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United Nations Development Programme

RULE OF LAW AND ACCESS TO JUSTICE

in Eastern and Southern Africa

Showcasing Innovations and Good Practices



Rule of Law and Access to Justice in Eastern and Southern Africa: Showcasing Innovations and Good Practices

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FOREWORD

Respect for the rule of law and the ideals of fair and accessible justice systems are taking root in sub-Saharan Africa. Capable and accountable law and justice delivery institutions and governments that adhere to the rule of law are important to political, social and economic development. Legal and judicial systems are centrally placed to prevent abuse of power and arbitrary decision-making. Apart from being relevant in promoting democracy and human rights, more accountable legal and justice systems, contribute to the overall wellbeing of society and individuals as well as the equal distribution of opportunities. They are essential for creating conditions conducive for national and regional peace and security. Rule of law and justice are indeed both processes and outcomes of inclusive, accountable and democratic states.



Tegegnework Gettu
UN Assistant Secretary General
and Director, UNDP Regional
Bureau for Africa

This report provides thought provoking lessons from eastern and southern Africa that set out principles and approaches that can be used to position law and justice in development. It analyses how law and justice advance social, economic and cultural rights; assist societies to withstand crisis; and to drive inclusive growth that improves quality of life. It conveys concrete approaches from the region that help to shape continental and global discussion on rule of law and access to justice.

In so doing, the report reiterates acknowledged phenomena and shares recent practices, innovations and stories of change that dispel perceptions that legal and justice reforms have not gained traction in sub-Saharan Africa. We learn how to better use the law and justice as tools for sustainable development from the democratic governance reforms in Kenya; to the value of engaging with alternate justice systems in Uganda, Burundi and Malawi; and how to overcome the legacy of conflict in DRC and Burundi. We also bear witness to the impact of shifting trends in legal aid provision to secure rights and enhance access to justice for specific vulnerable groups such as persons living with and affected by HIV and AIDS in Botswana, and the growing use of ICTs and social media in enhancing access to legal and other information on improving peoples' lives and livelihoods.

Experiences from the work of UNDP, partner governments and organizations show a positive increase in innovation across the region with a shift from traditionally supply- side interventions – focused on providers of justice - towards mainstreaming law and justice into development. However, policy and programmatic



responses have sometimes faltered. Many governments and other actors fail to recognize the rapidly changing and fragile contexts within which reforms are implemented and lack bold interventions that seek to shift power to citizens. Sometimes, responses are inadequate, reactive, ad hoc, fragmented and often short-term with limited inbuilt sustainability. As such, some reforms are yet to create increased and sustainable choice among target groups.

The reality in many countries highlighted in this report is that of unfairly enforced laws that are not accessible to all, weak institutions unable to increase access to justice, or citizens who are not empowered to make effective use of the law. Measures for better policies, effective laws, stronger institutions, empowered citizens and improved practices need to be tailored to country-specific contexts. They should also adopt long term programmes that target structural challenges and root causes of discrimination and injustice, supported by sustained regional and national partnerships and investments. At the same time, the approaches should be adapted continuously to make law and justice relevant and responsive to community needs. This will ensure sustainability of benefits and achieve the necessary societal transformation.

By reinforcing law and justice as vital elements in national policy making and implementation, the lessons and good practices from this study are expected to add value to the ongoing discourse on the rule of law, legal empowerment and access to justice. We hope that the findings will inform the work of development practitioners and policy makers on the continent and around the world, and reinvigorate the debate on how to strengthen the rule of law and access to justice in Africa and lead to more decisive action.

A handwritten signature in black ink, appearing to read 'Tegenuk Seb', is located above the official title.

**UN Assistant Secretary General and Director,
UNDP Regional Bureau for Africa**



PREFACE

Law, legal and judicial institutions are crucial to reducing poverty, strengthening social and economic equality, and achieving human security and development, and they should therefore be people centred. In that regard, rule of law, accessible legal and judicial institutions, and a legally empowered citizenry facilitate the enjoyment of social, economic and political justice and its benefits should be all inclusive and sustainable. Such an understanding helps to ground law and justice considerations in a sustainable human development agenda. However, measures taken to strengthen the rule of law and enhance access to justice have tended to focus more on enacting rules, and developing frameworks and institutions. The transformative role of law, legal and judicial institutions and legal empowerment have not been fully explored and as such, it is often difficult to present evidence of impact from decades of legal and judicial reforms.



Geraldine Fraser-Moleketi
Director, Democratic Governance
Group, Bureau for Development
Policy, UNDP

Drawing on case studies from Botswana, Burundi, Democratic Republic of Congo, Kenya, Malawi, Mozambique, Rwanda, South Africa and Uganda, the report outlines several achievements and challenges that affect UNDP's rule of law and access to justice focus and approach. The mapping shows an increase in innovative reforms across the region and through which different stakeholders have moved towards mainstreaming law and justice in development. However, it also indicates that the evidence is sparse on the real and sustained impact of development assistance from UNDP and other organisations to enable an environment in which people's access to justice results in more opportunities which are both inclusive and equitable. This demands that UNDP consider how to better ensure the relevance of its development assistance in this field and more visibly position law and justice in development in the context of contemporary challenges and emerging issues in order to sustain accruing benefits in terms of transformative change. The formulation of a Post 2015 global development agenda that integrates law and justice considerations should provide a unique opportunity to fully explore the potential of this approach.

I hope that this study will continue to inform the future design of UNDP corporate policy and that of national, regional and global strategies and programmes which seek to enhance the capacity of legal and judicial institutions to support sustainable and inclusive human development. The knowledge should also further promote regional and national rule of law, access to justice and legal empowerment dialogue on policy and institutional frameworks as means to achieving effective and sustainable development.

This report is the result of a cross-practice effort between the Bureau for Africa and the Bureau for Development Policy in UNDP. Its preparation would have been impossible without the assistance of people who have



kindly provided information and participated in interviews. I wish to especially acknowledge our gratitude to the team in the UNDP Regional Service Centre for Eastern and Southern Africa whose insights, guidance and contributions have greatly strengthened the process and final report. Special thanks to Ms. Evelyn Edroma, Policy Specialist for Human Rights and Access to Justice who provided technical input and direction during the course of the study. We also wish to acknowledge the UNDP Country office Governance and Rule of Law Units in Kenya, DRC, Botswana, Burundi, South Africa, and Uganda as well as partner organizations which shared their views and documents on rule of law and access to justice, and facilitated meetings with stakeholders at national level.

A handwritten signature in black ink, reading "G. J. Fraser - Moleketi".

Geraldine Fraser-Moleketi
Director, Democratic Governance Group,
Bureau for Development Policy, UNDP



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ACKNOWLEDGEMENTS

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Valuable contributions were provided at different stages of the study by the following:

Representatives of governments and partner organizations namely:

Burundi: National Council of the *Bashingantahe*, Global Rights, Belgian Technical Corporation, ACCORD, BINUB, International Conference on the Great Lakes Region

Botswana: Botswana Network on Law and AIDS

Democratic Republic of Congo: American Bar Association, MONUSCO, Association of Women Lawyers, Heal Africa, Heal Africa Transition Centre for Victims, Police and the Army

Kenya: Ministry of Justice, National Cohesion and Constitutional Affairs, *Amkeni Wakenya*, *Akiba UHAKI*

Malawi: Paralegal Advisory Services Institute

South Africa: Southern African Litigation Centre, African Legal Information Institute

Uganda: Association of Women Lawyers in Uganda (FIDA-U), Forum for Women in Development, Justice Centres Uganda, Land and Equity Movement Uganda, Mentoring and Empowerment Programme for Young Women, Global Rights, MMAKS Advocates, LIGOMARC Advocates, UNFPA, UNICEF: Emma De Villiers

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LIST OF ACRONYMS AND ABBREVIATIONS

AAIK	Action Aid International Kenya
ABA	American Bar Association
ACCORD	The African Centre for the Constructive Resolution of Disputes
ACHPR	African Commission on Human and People's Rights
African LII	African Legal Information Institute
Amkeni Wakenya	Civil Society Democratic Governance Facility
APRM	African Peer Review Mechanism
ASF	Advocats sans Frontières
BDP	Bureau for Development Policy
BINUB	Bureau Intégré des Nations Unies au Burundi
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBO	Community Based Organization
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CIC	Commission for the Implementation of the Constitution
CIDA	Canadian International Development Agency
CLARION	Centre for Law and Research International
CoE	Committee of Experts
CoP	Community of Practice
CLARION	Centre for Law and Research International
CNTB	National Commission on Land
CSO	Civil Society Organization
CRC	Convention on the Rights of the Child
CTB	Belgian Technical Cooperation
DFID	Department for International Development
DGG	Democratic Governance Group
DIHR	Danish Institute for Human Rights
EAC	East African Community
EACJ	East African Court of Justice
EALA	East African Legislative Assembly
ECK	Electoral Commission of Kenya
ESCRs	Economic, Social and Cultural Rights
FARDC	Forces Armées de la République Démocratique du Congo
FIDA-U	Association of Women Lawyers Uganda
HDC	Harmonized Draft Constitution
HRC	Human Rights Council
HRW	Human Rights Watch
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
IIEC	Interim Independent Electoral Commission (Kenya)
INTAHE	National Council of the Bashingantahe
IREC	Independent Review Commission of the 2007 Kenyan Elections

LIST OF ACRONYMS AND ABBREVIATIONS



ISSSS	International Support Strategy for Security and Stabilization
JC	Justice Centres
KCBO-Net	Kamukunji Community Based Organization Network
KHRC	Kenya Human Rights Commission
KICODI	Kisauni Constituency Development Initiative
KNDR	Kenya National Dialogue and Reconciliation
NDFW	Nairobi Devolved Funds Watchdog
LEMU	Land and Equity Movement of Uganda
LRF	Legal Resources Foundation
MONUSCO	United Nations Organization Stabilization Mission in the DRC
MSM	Men Who Have Sex with Men
NCEP	National Civic Education Programme
NRC	Norwegian Refugee Council
OPC	Office of the President and Cabinet
OPJ	Officier de Police Judiciaire
PASI	Paralegal Advisory Services Institute
PEV	Post-Election Violence
PSC	Prosecution Support Cells
PIL	Public Interest Litigation
PLWHA	People Living with HIV/AIDS
RBA	Regional Bureau for Africa
SADC	Southern Africa Development Community
SALC	South African Litigation Centre
SGBV	Sexual and Gender-Based Violence
SIDA	Swedish International Development Agency
SWAp	Sector-wide Approach
TA	Traditional Authority
UDEK	United Disability Empowerment in Kenya
UDHR	Universal Declaration of Human Rights
UG LII	Ugandan Legal Information Institute
UNDP/PNUD	United Nations Development Programme
UNDP RSC ESA	UNDP Regional Service Centre for Eastern and Southern Africa
UNEAD	United Nations Electoral Assistance Division
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women (UN Women)
UPR	Universal Periodic Review



EXECUTIVE SUMMARY

I. Overview

The rule of law and access to justice are fundamental to ensuring sustainable change and development and should be seen, not as ends in themselves, but as tools in the promotion of other rights. It is not enough to have laws enacted or justice institutions rehabilitated, these laws must be implemented and systems operationalized to ensure that they work for the people. Indeed, in the last decade or so, UNDP has shown a conceptual shift in its approach to the rule of law and access to justice, viewing and applying these principles comprehensively in reforms that seek to eliminate poverty and strengthen social justice, human development, security, and democratic governance.

