Police Accountability, Oversight and Integrity* (op. cit. note 196), pp. 93-99.

198 Cf. UNODC, *Handbook on Police Accountability, Oversight and Integrity* (op. cit. note 196), p. 69; more requirements are listed on p. 70 of the Handbook.

A key element of effective external oversight is a dynamic relationship among the police, civil society and oversight bodies. It is critical, therefore, to raise awareness among civil society on their rights and the security and justice services to which they are entitled, and to develop the capacity of civil society organizations to undertake their oversight function. In addition to the provision of resources, legal powers and independence, they must be made aware of specific oversight procedures, including monitoring and complaint review functions. In addition, through positive encounters with the CJS institutions, civil society should develop trust in the work of the oversight structures and feel confident/safe in collaborating with these oversight mechanisms.[199]

"Increasing the participation of women in oversight helps to ensure that they are – and are perceived to be – representative, which can increase public confidence and responsiveness of oversight to the concerns of citizens. Involving civil society with gender expertise, including women's organizations, men's organizations and gender experts, can strengthen both formal and informal security oversight mechanisms."[200]

The overall analyses by both internal oversight bodies and external civilian review boards can reveal patterns, trends, and problems in the cases/complaints filed with each body. Such information may generate policy changes and recommendations, as well as adoptions in training and the incentive structure, and initiate corrective actions and reform.

VII.5.2 Accountability and Oversight of the Judiciary

Formal oversight mechanisms for the Judiciary may include Judicial Service Commissions, a National Office of the Ombudsperson or Human Rights Commissions.

Civil society can contribute to oversight, for example, through participating in local committees with representatives of justice agencies in order to reviewing caseloads, individual files, or the status of detainees,[201] or through monitoring trials.

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199 Cf. Hansen et al., *The Transition to a Just Order – Establishing Local Ownership after Conflict* (op. cit. note 51), pp. 53ff.; and
UNODC, *Handbook on Police Accountability, Oversight and Integrity* (op. cit. note 196), pp. 101-109.

200 Valasek, Kristin, "Security Sector Reform and Gender", Tool 1, in: Bastick, Megan/ Valasek, Kristin (eds.), *Gender and Security Sector Reform Toolkit*, DCAF/ ODIHR/ International Research and Training Institute for the Advancement of Women, Geneva 2008, p. 10.

201 Cf. UNODC/USIP, *Criminal Justice Reform in Post-Conflict States* (op. cit. note 9), pp. 88f.

Caseload Reviews

Where there are notable backlogs of cases and/or prisons are overcrowded, "there is usually little to gain by pursuing cases at the lower end of the criminal scale. This does not mean, however, that they should be dismissed; rather, they can be dealt with in alternative ways."[202] Civil society groups and legal aids may support the CJS in reducing backlogs while also fulfilling an important oversight function by reviewing individual files and the status of the detainees, and by making monthly recommendations to the Solicitor General to either drop charges in appropriate cases[203] or release the suspect on bail or on one's own recognizance while awaiting trial, given that national jurisdiction provides for such prosecutorial discretion. Civil society groups and legal aids may also support the CJS by visiting prisons and screening detainees in order to identify those who have overstayed or been unnecessarily held, and refer their cases to the courts for action.[204] Further, they may also decide to refer some cases to the customary/traditional judicial system when possible; others might be dealt with through diversion programmes (see also chapter VII.3.2). The other cases not dealt with in alternative ways would remain to be heard by the courts.

CJSR advisers should work with justice agencies and consult with local advisers, civil society groups and legal aids to develop a screening process that determines which cases are to be referred or diverted. A key step in setting up a screening process is reaching agreement among local and international actors on the criteria to be applied in deciding how to handle a case.[205]

Monitoring of Detention Facilities

An important mechanism of external oversight of the CJS, requiring co-operation between the CJS and civil society, is the monitoring of detention facilities by civil society organizations. These monitoring activities can be conducted in police and prison facilities during all stages of the criminal procedure. Memorandums of Understanding (MoUs) between the CJS institutions and civil society organizations must define the modalities under which the monitoring visits will take place, describing the responsibilities and tasks of CJS staff and detention monitors.

Monitors, based on local agreements, are allowed to visit these detention facilities with or without prior announcement in order to verify whether international legal standards and norms of the rights of detainees and

202 Ibid, p. 85.
203 Ibid, p. 87.
204 Ibid, p. 88.
205 Ibid, p. 85.

good practices in the correct handling of detainees are implemented properly.

Examples of Detention Facility Monitoring Instruments

Monitoring of Detention Facilities by the International Committee of the Red Cross (ICRC)

Based on the Geneva Conventions, the ICRC has the mandate to visit both prisoners of war and civilians interned during armed conflict. "Wherever possible, the ICRC also visits people detained in other situations of violence. ICRC detention visits aim to ensure that detainees, whatever the reason for their arrest and detention, are treated with dignity and humanity, in accordance with international norms and standards. ICRC delegates work with authorities to prevent abuse and to improve both the treatment of detainees and their conditions of detention."[206]

Monitoring of Detention Facilities in Kyrgyzstan

In Kyrgyzstan, the OSCE Centre in Bishkek (CiB) facilitated the signing of an MoU by the Ombudsman's Office, the Prosecutor General's Office, the Ministry of the Interior (MoI), the State Service for the Execution of Punishments (SSEP), the Ministry of Justice, and 14 key international and local civil society organizations (12 local NGOs specialized in monitoring places of detention, the Soros Foundation Kyrgyzstan and Freedom House Kyrgyzstan). The MoU allows unannounced visits to places of detention by local human rights monitors and Ombudsman officials. The CiB has been facilitating joint monitoring of places of detention under the MoI and the State Service for the Execution of Punishments under the Government of the Kyrgyz Republic (SSEP) countrywide. A first annual report analysing the results of the monitoring and providing detailed recommendations to all the relevant actors was presented in December 2012.

Monitoring of Trials

The monitoring of trials is conducted on the basis of the CSCE *Copenhagen Document* in which all the participating States made a commitment to accept court monitors as a confidence-building measure and to ensure transparency in the implementation of their commitments to fair judicial proceedings, as enshrined in the International Covenant for Civil and Political Rights.[207]

206 International Committee of the Red Cross, *Visiting Detainees*.

207 Cf. CSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, Copenhagen, 29 June 1990, Paragraph 12; and United Nations, *International Covenant on Civil and Political Rights* (op. cit. note 82).

Trial monitoring may serve to improve the effective and fair administration of justice or bring attention to serious deficiencies. Over time, trial monitoring raises awareness of the right to a public trial within the judiciary and among other legal actors. Trial monitoring can prompt justice actors to improve their practice, encourage the executive to provide resources needed to overcome shortcomings in the justice process, and encourage the legislature to adopt or amend legislation to bring justice practices into conformity with human rights standards. Trial monitoring in the strict sense would only focus on the public court proceedings and the conduct of judges, prosecutors, lawyers and other judicial officials present at courts. Trial monitoring in a wider sense would also address the shortcomings of the other criminal justice institutions, such as the police, judicial administration bodies, and prisons, whose standard of performance during the criminal justice process may become visible during trial.[208]

Example of a Trial Monitoring Instrument

OSCE Trial-Monitoring Project in Kyrgyzstan

Between November 2004 and September 2006, ODIHR, in co-operation with the OSCE Centre in Bishkek and Kyrgyzstan's Supreme Court, undertook a trial-monitoring project in Kyrgyzstan. After being selected and trained by the OSCE/ODIHR on the basis of the ODIHR Trial Monitoring Manual, 19 people with a higher legal education or human rights experience, from February 2005 to April 2006, attended 1,134 first instance court hearings in 821 criminal cases, in 26 districts and three regional courts, presided over by a total of 105 judges.

The project's main aims were to assess the extent to which court practice in criminal cases in Kyrgyzstan met international fair-trial standards, to process and analyse the monitoring results, and to develop recommendations in order to further improve existing criminal procedural legislation and the implementation of the legislation in compliance with international fair-trial standards. Monitoring focused in particular on fair-trial standards, such as: the openness of court proceedings to the general public; the presumption of innocence; the observation of the principle of equality of arms and adversarial proceedings; and access to judges, including the right to defend oneself through counsel.

In order to ensure systemized and consistent reporting, the trial-monitors used a *Trial Monitoring Reporting Form* developed by ODIHR.[209] To promote sustainability and local ownership of trial monitoring initiatives, ODIHR has

[208] Cf. ODIHR, *Trial Monitoring. A Reference Manual for Practitioners*, Revised edition 2012, Warsaw, 2012, pp. 16f.

