

JUSTICE IN POST-CONFLICT SITUATIONS

CHAPTER



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OVERVIEW OF THE CHAPTER

Many countries in the Asia-Pacific region are either facing an ongoing conflict or are recovering from a conflict. This chapter focuses on the specific types of obstacles experienced in post-conflict situations and suggests some entry points for UNDP in improving access to justice in the context of conflict and post-conflict.¹

Post-conflict refers to the aftermath of a conflict and usually applies to post-war situations, but can also include internal rebellion against an authoritarian regime. Post-conflict conditions in a country where much of the infrastructure and capacities of the State have been dismantled or severely weakened create a challenging situation for UNDP. However, it can also be an opportunity for UNDP to work with the State to address structural problems and to put into place systems and institutions that can contribute to long-term development where, right from the outset, there is an awareness of the importance of a rights-based approach and a focus on access to justice for the most disadvantaged.

Often in post-conflict situations, there is the added dimension of dealing with human rights violations that may have been the cause of the conflict and have inevitably been exacerbated during the conflict (torture, illegal detention, rape, murder, etc.). For the society to confront the legacy of, and recover from, these human rights abuses it is often necessary to set up a transitional justice system that holds perpetrators accountable and plays a role in addressing the violations of the past and ensuring that the most disadvantaged have access to these transitional systems of justice. If there is no justice accessible in the aftermath of conflict, or if there is only unequal access, the risk of a re-emergence of violent conflict increases.

Root Causes of Conflict

“...many conflicts are rooted in the real or perceived breakdown of justice where individuals and groups are not able to obtain a fair remedy for their grievances; where political, legal and institutional biases marginalize segments of the population such that they resort to violence. Even where the justice system per se may not be the cause of the conflict, with the continuation and the escalation of the conflict over time, the judicial and legal system generally becomes less able to cope with the injustices of war, thus compounding the perception that the judicial establishment is either unable or unwilling to fulfil the demands for justice. As such, any attempts to facilitate a process of moving from conflict to democratization and/or peace, if they are to be successful, must take into account the causes of the conflict including the absence of an effective justice and human rights mechanism that allows the aggrieved to claim their right to redress. To be sure, the success or failure of UN peacekeeping missions has often hinged on whether a preparatory process involving issues such as criminal justice and human rights protection has been implemented...”

From “Governance in Post Conflict Situations: Justice, Security and Human Rights”, UNDP and Chr. Michelsen Institute, Bergen Seminar Series, Norway, 5-7 May 2004.

¹ Adapted from UNDP and Chr. Michelsen Institute. 2004. “UNDP Background Paper for Working Group Discussions: Governance in Post-Conflict Situations - Justice, Security and Human Rights.” Bergen Seminar Series. Tomas, Amparo. 2004. “Background Paper for UNDP Indonesia”, UNDP Indonesia.

7.1 THE JUSTICE SYSTEM IN POST-CONFLICT SITUATIONS

Previous or existing problems faced by the justice system are compounded in situations of conflict, leading to even greater difficulties in being able to provide justice remedies. Court closures, destruction of infrastructure, drastic decreases in the numbers of cases filed as a result of restricted access, and the departure of legal personnel from conflict-affected areas due to fear or intimidation are typical effects of conflict on the justice system.

The lack of a functioning system affects the poor and other groups in conflict zones in a number of ways:

- It creates an environment where small, solvable disputes can lead to broader social conflict;
- The presence of vigilantes generates localized village-level violence and legitimizes acts of revenge;
- Legitimate grievances of internally displaced populations remain un-addressed, particularly

in regards to land and other assets in places of origin;

- Abuses by military, officials, or extremist groups against individuals or groups of individuals are overlooked and the perpetrators are allowed to act with impunity;
- Communities have limited avenues to claim basic rights such as land, or access to basic services; and
- The formal court system is perceived as biased on the basis of political and/or ethno-religious identities, and as a result communities do not trust their neutrality, perceive them as unfair, and are reluctant to deal with them.

The following sections will begin by exploring access to justice issues in post-conflict situations, then examine programmatic challenges for access to justice in post-conflict situations as well as strategic entry points for UNDP, and conclude by offering some long-term considerations.