In this regard, UNDP has undertaken numerous interventions within the Eastern and Southern Africa (ESA) region. Progress has been made on many fronts, from successful referendum elections conducted in Sudan and Kenya and general elections held in Rwanda, Tanzania, Zambia and other countries in the region, to constitutions and laws enacted in Kenya, Zambia and Mozambique; justice institutions rebuilt in several countries; access to legal aid enhanced in Rwanda; and progress achieved in women's rights particularly in increased representation in political office across the region.

Tangible results have been attained in many crucial areas. For instance, the recently released United Nations MDG Progress Report, July 2011 reports gains in the reduction of global poverty which is estimated will sink below 15% in 2015; increased education enrolment with 18% gains in Sub-Saharan Africa alone between 1999 and 2009; reductions in deaths due to Malaria; a decline in the number of deaths of children under the age of five from 12.4 million in 1990 to 8.1 million in 2009; increased access to water with an estimated 1.1 billion people in urban areas and 723 million people in rural areas gaining access to an improved drinking water source between 1990 and 2008. In many cases, this progress has been reinforced by strong legal and justice systems and credible reforms in the rule of law and access to justice. (*See discussion in section A*)

A key concern, nonetheless, is that despite this improvement, the most vulnerable including the "poorest of the poor and those disadvantaged because of their sex, age, ethnicity or disability" remain marginalized and excluded from the benefits so far attained. This state of affairs has been exacerbated by increasing inequality, multiple crises and persistent violent conflicts in many regions of the world, weak legal and justice systems and non-adherence to the rule of law.

II. Issues emerging and lessons identified

While stories of reform are plentiful, stories of sustainable change as a result of these reforms are fewer and far between. Interventions have, in a number of cases, not translated into sustainable impact primarily as a result of the fragile context within which these reforms are implemented and the emerging global and regional context (including the global financial crisis, rising crime, global terrorism and HIV/AIDS) that pose new challenges for development programming.

The evolving global and regional context requires engagement with the distribution of power and resources, and renewed commitment to fundamental values and norms in order for the African continent to develop sustainably. Without bold and often contentious reforms the fragile situation in the region, shifting power relations and growing inequality are likely to remain unaddressed.



UNDP possesses the required technical capacity to engage with governments and partners. However, current development approaches that focus on technical capacity, while useful, are often inadequate or inappropriate to address injustices and major human rights violations especially in the case of fragile, conflict and post-conflict situations.

The co-existence of UNDP with other UN agencies including the UN Missions supported by Department of Peacekeeping Operations (DPKO), or the Department of Political Affairs Bureau particularly in fragile and conflict settings aims at ensuring a division of roles. In practice, however, the division of roles and responsibilities is often insufficiently articulated and this has an impact on country programming regarding rule of law, especially when handling sensitive or politically charged issues.

The structural and root causes of inequality in society that concentrate resources, power and privilege into the hands of a few, should be increasingly central to development interventions. As each context is different, in-depth assessments and studies are required to support any intervention. A substantial challenge, nonetheless, is that addressing these structural problems requires long-term engagement and commitment and making difficult decisions.

Long-term planning and programming, funding and engagement are critical to addressing underlying complexities and vulnerabilities. Yet sustainable resources for funding rule of law and access to justice interventions over the long term do not exist. This may result, in some cases, in projects that are ad hoc and fragmented and whose sustainability is inherently ineffective and limited.

Legal pluralisms are a reality in the region. While utilized by many individuals and communities in settling disputes, inherent to these alternative justice systems are weaknesses that can be used to exploit the vulnerable. Lessons from Malawi, Botswana, Uganda and Kenya indicate that it is essential to systematically engage with these multiple justice systems so as to understand what works, what doesn't work, and how these systems can be strengthened to safeguard the rights of the vulnerable and ensure fair justice outcomes for individuals and communities.



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EXECUTIVE SUMMARY

Integrated justice system reforms are critical in ensuring that root causes and bottlenecks are identified and addressed in a holistic manner and that justice systems operate effectively. Furthermore, lessons from Kenya (GJLOS) and Uganda (JLOS) highlight that strong leadership is critical for driving through bold reforms.

Though legal aid underpins the attainment of other rights, lessons from Kenya, Malawi and Uganda indicate that increased legal awareness of rights and the mechanisms to attain them has not necessarily translated into legal empowerment, increased consciousness or citizen action for the protection and promotion of these rights.

III. Recommendations

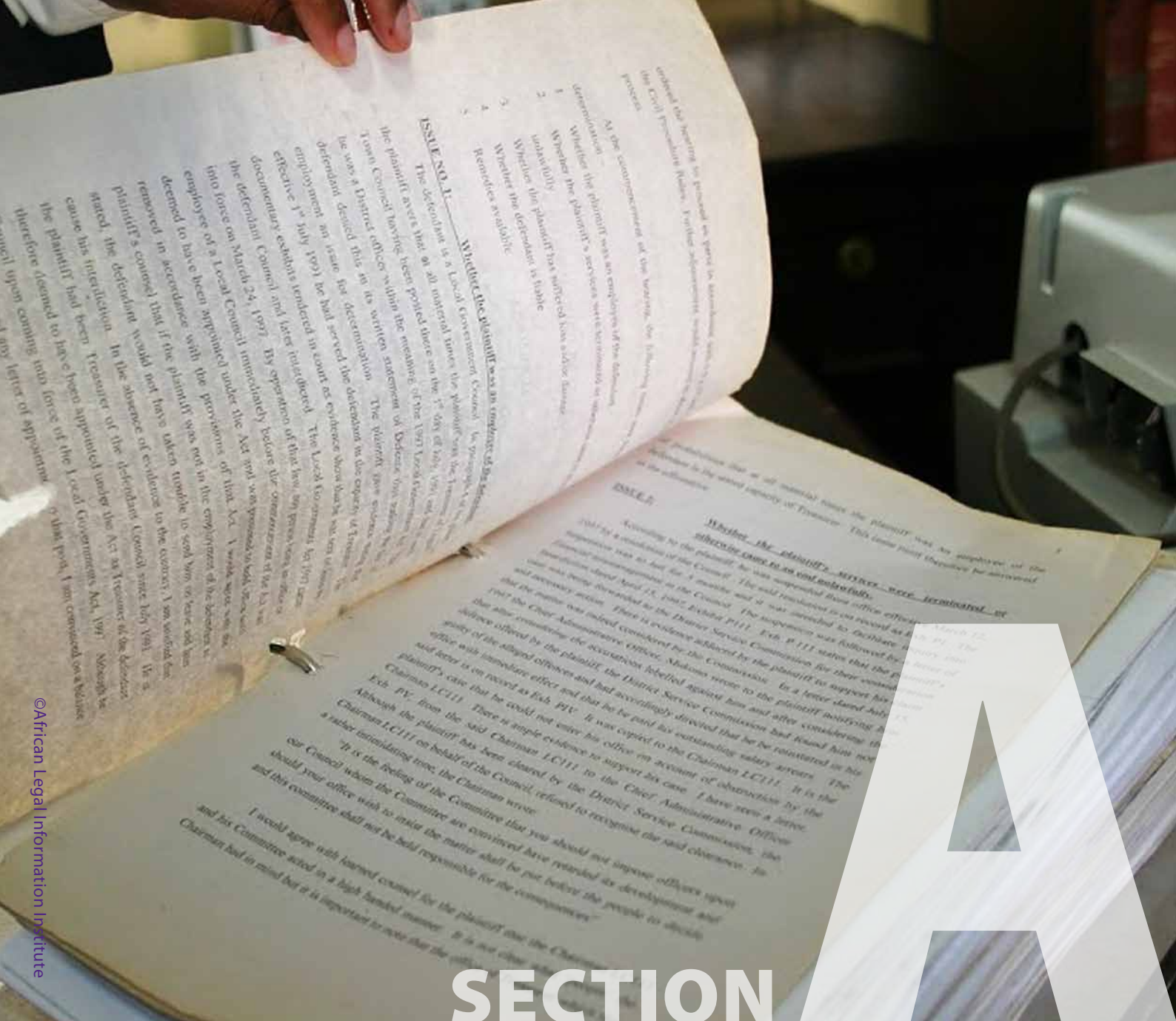
Overall, while achievements have been made in enhancing UNDP's conceptual clarity around the key principles of the rule of law and access to justice, **it is necessary for UNDP to revisit its approaches and methodologies due to evolving global and regional challenges and contexts.** To do this requires a thorough examination, in specific contexts, of the underlying causes and structural challenges that exacerbate inequality and of the augmented application of the Human Rights-Based Approaches to development that promote participation, empowerment, non-discrimination and accountability for fair justice outcomes.

While making the most of its niche in technical capacity, **UNDP should also be able to consistently engage in more "political" issues,** including influencing power and resource allocation. In complex contexts, UNDP should utilize its convening power to address politically sensitive issues. This also calls for a more coherent approach in practice and the clarification of roles and responsibilities among the various departments and agencies of the UN.

UNDP should seek long-term programming and coherent support for the rule of law and justice in the region and move away from short-term and fragmented interventions. Lessons from supporting integrated justice reform programmes and democratic governance reforms in Kenya all show that a long-term approach holds more potential in terms of changing policies, practices and attitudes to enable sustainable transformational change in communities.

Systematic engagement with multiple justice systems, including the traditional and religious mechanisms, is crucial to understanding what works and what doesn't work within these systems, and how these systems can be strengthened to safeguard the rights of the vulnerable and ensure fair justice outcomes for individuals and communities.

Increased systematic partnership with and support to citizen voice and action is required from UNDP. This should be through structured legal aid reforms encompassing policy frameworks and institutional building; support to Public Interest Litigation (PIL) interventions to create wider impact; and exploration of the increased use of ICTs, particularly social media, as a tool to promote the rule of law in the wake of social activism in North Africa and the Middle East.



SECTION

THE RULE OF LAW AND ACCESS TO JUSTICE: OVERVIEW, STATUS AND TRENDS



THE RULE OF LAW AND ACCESS TO JUSTICE: OVERVIEW, STATUS AND TRENDS

"The United Nations has learned that the rule of law is not a luxury and that justice is not a side issue. We have seen people lose faith in a peace process when they do not feel safe from crime. We have seen that without credible machinery to enforce the law and resolve disputes, people resorted to violence and illegal means and we have seen that elections held when the rule of law is too fragile seldom lead to lasting democratic governance. We have learned that the rule of law delayed is lasting peace denied, and that justice is a handmaiden of true peace. We must take a comprehensive approach to justice and the rule of law. It should encompass the entire criminal justice chain, not only police, but lawyers, prosecutors, judges and prison officers, as well as many issues beyond the criminal justice system."

*Kofi Anan, Former UN Secretary-General
Foreword, UNDP Access to Justice: Practice Note 9/3/2004*

A.1 Rule of law and access to justice: an overview

Since the adoption of the Universal Declaration of Human Rights by the General Assembly in 1948, significant progress has been attained through the ratification of key human rights treaties and instruments and the establishment of institutional frameworks and treaty mechanisms for the protection and promotion of human rights. The last few decades have seen a wave of reforms that seek to incorporate the fundamental Bill of Rights,¹ including constitutional reforms,² enactment of legislation, creation of national human rights and democratic institutions, and the establishment of integrated justice systems to coordinate reform.

Central to these reforms are two fundamental principles: the Rule of Law and Access to Justice. The Rule of Law is a cornerstone of democratic governance and ensures that governmental authority is legitimately exercised in accordance with written, publicly disclosed laws which are consistent with international human rights norms and standards and enforced in accordance with established procedural steps referred to as due process.