[209] The findings and recommendations of the trial-monitoring project, as well as the Trial Monitoring Reporting Form and the Trial Monitoring Manual, developed by ODIHR, can be found in the following report: OSCE ODIHR/Centre in Bishkek, *Results of Trial Monitoring in the Kyrgyz Republic, 2005-2006*.

since provided capacity building to Kyrgyz non-governmental organizations (NGOs) and human rights defenders involved in trial monitoring, based on methodological tools that served as the basis for the ODIHR *Trial Monitoring Manual.*[210]

VII.5.3 Accountability and Oversight of the Prison System

"In the prison system, there should be independent inspection mechanisms. In many countries, a judge is assigned to chair a prison's inspectorate. In others, a body of prison visitors is allowed access to conduct periodic inspections. Advisors need to discuss with prison authorities the benefits of such mechanisms as a potentially powerful advocacy tool for prison reform and the improvement of prison conditions across the board. Regular inspection of prisons is a requirement of the United Nations' Standard Minimum Rules for the Treatment of Prisoners (Rule 55)."[211] Prison inspections are essential for improving the living conditions of inmates, and in particular, preventing abuse and reducing corruption, which are both likely to be widespread in post-conflict countries.

VII.5.4 Accountability and Oversight of Non-State Security Services

Accountability of civilian private security services could be strengthened through licensing systems and police supervision.[212]

States may also "consider encouraging relevant NGOs to play a part in the oversight of civilian private security services, *inter alia,* by identifying and preventing any abuses perpetrated by personnel and providers of civilian private security services […]. Without prejudice to the normal criminal justice system procedures, States may consider subjecting civilian private security services and their personnel to procedures relating to the receipt and investigation of complaints against them. To that end, they may consider:

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210 OSCE ODIHR, *Trial Monitoring: A Reference Manual for Practitioners*, Warsaw 2008. A revised version of the document was published in 2012, see note 208. Furthermore, in 2012, ODIHR published the *Legal Digest of International Fair Trial Rights*, which complements the *Reference Manual*. The *Legal Digest* provides a comprehensive description of fair trial rights combined with practical checklists based on the experience of OSCE trial monitoring operations. For more information, see OSCE ODIHR, *Legal Digest of International Fair Trial*, Warsaw 2012.

211 UNODC/USIP, *Criminal Justice Reform in Post-Conflict States* (op. cit. note 9), p. 101.

212 Cf. UNODC, *Civilian Private Security Services* (op. cit. note 13), p. 7; and England, *Security Sector Governance and Oversight* (op. cit. note 196), p. 25.

(a) Establishing mechanisms for the receipt and impartial investigation of complaints by any person against personnel and providers of civilian private security services;
(b) Defining the type of complaints to be subject to such mechanisms;
(c) Utilizing an impartial body to determine guilt and penalties for the most serious complaints and create an appropriate appeals process;
(d) Publicizing the existence of those provisions;
(e) Ensuring that serious cases are prosecuted under the criminal justice system […]."[213]

VII.5.5 Accountability and Oversight of Customary/Non-State Justice Providers

Accountability and oversight of the customary/non-state justice providers should be ensured by the Ministry of Justice. This is achieved by developing procedures to record their decisions and register them within the Ministry and by ensuring that decisions by customary/non-states justice providers can be appealed to statutory courts[214] and are subject to revision for compliance with national law and international human rights conventions.

Furthermore, monitoring and evaluation mechanisms should be established to ensure the quality of non-state legal aid services.[215]

VII.5.6 Accountability and Oversight at the Interfaces in the CJS

As mentioned above, the judiciary is responsible for assessing whether the various CJS institutions are correctly implementing the framework for their operations, e.g. their duties, roles and responsibilities. The police must comply with court orders regarding the arrest or release of individuals and request authorization from the investigative judge for using certain investigative measures.

Furthermore, "the judiciary is the primary means of legal accountability for misconduct by security forces. Its role is to adjudicate cases brought against security services and individual employees, protect human rights, uphold rule of law, monitor special powers of the security services, assess constitutionality, provide an effective remedy, and review policies of

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213 UNODC, *Report on the Meeting of the Expert Group on Security Services* (op. cit. note 142), pp. 4-6.

214 Cf. England, *Management of the Security Sector: A Note on Current Practice*, Henry L. Stimson Center, Washington D.C., 12 December 2009, p. 5.

215 United Nations, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (op. cit. note 81), Para 70 (c), p. 20.

security and justice providers in the context of prosecutions."[216] In cases where the police find themselves under criminal investigation (and also under civil proceedings), mechanisms should be in place to ensure that close routine working relationships between the police and prosecution in standard criminal proceedings do not undermine the independence and impartiality of the prosecutor when dealing with police misconduct.[217]

Naturally, mechanisms must also be in place to ensure the integrity of the judiciary.[218]

Finally, CJS must ensure that there is no political interference in the operational matters of any of the CJS institutions. Political interference may only be acceptable with regard to the appointment of the highest ranks in the CJS.

Performance Measurement

Accountability of the CJS is also provided through the transparent measurement of CJS performance. Specific performance indicators of the different CJS institutions may include qualitative data such as: public perception of the quality of service delivery; access to security and justice; the level of public confidence in the CJS institutions; and data from victimization surveys. When conducting public surveys, it is important not to neglect marginalized individuals since they may encounter the greatest barriers to accessing justice while being disproportionately victimized.[219] The reliability and validity of quantitative data such as reported crimes and conviction rates are often questionable[220] and should not be used therefore as a key indicator for the performance of the CJS.

With regard to the holistic approach to CJS reform, a specific measure to address the interfaces between the various CJS institutions would be to

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216 England, *Security Sector Governance and Oversight* (op. cit. note 196), p. 24; see also OECD, *OECD DAC Handbook on Security System Reform* (op. cit. note 28), p. 113.

217 Cf. UNODC, *Handbook on Police Accountability, Oversight and Integrity* (op. cit. note 196), p. 99; and
Wisler, Dominique, *Police Governance: European Union Best Practices*, DCAF, COGINTA, 2011, p. 32.

218 These mechanisms should be in line with, *inter alia*: the United Nations *Bangalore Principles of Judicial Conduct;* the United Nations *Guidelines on the Role of Prosecutors*; and the United Nations *Basic Principles on the Independence of the Judiciary*.
For more information see also UNODC, *Resource Guide on Strengthening Judicial Integrity and Capacity*, New York 2011.

219 Cf. United Nations, *The United Nations Rule of Law Indicators. Implementation Guide and Project Tools*, DPKO/OHCHR, New York 2011, pp. 3f.

220 For example, low crime rates can be the result of a lack of reporting of crimes by the public due to low expectations of proper CJS response, while an increase in crime rates may be the result of an increasing motivation of the public to report crimes due to an increased confidence in the CJS. Furthermore, high conviction rates can be the result of convictions based on confessions that may have been obtained through torture.

develop joint performance standards and delivery measures for the statutory charging process.[221] A case management system that is capable of showing the number of cases pending trial, the number of cases heard and their disposition could be useful in identifying bottlenecks in the criminal justice process and holding individual actors of the CJS accountable for their performance (see also chapter VII.1.2).[222] However, an overemphasis on statistics may, again, have negative consequences for the entire criminal justice process. For instance, the performance indicator "attrition rates", which measures the performance of the prosecution by focusing on the numbers of acquittal, discontinuance or dismissal of cases, may compel the prosecution to seek more evidence from the police than is necessary, involving an increased amount of paperwork and delaying or denying charges. The impacts of such kind of risk aversion by the prosecution service may also lead to conflict with the police.[223] In addition, the discontinuation of a criminal investigation, due to a lack of evidence or the introduction of alternatives to prosecution (for instance, diversion programmes or mediation processes (see also chapter VII.3)), should not automatically be considered a professional failure by the prosecutor leading to negative performance evaluations.[224]

Example of a CJS Performance Measurement Instrument

United Nations Rule of Law Indicators

In 2011, the United Nations launched the *United Nations Rule of Law Indicators* as a tool to monitor changes in the performance and characteristics of national criminal justice institutions. This comprehensive guideline document defines 135 indicators for measuring these changes in the three CJS institutions – the police, the judiciary and prisons. In addition to the performance of the three CJS institutions, the guidelines also provide indicators for measuring: the integrity, transparency and accountability of the CJS institutions; the treatment of members of vulnerable groups by the CJS institutions; and the capacity level of the CJS institutions to perform their functions. The guidelines also provide information on how to conduct the assessments and provide templates for undertaking surveys.[225]

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221 Cf. Berry, *Reducing Bureaucracy in Policing* (op. cit. note 105), p. 15.