Direct Impact of Conflict on the Justice System

- Debilitating impact on local governance institutions, including government infrastructure and departure of staff
- Segregation of bureaucracy along ethnic or religious lines
- Militarization of civil administration and decision-making
- Refocusing of policy, programmes and funds on conflict
- Lack of credible institutions through which to channel grievances
- Lack of participation in decision-making increases disenfranchisement
- Lack of faith in policing apparatus leads to militia formation

Some General Strategies to Overcome the Challenges:

- Strengthening institutions of democratic governance and increasing participation, accountability and transparency
- Enhancing access to justice to enable disputes to be resolved peacefully
- Strengthening of conflict-sensitive development planning and service delivery

7.2 ACCESS TO JUSTICE AND POST-CONFLICT

Access to justice is an integral element of any peace-building and long-term development process after conflict. Concepts of redress and justice are central to peace, trust and confidence-building. Immediate results need to be balanced with long-term goals and an overall strategy needs to be in place to coordinate recovery efforts.

Access to Justice and Conflict Prevention and Recovery in Indonesia

The 'Strengthening Access to Justice and Rule of Law for Governance, Conflict Prevention and Recovery' project implemented by the Government of Indonesia and supported by UNDP seeks to undertake an access to justice assessment in five provinces in Indonesia. The assessment has a strong orientation towards conflict prevention and recovery. From a recovery point of view, the assessment aims to clarify what has been the impact of conflict on the capacity of the justice system to deliver speedy, fair and impartial justice, particularly for poor and disadvantaged groups. On the other hand, conflict prevention requires building sufficient capacities in the justice system so that it can provide effective remedies to offences that may breed violent conflict. Thus, from a conflict prevention point of view, the assessment should provide a concrete picture of what are the existing capacities in the justice system with regard to offences that pose risks of outbreaks of inter-ethnic and inter-community violence.

Access to justice is a cross-cutting issue which is present in three major components of conflict prevention and recovery:

■ Strengthening mediating institutions.

Neutral, transparent and accountable institutions in the justice system are key for effective conflict management and the establishment of trust and confidence among communities deeply affected by conflict – by assuring them there is no impunity for those who commit major grievances and offences.

■ Developing capacities in civil society.

This allows civil society to manage its own mechanisms for conflict prevention. Informal conflict resolution mechanisms in communities are fundamental for preventing the recurrence of violent conflict. Transparency and accountability of such mechanisms (e.g., through community leaders, and a greater involvement of civil society in reform processes) are critical to ensuring successful peace-building efforts.

■ **Justice and reconciliation.** There is a debate on the extent to which justice and reconciliation objectives in a post-conflict context may undermine each other. However, such goals need not be seen as oppositional, but rather as reinforcing each other. Impunity and the deterioration of the justice system put peace and development at risk in the long-term. At the same time, reconciliation goals demand a careful analysis of the type of 'justice' needed and for whom, taking into consideration the legitimate demands and aspirations of the communities affected.

Capacity development of institutions to provide justice and for people to claim remedies needs to go hand-in-hand with strategies aimed at minimizing critical risks influencing the justice process. The significant risks of justice include – economic loss, physical or emotional injury, social ostracism, etc. Even when the capacities to perform key functions (e.g., legal awareness) exist, people may still consider the risks involved in seeking or delivering justice remedies too great.

Risk becomes particularly acute in conflict and post-conflict settings. The influence of risks (such as threats or intimidation) is significant not only for poor and disadvantaged populations, who often live in situations of high insecurity, but also for individual and institutional operators in the justice system – judges, lawyers, prosecutors, police, etc. Other risks include:

■ **Risk of recurrence of conflict.** This risk increases if the main stakeholders are interested in destabilizing the situation in order to avoid being held accountable or brought to justice. They might also press for amnesties.

■ **Ignoring the violations committed.** This runs the risk, firstly, of not meeting victims' expectations and thus diminishing their trust in the State, and secondly, of inconsistency with the international framework which outlines the obligations of States and the entitlements of individuals. The longer the abuses are ignored, the more likely they are to damage hopes for peace.²

Access to justice programming needs to be part of a comprehensive approach towards justice and security sector reform, particularly in post-conflict settings. Therefore, access to justice-related strategies may also involve security bodies such as military and other armed groups.

² International Crisis Group. 2003. "Afghanistan: Judicial Reform and Transitional Justice." *International Crisis Group Asia Report 45*. Kabul/Brussels.

Key actors in the Justice and Security Sector (JSS) Community

Criminal justice organizations: Police, judiciary (including courts, prosecutors, and defence counsel), traditional conflict resolution mechanisms, and correctional services;

Management and oversight bodies: Executive branch of government (presidential and/or prime ministerial); legislative branch of government, including national, provincial, and municipal legislatures/assemblies, their committees and commissions; ministries of internal affairs, justice, defence; financial management bodies (ministries of finance, budget offices, auditor general's offices); other oversight bodies such as human rights ombudsman, police commissions; civilian review bodies;

Military and intelligence services: Armed forces, paramilitary forces, coast guards, militias, and intelligence services; and

Non-core institutions: Customs and other uniformed bodies.