The existence of laws and justice systems provides a starting point for individuals and communities to claim and demand their human rights as laid down in international, regional and national instruments. However, it's not enough to have laws, these laws must be implemented and there must be mechanisms for rights holders and claimants to seek justice and redress where these rights are not protected and promoted or have been violated. Required are functioning systems and mechanisms through which aggrieved parties can settle disputes and grievances and seek redress.

¹ The International Bill of Rights consists of the UDHR, the International Covenant on Civil and Political Rights (and Optional Protocols), the International Covenant on Economic, Social and Cultural Rights (and Optional Protocol) and subsequent treaties.

² The latest countries in Africa to enact new constitutions are Kenya and newly created South Sudan



It is globally recognized that the rule of law and access to justice are not ends in themselves but that both are pivotal to eliminate poverty and strengthen social justice, human development, security and democratic governance. In its wider application, the rule of law has been extended to embrace socio-economic development and social justice. In this sense, the rule of law not only prohibits those in power from abusing it, but also obligates them to act positively and meaningfully for the welfare of the people as a whole.⁴ Increasingly, the definition

of access to justice has expanded beyond the traditional narrow sense of addressing barriers to justice to encompass a greater focus on justice outcomes. According to UNDP,⁵ access to justice encompasses more than improving an individual's access to courts, or guaranteeing legal representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable. Furthermore, it must encompass the ability of people - especially those from disadvantaged groups - to prevent and overcome human poverty by seeking and obtaining a remedy, through the justice system, for grievances in accordance with human rights principles and standards.”⁶

Overall, progress in the realization of the rule of law and access to justice in eastern and southern Africa has been attained at certain levels, for example, in promoting the rights of children; gender equality through women's representation in public office; protection of inheritance and property rights; and combating domestic violence. However, significant concerns exist especially around translating laws into implementation, ensuring positive change and impact on communities and sustaining development.

In the African context, the last decade has seen numerous reforms, innovations and practices aimed at enhancing the rule of law, democracy and access to justice that have made some difference within the localities and communities of intervention. In some specific cases, tangible progress has been recorded and justice outcomes have been attained. In many cases, however, some reforms have not always been responsive to structural challenges and often do not address the roots of the problem caused by patriarchy, power and privilege that are manifested in exclusion, unequal distribution of resources and discrimination.

The Rule of Law has been defined by the UN Secretary General³ as “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.”

3 UN, 2004: Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies.”

4 “Strengthening Administration of Justice and Upholding The Rule of Law in East Africa: Challenges And Opportunities” A paper presented by Mr. Keriako Tobiko, Director of Public Prosecutions, Kenya during the 2nd EAC conference on good governance- 19th-20th August 2010, Nairobi.

5 UNDP, 2004: Access to Justice Practice Note, 9/3/2004, p6.

6 Ramaswamy Sudarshan, 2003; Rule of Law and Access to Justice: Perspectives from UNDP Experience - Paper presented to the European Commission Expert Seminal on Rule of Law and the Administration of Justice as part of Good Governance, 3-4 July 2003, Brussels.



A.2 Objectives of the study

Laws and justice systems have been the focus of women's activism because women have recognized both their potential and their current failings. Where laws are missing or discriminatory and the infrastructure of justice is broken, access to justice must mean more than simply helping women to access existing justice systems.

*Progress of the World's Women: In Pursuit of Justice
UN Women, 2011/2012, p 9*

The UNDP Regional Centre for Eastern and Southern Africa commissioned a mapping of innovative tools, methodologies and approaches to promote the rule of law and enhance access to justice in eastern and southern Africa. UNDP specifically seeks to “increase its knowledge on the role that the law and justice play in promoting and ensuring transformational change in people's lives and to explore how law and justice are being used or should be used by UNDP:

- to advance social, economic and cultural rights,
- to protect and promote the rights of vulnerable and marginalized groups,
- to assist societies to withstand crisis, and
- to drive and further sustain growth that improves quality of life for all.”

This study is aimed at documenting and showcasing good practice that can be disseminated, replicated and scaled up and will apprise future UNDP policy and strategy on rule of law.

A.3 Scope and methodology of the study

The study encompassed Eastern and Southern Africa (ESA) covered by the UNDP Regional Service Centre and comprising 23 countries.⁷ The study synopsis states “Sustainable development and indeed transformative change can only take place where structural challenges and root causes of community problems are systematically identified and addressed.” Criteria were developed to hone in on interventions that have shown a tangible contribution to sustainable development and transformative change using the rule of law and access to justice as tools of development. It was deemed insufficient to simply document laws that have been enacted, and decided necessary to record the changes that have resulted from implementation of this legislation.

Methodology: A threefold methodology involved (1) a *desk study* covering the ESA region based on studies, reports, evaluations and project documents.⁸

7 The countries include Angola, Botswana, Burundi, Comoros, Democratic Republic of Congo (DRC), Eritrea, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe. In July, South Sudan was added to the region bringing the number to 23.

8 Documents reviewed listed in Annex 3.



Paralegal Advisory Services
Institute on Camp Court
facilitated by PASI in progress
©PASI, Malawi

Specific Objectives of the Study:

1. To review and map reform orientated interventions in eastern and southern Africa aimed at promoting rule of law and security and to enhance access to justice particularly for the poor and marginalized groups.
2. To identify innovative rule of law tools, methodologies or interventions within countries, and to identify evidence of impact from the application of these tools, methodologies or interventions on enhancing access to justice, promoting legal pluralism, security and development.
3. To highlight good practice, and analyse the drivers and conditions for the creation of good practice and for their replication.
4. To document, based on the findings, key conclusions on policy and programmatic principles for making rule of law and access to justice in particular, a more effective enabler for development.

TORs, UNDP RSC

(2) *A conceptual framework⁹* highlighting the current status of rule of law and access to justice, major trends, emerging issues at global and regional level and numerous interventions that have been undertaken by UNDP and other partners. The study focused on interventions that sought to catalyse the creative application of the law and the innovative delivery of justice services to bring about transformative change in the political, social, and economic spheres and to lessons that could be derived and had the potential to be instrumental to UNDP programming.

(3) *Field visits to 6 countries were completed between August and September 2011* selected on the basis of the findings and issues emerging from the desk study and the availability of information, and readiness of UNDP country teams to participate in the process. The recurring and emerging issues identified were clustered and reforms and interventions that had been utilized were identified and examined. In narrowing down the final set of countries, priority was given to areas where information was readily obtainable. The six countries selected are: Botswana, Burundi, DRC, Kenya, South Africa and Uganda.

⁹ See the conceptual framework submitted on July 10th 2011 and the revised concept paper submitted August 2011.



SECTION A

Table 1: Clustering of Key Issues and Countries Identified for Field Visits

Issue	Reform/ intervention	Country identified
Conflict, post-conflict recovery	Addressing contextual issues including land and SGBV	Burundi, DRC
Democratic governance and the rule of law	Electoral reforms, constitutionalism and law reform	Kenya
Functionality of justice institutions	Integrated justice systems	Kenya, Uganda
HIV/AIDS and the law	Protecting and promoting the rights of vulnerable groups, including women	Botswana, Kenya, Mozambique
Legal empowerment for the poor	One-stop legal centres, innovative approaches to prisoners rights	Malawi, Uganda, Kenya, Burundi
Legal pluralisms and alternative justice mechanisms	Navigating and engaging alternative justice mechanisms	Burundi, Malawi, Uganda
ICTs and the law	Use of ICTs to enhance free access of the law	South Africa

Study limitations: While support was rendered by the UNDP RSC and the relevant country teams, a number of challenges were faced that limited the study and these included: poor documentation and a paucity of updated information on processes and outcomes of interventions; absence of independent evaluation reports; busy schedules of country teams; programme reports and documents often not reflecting findings on the ground; and a sense of fear from some interviewees who declined interviews notably in the conflict affected countries of Burundi and DRC.

A.4 Key findings: access to justice and rule of law interventions by UNDP in the region

UNDP has over the last decades supported access to justice, rule of law, and security reforms through the provision of financial and technical support and advisory services in a broad range of related areas such as: criminal justice, prison and police reform; sexual and gender-based violence; public legal aid systems, legal awareness and legal counselling; informal justice systems; reform of family and inheritance law and women's land rights.¹⁰

¹⁰ UNDP 2011: Global Thematic Programme for Accelerating Access to Justice for Human Development, 2009-2013 p11. The document highlight some of the interventions UNDP has undertaken based on a 2006/2007 UNDP survey carried out to assess its justice programming since 2004.



Traditional rule of law and justice reforms were largely supply oriented and focused on addressing challenges in the justice sector that included enacting new policies and legislation and repealing outdated laws that have perpetuated discrimination; removing procedural technicalities that have obstructed justice; enhancing the geographical presence of justice sector institutions so as to address the inaccessibility of the formal justice system; and capacitating overstretched and ill-resourced justice systems. Nevertheless, in the last decade, the provision of legal aid has expanded and the awareness of rights holders has been enhanced while working with and capacitating informal justice systems to deliver justice that resonates with legal principles.

Examples of specific programmes that have been implemented or facilitated by UNDP in the region include:

- Supporting governments to formulate national justice reform strategies, for example, the Access to Justice Programme in Malawi, the Justice Law and Order Sector-Wide Approach in Uganda, the Legal Sector Reform Programme in Tanzania; the reform and modernization of the justice system in Swaziland, Angola and the Comoros; and the review and reform of laws in Rwanda.
- Enhancing legal awareness and legal aid through supporting awareness-raising activities such as the Amkeni Wakenya's Access to Justice Project in Kenya;¹² supporting interventions to develop a legal aid policy and institutional framework in Swaziland; capacity-building paralegal associations in several countries and strengthening legal aid service providers.
- Facilitating adjudication through training judicial officers, including the establishment of a SADC Judicial Secretariat based in Johannesburg so as to enhance the integrity and independence of the SADC judiciary which has been under threat from executive interference in several countries in the region.
- Enhancing the functionality and accessibility of adjudication systems by establishing centres for administration of justice and strengthening informal justice mechanisms including; capacitating court presidents, clerks and assessors in the traditional courts in Swaziland; capacitating the Local Council Courts through legislative enactments and developing regulations and manuals and providing training for local councillors in Uganda and the decentralisation of the courts and reconstructing the basic echelons of the traditional justice systems in Sierra Leone.
- Supporting transitional justice initiatives in post-conflict areas, for example, through partnerships with traditional leaders in northern Uganda, and establishing a Justice and Confidence Centre in Sudan, and training Justices of the Peace and their clerks and bailiffs for duty in rural locations during the critical post-conflict period in Sierra Leone.
- Supporting reforms aimed at anchoring democratic governance, community policing and human rights training in prisons and for police in Tanzania, Kenya, Mozambique and Ghana; electoral reforms and civic education in various countries in the region; constitutionalism in Sudan and Kenya.
- Implementing programmes on gender justice across the region.