222 Cf. USAID Office of Inspector General, Audit of USAID/Haiti's Justice Program (op. cit. note 116), pp. 9f.

223 Cf. Flanagan, Sir Ronnie, *The Review of Policing. Final Report*, 2008, p. 60.

224 Cf. OSCE ODIHR, *III Expert Forum on Criminal Justice for Central Asia* (op. cit. note 164), pp. 9 and 22.

225 Cf. United Nations, *The United Nations Rule of Law Indicators. Implementation Guide and Project Tools* (op. cit. note 219). As important and useful as these 135 indicators are for measuring the performance and other characteristics of the three major CJS institutions, they do not address the interfaces between the three CJS institutions that could identify the actual bottlenecks in the criminal justice process.

VII.6 Cultural Changes in the CJS

All the structural and organizational changes at the managerial and operational level, in line with new laws, policies and regulations, will have little impact without a *culture*[226] of co-operation and co-ordination among the various CJS institutions.

In many countries, particularly in post-conflict societies and states in transition, there is a high level of distrust between the different CJS institutions, inflamed by a lack of understanding and appreciation of the role, responsibilities and needs of the other CJS institutions,[227] different outlooks on the essence of law and order,[228]and the mutual perception of incompetence, unresponsiveness and even corruption.[229]

If the request for enhanced co-operation and co-ordination challenges the power relations between the different CJS institutions, resistance from the "losing" side needs to be expected. Police or prosecutors may also be reluctant to accept changes, particularly if the responsibilities for investigations are transferred from one organization to the other.

Moreover, a certain interpretation of the doctrine of separation of powers that supports the judiciary's claim of independence from the executive government often hampers the development of a spirit of co-operation and co-ordination between the courts and the other institutions of the CJS.[230]

The work culture of the CJS institutions not only needs to be changed with regard to CJS-internal collaboration attitudes, but also with regard to the interaction with the public. Although police agencies often publicly promote the idea of police-public partnerships in the rhetoric of community policing, "the reality of such interaction is that they are asymmetric, with the police operating from a public relations, rather than a public engagement perspective".[231] However, in order to encourage the public to share responsibility for enhancing the communities' quality of life and thus actively support the police in efforts to control and prevent crime, the

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226 In accordance with a definition provided in the DCAF *Toolkit on Police Integrity*, culture shall be defined here as "the pattern of basic assumptions (values, basic principles) that a particular group of people have developed as they learned to solve problems of adapting to the outside world as well as integrating their own world"; DCAF, *Toolkit on Police Integrity*, Geneva 2012, p. 59.

227 Cf. Centre for International Governance Innovation, *Afghanistan, Security Sector Reform Monitor*, No.4, September 2010, p.12.

228 Cf. Downes, Mark/Keane, Rory, *Security-Sector Reform Applied: Nine Ways to Move from Policy to Implementation*, International Peace Institute, Policy Papers, New York/Vienna, February 2012, p. 6.

229 Cf. Centre for International Governance Innovation, *Afghanistan* (op. cit. note 227), p. 12.

230 Cf. Berry, *Criminal Justice Units and Case Building* (op. cit. note 100), p. 1.

231 Greene, Jack R., *Policing through Human Rights*, Ideas in American Policing, Police Foundation, No.13, December 2010, p. 14.

police must aim at building a true partnership with the public, characterized by mutual responsiveness on an equal basis for both partners (see also chapter VII.3). The police must therefore agree to a two-way dialogue with the public, based on shared knowledge and equal decision making and priority-setting rights – equal insofar as the national laws and operational necessities reasonably allow.[232] The willingness to accept the public as an equal partner also depends on a change in the mind sets and attitudes of the police towards not overreacting to public criticism about their policing[233]and becoming more open to and finally internalizing the democratic policing principles of accountability and transparency. There will be fewer reasons for public criticism if the protection of and adherence to human rights and fundamental freedoms of citizens and police officers are also emphasized in any initiatives to changing the work culture.

Changing the work culture of the CJS institution may, however, be a challenging task. CJS institutions, in general, are often inherently conservative; further, societal roles, organizational arrangements and work attitudes of CJS staff may be deeply entrenched and thus difficult to change.[234]

Changing the work culture of the different CJS institutions thus requires a sound change management approach that takes into consideration the following: the inherent resistance to change by both individuals and organizations; the identification of and support to drivers of change as well as the control of potential spoilers; and the CJS-wide communication on the need for change and its potential benefits for all stakeholders, as well as on the role of the various CJS actors in implementing the change. The latter would also include the release of SOPs and the provision of training on how to render them operational.[235]

Changing the work culture will also require an effective and powerful coalition among the CJS institutions that will promote this change, clarify the vision, and create a sense of urgency.

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232 Cf. OSCE, *Good Practices in Building Police-Public Partnerships* (op. cit. note 86), pp. 22, 54 and 65.

233 Cf. Greene, *Policing through Human Rights* (op. cit. note 231), p. 14.

234 Cf. UNODC/USIP, *Criminal Justice Reform in Post-Conflict States* (op. cit. note 9), p. 73; Marenin, Otwin, "The goal of democracy in international police assistance programs", Policing: An International Journal of Police Strategies & Management, Vol. 21 Iss: 1 1998, pp.159-177, here p. 160; and
UNDP, *Justice and Security Sector Reform. BCPR's Programmatic Approach,* November 2002, pp. 16f.

235 Cf. UNODC/USIP, *Criminal Justice Reform in Post-Conflict States* (op. cit. note 9), pp. 30f. and 50; and
OECD, *OECD DAC Handbook on Security System Reform* (op. cit. note 28), p. 82.

Example of Managing Cultural Change in the Police

Cultural Changes in the Serbian Police

A new strategy for the development of the Serbian Ministry of Interior, adopted in 2011, explicitly emphasizes, *inter alia*, organizational and management changes, introducing:

- new strategic management and human resources management approaches;
- a new partnership approach with state actors, in particular, prosecutors and customs, and with private security services and civil society;
- enhancement of community policing; and
- the establishment of sound systems of transparency, internal control and audit, and civilian control.

In order to achieve these highly set goals, the Cabinet of the Minister, in particular its Bureau for Strategic Planning, started a process of changing the organizational culture in the Ministry. In partnership with the OSCE, DCAF, the Governments of Sweden and the United Kingdom, several projects are being implemented in strategic management, horizontal communication, and human resources management, all aimed at setting up a normative and cultural framework for the reform.

A new work culture that promotes the importance of co-operation and co-ordination of the different CJS leaderships, including the attitudes and behaviour of their staff, can only be effective when it becomes an integral part of everyday life and is recognized as a core value for the whole CJS. To achieve this, managers must lead by example.[236]

VII.7 Training and Professional Development

As mentioned above, structural and organizational reform measures to improve co-operation and co-ordination between the various CJS institutions will only have a lasting impact if they are complemented by measures to change the work culture within the various CJS institutions. In order to change the culture, including the attitudes and behaviour of the CJS practitioners, the provision of policies, codes of conduct and SOPs, and the regular and consistent articulation of the related values by the management must be complemented with initial and continuing in-service training and professional development activities. In the professional development process, supervisors, through mentoring, encouragement,

[236] Cf. Coxhead, John, *Improving Performance in Race and Diversity*, Lambard Academic Publishing, 2009, Chapter 6.

rewards and disciplinary action, can enhance and sustain such changes among their staff and ensure appropriate behaviour. Focusing on behaviour in the workplace rather than in the classroom makes it possible to influence staff behaviour in real-life settings. Changing values and attitudes, including stereotypes that are often deeply rooted among adults, is particularly challenging and requires skilful trainers and long-term processes.[237]

With regard to the holistic approach to CJSR in the training field, CJS practitioners must be provided with the knowledge on criminal procedure codes that rule and regulate the roles, duties and responsibilities of the different CJS institutions as well as the context in which the other CJS institutions operate. This is essential in order to raise awareness of the needs of all CJS actors working at the interfaces in order to facilitate an effective and efficient criminal justice process. With regard to changing the work culture, interagency team-building exercises during joint training events can also be of great value.