The above four categories of actors comprise the JSS. However, it is important to also take into account:

Non-statutory security forces: Liberation armies, guerrilla armies, traditional militias, political party militias, private security companies; and

Civil society: Professional organizations, research institutes and think tanks, advocacy groups, religious organizations, non-governmental organizations, and the media.

7.3 PROGRAMMATIC CHALLENGES FOR ACCESS TO JUSTICE IN POST-CONFLICT SITUATIONS

Reconciling the need for immediate results without jeopardizing long-term structural reform efforts

The demand for immediate justice and protection of human rights is often well beyond the capacity of post-conflict administrations, which may be deeply affected by the destruction of physical and human infrastructure. The inability to meet this demand may result in a further erosion of credibility and public confidence in the justice system. Therefore, it is of critical importance that public faith in the justice system is restored quickly halting the possibility of a return to extra-judicial measures such as vigilantism and 'mob-justice' or 'victors' justice'.

The call for immediate results can, however, detract from long-term reform and capacity building. For this reason, efforts should be made to reconcile the need for immediate results with long-term structural reform efforts. While many immediate post-conflict interventions focus on short-term capacity building, infrastructure rehabilitation and transitional justice initiatives (e.g., truth commissions), these initiatives should be part of a broader strategy aimed at developing a legal and institutional framework that focuses on the rights and access to justice of the poor and underprivileged in the mid to long term.

How to balance the relationship between traditional and formal/official justice when justice is weakly institutionalized or perceived as alienating by poor and disadvantaged populations

Post-conflict justice reforms tend to focus on the formal institutions at the expense of national human rights institutions, traditional justice, customary law and civil society organizations. This is not only likely to diminish the overall impact of reforms (by overlooking critical components of the justice system); it also limits opportunities to strengthen the access to justice of poor and conflict-affected communities – by ignoring mechanisms which are used by, and are more accessible to, these groups.

Poor and conflict-affected communities often prefer traditional forms of justice, which are largely conciliatory, as they help to preserve social cohesion. However, it is important to recognize that traditional justice may not be rights-respecting and is not always consistent with basic human rights norms, e.g., in terms of access by specific groups (e.g., women), due process or punishments. Although the need to balance the relationship between formal/official justice and traditional justice is now widely recognized, development experience in this field is limited (See Chapter 4: Informal Justice Systems).

In line with its UN mandate, UNDP's support to traditional systems should be guided by minimum standards, particularly with regard to non-discrimination, transparency and

Disadvantaged Groups and Situations of Conflict

Conflict exacerbates the vulnerabilities of disadvantaged groups. During conflict situations, disadvantaged groups are under increased pressure and stress, and the few social networks for support they may have had often break down. As violence and insecurity increases, there is little protection available for the most disadvantaged and human rights abuses against them increase sharply. For example:

- Ethnic and religious tensions can be heightened;
- Violence against women rises (domestic abuse as well as rape and other gender specific violence);
- Displacement and migration increases as people are driven away from their homes;
- People suffer from increased disabilities as a direct result of conflict, e.g., victims of land mines, psychological trauma, victims of violence, etc.,
- Increased spread of HIV as a result of an increase in prostitution during conflict or the use of rape as tool of war;
- People living with HIV/AIDS no longer receive the support or care they need;
- Indigenous peoples and other minority groups may be specifically targeted for violence;
- Women may face additional burdens within the household as many of the men may have left to fight, or may have been killed or may be disabled; and
- Shifting priorities and increased responsibilities of girls results in their being less likely to attend school.

In conflict situations, and in the aftermath, strategies that the Government and the donor communities develop need to focus on the least privileged and worst affected section of society which are invariably from disadvantaged groups (see Chapter 6).

accountability, and adequate process and punishments. Strengthening linkages between formal and traditional systems (e.g., through appeal to and oversight of the judiciary) can enhance due process and reduce the likelihood of impunity.

How to reconcile the need for a comprehensive approach towards justice reforms with a scarcity of resources and limited capacity

A holistic approach goes beyond merely strengthening adjudication mechanisms. It also focuses on improving access to these institutions, especially by the disadvantaged; ensuring the establishment of a sound legal basis; and the institution of adequate enforcement mechanisms. Such an approach should involve numerous entities: from the executive to the legislature and from the judiciary to civil society.