11 www.amkeniwakenya.org



A.5 Major trends in the rule of law and access to justice

In the last decade, there has been a shift in UNDP's work from the traditional legalistic interpretation of the rule of law and access to justice to a broader understanding of the concepts, in which the focus is placed on enhancing equal access to opportunities and on the role of the legal systems in enhancing access to sustainable development. Key factors for this shift have included:¹² the changing African governance architecture with a specific quest for shared African values as shown in the African Peer Review mechanism; the vision of building capable, democratic, developmental states in Africa focussed on public service delivery, accountability, human rights protection and promotion, and increased focus on the relationship between justice and development with more emphasis on the MDGs, economic justice and inclusive growth. The major trends have included:

- a) **Policy and legislative reforms** - from repealing outdated and discriminatory laws and enacting new laws that are in accordance with international and regional human rights standards, to wider democratic governance reforms including facilitating constitution making, electoral reforms, strengthening key oversight bodies including national parliaments and national human rights institutions.
- b) **Specific institutional reforms** such as training judges on the adoption of sector-wide approaches and legal sector reform programmes for improved justice service delivery.
- c) Legal empowerment of the poor and marginalized groups through legal assistance and awareness of innovative approaches on **legal pluralisms and alternative justice mechanisms** and legal protections for economic and social rights claims.
- d) **Crime prevention strategies** including community policing, penal reforms for broader engagement on security sector reforms, transitional justice mechanisms and an increased focus on creating an environment conducive for economic development.
- e) **Gender equality programming**, from gender mainstreaming and focusing on women's security in the public sphere to increasing women's legal and economic empowerment and emphasising the private sphere including the home (in issues of domestic violence) and work place (equal work for equal pay and sexual harassment).
- f) **Added emphasis on commercial and economic governance reforms** including trade in both the formal and informal sectors, public financial management, anti-corruption, and land, energy and climate change adaption.
- g) Additional focus on **human rights-based approaches** in development programming including participation, non-discrimination and inclusion of vulnerable groups, empowerment of both rights holders and duty bearers and accountability for human rights-based outcomes.

¹² Op cit



These shifts have delivered progress in some cases. However, in others, progress has been relatively slow and in some cases retrogression witnessed, especially where crises such as war and conflict or the effects of climate change have befallen communities and states. In addition, in some instances the impact of reform has not been sustained while within the justice systems, serious obstacles and challenges still exist to limit the realization of people's right to access justice (*See section C for a detailed discussion using examples from cases studies in six countries including Burundi, Botswana, DRC, Kenya, South Africa, and Uganda*).

Box 1: Current Status and Challenges to Rule of Law and Access to Justice in Africa

- Archaic and outdated laws, procedures and processes remain in place
- Enormous implementation gaps prevailing between the existing laws and their application in practice
- Diverse and multiple applicable legal regimes leading to overlaps, forum shopping, and uncertainty
- Institutional and capacity shortages including those of skills, tools and manpower
- Institutionalized corruption, poor governance and lack of political will and commitment to carry through reforms
- Weak institutional reforms that fail to address barriers in the justice system
- Little public awareness of human rights and the mechanisms to claim them
- Lack of public trust and confidence in the governance and justice systems
- Patriarchy, gender blindness and inequality
- Language and cultural barriers and inter-factional fears and suspicions
- Financial and budgetary constraints
- Poor coordination between and among national and community justice agencies
- A plethora of dispute resolution mechanisms resulting in overlaps, duplication and under-utilization of the established mechanisms



A.6 Current context: How accessible is justice for the people of the region?

The recently released United Nations MDG Progress Report, July 2011 confirms that considerable progress has been attained in some areas of human wellbeing. For instance, global poverty reduction is estimated to fall below 15% in 2015; increased school enrolment with an 18% gain in sub-Saharan Africa alone between 1999 and 2009; reductions in deaths from Malaria; a decline in the number of deaths of children under the age of five from 12.4 million in 1990 to 8.1 million in 2009; increased access to water with an estimated 1.1 billion people in urban areas and 723 million people in rural areas gaining access to an improved drinking water source between 1990 and 2008.¹³

Some countries in the region continue to perform highly and advance towards attaining major human rights and development goals. Within Africa, these include Mauritius, Seychelles, South Africa, Ghana, Botswana, Namibia, Sao Tome and Gabon, which all rank relatively low on the Failed State Index.¹⁴ Critical to their success are tangible attempts to enhance the rule of law, address governance challenges, the existence of strong and functional legal and justice systems, and inclusiveness and gender parity, which are essential for sustainable development.

A key concern, however, is that despite progress, the most vulnerable including the “poorest of the poor and those disadvantaged because of their sex, age, ethnicity or disability” remain marginalized and largely excluded from the benefits that have been attained.¹⁵ This state of affairs has been exacerbated by increasing inequality, multiple crises and persistent violent conflicts in many regions of the world.¹⁶ Global shocks and challenges such as the financial and economic crisis and climate change have exacerbated existing risks and pose potential challenges for the development agenda.

The existence of legislation, justice systems and reforms is clearly not enough to guarantee that human rights will be fully realized. The UNDP Global Programme for Accelerating Access to Justice duly notes¹⁷ that while some success has been demonstrated in addressing individual and public grievances, a number of reforms have not been built on comprehensive and targeted strategies while public needs and expectations are not systematically assessed and integrated. This has, at times, resulted in initiatives that are ad hoc, sectoral and institutional in nature and that fail to meet the needs of populations - especially the very poor.

Stagnant economies, weak institutions, strife, civil war and poor governance have undermined the rule of law in some African countries with increasing inequality, uncertainty, and insecurity becoming routine. Violent conflicts in Africa have resulted in untold suffering with millions killed, maimed and disabled; others being displaced either internally or as refugees; a breakdown of the social fabric within communities, a rise in sexual and gender-based violence; and rape increasingly being used as a weapon of war with disastrous effects notably in northern Uganda, DRC and the Darfur region of Sudan.

13 United Nations, 2011: The Millennium Development Goals Report 2011 p4.

14 Tunisia and Libya which appeared number 108 and 111 respectively on the Failed State Index have since undergone revolutions and are in a relative state of fragility. Tunisia recently held its first democratic elections in decades while Libya now has a new transitional government in place after 42 years of dictatorship.

15 Op cit

16 Affirmed by World Leaders at the High-level Plenary Meeting of the General Assembly on the Millennium Development Goals, September 2010.

17 UNDP: Global Thematic Programme for Accelerating Access to Justice for Human Development, 2009-2013, p12. The document highlights some UNDP interventions based on a 2006/2007 UNDP survey carried out to assess its justice engagements since 2004.



Burundi. Rural farmers find out information about local government systems which include justice systems.
©Tom Martin/JAI/Corbis

Indeed, a number of African countries continue to top the Failed States Index¹⁸ - a set of criteria that includes: legitimacy of the state, demographic pressures, progressive deterioration of public services, violation of human rights and the rule of law, weakened security apparatus, rise of factionalized elites, chronic or sustained human flight, mass movement of refugees or Internally Displaced Persons (IDPs), vengeance seeking group grievances and uneven economic development. Many states bearing these criteria are embroiled in some form of conflict, are on the brink of war or are emerging from conflict.

18 Failed States Index 2011 compiled by the Fund for Peace, Washington DC - www.fundforpeace.org. Detailed rankings at: http://www.foreignpolicy.com/articles/2011/06/17/2011_failed_states_index_interactive_map_and_rankings. The latest index shows that African States make up 7 of the top 10 and 14 of the top 20 places of worst ranking countries. These include: Chad, Sudan, DR Congo, Zimbabwe, Central African Republic, and Cote d'Ivoire. Among the top 20 are Nigeria, Niger, Kenya, Burundi, Guinea Bissau and Ethiopia.



SECTION A

A number of global and regional crises including the global economic and financial crisis, and the HIV/AIDS epidemic, are likely to affect progress towards set global targets including the MDGs. Growing populations continue to place a strain on scarce natural resources (including water and land) further aggravating disputes and conflicts. The ongoing global economic and financial crisis has not only led to rising inflation and high food and commodity prices, but it has also exacerbated existing inequalities in societies in which millions of people live in hunger.¹⁹

The World Bank in its World Development Report 2011 highlights the centrality of security and justice in attaining development. The report assesses the context of violence and conflict including transnational organized crime in Latin America, the Arab Spring in North Africa and the Middle East, and crime in Africa and how this is likely to threaten development in these regions. The report concludes that for development to take place, conflict must be prevented and causes of conflict addressed in the development processes.

According to the recently released United Nations report on the Global Social Crisis,²⁰ there exists a strong correlation between social crisis, increasing crime and political instability. Indeed, this year has so far witnessed high levels of civil strife exhibited through protests, strikes and demonstrations as a result of high food prices, wide-scale poverty and hunger in the face of massive public administration expenditure and corruption.²¹

Africa, like the rest of the world is also grappling with the adverse effects of climate change and environmental degradation and limited natural resources, particularly land and water, which are critical for livelihoods. These issues have all been detrimental to social cohesion, marked by increased levels of domestic violence, abandonment, neglect and abuse of children, tensions among social groups and youth as a result of unemployment and low incomes culminating in violent disputes, anti-immigrant and racial sentiments and increased crime.²²

Existing and emerging global and regional issues pose new risks and challenges to regional peace and security especially given the ineffectiveness of existing approaches used to promote justice and the inherent weaknesses and barriers that continue to plague justice systems in the region. To furnish an example, existing mechanisms for dealing with SGBV are largely through the formal court systems with the training of police and court officers, and development of guidelines and manuals. Reforming such systems while useful can be inadequate and often ineffective given the open court system that is remote, deters reporting, requires a high burden and standard of proof and is unable to promptly handle the mass abuses that occur during conflict. As a result, there are few reported cases and even fewer convictions and a growing culture of impunity to crime.

The existence of archaic procedures and laws that are often inaccessible to the majority of populations and the aforementioned failings of and obstacles in the justice systems, such as the poor capacity of judicial and investigating officers, have contributed to delays, growing case backlogs, overcrowding in prisons,

19 FAO estimates that the number of people living in hunger in the world rose to over a billion in 2009, the highest on record - see www.fao.org.

20 United Nations: The Global Social Crisis - Report on the World's Social Situation, 2011.

21 Civil and political strife has so far occurred in Angola, Botswana, Malawi, Mozambique, South Africa, Swaziland, Uganda and Zimbabwe. Other countries like Kenya took immediate short-term measures such as reducing fuel prices to avert imminent civil strife, while Rwanda maintained a strong fiscal policy.

22 Op cit No.17 p56-56.



and overall ineffectiveness in the administration of justice. In some cases, high levels of corruption affects service delivery within the justice sector consequently causing increased costs, delays and denial of justice. Based on international indices such as Transparency International, save for a few exceptions such as South Africa and Botswana, many of the countries in the eastern and southern Africa region routinely appear on the list of most corrupt nations.²³

The United Nations report on the Global Social Crisis 2011, points to a strong correlation between this social crisis and increasing crime and political instability.

Additional mechanisms and impetus are required to ensure that justice and the law are utilized as tools for empowerment, strengthening the resilience of communities and creating transformational change, particularly for the vulnerable and marginalized groups including youth, women, disabled, those living with HIV/AIDS and those often discriminated upon for age, religion and sexual orientation, among other bases. It is thus recommended that lessons learned, both positive and negative, and good practice from countries that have designed and embarked upon reform processes are identified and applied in order to apprise reform strategies.²⁴

23 See www.transparencyinternational.org

24 UNDP: Global Thematic Programme for Accelerating Access to Justice for Human Development, 2009-2013, p12.



©UNICEF/Karin Schermbrucker



A.7 Mapping reforms that innovatively use the law and justice to create change

This study contends that sustainable development can be attained where transformative change occurs, and that transformation can take place where social structures that foster inequality and the root causes of injustice are addressed. In the contemporary African context, inequality and injustice are principally grounded in exclusion from the benefits of economic growth, unfair natural and material resource allocation, patriarchal power structures and the abuse of privilege by ruling elites and traditional authorities.