Moreover, consideration may be given to the strategy to assign police officers and prosecutors as "trainees" or "visiting professionals" for short periods in the investigation departments of the other criminal justice institutions.[238] Ideally, police investigators and prosecutors would obtain a degree combining both policing and law as part of their academic education.

Example of Combined Police and Law Education

Law Education for Police Investigators in Bulgaria

In Bulgaria it is mandatory that all investigators have a master's degree in law and pass an exam before a Commission for the Ministry of Justice. With this knowledge of the judicial perspective on the criminal justice process, police investigators can better tailor their investigation measures to the needs of the prosecution, which can greatly enhance their collaboration.

Training must also address the requirements for enhancing co-operation of the CJS with non-state security and justice providers as well as with civil society. In order to raise this awareness among the stakeholders of the criminal justice process, it would be useful to provide such training for mixed classes comprising representatives of the different CJS institutions as well as civil society and non-state security and justice providers.

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237 Cf. OSCE, *Guidebook on Democratic Policing* (op. cit. note 25), pp. 50 and 57; and OSCE, *Police and Roma and Sinti: Good Practices in Building Trust and Understanding* (op. cit. note 151), pp. 80-84.

238 Cf. Berry, *Criminal Justice Units and Case Building* (op. cit. note 100), p. 4.

VII.7.1 Enhanced Collaboration among CJS Institutions

General cross-cutting training topics for enhancing co-operation and co-ordination among the CJS institutions could include general management and executive development training as well as methods of interagency co-operation, including the building of cases to be taken forward to trial.[239] The latter should also include the development of a common understanding of offences and the classification of cases among police investigators and prosecutors to avoid inconsistency and/or discrepancies in reporting and filing cases. Different standards in gathering evidence and seizing assets, and in particular, in assessing evidence can contribute to confusion in data collection, and suspicion and misunderstanding between the police and prosecutors. The police, prosecutors and judges should thus be trained to understand the elements of proof, as defined by criminal law, which is necessary for prosecution of crimes, to conduct the investigation and analyse the evidence collected in accordance with these elements.[240]

Joint specialized investigation training is recommended for criminal justice practitioners for dealing with specific crimes, such as sexual assault, domestic violence, human trafficking, illicit drugs and precursors, economic crimes, financial crimes including money laundering and the financing of terrorism, corruption and cybercrime. Specialized units within the police and prosecution that are dedicated to fighting specific crimes involving legal and factual issues that are unique to this specific type of crime and that have received joint specialized training have proven effective in generating high quality cases resulting in convictions and appropriate punishment.[241]

Close co-ordination and co-operation in the field of training should also be sought in cases where responsibilities for investigations are transferred from one CJS agency to another, for instance, from the prosecution to the police. Investigators from the agency previously entrusted with conducting investigations should provide their skills and knowledge to the investigators of the newly entrusted agency. This could also involve the mentoring of colleagues from the other agency for some time.

In order to effectively combat transnational organized crime and implement the provisions of the UNTOC and other relevant conventions in the fight against transnational organized crime (see also chapter V.1), it is

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239 Cf. Hudzik, John K., “Comprehensive Criminal Justice Planning” (op. cit. note 123), p. 10; and
UNDP, *Justice and Security Sector Reform* (op. cit. note 234), p. 23.

240 Cf. Moskowitz, *Challenges and Priorities in Prosecuting and Adjudicating Trafficking in Person Cases* (op. cit. note 124), p. 5.

241 Ibid, p. 16.

also important to provide joint training initiatives for the various CJS institutions from different countries.

Examples of Joint Specialized Investigation Training for the Fight against Organized Crime

Cybercrime

In 2008, the OSCE Mission to Montenegro assisted the Montenegrin Police Directorate in professional development and capacity building of the Criminal Police Sector by providing a basic cybercrime training programme focusing on credit card frauds. The training was delivered to ten police officers from the Economic Crime Department and the Division for Combating Organized Crime and Corruption as well as to three prosecutors from the Montenegrin Prosecutor's Office.

In 2011, the OSCE SPMU, in co-operation with the OSCE Mission to Serbia's Rule of Law Unit, hosted the "Regional Workshop on Computer Forensics and Digital Evidence for Police, Prosecutors and Judges in Southeastern Europe" in Belgrade, Serbia. The workshop for police supervisors, appellate-level prosecutors and judges consisted in an introduction to computer crimes, computer forensics, and cyber evidence. The event brought together 25 criminal justice experts from Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, and Serbia. The training was provided by cybercrime investigation experts from Serbia's Ministry of Interior and Ministry of Justice, the Prosecutors' Association of Serbia, and the Cybercrime Research Institute (Cologne, Germany). The training gave the participants an introduction to computer crimes, computer forensics and cyber evidence. The course was designed for police managers who supervise cybercrime investigations, prosecutors who are responsible for handling appeals related to electronic evidence, and judges who deal with cyber evidence and Internet crimes. The workshop was funded by the Norwegian Government and was implemented in co-operation with the OSCE Mission to Serbia's Rule of Law Unit.[242]

Financial Investigations

In 2008, the OSCE Office in Baku facilitated the training of relevant Azerbaijani Government representatives in Azerbaijan and a number of participating States. The Rule of Law Department of the Office conducted a two-day workshop to raise awareness among law enforcement bodies of current legislation and international mechanisms to tackle money laundering; 21 judges and ten prosecutors participated in the workshop.

[242] OSCE, *Annual Report of the Secretary General on Police-Related Activities in 2011*, Vienna 2012, p. 19.

In 2009, the OSCE Office of the Co-ordinator of Economic and Environmental Activities and the OSCE Project Co-ordinator in Uzbekistan supported the World Bank and the Uzbek Government in holding a national training workshop for officials of the Uzbek Financial Intelligence Unit (FIU) in Tashkent. The objective of the workshop was to build capacity of the Uzbek FIU and to enhance collaboration between the FIU and the competent law enforcement/prosecutorial authorities as well as to enhance the FIU's international co-operation. The three-day event was organized in co-operation with the Asian Development Bank and the Eurasian Group on Combating Money Laundering (EAG), and was attended by 30 experts from the General Prosecutor's Office and other Uzbek institutions. Discussions focused on FIU governance and operational independence, FIU security and protection of data, international co-operation between FIUs, the suspension of suspicious transactions, international standards and best practices regarding domestic interagency collaboration, as well as a range of practical case studies.

In 2010, the OSCE Mission to Montenegro, in co-operation with the Italian Embassy in Podgorica, organized a three-day seminar on new investigation methods in money laundering and financial crime. Senior police officers, tax inspectors, employees of the Directorate for Anti-Money Laundering and high officials from the Public Prosecutor's Office took part in the seminar, led by experts from the *Guardia di Finanzia*, Italy. The participants gained a wide range of information in the area of anti-money laundering and financial and economic criminal investigations.[243]

Trafficking in Human Beings

In 2006, the OSCE Presence in Albania, in conjunction with the OSCE SPMU, conducted a two-week training programme in the framework of the OSCE Action Plan for Combating Trafficking in Human Beings. This was a multiagency training programme, the beneficiaries of which included law enforcement agencies, the Ministry of the Interior, the Police Academy, the Prosecution Service, and anti-trafficking NGOs. The focus of the training was to learn how to obtain information, in a multi-agency approach, to achieve prosecution without relying on the victim's testimony. Over 20 people received training by the experts provided by the SPMU.

In 2011, the OSCE Centre in Astana, Kazakhstan, organized the "Fourth Annual Workshop on Promoting Law Enforcement and Judicial Co-operation in Response to Human Trafficking and Migrant Smuggling in Central Asia" in Almaty, Kazakhstan. The event was co-organized by Kazakhstan's Ministry

[243] OSCE, *Annual Report of the Secretary General on Police-Related Activities in 2010*, Vienna 2011, p. 50.

of the Interior, the International Organization for Migration (IOM), UNODC, the U.S. Embassy in Kazakhstan, the OSCE Centre in Bishkek, and the OSCE Office in Tajikistan. The workshop brought together more than 70 senior prosecutors, law enforcement officers, representatives of foreign ministries and NGOs.[244]

Drug Trafficking

In 2007, the OSCE SPMU organized a regional conference in Bishkek, Kyrgyzstan on "Enhancing Law Enforcement and Judicial Co-operation on the Central Asian Drug Routes**".** The event was organized in close co-operation with UNODC, together with the support of the OSCE Centre in Bishkek and other OSCE field operations in the region. Participants were experts from UNODC, the Collective Security Treaty Organization (CSTO), and representatives from China, Kazakhstan, Kyrgyzstan, Mongolia, the Russian Federation, the United States of America and Uzbekistan. The experts focused their discussions on international legal instruments, standards, national legislations and practical challenges related to improving transnational co-operation between judges, prosecutors and the police. The workshop served three main purposes: establishing personal links among relevant law enforcement and judicial authorities dealing with mutual assistance in states affected by Afghan heroin trafficking; disseminating information on the specific legal and procedural requirements of each country; and identifying problems connected with internal and transnational co-operation.