Scarcity of resources may, however, increase the tendency towards 'piecemeal' reforms. This could not only lead to a less than optimum use of resources, but also to a situation where disadvantaged groups entering the justice system could fall through the cracks and be subjected to serious human rights violations.

In many, if not most, crisis and post-conflict countries there is a gap between the level of reforms recommended and the capability of

national governments to institute the changes implicit in the reform agenda.³ This may increase citizen's frustration with the system and exacerbate the potential for conflict.

It is, therefore, of critical importance to focus attention on coordination mechanisms among the different components of the justice system, particularly when these are undergoing simultaneous processes of reform. At the same time, UNDP strategies need to be coherent and complementary with those being supported by other donors, in order to maximize the overall impact of development assistance.

Lack of Coordination between Judicial Institutions

In Timor-Leste, for example, prisons have been flooded with persons whose detention orders have long expired because of the lack of coordination between the courts, the prosecutors, the public defenders and the prisons.

How and when to foster demand for access to justice-related reforms when official support for the process is lacking

Access to justice programming is an inherently political endeavour, and there may be strong

³ See proceedings of the UNDP Conference on 'Justice and Security Sector Reform: Coherence, Cooperation and Comparative Strengths', Oslo, 10-11 April 2003.

resistance to substantive reform processes, particularly by elites and groups whose positions of power may be eroded or subject to stricter controls, as a consequence of such processes. At the same time, political controversies may inhibit donors from engaging in substantive reform processes, creating a tendency toward 'superficial' reform that does not alter the structural conditions under which the justice and security systems operate.

A failure to engage in meaningful reforms can aggravate social and political tensions, jeopardize chances for sustainable development, and increase the risk of a reoccurrence of violent conflict. Therefore, there is a need to identify 'change agents' within the justice and security systems in order to strengthen their role and capacities to promote and sustain reform processes. Similarly, potential 'losers' or 'spoilers' of reform programmes need to be identified, and strategies for their positive engagement or neutralization set in place. This implies ongoing analysis of potential sources of conflict in reform processes, and systematic inclusion of conflict mediation mechanisms in such processes.

7.4 STRATEGIC ENTRY POINTS IN THE POST-CONFLICT CONTEXT

Suggested entry points

Activities oriented towards obtaining a better understanding of the major access to justice issues arising in the post-conflict context

- **Rapid assessment and diagnosis**, encompassing both formal and informal systems of justice.
- **Identifying high-priority human resource management and administrative needs** within each institution.

Property Rights in the Post-Conflict Context

Recovering registries, clarifying titles, and supporting dispute resolution mechanisms to deal with conflicting claims can all be important entry points in a post-conflict situation. However, the concept of registering private property may vary according to culture, therefore, representatives from local communities must participate in determining appropriate solutions. For example, in the Philippines, UNDP supported the implementation of the Indigenous People's Rights Act by assisting the National Commission of Indigenous Peoples to map land titles and assist civil society through the provision of paralegal support to communities to enhance their understanding of the law and how to use it.

Activities oriented towards enhancing the capacities of civil society and informal/traditional justice mechanisms, particularly with regard to their interface with the formal justice system

- **Examining the potential of traditional mechanisms of justice**, and strengthening linkages between formal and informal systems (see Chapter 4: Informal Justice Systems).
- **Establishing property rights and providing legal services** and human rights protection to internally displaced persons (see Chapter 6: Migrants and IDPs).
- **Strengthening the capacity of national human rights institutions and local human rights groups**, as well as the capacity of legal advocacy and aid civil society organizations to advocate for reforms and provide services to disadvantaged people, and the creation of advocacy networks (see Chapter 4: National Human Rights Institutions).
- **Using mass media** (e.g., T.V., radio, newspapers, etc.) to reach disadvantaged populations, particularly geographically isolated communities, and exploring the effectiveness of ICT programmes.

- **Promoting the creation of advocacy groups** to demand for transparency and accountability in order to minimize the risk of threats against individuals or organizations. Building networks and coalitions also helps to reduce the potential for impunity in cases where the justice system is perceived to be complicit or inefficient.