For such deep-seated norms and practices to diminish, experience shows that while awareness-raising and increased political conscience has helped to shift power structures, this process needs to be more closely aligned with advancing social wellbeing and inclusive economic growth. Daily, there are numerous examples of social transformation, large and small, where power structures have been changed and growth experienced (for detailed examples see section B and annexed case studies). Of interest to this study are those transformations that are sustainable and those changes that have occurred as a result of states and citizens using the law and justice to achieve this change with development support.

The mapping process clustered and drew from specific categories of innovation including those that have facilitated change, but also those that may not have resulted in change, but provide valuable lessons for future programming. In particular, the study looked at reforms that seek to:

- a) **Enhance democratic governance and constitutionalism** and put in place appropriate legislation and strengthen institutions that promote citizens exercise of choice and tackle politically sensitive issues such as power and governance.
- b) Utilize the rule of law and access to justice in **post-conflict and recovery situations to protect communities** against heinous crimes while ensuring justice for crimes committed.
- c) **Address inherent and systematic obstacles in the formal justice system** using, for instance, integrated justice systems, and sector-wide approaches.
- d) **Support legal empowerment of poor and vulnerable groups** including the use of legal aid, paralegals and community based advisors, one-stop justice centres, Public Interest Litigation, and citizen action.
- e) **Engage alternative justice mechanisms** such as traditional leaders and religious authorities.
- f) **Address discrimination, protect the legal status and rights of minorities and disadvantaged groups** and expand opportunities for inclusion and participation in public and private life, including for Persons Living with HIV/AIDS, persons with disabilities, Lesbians, Gays, Bisexual, Transgender and Intersex (LGBTI), men who have sex with men (MSM) and commercial sex workers.
- g) **Deter impunity for gross human rights violations** through the use of international and regional human rights mechanisms including the ICC, the African Court of Justice and Human Rights, the East African Court of Justice, the SADC tribunal and the African Commission on Human and Peoples' Rights
- h) **Utilize technology including ICTs** and social media to promote information on and access to the law.



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SECTION

B

MAPPING METHODOLOGIES ON THE RULE OF LAW AND ACCESS TO JUSTICE: KEY FINDINGS, ISSUES AND LESSONS FROM CASE STUDIES



MAPPING METHODOLOGIES ON THE RULE OF LAW AND ACCESS TO JUSTICE: KEY FINDINGS, ISSUES AND LESSONS FROM CASE STUDIES

People must be at the centre of human development, both as beneficiaries and as drivers, as individuals and in groups. People must be empowered with the tools and knowledge to build their own communities, states and nations. People must be involved in their development.

UNDP Annual Report 2010/2011

B.1 Overview

Across the globe, the last decade has witnessed numerous experiences of transformation, from the revolutions in eastern Europe to the recent, and continuing, Arab Spring in North Africa and the Middle East. The institutionalization and transferability of such experiences to other parts of the world has been a point of discussion especially given the recent spate of civil unrest in a number of countries in the African region (including Malawi, Uganda, and South Africa) and the ongoing “Occupy Wall Street” movement in the western hemisphere. The lessons from the Arab Spring are still fresh in people’s minds: the consequences of being “ruled by law, by rulers of law or without law instead of the rule of law”²⁵ are clear to see.

This section seeks to present a cross section of innovations and interventions that have been undertaken by UNDP and its partners in the eastern and southern Africa region to enhance the rule of law and effectively use it to create sustainable change. In a region riddled with conflict and with institutions characterized by corrupt judiciaries, ineffectual parliaments, ineffective executives and overpowering presidents, a logical starting point is with reforms that seek to enhance democratic governance. This is necessary given the criticality of strengthening the capacities of political leadership and institutions to effectively and sustainably perform in change management while enhancing citizen choice, voice and participation in the development process.

In the last year alone, UNDP has supported institution building, constitutionalism and elections in the sub-region including Kenya (support to the referendum), South Sudan, Tanzania, Rwanda, Uganda and Zambia. Yet, elections continue to be a contentious subject in the region with malpractices such as voter rigging, electoral violence and commercialization of the electoral process frequently emerging. With the exception of recent peaceful and undisputed elections in Zambia, the general trend is not as positive. In this regard, the experiences and lessons from Kenya are worth considering given the post-election violence in 2007 and actions taken thereafter to restore democracy and enhance governance.

25 Summed up by a participant at a round table discussion on the rule of law at the GIZ/Bertelsmann Transformation Thinkers Forum in Berlin, September 20, 2011.



Constitution Making Process, Kenya.
©UNDP Kenya

B.2 Democratic governance reforms and constitutionalism in Kenya

Context: The post-electoral violence in 2007 that arose out of mismanagement of the 2007 parliamentary and presidential elections by the now defunct Electoral Commission of Kenya resulted in the loss of over 1,000 lives, displacement of hundreds of thousands of people and loss of property worth millions of dollars. However, electoral mismanagement was but a match to dry tinder. The roots of this violence lay in decades-old simmering tensions that had built up within the population based on a number of issues including inequity in resource allocation, tribalism, corruption, and rising unemployment.

Intervention and approach: Following negotiations among the opposing parties facilitated by a panel of eminent persons led by former UN Secretary General Kofi Annan, a coalition government was sworn into office in 2008. They identified a number of priority interventions to restore peace and also instigate democratic reform. A comprehensive reform package was critical to address the crisis situation in Kenya and hence a joint approach that brought together different stakeholders was necessary considering the massive scale of intervention required and the time imperative. A joint funding agreement was established supported by several donors²⁶ through a basket fund of USD 12.6 million managed by UNDP. The efforts were the equivalent of walking a tightrope - a flawed process or outcome could easily tip the scales towards conflict thus it was critical to use the right approach.

²⁶ The donors included: SIDA, Finland, Norway, UNEAD, DFID, Denmark, USAID, CIDA, EU, RNE and UNDP. The project had a total budget of USD 12.6 million.



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Key initiatives supported included political dialogue between coalition parties, establishment of the Interim Independent Electoral Commission (IIEC), holding a referendum on the constitution, enhancing citizen voice and participation through support to civil society in partnership with Amkeni Wakenya and a massive civic education campaign by the Committee of Experts (CoE) in Kenya. The table below highlights the key project components of UNDP support in Kenya.

Table: Main Project Components of UNDP Support in Kenya

- | |
|--|
| a) Support to electoral reforms and constitutional referendum by the IIEC, including support to civic education. |
| b) Support to political dialogue between the coalition partners and the panel of eminent personalities. |
| c) Support to Civil Society for Democratic Governance (Amkeni Wakenya). ³¹ |
| d) The Access to Rights programme. |
| e) The Judicial Review Programme. ³² |
| f) Progressive enhancement of democratic governance and human rights. ³³ |
| g) Access to justice for marginalized groups. ³⁴ |
| h) The Commission for the Implementation of the Constitution (CIC) |

Results and outcomes: UNDP support resulted in significant tangible outcomes including the establishment of critical institutions such as IIEC and the National Human Rights and Equality Commission, raising civic consciousness and awareness and holding the referendum and credible elections. For the first time, in August 2010, a constitution was disseminated that was a reflection of the aspirations of citizens and sought to tackle some of the deep-seated social and political structures and complexities that had so far dogged Kenya by; using strategies to remedy gender and tribal inequality through agreed targets; rectifying inequitable allocation of resources, including land and jobs, and decentralizing power through government devolution; and confronting corruption through various methods that included accountability of public office. ²⁷²⁸²⁹³⁰

27 Amkeni Wakenya is a Civil Society Democratic Governance facility founded by UNDP and other development partners to strengthen CSOs working on democratic governance of Kenya.

28 This review was conducted as part of a larger Agenda 4 comprehensive review that targeted constitutional and institutional aspects (including the police and parliament).

29 The project supported national human rights institutions as key counterparts in the promotion and protection of human rights for all at the national level.

30 The programme is funded by UNDP and the implementing partner is Kituo Cha Sheria (Legal Advice Centre).



The subsequent enactment of essential legislation within the stipulated constitutional timeframe (within a year of the constitution coming into force – 27th July, 2011) and establishment of a number of constitutional bodies for oversight, accountability and implementation of the constitution generated expectations among the population that reform had truly begun.

Arising issues and lessons: Overall, the programme in Kenya could be considered successful for not only instigating visible reform, but also supporting the country to recover from crisis and to address some underlying issues. The reforms also put in place some guarantee that future conflict could be resolved through the rule of law. Some of the issues and lessons include:

- a) **Facilitating the implementation of the Kenyan constitution** that makes a commendable attempt at addressing some of the causes of the conflict that has so recently occurred and puts in place deadlines for the realization of certain targets.³¹ While it's necessary to maintain momentum and consistency and take a long-term view of programming, implementation schedules and provisions for dedicated funding remain unspecified.
- b) In addition, a **potential shift of focus, and funds, away from implementing the constitution towards upcoming elections must be averted.** Such a shift could undermine the chances of preventing future conflict and ensuring sustainable development. Furthermore, the population is becoming weary of and frustrated at the sluggish pace of reform and the realization that the substantial political and social change that they'd anticipated is perhaps unattainable. The state needs to manage public expectations through wide-reaching information sharing and a time-bound implementation programme of its constitution.

31 For example tight deadlines for the reform of over 27 pieces of legislation within one year expired on August 27, 2012 and resulted in the hurried debate and enactment of legislation that will most likely require review.



©UNDP Kenya



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- c) Concurrently, the state is grappling with **tensions and possible fallout of the ongoing trial of six high profile officials in the ICC** that has created extensive debate and divided the country for and against the trials.³² The recent indictment of four of the accused persons³³ while the topic of debate across the country has not resulted in the predicted violence. That said, the state must reconcile over 5,000 cases of post-election violence that are stuck in the Attorney General's Chambers.
- d) **Democratic governance reforms should be grounded in wider social and economic revitalization.** While considerable advances have been made regarding laws, institutions and leadership, less have been attained in the social and economic spheres. As in other countries in the region, Kenya has been adversely affected by the global economic and financial crisis with high commodity and food prices and an inflation rate peaking just shy of 20%.³⁴ The potential for civil unrest that could undo the success attained in the mechanisms of democracy is high and hence support should be structured to ensure that strategies and resources are adequate to address the economic and social challenges facing the country.
- e) **Quality and effectiveness of reforms should be enhanced:** While positive indicators are evident and "boxes ticked" on a number of fronts, for instance, constitutional bodies established and laws enacted, it is essential to enhance the quality and enforceability of legislation while ensuring that the institutional framework is robust, independent, has clout and is capable of implementing its mandate.
- f) To facilitate long-term implementation and sustainability, **institutional and democratization reforms must be pursued within wider government restructuring** such as the Governance, Justice Law and Order Sector (GJLOS) reforms.

-
- 32 The ICC named and filed charges against six high-profile Kenyans as key suspects in the violence that erupted after disputed elections in December 2007. The six include: Uhuru Kenyatta, Francis Muthaura, Hussein Ali, William Ruto, Henry Kosgey and Joshua Arap Sang. They are charged for crimes against humanity that led to the death of at least 1,000 people, injury to thousands and destruction of property. The cases of The Prosecutor v. William Samoei Ruto and Joshua Arap Sang and The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta have been sent to the Court of the Presidency for hearing. See <http://www.icc-cpi.int/menus/icc/situations%20and%20cases/situations/situation%20icc%200109/situation%20index?lan=en-GB>
 - 33 On January 23, 2012, the ICC confirmed the trial of 4 of the accused including Uhuru Kenyatta, Francis Muthaura, William Ruto, and Joshua Arap Sang. Two of the four men accused are presidential candidates in the upcoming election: the Deputy Prime Minister and Finance Minister Uhuru Kenyatta and former Education Minister William Ruto.
 - 34 The inflation rate was at its highest at 19.72 in November 2011, but has since come down to 15.6% as at end of March 2012. See Central Bank of Kenya at www.centralbank.go.ke

Resilient Nations:

The importance of resilience in UNDP's vision of human development cannot be overstated. Resilience is defined as the strength of a person or community to resist shock, manage crises and grow stronger. Resilience in particular ensures that societies, communities and families can withstand crisis — whether a natural disaster or rise in food prices — recover with limited long-term damage, and be better prepared for the next crisis.