In 2011, the OSCE Mission in Kosovo conducted a controlled delivery exercise involving criminal justice agencies from Albania, Bulgaria, the former Yugoslav Republic of Macedonia, Germany, Montenegro, Slovenia and Turkey. The Operation & Co-ordination Centre was established at the Kosovo Police Headquarters.[245] The controlled delivery practical exercise was carried out for the first time in Kosovo and enhanced the capacities of police, customs and judiciary officials in fighting drug trafficking and improving regional co-operation. As a result, the agencies involved in the controlled delivery exercise increased their mutual exchange of information as well as trust in each other.[246]

244 OSCE, *Annual Report of the Secretary General on Police-Related Activities in 2011* (op. cit. note 242), p. 99.

245 All references to Kosovo institutions/leaders refer to the Provisional Institutions of Self-Government.

246 OSCE, *Annual Report of the Secretary General on Police-Related Activities in 2011* (op. cit. note 242), p. 48.

VII.7.2 Enhanced Collaboration between CJS Institutions, Other Governmental Agencies, Non-State Security and Justice Providers, and Civil Society

As mentioned in the box above, the training activities with respect to the fight against specific areas of organized crime may also be provided to the members of other governmental agencies, civil society and the private sector who play an important role in preventing these crimes (through awareness raising), or who support victims of these crimes (through victim identification and further support), such as in cases of drug trafficking, trafficking in human beings, and the online abuse of children.

Most of the joint training activities may, however, focus on areas of co-operation that aim at improving the general safety and security feelings of the population, addressing human rights (see also chapter VII.7.3) and ensuring public oversight of the CJS (see also chapter VII.7.4).

First, these training activities can be an important tool for increasing mutual confidence and breaking down stereotypes and distrust between groups, and for promoting positive and effective interpersonal and cross-cultural relations. They provide the opportunity for sharing experiences and views among the different stakeholders, which may notably increase their awareness and understanding of the needs and concerns of the other groups. The willingness to share experience and views is a precondition for identifying problems in the communities and for jointly developing and implementing problem-solving initiatives. These training activities can then also raise awareness among all groups involved on their roles, rights and responsibilities in this problem-solving.

Technical skills developed in the training may focus on communication, trust building, mediation in conflicts, cultural diversity, and development of creative approaches to address community concerns and problem-solving.

Joint training activities may also focus on developing sound co-operation with the media, including guidelines for media contacts, creating clearly defined roles for spokespersons, and providing media training for officers.[247]

Furthermore, co-operation should also involve guest speakers from civil society and other relevant non-CJS institutions in the training of the criminal justice officials in general. CJS institutions should therefore develop partnerships with a variety of civil society groups to identify representatives of different age, gender and different segments of the

[247] Cf. OSCE, *Good Practices in Building Police-Public Partnerships* (op. cit. note 86), pp. 46f., 54, 58, and 65f.

communities who would be able to convey the different views held within their communities.[248]

VII.7.3 Human Rights Aspects

Human rights and fundamental freedoms must be an integral part of all types of basic, advanced and specialized training courses or educational programmes for CJS staff.[249] These rights and freedoms include:

- the right to life;
- freedom from torture and ill treatment;
- the right to liberty and security;
- freedom of thought, conscience, religion;
- freedom of expression;
- freedom of association and peaceful assembly;
- the right to a fair trial;
- the right to work, education and community participation;
- the presumption of innocence;
- the rights of the arrested person, minorities, women and children; and
- respect for privacy of information.[250]

Knowledge of human rights legislation, policies and procedures, and the skills for applying them appropriately in practice should be a prerequisite for attending any advanced and specialized course. Furthermore, all course providers and facilitators should have expertise in human rights education.

In recent years, several useful training documents have been developed by various international organizations and human rights NGOs that provide guidance on incorporating human rights aspects in CJS training curricula.

The United Nations has designed training modules on human rights for the staff of the various CJS institutions, including the police, the courts, the prison system, the ombudsperson office, parliaments, and other official entities charged with law enforcement and security. In 2002, the United Nations Executive Committee on Peace and Security (ECPS) Task Force for the Development of Comprehensive Rule of Law Strategies for

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248 Cf. *Police and Roma and Sinti: Good Practices in Building Trust and Understanding* (op. cit. note 151), p. 80.

249 Cf. OSCE ODIHR, *Guidelines on Human Rights Education for Law Enforcement Officials*, Warsaw, September 2012, p. 3.

250 Cf. OSCE, *Good Practices in Basic Police Training – Curricula Aspects by the Senior Police Adviser to the OSCE Secretary General*, SPMU Publication Series Vol. 5, Vienna, October 2008, p. 31.

Peace Operations produced a report surveying training efforts for the police, the judiciary and prisons. In its report to the ECPS, the Task Force discussed more than 50 training modules and manuals created by United Nations agencies or departments in the area of rule of law.[251]

In 2012, ODIHR, in co-operation with the OSCE TNTD/SPMU, developed *Guidelines on Human Rights Education for Law Enforcement Officials.* The Guidelines are intended to serve as a measure for gauging the quality of programming and as a resource for those who initiate and conduct educational programmes compliant with good practices in human rights for law enforcement officials. The document suggests six main areas that should be in place to warrant successful human rights education programme for law enforcement officials: human rights-based approaches to overall processes and goals; core competencies; curricula; teaching/training and learning processes; evaluation; and finally, professional development and support for educational personnel.[252]

Furthermore, ODIHR, in co-operation with the TNTD/SPMU, developed a practical training module on human rights-compliant investigations of terrorism for law enforcement officers.[253]

There is also a need to provide all CJS actors with the knowledge and skills to properly address gender justice and gender-based violence in order to effectively respond to investigations of terrorism while demonstrating appropriate gender sensitivity. This area in particular requires co-operation with governmental and non-governmental agencies (e.g. health services, paralegals, village councils, women's groups and shelters, mobile legal aid); CJS practitioners must be prepared to effectively co-operate with these different civil society actors.[254]

Following the holistic approach to CJSR, OSCE executive structures provide joint training for various CJS institutions with a specific focus on human rights protection in a number of criminal justice areas where human rights of victims as well as offenders are particularly at risk of being violated.

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251 UNODC/USIP, *Criminal Justice Reform in Post-Conflict States* (op. cit. note 9), p. 75.

252 Cf. OSCE, *Annual Report of the Secretary General on Police-Related Activities in 2011* (op. cit. note 242), p. 48; and
OSCE ODIHR, *Guidelines on Human Rights Education for Law Enforcement Officials* (op. cit. note 249).

253 OSCE ODIHR, *Human Rights in Counter-Terrorism Investigations – A Practical Manual for Law Enforcement Officers*, Warsaw, 2013, forthcoming.

254 UNDP, *United Nations Development Programme in Timor-Leste*, Project Document, New York 2008, pp. 26f.

Examples of Joint Training on the Protection of Human Rights in the Criminal Justice Process

Domestic Violence

In 2011, the OSCE Mission to Moldova conducted a number of training seminars on "Combating Domestic Violence" for police officers, prosecutors, judges and lawyers. The seminars focused on the human rights of victims, the legal mechanisms and best practices that ensure their protection, and the proper prosecution of offenders. Course participants also learned how to improve multi-agency co-operation in solving cases of domestic violence. Cases from Moldova and the case law on domestic violence of the European Court of Human Rights were included in the programme. The seminars were conducted in partnership with the National Institute of Justice and prominent local legal experts, psychologists and social workers.[255]

Human Rights in Trafficking in Human Beings Investigations

In 2011, the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings (SR/THB) addressed an international training course for judges and prosecutors on "Penal Systems, Migration Flows and International Co-operation", organized by the Italian Judicial Council in Rome, Italy. Participants included judges and prosecutors from Albania, France, Italy and Romania, as well as representatives of Eurojust, and NGOs. The SR/THB lectured on international standards for the protection of victims' rights and the need for a multidisciplinary approach to the identification and assistance of trafficked persons.