Activities oriented towards strengthening formal justice systems

- **Greater professionalism and accountability** of formal justice institutions.
- **Reviewing and revising relevant sections of the Constitution, penal code and criminal procedure code** to ensure that the independence of the judiciary, human rights are protected and that specific attention is paid to the situation of disadvantaged groups (see Chapter 3).
- **Developing selection, vetting and recruitment processes and criteria**, and strengthening accountability mechanisms within the justice system, especially to address corruption and lack of accountability.
- **Providing necessary support, either through infrastructure, short-term training or additional personnel**. Innovative solutions

appropriate to the particular setting, such as mobile courts, may be needed, as well as the setting up of legal services and providing human rights protections to returning refugees and internally displaced persons (e.g., citizenship rights, obtaining records, facilitating return, etc.).

- **Identifying critical risks** faced by those working in or accessing the justice system (e.g., threats, intimidations, and reprisals), and establishing strategies for minimizing those risks. UNDP could, for example, facilitate dialogue on these issues in order to strengthen protection to judges, prosecutors, defence counsels, police officers, as well as victims and witnesses.
- **Strengthening law enforcement** as weak enforcement is a critical impediment to sustainable peace-building. However, police reform processes can be extremely difficult and highly political (see Chapter 4: Police).
- **Facilitating coordination** between institutions in the criminal justice system and disseminating information on ongoing reform processes. Encouraging the establishment of a coordinating committee to address mutual problems can lead to a more holistic approach, enabling reform of the entire justice system.
- **Evaluating the impact of training activities** related to pro-poor and human rights legislation, and supporting systems for the dissemination legislation and court decisions. A strategic niche for UNDP support may be in (a) ensuring training on pro-poor and human rights related legislation and procedures is incorporated into the professional curriculum of relevant institutions, and (b) evaluating the impact of donor-supported programmes on policy and attitudinal change, and identifying other necessary strategies (e.g., reforms in recruitment systems, improvements in working conditions, etc.).

Support Transitional Justice Mechanisms (TJM)

Initial considerations when developing activities to support TJMs should include

- **An understanding of the needs of the people who will have to live with the consequences of any agreement on the utilization of TJMs.** It is up to each society to negotiate its own path toward truth and reconciliation, and the international community should pursue a policy of “solidarity not substitution” in facilitating justice and peace.⁴ Therefore, the consultation, participation and empowerment of marginalized groups are crucial for designing effective TJMs. This would also ensure that TJMs have relevance and legitimacy for those they aim to assist.
- **Awareness that a single TJM may fail to address all the objectives of transitional justice.** Therefore, a combination of TJMs, which consider that the failings of one may impact the other, is advisable. Any combination of TJMs should also take into account existing justice mechanisms and coordination of donor assistance.
- **Defining clear and realistic goals** - otherwise the danger of unmet expectations could diminish the positive influence of TJMs.
- **Ensure due process standards.** Realization that in implementing a strategy to provide accountability and justice for past abuses, there is a risk that further human rights violations will be committed. Therefore, respect for due process standards has to be ensured.
- **Need for external oversight of TJMs.** Until national civil society bodies are able to effectively carry out this function, oversight presents an entry-point for international involvement.⁵

Building Support to Undertake Rights-based Police Reform

Police reform is part of the mandate of UNDP as it is crucial for ensuring the rule of law. However, donor agencies can be resistance to police reform as they do not see it as a ‘development’ problem. The Government and police itself can also be resistant, and may be unwilling to subject themselves to human rights standards. In such cases, support should be built from both within these organizations and outside. It may also be necessary to ‘tone down’ human rights language, while pursuing the goal of upholding human rights standards.

⁴ International Center for Transitional Justice. February 2004. “Workshop on Transitional Justice for Senior Managers of the United Nations – Summary of Discussions.” February 2004, New York, NY.

⁵ Alexander, Jane. 2003. “A Scoping Study of Transitional Justice and Poverty Reduction.” DFID. United Kingdom.

In addition, the International Center for Transitional Justice (ICTJ) provides suggestions on steps that could be taken to strengthen civil society's ongoing efforts on transitional justice. These include supporting the networking capabilities of civil society (e.g., through the establishment of a transitional justice coalition, or a transitional justice newsletter).

Further, communicating information to affected populations about how violence erupted, without necessarily seeking to lay legal blame, can be critical to preventing the eruption of violence in the future. These types of initiatives may adopt different forms, including the establishment of truth commissions.