And yet, crises are often addressed as one-time events, instead of tackling the complex underlying causes and vulnerabilities that many developing countries face.

UNDP Annual Plan 2010/2011



A police officer is seen arresting a suspect in accordance with international standards for police conduct which he was trained on in Mozambique.
©UNDP Mozambique

- g) Despite considerable support rendered under Amkeni Wakenya, and with the presence of some strong voices,³⁵ civil society as a whole remains relatively weak, is largely reactive and lacks a cohesive strategy for involvement in constitutional implementation. A **change of approach is needed to ensure a stronger civil society whose voice is critical in creating a climate appropriate for sustainability**. In the aftermath of the post-election violence, support to CSOs was fragmented, however a new approach is to be implemented, aimed at raising consciousness among communities by channelling support to community based organizations while also linking national level CSOs, grassroots CBOs, academic institutions and think tanks for quality research and advocacy of policy issues.
- h) **Limited funding should not be an impediment.** Despite providing limited seed funding (for instance, USD 230,000 for the IIEC Component), UNDP was able to play a lead role as programme manager and convener and play a catalytic role using limited but flexible funding especially for high impact political interventions such as the support to political dialogue for which initially there was no dedicated funding.
- i) Nonetheless, stakeholders' **increased perception of UNDP as a funding agency** is worrying and is as a result of its role in managing sizeable basket funds including the Umbrella Fund and the Amkeni Wakenya CSO fund. The question being posed is whether UNDP has moved away from its niche as a technical capacity-building agency to being a conduit for resources. Managing basket funds should not preclude UNDP from providing technical support to its partners but, in reality, a large amount of staff time is spent on operations and less on technical advisory services, limiting its potential role in providing strategic and technical support that is critical for driving reforms in the right direction.
- j) **As concurrent interventions require consolidation,** in its new programming for 2012 onwards, UNDP seeks to enhance coherence among its programmes to address the concerns raised around fragmented interventions and the need to consolidate reforms.

³⁵ From individuals and institutions such as the Kenya Human Rights Commission.



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Livelihoods and economic social recovery project in Burundi. Micheline Bazima, a mother of 7 working on the Buruhukiro Road rehabilitation project in Nyagasaka village, Burundi.
©UNDP Burundi

B.3 Reforms to strengthen the rule of law and access to justice in post-conflict and recovery situations

B.3.1 Case study Burundi: navigating a complex political context to promote human rights

Context: Burundi is emerging from painful and decades long ethnic conflict between the majority Hutu and minority Tutsi during which approximately 850,000 Burundians were displaced. During the conflict, human rights and the rule of law were severely compromised with repeated violence against women and children, including sexual violence, and indiscriminate attacks on civilians by state agents and rebel groups. In addition, as refugees fled, their land was occupied by opportunistic settlers. Furthermore, the justice system was left severely malfunctioning and marked by rampant corruption, poor conditions and congestion in prisons.

Following the comprehensive Arusha Peace Accord, relative peace and calm returned to the country. The country held presidential and parliamentary elections at the end of 2010 and while dubbed a historic milestone for the country, these elections were severely contested by the opposition parties and the country remains in an uneasy calm. Simmering beneath the surface are tensions regarding power sharing and resource allocation. While there are no obvious indications of the recurrence of civil war, the situation is far from settled.



Recently there have been sporadic incidences of violence and undocumented reports of state sponsored extrajudicial killings by the police force averaging 100 – 200 deaths a month.³⁶

In the meantime, land ownership remains contentious. Despite ongoing voluntary and assisted repatriation of refugees, their land rights are uncertain and land disputes have become common. Women headed households are adversely affected given that current laws that do not recognize widow or girl child inheritance. Approximately 80% of court cases in Burundi involve land disputes³⁷ that often involve lengthy delays. A number of interventions are underway by various stakeholders including the government (National Commission for Land and other Properties - CNTB),³⁸ UNHCR, ACCORD and Traditional Authorities (Bashingantahe) to resettle returnees and address land disputes. However, the growing number of unresolved land disputes and unenforced decisions could easily spark an already tense situation.

National reform is underway with a new land code enacted in August 2011. However this law is largely focused on administration and titling of land and even where dispute resolution mechanisms are provided for under this administrative system, funding remains inadequate.

Interventions and approaches by the UN (including BINUB, UNDP): In the aftermath of the conflict, the Bureau of United Nations in Burundi (BINUB) was established in Burundi to oversee and coordinate the recovery process. It focused on establishing transitional justice mechanisms including:³⁹ an International Investigative Commission (IIC) to determine the type of violations that were committed in Burundi; a National Truth and Reconciliation Commission (NTRC) and an International Criminal Tribunal (ICT). For a number of largely political reasons, positive outcomes has been few, with various discussions having taken place on the timing and sequencing of these initiatives occurring simultaneously with peace initiatives. This has had a negative impact on ensuring accountability among the perpetrators of violence and laid the ground for a pervasive culture of impunity.

In the meantime, UNDP and BINUB have implemented a joint programme under the Integrated Justice Unit focusing on human rights, access to justice and transitional justice. Interventions included:

- i) Professionalization of the bench – the Judicial Training Centre was established and training undertaken for magistrates on court management, procedural law and judicial ethics.
- ii) A court management pilot project focused on case flow management, improved working conditions, office furnishing and equipment and providing legal documents.
- iii) The Juvenile Justice pilot project, in conjunction with Terre des Hommes, linking social workers to the criminal justice system and establishing a child protection unit at Ministry of Justice.
- iv) Legislative reforms that include facilitating technical assistance to draft the Criminal Code and translate it into Kirundi, and formulating a draft law on judicial ethics.
- v) Improving correction services by providing legal services in prisons, linking accused persons to outside employment in order to obtain bail, refurbishing prisons, providing basic medicines and training staff.
- vi) Publishing 3,000 copies of a guide on electoral offences and training judges on its use.

³⁶ As a culture of fear exists especially among the public service, some planned interviews did not take place. Several officials refused to be interviewed possibly for fear of repercussions.

³⁷ www.unhcr.org/rewford/country,,IRBC,,BDI,,4b20f0322,0.html

³⁸ The CNTB has so far handled 23,317 cases out of which 15,358 have been successfully handled and 7,958 are pending.

³⁹ The Human Rights and Justice Joint Programme, Programme Document 2005-2009.



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Results and outcomes:⁴⁰ Some positive results have been recorded in law reforms such as enacting the law establishing the Ombudsman. Additionally, 17 courts of residence were constructed and equipped, and tribunals and prisons rehabilitated to comply with international prison standards. Furthermore, a reduction in the prison population, particularly of minors, was recorded through reintegration programmes, acceleration of judgments, alternative sentencing and also through training judicial officers including training over 550 judges, court clerks and bailiffs in writing techniques.

“UNDP is not political, we are not DPA or DPKO, we are development. The long-term development approach should bring about dividends”

UNDP practitioner

Arising issues and lessons: Though the results are significant, and the interventions useful in restoring the formal justice institutions, **the current support is not as responsive as it could be in the existing context in Burundi and the complex underlying vulnerabilities caused by the war, political tensions and a highly insecure environment.**⁴¹ Discussions with stakeholders indicate that the UN Mission, and UNDP, have not been able to effectively support the government and other partners to address critical political issues, for instance, facilitating dialogue to avert a potentially imminent fall out between the government and opposition forces, and establishing transitional justice mechanisms aimed at addressing human rights violations and deterring impunity.⁴²

While UNDP **programme documents reflect this complex setting in their analyses, this has not always been fully translated into programme activities.** Overall, the activities of the Integrated Justice Unit lean towards addressing symptoms such as poorly functioning courts and overcrowded prisons but not the underlying tensions and structures that cause these symptoms such as, power sharing and inequitable allocation of resources.

The situation in Burundi **highlights the complexity of the role of UNDP in a post-conflict or a recovery setting.** It begs the question whether technical capacity and development interventions are able to address these complex, often political issues. In such a setting in which a UN Mission (BINUB) is in place and holds political mandate, this mandate should cover development agencies like UNDP. In the absence of decisive political engagement by BINUB with the government and other partners, UNDP must explore opportunities for using its convening power to bring together stakeholders to tackle subjects such as the ongoing extra judicial killings, violence against women and political dialogue.

Nonetheless, such sensitive themes may jeopardize UNDP’s in-country position, though, in the long run, inaction by UNDP is likely to undermine its legitimacy and relevance in participating in the country’s recovery process. In this regard, **UNDP should approach both Burundi’s long-term development needs and its political issues.** Staffing and resourcing (both in terms of numbers and technical capacity) should be reviewed and bolstered to take into account the specific requirements of offices operating in countries emerging from conflict.

40 Evaluation of the effects of the Justice Programme 2005-2009, final report Bujumbura 2010.

41 For instance, at the time of conducting the study, unconfirmed reports indicated that an average of between 100-200 extra-judicial killings were happening in Bujumbura on a monthly basis.

42 In December 2010, the government established a national commission to investigate human rights violations including extra-judicial killings however, the report has yet to be circulated.



Meaningful and sustainable **peace in Burundi will require that the rule of law is respected and enforced and that the general population has confidence in its execution and delivery.** This is particularly important with regard to the ability of the justice system to respond to the perceived and reported rise in violent crime in Burundi.

B.3.2 Case study: Addressing Sexual and Gender-Based Violence (SGBV) in the DRC

Context: Civilian populations, particularly women, have been the greatest victims of the Congo conflict. They have experienced violence during and after the conflict, violence in the community through harmful practices and discrimination and yet, have limited access to justice. In 2009 UNFPA recorded a total of 17,507 cases of sexual violence in DRC.⁴³ Specific cases include mass rapes in Walikali, Busani, Pinga and Fizi. The perpetrators were both militia, armed groups including the FDRR, FARDC, Mai Mai, and government forces.

Over time community protection mechanisms and the status of women and girls have been eroded. Rape survivors continue to be stigmatized, suffering social and economic exclusion, and few have access to adequate medical and psychosocial care. The principal causes of the high incidence of rape are both political and social and include:

43 UNDP ProDoc on Strengthening Investigation and Prosecution Capacity of the Military Justice System on Sexual Violence in eastern DRC (through SCR 1888 Team of Experts).



Kanyere sits in a shelter in North Kivu in the DRC while her 3 year old child, Kabira, who was raped by a 48 year old man, looks on.

© Lynsey Addario/VII/Corbis



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- Rape being used as a military strategy, for instance by the Mai Mai, to garner attention and political leverage to negotiate for political power. Rape has also been used as an instrument of war to cause stigma and shame and destabilize communities.
- There are also incidences of opportunistic rape that occurs when armed groups such as FARD take advantage of a particular situation.
- The victimization of women by Congo's army and various militias in the battle for profits from 'conflict minerals' (such as tin, tantalum and tungsten for use in the mobile phone industry). For this reason attacks by rebel groups and government forces on civilians have increased.
- However, even with the cessation of armed hostilities, the high incidence of rape has continued – an atmosphere of “normalized” rape now exists in which civilians are the chief perpetrators of these crimes.
- Discriminatory attitudes and perceptions of women persist in the Congo. Traditionally, acts of sexual violence were not considered a crime and were dealt with amongst families.