Human Rights in Detention

In 2001, a project of the Legal and Judicial Reform Unit of the OSCE Office in Tajikistan highlighted gaps and areas for improvement in the new Criminal Procedure Code (CPC) and its implementation by law enforcement, prosecutors and judges. A particular focus was placed on areas of the CPC that provide additional protections for individuals during detention and pre-trial investigation. The project, implemented by the NGO Human Rights Centre in close co-operation with the Office of the General Prosecutor, provided training for over 100 prosecutors from around the country on torture prevention, fair trial rights and guarantees of human rights in terrorist and extremist prosecutions. In the framework of the project, civil society representatives held regular meetings with defence attorneys to identify cases of torture and ill-treatment, and trace the procedural elements that lead to these human rights violations.

[255] Cf. OSCE, *Annual Report of the Secretary General on Police-Related Activities in 2011* (op. cit. note 242), p. 80.

VII.7.4 Accountability and Oversight

Members of the CJS, non-state and customary security and justice providers as well as civil society organizations must be informed of the codes of conduct and SOPs of the various security and justice services in order to raise their awareness about their own rights, duties and obligations with regard to ensuring accountability and oversight.

Examples of Joint Training on Accountability and Oversight Issues

Anti-corruption Training in Kosovo

In 2011, the OSCE Mission in Kosovo provided training courses that aimed at improving investigative skills and promoting joint agency working in Kosovo in the fight against corruption. An advanced course was implemented, which involved participants from the Kosovo Police, the Police Inspectorate of Kosovo (PIK), Customs, the Kosovo Anti-Corruption Agency, the Anti-Corruption Task Force, as well as prosecutors and judges. In general, the course covered special techniques of corruption investigation, intelligence-led investigations, the handling of witnesses and informants, as well as integrity testing, which is one of the new powers given to the PIK. The involvement of prosecutors and judges was considered significant and will therefore be used in further training in subsequent training initiatives.

Furthermore, the OSCE Mission in Kosovo, supported by experts from the Kosovo police, the Office of the Public Prosecutor and the Journalists Union, designed and delivered training courses on the role of the media as an oversight mechanism, which were delivered in six regions of Kosovo. The courses address the importance of good co-operation and communication between the Kosovo police representatives, the prosecutors and the media. During the training, participants discussed the legal framework and regulations applied to their duties. Training subjects also addressed the lack of communication skills and the conceptual understanding of the role of the security sector with respect to the public. At the end of each workshop, participants were provided with a glossary of frequently used terminology by all institutions in order to make communication easier.

Trial Monitoring Training in Kyrgyzstan

In the framework of ODIHR's trial monitoring project in Kyrgyzstan (see also chapter VII.5.2), 26 individuals with a higher legal education or human rights experience were trained as trial monitors by the OSCE/ODIHR on the basis of the ODIHR *Trial Monitoring Manual*, focusing on the aims and procedure of trial monitoring, as well as principles of impartiality in reporting and non-interference during trials. As part of the training, a mock trial was organized

with the involvement of a judge from the Supreme Court and staff from the General Prosecutor's Office.[256]

[256] Cf. OSCE ODIHR/Centre in Bishkek, *Results of Trial Monitoring in the Kyrgyz Republic, 2005-2006* (op. cit. note 134), pp.14f.

VIII. Evaluation and Review of CJSR

Evaluations are in line with a learning and accountability function to assess the effectiveness, efficiency and relevance of specific reform implementation activities. Their purpose is to: contribute to improving tactics, procedures and techniques; consider continuing or discontinuing projects and programmes; and ensure accountability to stakeholders and tax payers for expenditures and the use of scarce resources.[257] As mentioned in chapter IV, evaluations should analyse to what extent the reform benchmarks have been met, as had been defined in the reform strategy development phase. The evaluation criteria should be specific, measurable, attainable, relevant and trackable.

Introducing holistic CJSR is a long-term effort and needs cyclic evaluations, which should be linked to the policy cycle, enabling the strategic level to systematically and continuously improve the quality of the CJS service. Referral frameworks supporting organizational development, such as the European Foundation for Quality Management (EFQM) Model by the European Foundation for Quality Management and the Total Quality Management (TQM) model by the Common Assessment Framework, could be appropriate tools to follow this approach.[258] Final evaluations should not be undertaken before implementation programmes have had a chance to succeed. When CJSR is introduced with a focus on the co-operation and co-ordination at the CJS interfaces, programmes should be given a two- to five-year duration, depending on the challenges that confront the implementation process. In addition, care should be taken to ensure that any monitoring and evaluation framework contains a sufficiently broad range of both qualitative and quantitative indicators. This will allow changes in specific areas to be interpreted within a broader context.

In order to avoid any perceptions of biased assessments or conflicts of interests, and to raise the credibility of evaluations, self-evaluations by the various CJS institutions should be complemented by independent external evaluations.[259]

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257 Cf. OSCE, *Good Practices in Building Police-Public Partnerships* (op. cit. note 86), p. 58; and
OECD, *DAC Evaluation Quality Standards*, Paris 2006, p. 6.

258 Cf. OSCE, *Good Practices in Building Police-Public Partnerships* (op. cit. note 86), pp. 58f.

259 Cf. OECD, *DAC Principles for Evaluation of Development Assistance*, OECD/GD(91)208, Paris 1991, Para. 11.

VIII.1 Criteria for Evaluation

General criteria for evaluating CJSR implementation processes, in accordance with the OECD *Development Assistance Committee* (DAC) criteria for evaluating development assistance, are: relevance, efficiency, effectiveness, impact and sustainability[260] of the reform initiatives.

DAC Criteria for Evaluating CJSR Assistance

Relevance: The extent to which the CJSR implementation measures are suited to the priorities and policies of the target groups, recipients and donors.

Questions to be addressed:
- To what extent are the objectives of the programme still valid?
- Are the activities and outputs of the programme consistent with the overall goal and the attainment of its objectives?
- Are the activities and outputs of the programme consistent with the intended impacts and effects?

Effectiveness: The extent to which projects attain their objectives.

Questions to be addressed:
- To what extent were the objectives achieved /are the objectives likely to be achieved?
- What were the major factors influencing the achievement or non-achievement of the objectives?

Efficiency: Measurement of the qualitative and quantitative output in relation to the inputs. This requires comparing alternative approaches to achieving the same outputs, and verifying if the most efficient process has been adopted.

Questions to be addressed:
- Were activities cost-efficient?
- Were objectives achieved on time?
- Was the programme or project implemented in the most efficient way?

Impact: The positive and negative changes produced by a CJSR initiative, directly or indirectly, intended or unintended.

Questions to be addressed:
- What has resulted from the programme or project?
- What real difference has the activity made to the beneficiaries?
- How many people have been affected?

[260] Cf. OECD, *DAC Evaluation Quality Standards* (op. cit. note 257), p. 6.

Sustainability: The measurement of whether the benefits of an activity are likely to continue after donor funding, external advice and supervision have been withdrawn.

Questions to be addressed:
- To what extent did the benefits of a programme or project continue after donor funding ceased?
- What were the major factors that influenced the achievement or non-achievement of sustainability of the programme or project?

Ultimately, a criterion for evaluating the success of the initiatives within the different CJS institutions and to assess the impact on the criminal justice process in general would be the extent of structural and organizational changes, including: the establishment of a legal framework that facilitates close co-operation and co-ordination within the CJS; the development of communication and co-ordination structures, including integrated data collection and processing systems; the allocation and provision of resources and training; the creation of transparent, fair and effective accountability mechanisms; and in particular the performance of the different CJS institutions and the public perception of the CJS according to the criteria described in chapter VII.5.

The public should be informed of the results of the evaluation, both positive and negative. This may further mobilize civil society participation, strengthen their involvement in the CJSR process, and ultimately increase their trust in the CJS.

Based on the evaluation of the implementation process and its results, a review process should be initiated, involving all stakeholders and focusing on all stages of the implementation process. Any strategic, structural, organizational and operational activities that have not proven to be successful in improving the effectiveness and efficiency of the criminal justice process over a longer period of time should be thoroughly redesigned.

VIII.2 Geographical Outreach of CJSR Initiatives

CJSR initiatives are often centralized and focused on institutions that operate from the capital or in major cities. Since access to security and justice, however, may often be a much more serious problem in rural areas, it is important to implement CJSR in rural areas as well.