UNDP access to justice assessments should aim to understand the specific aspirations of conflict affected communities with regard to transitional justice. The ICTJ report from Indonesia, for example, concluded that while almost all civil society institutions consulted agreed that truth-seeking

measures are an important part of addressing Indonesia's legacy of abuse, investigations into past violations are not listed as a priority. The ICTJ report also found that activists had different perceptions of reconciliation. For example, some rejected the idea because they felt it meant forgiving and forgetting the role of the perpetrators and colluding with the political elite. Others felt that human rights violations were a part of the past and must be forgotten if Indonesia wishes to avoid reawakening of old trauma and national disintegration.⁶

The existence of militia groups is a powerful impediment to peace building efforts and a major threat to access to justice. The operation of militia groups in post-conflict areas jeopardizes the success of ongoing reform and peace efforts. Exploring the potential initiatives for disarmament, demobilization, resettlement and reintegration (DDRR) of militia groups and initiating dialogue on this issue may constitute a strategic entry point for UNDP support.

Types of Transitional Justice Mechanisms (TJMs)

Criminal prosecutions: Domestic courts, international tribunals, hybrid judicial mechanisms.

Transnational justice mechanisms: Criminal prosecutions and civil suits in foreign courts.

Quasi-traditional justice mechanisms: Incorporation of mechanisms or processes that exist outside the formal state framework, as elements of a transitional justice strategy.

Commissions: Primarily truth commissions set up on a temporary basis to investigate specific human rights abuses.

Lustration/vetting processes: Excluding certain individuals from holding public office or employment through dismissal, forced retirement or establishing certain criteria which must be met by future candidates for public positions.

Reparations: Relieving suffering of, and affording justice to, victims to achieve satisfaction through restitution, compensation, rehabilitation and guarantees of non-repetition.

Amnesty: Act by which an individual or a group of people is granted immunity from criminal prosecution, and in some cases civil liability, for a crime committed in the past.

Adapted from: "A Scoping Study of Transitional Justice and Poverty Reduction", Jane Alexander for DFID, January 2003.

⁶ Farid, H., and R. Simarmatra. 2004. "The Struggle for Truth and Justice: A Survey of Transitional Justice Initiatives throughout Indonesia." Occasional Paper Series, International Center for Transitional Justice. New York, NY.

Focus on Long-term Stability

In post-conflict situations, sustainable capacity building and just self-governance are central to long-term stability. Therefore, the emphasis should be on the development of human resources and on institutional reform which focuses on the most disadvantaged people.

Achieving such goals requires the adoption of a constitution to provide legal protection for all individuals and to define the competencies and responsibilities of the State. Further, legal drafting should specify the roles of State actors. Emphasis should be given to drafting the necessary procedure codes to ensure non-discrimination and inclusion of international human rights standards.

Not only is it necessary to establish a legal framework which adheres to international

standards, it is also important to ensure such a framework can be implemented effectively. This requires that all key actors are accountable, that independence of the judiciary is ensured, and that governance is democratic. It also requires that legal aid systems are in place to assist people in seeking justice, and that citizens have the capacity to monitor the justice system. CSOs also play a key role, and strengthening them will enhance their ability to monitor the judiciary.

A rights-based approach to programming in post-conflict countries is crucial. As in all access to justice programming, non-discrimination, accountability, and participation are all key to ensuring an inclusive process in rebuilding the justice system in the aftermath of conflict. As a result, although post-conflict rebuilding brings many unique challenges, the strategies outlined in other sections of this Guide may also be applicable.

A Rights-based Approach to Post-Conflict Situations

- From a procedural point of view a rapid assessment of the situation and the people's needs has to be undertaken. Participation, that is, national ownership of all reforms has to be ensured right from the beginning. Although there may be a lack of capacity, e.g., due to death or displacement of qualified people, meaningful participation is fundamental to sustaining the reforms.
- Enhancing the capacities of duty-bearers to enable them to be accountable involves defining their tasks, improving their administrative capacities and raising their awareness through training. Duty-bearers include staff of ministries, judiciary, prosecutors, quasi-judicial bodies, traditional justice mechanisms, police and law enforcement.
- The principle of non-discrimination calls for a focus on marginalized groups and their needs, as well as their participation and empowerment. The most disadvantaged tend to be minorities, refugees, internally displaced, prisoners, ill and disabled people, widows and orphans. For these groups, formal justice processes may be hard for them to access, perhaps due to lack of knowledge or lack of financial resources. In these cases traditional justice mechanisms may be more appropriate. Further, a gender perspective needs to be introduced into programming as women face particular challenges as refugees or as dependants of ex-combatants (see UNSC Resolution 1325).
- Linkages to international human rights standards are necessary to ensure that basic human rights, especially those of disadvantaged groups, are protected. Linking any approaches to human rights standards means familiarizing those who are part of the justice system or are implementing TJMs with the relevant standards.