While the incidence of rape is high, only an estimated 7-10% of cases are reported, largely because victims fear reprisals and stigmatization, and due to a poor perception of the justice system. In addition, rates of attrition are extremely high, for instance in the first quarter of 2008, out of 2,288 cases reported in North Kivu, only 152 (7%) were referred to the police or a judicial structure. The formal justice system remains largely inaccessible to most communities due to geographical remoteness, poverty, ignorance of human rights and a mistrust of the judicial system due to its perceived corruption and ineffectualness.

The situation in the DRC has attracted global attention and commands high-level political commitment and action from the UN Secretary General and the international community. The passing of UN Security Council Resolution 1820 and 1888 on curbing SGBV and impunity; the appointment of a UN Special Representative on Sexual Violence in Conflict and the ordination of a Committee of Experts signifies high-level international commitment in the fight against sexual violence and particularly the use of rape as a weapon of war in the DRC.

Interventions: A multiplicity of actors work on SGBV issues in the DRC with various attempts at coordination. For example, at the national level there exists an International Support Strategy for Security and Stabilization (ISSSS) - a framework for coordinating donor support in the Congo under which SGBV issues are addressed. In practice, however, coordination is inadequate, with overlaps and duplication, such as repeated training of the same police prosecutors in investigation and prosecution techniques by different agencies.

UNDP has a presence in the town of Goma from which operations for eastern DRC are coordinated. Key activities implemented by the Access to Justice Unit include (*See case study matrix 2 in annex 1 for details*):

i) Project 1: Enhancing women's access to justice

- a) An anthropological study was conducted on community perceptions of the traditional justice response to sexual violence, which highlighted the local population's lack of awareness about the criminality of different forms of SGBV and documented cultural norms and attitudes about women in this region of the DRC.



Florence was supported in the Peace Building programme by UNDP in the Peace Building Through Justice for all component. The photos show Florence before and after the support.
©UNDP Uganda

- b) Awareness-raising took place in local communities and legal assistance was provided through legal aid clinics. In addition, the unit sensitized FARDC officers on the individual, social and legal consequences of sexual violence, provided counselling and legal assistance for victims and conducted outreach activities for traditional chiefs and community leaders.
- c) The investigative and prosecution capacity of the military justice system on sexual violence was strengthened in eastern DRC that included support to the Auditor Militaire (Military Prosecutor).

ii) Project II: Judicial trial monitoring of SGBV cases

- a) Tracked cases of sexual violence in the justice system from reporting to adjudication and enforcement.
- b) Carried out capacity-building for key stakeholders in the justice system on judicial and trial monitoring and on creating judicial monitoring centres within local universities, retraining judges and police officers.
- c) Collected data and prepared a report on SGBV statistics.

iii) Project III: Partnering with CSOs and other actors to fortify management of SGBV cases

- a) UNDP aligned with other international and local partners including ABA, ASF and the Association of Women Lawyers to train paralegals, run legal clinics and raise awareness on SGBV.



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Results and outcomes include:

- Discourse on rape is no longer a taboo in the Congo. The subject of SGBV is now openly discussed as a result of the global response.
- UNDP created a network of paralegals and lawyers in seven districts specialized in legal assistance and provided training to 330 paralegals in modules on impunity and sexual violence. 275 paralegals were trained in six territories in North-Kivu and a network of lawyers was also created linking barristers from North and South Kivu with NGOs combating sexual violence.⁴⁴
- Capacity-building for the Military Prosecutor's office has facilitated the investigation and issuance of warrants of arrest of at least 8 senior military officials.
- The project has facilitated improved data collection on sexual violence in eastern Congo and has produced an annual report that provides a reliable source of information.

Key issues arising and lessons identified: Despite the high-level political statements and commitment made by the UN and international community, **mass rape still occurs. This has been attributed to weak political will⁴⁵ by the government to implement legislation and reform thus fuelling impunity to crime** particularly in eastern DRC. There are concerns that the integrated UN Mission in the DRC – MONUSCO, which despite having the political mandate to do so, has not effectively compelled the government to cause the investigation, arrest and prosecution of those accused of grievous crimes that reportedly include senior military generals both in the national army and in the militia.

On its own **UNDP does not have the political leverage to address the structural challenges and causes of rape in the DRC and has taken efforts to involve itself politically through MONUSCO**, and directly, with some success. For instance, some lessons can be drawn from UNDP's engagement on the Fizi New Year rape cases in early 2011. UNDP, with the political leverage of MONUSCO, played a critical role in sustaining pressure in calling for the arrest and prosecution of implicated officials; enhancing victims' and witnesses' security by stationing personnel at police posts in Fizi; supporting the prosecutor's office in its investigation and prosecution, and playing a convening role for development partners and local government officials to sustain the case's momentum. This sustained political pressure and convening role were instrumental in the arrest and sentencing of four senior officials - including Lt. Colonel Kibibi Mutware, who received a 20 year sentence for his principal role the rape of at least 50 women.⁴⁶

This case provides insight into the possibilities for merging UNDP's convening power and MONUSCO's political mandate to address systematic rape and violence. Unfortunately, (often due to bureaucratic issues and practical limitations), it's not always possible to operate in this manner and this is part of broader issue that can only be dealt with by the UN. Instead, **the practical and general programming approach used in the eastern Congo has been to use technical assistance** such as capacity building for police and logistical support for law enforcement officials. **This approach while pragmatic is inadequate when facing**

⁴⁴ monusco.unmissions.org

⁴⁵ Weak political will has been manifested in the delay, failure to investigate, arrest and prosecute known or suspected perpetrators of heinous crimes notably those reportedly committed by senior government army officials of leaders of militia groups that are allied to the national army. For instance in Kikozo, South Kivu where women were repeatedly violated and raped, the perpetrators were identified by victims and the community and reported to be the integrated ex-FRF units of the Force Armées de la République Démocratique du Congo (Armed Forces of the DRC - FARDC) who were stationed near the town. See: <http://www.asafeworldforwomen.org/partners-in-africa/partners-in-drc/cofapri/cofapri-blogs/657-drc-when-will-rape-end.html>

⁴⁶ Interviews with UNDP Access to Justice Unit August 30th 2011; also see reports by various media including BBC at <http://www.bbc.co.uk/news/world-africa-12205969>



“As the international community has grappled with the relapse of civil war, the spread of organized crime and extremism, it has increasingly focused on the rule of law as an overarching objective for the response. This conceptual clarity shift is reflected in the diversity of actors involved: within the UN alone, peacekeepers, peace builders, political and development experts... this is an important conceptual shift and one that has generated important new forms of engagement and opportunities for the UN. It has however, also generated conceptual confusion and significant bureaucratic entanglement - and both have begun to erode confidence in the ability of the UN to fill this critical (and growing) gap in the international system.”

Shaky Foundations: An assessment of the UN's Rule of Law Support Agenda, Camino Kavanah and Bruce Jones, November 2011, p6

widespread impunity, ineffectual justice and law and order systems and government inaction against implicated senior officials.

In addition, fighting rape in the DRC is also a social issue and **UNDP should consistently work with other extensive ongoing reforms to address cultural attitudes and perceptions that fuel violence against women**, for instance through education (by positively influencing curriculum revision), and supporting initiatives to enhance sustainable livelihoods.

The roles of and tools used by UNDP and other actors (including integrated missions) in fragile, recovery and post conflict situations need to be clarified so as to minimize the potential for “bureaucratic confusion.”

A recent assessment⁴⁷ of UN operations in such settings advises, among other key recommendations, that the UN as a whole must:

- Clarify the underlying empirical and policy basis for the UN's work in these settings.
- Ensure that support to the rule of law responds more effectively to the internal and external challenges that can stifle the emergence of the rule of law in different settings.
- Guarantee better collaboration or joint programming especially on the ground.

UNDP must explore complementarity and other options for handling mass crimes using regional human rights mechanisms or through existing national systems. UNDP has been essentially ambivalent on the question of complementarity and has yet to present a clear position to guide programme implementation teams.⁴⁸ The UNDP Goma office has in the meantime partnered with the Office of the Prosecutor at the ICC to train prosecutors and investigators - however these are interim measures and no strategy exists for long-term action. The ICC's first case concerning mass rape involves former Vice President Pierre Bemba and is a positive signal despite resistance to the use of the ICC within the region. Regional and sub-regional discussions on alternative options are ongoing and UNDP must participate in this discourse.

⁴⁷ Camino Kavanah and Bruce Jones, 2011: Shaky Foundations: An Assessment of the UN's Rule of Law Support Agenda, New York University, Centre on International Cooperation, p7.

⁴⁸ Views expressed by UNDP teams and staff during the field visits.



Suspected juveniles in the adult prison being screened by a doctor who was sourced by the Justice Law and Order Sector in the context of justice for children. Thirteen children were confirmed.
©Centre for Justice Studies and Innovations, UNICEF and JLOS, Uganda

B.4 Addressing obstacles in the formal justice system

Context: Formal justice systems should play a key role in ensuring interpretation and implementation of the law and thereby promoting the rule of law. In reality, a significant barrier to justice in the region is poorly performing formal justice institutions and systems. Common characteristics include institutions with poorly capacitated staff, dilapidated infrastructure, inadequate equipment and often subordination to other arms of government, particularly the Executive, in making decisions and judgments.



The first wave of reform interventions were piecemeal and tackled symptoms of a failed justice system with various donors supporting institutional components of the justice system such as, training judges, rehabilitating courts and police stations and penal reforms. However, in many cases, this piecemeal approach did not deliver the desired results because, while there were some areas of excellence in the system for instance, well constructed courts and trained judges, other parts of the system, such as the capacity of police investigators, showed little amelioration creating more barriers, commonly manifested in huge case backlogs, lengthy pre-trial detention and overcrowded prisons.

Intervention: The last decade has seen a wave of reforms that see the justice sector on the premise that a chain is as strong as the weakest link – hence the need for an integrated system. Institutions in the chain of justice (such as the police, prosecutors, judiciary, prisons) come together to analyse the key problems and devise priority interventions coordinated into as a Sector Wide Approach (SWAp). Such SWAps had been tried successfully in the health and education sectors, but the first SWAp in the legal sector in the region was the Justice Law and Order Sector (JLOS) in Uganda, initiated in 1999. Other SWAps have since followed across the region including in Kenya (Governance, Justice, law and Order Sector - GJLOS), Tanzania, Rwanda, South Africa and Malawi. Though some of the SWAps may be thematic and focus on a single sub-sector, the fundamental parameters are the joint assessment and identification of problems, prioritization of interventions and coordination of resources a joint basket or pool. (*See case study matrix 3, annex 1 for details on JLOS and GJLOS*).

In Uganda, JLOS brings together at least 13 institutions working on 4 thematic areas of criminal, commercial, land and family justice. In Kenya, GJLOS unites relevant institutions in the justice, governance and law and order sub-sectors with the aim of creating more effective, transparent and accountable institutions, responsive and enforceable policy, law and regulations, reduced corruption-related impunity, improved access to justice (especially for the poor, marginalized and vulnerable), and a more informed and participatory citizenry and non-state actors.

UNDP has over time supported JLOS and GJLOS in various ways:

- Providing technical support during the identification of challenges and strategizing processes.
- Facilitating studies, for example, a study to enhance stakeholders' understanding and prioritization of transitional justice following the cessation of hostilities in northern Uganda and a Joint Assessment of the Local Council Courts and Legal Aid System in Uganda that informed law reforms concerning the LCCs and a study on developing a national legal aid policy and legislation.
- Capacity-building based on sector prioritization - in Uganda, training for Local Council Courts.
- Supporting specific interventions through the umbrella basket fund in Kenya or directly to facilitate Agenda 4⁴⁹ interventions.