If pilot programmes for the implementation of certain reform steps (e.g. the implementation of certain communication mechanisms or case file management systems in certain regions/cities) have proven to be successful, they should be expanded to additional programme sites throughout the country. This expansion will clearly depend on the availability of resources for implementation (e.g. the number of project co-ordinators; the number of CJS practitioners and managers trained in enhancing co-operation and co-ordination; budget for purchasing required equipment). CJS practitioners involved in the pilot phase should be used as a core team of advisers explaining the strategy to their colleagues in other CJS departments/branches and geographical areas.

It should always be kept in mind, however, that regional diversities might influence the implementation of strategies in different ways; what worked in one region or among certain interfaces of the CJS might not work in others. Best practices of one pilot programme still need to be adapted to best fit another environment.[261]

VIII.3 Sustainability and Exit Phase

There are two basic requirements for the sustainability of CJSR: (i) proper understanding, acceptance and operationalization among all national stakeholders of the concept of a holistic and integrated criminal justice process; and (ii) the buy-in and support for the holistic approach by the national stakeholders, including a legal, written basis for the reform that also facilitates the institutionalization of the new approach and the availability of appropriate funding.[262]

If the reform implementation review process reveals that certain reform benchmarks have been achieved and an appropriate level of sustainability of the reform achievements has been accomplished, international reform assistance can be gradually reduced as the level of sustainability increases. A flexible approach will allow to progressively phase out areas of reform involvement, where appropriate. In cases where the international

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261 Cf. OSCE, *Good Practices in Building Police-Public Partnerships* (op. cit. note 86), pp. 62f.

262 Cf. OSCE, *Implementation of Police-Related Programmes* (op. cit. note 52), p. 52.

organizations have had an executive mandate or the responsibility for creating infrastructure and providing training, the transition of this responsibility from the international advisers to their national counterparts needs to be thoroughly planned, taking into account realistic time frames and the proper handover of necessary equipment, information, documentation and curricula, etc.[263]

[263] Ibid, p. 51.

IX. Integrated CJSR Approaches among International Reform Assistance Organizations

Close consultations of the OSCE executive structures with other international stakeholders involved in CJSR are crucial in order to develop holistic and complementary reform goals and strategies, and deliver coherent and joint statements of goals and expectations to the national counterparts.

Close co-operation and co-ordination also helps to avoid contradictory project philosophies and implementation methodologies that can lead to considerable confusion and frustration among the programme beneficiaries – CJS institutions, other state and non-state agencies, as well as civil society.

In view of scarce financial and personnel resources, co-operation can help build synergies, delegate and divide tasks, and avoid duplication of efforts and incompatible equipment donations.

International CJSR assistance activities should therefore be co-ordinated at the bilateral as well as multilateral level, engaging international organizations, research institutions and donor countries.

The holistic and multidisciplinary approach to CJSR should also involve political and economic development assistance actors.

Co-ordination can include sharing of information about planned activities, which may result in the development of a matrix of the activities, and adapting and harmonizing different activities of each other.

Multilateral meetings at the strategic and operational level can be held on an informal *ad hoc* basis as well as in the framework of regular official meetings or conferences.

Examples of International Co-Ordination Mechanisms

In the field of police reform, OSCE executive structures have been facilitating the exchange of information and the co-ordination of activities by developing and maintaining databases and matrixes on police reform projects in their host countries and by actively supporting international technical police assistance databases such as the Automatic Donor Assistance Mechanism (ADAM) database developed by UNODC. In addition to maintaining a training matrix, the OSCE Office in Tajikistan also established an informal co-ordination platform, the "law enforcement breakfast", where representatives from justice and security agencies as well as from NGOs gather regularly to discuss issues related to criminal justice reform.

The OSCE executive structures have also been supporting police assistance co-ordination mechanisms at the regional and international levels, such as the Regional Co-ordination Council (RCC) in Sarajevo.

Furthermore, there are well-established co-ordination mechanisms between the OSCE and UNODC with respect to promoting the implementation of international conventions and implementing anti-organized crime strategies, such as the "Rainbow Strategy". This type of systematic co-operation should be reinforced and receive dedicated attention by the offices in the field to ensure effective co-ordination.[264]

Clearly, the recipients of international CJSR assistance should be involved in the planning and co-ordination of international reform activities, especially to foster their local ownership of the reform process (see also chapter IV). Co-ordination on behalf of the recipient side could be facilitated by co-ordinating cells or steering groups within national core implementation groups, or by a lead agency among the international actors selected by the host government that would be tasked with and empowered to co-ordinate the activities of all external agencies and stakeholders involved. The co-ordinating cell, steering group or lead agency could organize multidisciplinary meetings of all relevant actors on a monthly or at least regular basis to discuss activities and initiatives under way to ensure reduced duplication and increased effectiveness. These meetings should also be used to remove barriers to initiatives that face challenges.[265]

[264] Cf. OSCE, Report by the OSCE Secretary General on Police-Related Activities of the OSCE Executive Structures up to the End of 2009, Vienna, April 2010, pp. 35f. and 81.

[265] Cf. OSCE, *Implementation of Police-Related Programmes* (op. cit. note 52), pp. 21f.

X. Integrated CJSR Approaches within International Reform Assistance Organizations

The holistic approach to police reform within the framework of CJSR naturally requires an integrated approach within an assistance providing organization, where different departments of a mission and within the organizations' headquarters/secretariat that are relevant for a whole-of-government approach (i.e. law enforcement, rule of law, democratization, human rights, economic development, environment, and media departments) closely co-ordinate, synchronize and complement their activities during the planning, assessment, implementation and review phases. Other administrative units, such as Human Resources and Financial Administration as well as Legal Affairs and Communication, need to be involved in the various reform phases as well.

Such integrated approaches should not only be based on personal relationships, but also on institutionalized structures, comprising the heads of departments as well as senior project and administration officers. Mission internal co-ordination and co-operation would also be enhanced through the development of integrated computerized mission information systems that streamline internal reporting, enhance the flow of information and provide access to relevant data for all units concerned.

If possible, field missions should establish project co-ordination and evaluation units, which would provide project managers with support throughout the entire project implementation process, ensuring a common high standard of project quality in the whole mission.

Consideration should also be given to the introduction of CJSR units, or at least liaison officer positions in the field missions who would co-ordinate and facilitate CJSR in their host States and closely communicate with the relevant counterparts in their main headquarters/secretariats (e.g. the United Nations Headquarters in New York or the OSCE Secretariat in Vienna). These units/liaison officers should be located at the strategic level in the Office of the Head of Mission to ensure that it possesses sufficient political and bureaucratic leverage to permit a co-ordinated and complementary approach of the relevant mission departments. The units/liaison officers would also be responsible for taking into account cross-cutting issues such as gender mainstreaming, human rights and accountability in all of the CJSR projects. Moreover, the units/liaison officers should be responsible for monitoring, and evaluating progress of

CJSR, and for modifying approaches if necessary.[266] A network of these CJSR liaison officers should be supported and maintained by a dedicated focal point/unit in the organizations' main headquarters/secretariats, responsible for developing CJSR policy and guidelines for all CJSR missions, providing assistance and/or guidance to the field missions.[267]

A basic requirement for a consistent and coherent holistic approach by international organizations is, first, that the different mission departments are convinced of the need to apply holistic multisectoral CJSR approaches, and willing to integrate their own reform projects in a cross-dimensional mission approach; and second, that they are aware of the specific needs and contextual framework of the different CJS institutions in their host State and the other relevant mission departments, respectively. A thorough joint preparation of the mission staff is therefore essential to convey this knowledge and thinking.

Examples of Joint Mission Preparation Courses for CJSR Experts

In 2011, the United Nations Rule of Law Coordination and Resource Group developed a United Nations Unified Rule of Law Training designed to enable United Nations staff in rule of law areas such as police, criminal justice, prisons, SSR and law reform, gender justice, transitional justice, etc. to apply a United Nations system-wide rule of law approach. Initial training modules covered rule of law principles and core values, United Nations norms and standards on the rule of law, guidelines for mapping and assessment, and coordination and strategy development.[268]

The German Center for International Peace Operations, in co-operation with the Swedish Folke Bernadotte Academy, provides holistic rule of law courses for people who intend to work in rule of law field missions, bringing together police officers, prosecutors, judges, correction officers, etc. and raising awareness among them about the holistic approach to CJSR.[269]

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266 Cf. Hänggi, Heiner/Scherrer, Vincenza, "UN Integrated Missions and Security Sector Reform: The Way Ahead", in Hänggi/Scherrer, *Security Sector Reform and UN Integrated Missions: Experience from Burundi, the Democratic Republic of Congo, Haiti, and Kosovo*, DCAF, Geneva, 2007, p. 239.

267 Hänggi, Heiner/Scherrer, Vincenza, *Recent Experience of UN Integrated Missions in Security Sector Reform (SSR): Review and Recommendations*, DCAF, Final Report, Geneva 2007, p. 19.

268 United Nations System Staff College, *UN Unified Rule of Law Training*; and United Nations Rule of Law Unit, *UN System-Wide Training on Rule of Law Piloted in Turin.*

269 Cf. Center for International Peace Operations (ZIF), "Rule of Law", in: ZIF Training Courses Overview 2012, p. 15; and Folke Bernadotte Academy, "Specialised Rule of Law Course" in: *Folke Bernadotte Academy Courses 2012*, p. 16.

Within the OSCE, consideration should also be given to the development of an OSCE strategic framework for CJSR, including implementation guidelines, through which all the various executive structures/CJSR practitioners could coherently address the various components of CJSR, depending on the specific context.

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Appendix 1: Key International Conventions, Guidelines and Commitments Applicable in Governing CJS Work in the OSCE Area

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Appendix 2: Generic Questions for the Application of the Capacity and Integrity Framework (CIF) Developed by the Geneva Centre for the Democratic Control of Armed Forces (DCAF)

The questions below are grouped in four categories, looking at internal and external capacity deficits, as well as internal and external integrity deficits. They help to analyse institutional shortcomings in relation to particular needs as identified by local citizens.[270]

1. Do **internal capacity deficits** account for why the actor does not deliver the services to meet the population's needs or why the actor directly causes these needs? Please specify the kinds of internal capacity deficits that apply:

1.1. Shortcomings in the normative framework of the actor
- Conflicting norms or omissions?
- Conflict between formal rules and cultural norms?
- Other?

1.2. Shortcomings in the mandate of the actor
- Is the provider responsible for delivering the service at issue?
- What services could possibly satisfy the need?
- To what extent, if at all, is the actor actually delivering?

1.3. Shortcomings in terms of human resources
- Inadequate staffing levels? Examine for every relevant staff category.
- Inadequate balance of substantive versus administrative support staff?
- Inadequate staffing pyramid (junior-management-leadership)?
- Inadequate recruitment procedures? Examine for every relevant staff category.

[270] For the overview of CIF questions see: Downes, *Paper for OSCE Meeting on 'Police Reform within the Reform of the Wider Criminal Justice System'* (op. cit. note 43), pp. 11-15.

- Shortcomings in terms of skills and/or a lack of training? Identify these shortcomings and the related training needs for every job category.
- Are shortcomings caused by a lack of commitment or competence of the leadership?
- Are the incentives inadequate in terms of salaries and career prospects? Compare to average costs of living.

1.4. Budgetary constraints or shortcomings
- Annual budget inadequate to cover the operational costs of service delivery?
- Inadequate budget development process?
- Budget does not correspond to real expenses?
- Running costs not covered in the budget or not provided in time?

1.5. Shortcomings of equipment. List equipment available, provide numbers and indicate where repairs are needed.
- Insufficient equipment?
- Inadequate equipment?
- Equipment in need of repair?
- Maintenance problems?

1.6. Shortcomings of infrastructure. Prepare inventory and indicate where repairs or improvements are needed.

1.7. Lack of security
- Lack of security for staff, victims, witnesses, or perpetrators?
- Insufficient protection of forensic evidence?
- Are procedures, equipment, infrastructure and human resources managed in ways that ensure security?

1.8. Organizational shortcomings
- Overly complicated rules and procedures that slow down the operations or limit access to services?
- Ineffective or inefficient internal management systems (management structure, information systems, management of resources, decision making processes, performance management, etc.)?
- Suboptimal distribution of resources and workloads (think of work units, geographic and functional distribution of human resources

and equipment)?

2. Do **external capacity deficits** account for why the actor does not deliver the services to meet the population's needs or for why the actor directly causes these needs?

The nature of the co-operation arrangements between the different actors of the criminal justice chain impact significantly on the performance of its actors. Weaknesses, gaps or bottlenecks in the chain can undermine the ability of the entire system to deliver policing, justice and corrections services, and can become a source of inefficiency or abuse. UNODC's chart of decision points [271]can be used to identify the formal relationships between actors in the criminal justice chain.

2.1. Inadequate cooperation procedures between the actor and other actors of the criminal chain

- Lack of clarity in their respective responsibilities?
- Overlap of responsibilities or gaps that create legal create legal uncertainty (e.g. conflicting decisions, or an absence of hierarchy of norms)?
- Overly complicated cooperation procedures and undue legal delays?
- Cumbersome case tracking systems and record-keeping systems?

2.2. Lack of actual collaboration between the actor and other actors of the criminal justice chain

- Collaboration between the police and prosecution service in the course of criminal investigations: Who is leading? Have priorities clearly been defined and agreed to and are investigators and other police actors aware of these?
- Collaboration between the police, prosecution service, corrections system and courts to avoid prolonged pre-trial detention: Is there a shared system to track individual suspects as they move through the criminal justice chain? If so, is it adequate? Is it respected?
- Collaboration between the police, the prosecution service, the courts and the corrections system to enforce court decisions, e.g. to ensure detention, avoid escapes and enforce indemnity rulings?
- Collaboration on cases concerning human rights violations involving police, justice, corrections or other government officials?

[271] See p. 54 of this Guidebook.

2.3. Ineffective or inefficient external guidance, management or other support provided by relevant government actors. Please pay particular attention to:

- Information systems;
- Decision processes;
- External resources management such as budgetary or recruitment processes

3. Do **internal integrity deficits** account for why the actor does not deliver the services to meet the population's needs or for why the actor directly causes these needs? Please specify the kinds of internal integrity deficits that apply.

3.1. Lack of respect for basic norms and values by CJS personnel?

- Inadequate professional conduct?
- Inadequate knowledge of relevant human rights standards?
- Involvement in human rights violations in the past (identify allegations)?

3.2. Inadequate rules and procedures to ensure that these norms and values are respected?

- Are recruitment and appointment procedures transparent and fair, and based on criteria such as competence, integrity and merit?
- Do codes of conduct provide clear and specific norms and values?
- Are the disciplinary and complaint procedures fair? Do they provide protection against arbitrary decisions and include appeal mechanisms?
- Do vetting processes exist, are they effective, and do they meet basic standards of due process?
- Do rules and procedures ensure sufficient transparency? Focus on: public access to trials, public reports on misconduct, public reports on budgets and expenditures, and accessibility of procedures (fees, rights and obligations), etc.

3.3. Lack of adequate representation of one or several population groups?

- Gender;
- Ethnicity;
- Religion;
- Regions, etc.

3.4. Lack of appropriate structures and mechanisms to protect the rights of minorities and vulnerable groups (e.g. child-friendly policies)?

3.5. Political or other interference in the criminal justice chain? Please categorize the type and source of interference, and for every category, try to assess the frequency and the consequences of these interferences:
- Hierarchy;
- Peers;
- Other actors of the criminal justice chain

4. Do **external integrity deficits** account for why the actor does not deliver the services to meet the population's needs or for why the actor directly causes these needs? Please specify the kinds of external integrity deficits that apply

4.1. Ineffective or inefficient external accountability and oversight procedures (parliamentary, political, independent, informal)? Please specify and pay particular attention to:
- Budgetary accountability;
- Formal procedures to independently investigate instances of alleged misconduct;
- Procedures to hold actors politically accountable;
- Possibilities for citizens to initiate an investigation into alleged misconduct or an alleged miscarriage of justice;
- Independent oversight mechanisms such as independent oversight boards, judicial commissions, independent human rights commissions, ombudsperson offices, etc.;
- External vetting processes;
- Oversight by media and civil society organizations.

4.2. Lack of capacity and/or integrity on the part of external oversight bodies?

4.3. External interference in the functioning of actors or directly in proceedings in the criminal justice chain? Please identify and categorize the source of interference, and describe the type (bribery, threats, political benefits, etc.), frequency and consequences of interference:
- Political actors;
- Security forces;
- Social/religious/ethnic groups

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