Results and outcomes: Perhaps the most visible results and outcomes have been the greatly improved coordination across justice sector institutions, improved working relations among the key agencies enabling institutions to coordinate reform and work beyond their institutional mandates.

⁴⁹ Agenda 4 issues (long-term issues) identified under the 'Kenya National Dialogue and Reconciliation' mediated by the AU Panel of Eminent Personalities under H.E. Kofi Anaan.



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Notably, GJLOS in Kenya instigated discourse on human rights and anti-corruption, increasing frank and open discussion. A number of results of this process were identified, including legislation on political parties and on sexual offences, increased awareness of human rights among sector institutions, improvements in the quality of human rights monitoring and reporting and improved planning, prioritization and coordination of the sector.⁵⁰

In Uganda, the mid-term evaluation of the JLOS Second Sector Strategic Investment Plan (JLOS SIP II)⁵¹ concluded that the sector attained numerous achievements through legal reforms, such as, the Acts on the Local Council Court and the Police and Prisons, physical de-concentration of institutions, retooling and equipping of justice functions and re-engineering of processes and systems. In the commercial justice sub-sector, there were continued improved court case disposal rates, and the improved used of alternative dispute resolution systems within the court. Forums such as National Justice Forum spurred an increased awareness of the justice system and people's human rights, while stakeholder engagement in the justice system increased through forums such as the Court Users Forums and District Coordination Committees (which bring together agencies in the administration of justice and civic leadership at the district or local level).

Arising Issues and lessons: Strong political will and leadership are essential for bold reform. In Kenya, it was noted that many developments stalled in the context of a volatile political environment that made bold, high-level decisions difficult.⁵² In Uganda, JLOS SIP II, though designed as a reform programme was implemented for the most part as "*routine maintenance*" focusing on routine needs rather than long-term priorities.⁵³ In part, this was due to a leadership hesitant to take some difficult decisions when it came to restructuring institutions, implementing recommendations in studies, and pursuing politically-laced actions such as the automatic release of accused persons or prisoners exceeding constitutional custody limits, and condemning torture.

In-depth assessment and analyses are requisite to comprehending problems and contexts and developing responsive strategies to tackle the roots of a poorly functioning justice system. In Uganda, UNDP studies, including those on transitional justice in northern Uganda and Local Council Courts and legal aid, were fundamental to planning interventions. The latter study appraised the on-going work to develop a National Legal Aid Policy and Framework.

As change takes time, **long-term planning and engagement and sustained funding are critical to address obstacles to access justice.** Additionally, sustainability mechanisms must be intrinsic to the reform programme, an example would be strengthening the sector's capacity to cater for strategic planning and ensure that funding to support reform is integrated in the institutional budgeting processes.

Even with little or no funding, a number of **"quick wins" or low-cost interventions can reap dividends in resolving barriers in the justice system and opening up avenues for more people to access justice in the formal system.** Understanding the problem is fundamental to devising appropriate interventions. For example - under the Commercial Justice Reform Programme in Uganda, a review of and change in procedures and court processes resulted in quicker turnaround time for addressing commercial disputes.

50 SIDA, GJLOS - An Analysis of Results, Delta Partnership 2011.

51 JLOS Mid-Term Evaluation of SIP II, The Consulting House and Centre for Justice Studies and Innovations, 2010.

52 SIDA, GJLOS Analysis of Results.

53 JLOS Mid-Term Evaluation of SIP II.



Where priorities have already been identified, **interventions pursued outside the mainstream framework often tend to create imbalances that could disrupt the reform programme.** For instance in Uganda, direct support to the police force worth 8 million euro from the Dutch Embassy for the restoration of civilian administration of justice in northern Uganda, while commendable, was done outside the sector framework and created a parallel process that diverted the police force away from the main framework under the Sector Strategic Investment Plan and long-term priorities. Moreover, no corresponding interventions were fulfilled for other institutions in the justice sector and this created further bottlenecks in the system.

Nevertheless, **it's imperative that sector frameworks are not rigid, but evolve and assimilate emerging issues.** Innovation must not be stifled as new ideas apprise stakeholders on how to address apparently impossible situations such as huge case backlogs or growing prison populations.

In both Uganda and Kenya, **while progress occurred at policy and institutional level reform, this was often not complemented by improvements in service delivery.** Justice continues to be elusive even where courts have been constructed or police stations established, primarily because little effort went into ensuring that these systems actually work when interlinked. In Uganda, SIP III now seeks to extend reform to the local level.

Involving civil society and the public in the prioritization process improves the likelihood that priorities reflect the needs of the population. For instance, in Uganda, the focus in SIP I was chiefly in the criminal and commercial sub-sectors though many of the issues within the communities revolve around land and family matters. Under SIP II, JLOS expanded reforms to encompass land and family justice; however these reforms have moved slower than anticipated.

Reforms should tackle both supply (structural constraints such as institutional and capacity gaps among justice providers) **and demand constraints** (such as legal awareness and access to legal aid within the population). In both Uganda and Kenya, focus was skewed towards supply constraints but efforts are now underway to address identified gaps, for instance, through the establishment of a national policy and legislative framework for legal aid in Uganda. In Kenya, the enactment of the constitution should provide a supportive environment for reforms in this area.

Establishing formal linkages between reforms in the alternative justice mechanisms and the formal justice system can broaden opportunities for citizens to address their grievances. Lessons from various initiatives⁵⁴ indicate that even where innovations in the alternative justice system are relatively successful, the absence of systematic connections to the formal structures is likely to limit the effectiveness of such reforms.



Burundi. A lady judge in Burundi stands outside the courthouse where she presides over cases.
© Tom Martin/JAI/Corbis

54 Such as KELIN and Justice Centres Uganda. The Land and Equity Movement in Uganda (LEMU) has initiated dialogue with the Chief Justice and head of the JLOS to put in place a mechanism to ensure that appeals on land disputes mediated by the Traditional Authorities are properly channeled to the formal courts.



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A paralegal providing legal advice and assistance at a Magistrates Court.
©PASI, Malawi

B.5 Support to legal empowerment of the poor and of vulnerable groups

Context: Where people are knowledgeable about their rights and the mechanisms to access them and have means of access, then attaining human rights becomes a possibility. Nonetheless, either as a result of underlying vulnerabilities such as poverty, disability, social status, gender or technical barriers such as language, distance to justice systems, corruption or court technicalities, people may lack knowledge and may have neither the voice nor the means to fulfil their rights. As a result, justice remains elusive for the vast majority of the population who are still unable to access not only civil and political but also social and economic rights.⁵⁵

Legal aid is central to guaranteeing human rights through effective access to justice. The right to legal aid is explicitly stated in the International Covenant on Civil and Political Rights 1966. Article 14(3)(d) specifically provides for the right to defence and a fair trial through provision of free legal representation in criminal offences. This means that the primary obligation to provide an effective system of legal aid rests with the state. A hallmark of justice systems that do not guarantee legal aid is that large segments of society are vulnerable because those in power know that many people cannot seek legal redress. This fuels impunity to crime, lack of confidence in the legal system and creates a vicious cycle of human rights violations.

Within east and southern Africa, South Africa has guaranteed funding for legal aid through Legal Aid South Africa (LASA) and a number of countries, including Malawi and Uganda, have embarked on legal aid reforms to put in place national legal aid policies and laws, institutional frameworks and funding. Overall, however,

⁵⁵ See: The Millennium Development Goals Report 2011, United Nations.



legal aid remains the purview of civil society which has developed a number of innovations to empower vulnerable and marginalized communities. Over time, the definition of legal aid has been expanded from that of legal awareness and legal assistance through court representation, to encompass a holistic approach that integrates outreach to communities through mobile legal clinics, and utilizes “one-stop centres” that incorporate mediation, psychosocial counselling and medical support. Using tools such as Public Interest Litigation (PIL), the right to legal aid has also been exercised to fulfil other rights including the right to water, education and health.

This study looked at several innovations including: the Justice Centres in Uganda - one-stop centres for the provision of legal aid services including legal awareness and education, psychosocial counselling, legal advice, court representation; the Paralegal Advisory Services (PAS) to promote prisoners’ rights in Malawi and Uganda (*see case study matrix 4, annex 1*); and the Kenya Legal and Ethical Issues Network on HIV/AIDS (KELIN) to protect property rights for widows and orphans (*details on KELIN in case study matrix 6 and on Amkeni Wakenya in case study matrix 1, both in annex 1*).

Arising Issues and lessons: Overall, legal aid has enabled millions of people to learn about their rights, and the mechanisms to access and claim these rights. A number of issues and lessons have been identified:

As legal aid is a primary duty of the state, **a starting point has been to enhance state capacity to fulfil this duty through supporting interventions to put in place legal aid policy, and legal and institutional frameworks.** Currently, financing is donor dependent, and with the ongoing global and financial crisis, aid, including to legal aid provision, has been severely curtailed, thus posing a grave challenge to legal empowerment initiatives.



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Legal aid interventions implemented by CSOs have generally been designed as pilots. **This has implications for sustainability given yearly funding, and inadequate, short-term attention to identifying and documenting lessons** for scaling up and replication. This weakness has been identified in nearly all case studies reviewed.

Often, insufficient research and analysis has been carried out - especially on the root causes of disputes and violations. For instance, the Justice Centres Uganda, while working in the northern and north-eastern part of the country, dealt with both land and family disputes through mediation of one on one cases without establishing why an escalation of land and family disputes had occurred in these areas. The same applies to the Paralegal Advisory Services in Malawi and Uganda where the focus has been on removing prisoners from the prison system without necessarily stemming the inflow.⁵⁶ This approach results in the focus on outputs and numbers of individuals cases handled without strengthening the justice system to effect wide-scale and sustainable change.

Legal aid initiatives by CSOs have traditionally operated as parallel processes to the formal justice system and alternative justice mechanisms. For instance, Justice Centres record high numbers of registered cases but low rates of resolution as a result of the obstacles within the formal justice system that result in lengthy delays in case administration and case backlogs. There is increasing recognition of the need to support these systems if reforms are to be effective. Successful litigation efforts are dependent on reforms in the formal justice system. Likewise, KELIN in Kenya has moved away from an individual approach and has consistently partnered with the Traditional Authorities to address the rising disregard of widows' property rights and of orphans affected by HIV/AIDS. In Burundi, ACCORD ensures that mediated land disputes result in a Memorandum of Understanding that is recorded and registered with the National Land Commission.

Alternative dispute resolution mechanisms have been successfully utilized to avoid litigation and to expand the options for vulnerable individuals to access justice while maintaining harmony with their communities. For instance, widows and orphans are at times reluctant to take cases to the formal systems for fear of being perceived as airing family matters to outsiders - which might lead to their being shunned in the future.⁵⁷ However, the absence of standards, guidelines and an oversight mechanism for mediation can result in poorly mediated processes that are instead injurious to the poor and vulnerable groups especially where cases are "settled but not resolved" and may encourage forum shopping and allowing disputes to fester.



A paralegal attending a Police interview of a child offender at police station
©PASI, Malawi

56 This has been the case in Uganda where despite efforts of the Paralegal Advisory Services to enhance access to justice for petty offenders (by 2011, at least 5,000 accused persons had accessed PAS services), a growing crime rate and increasing prison population (now standing at over 22,000) has meant that prisons remain largely overcrowded. See annexed case study on PAS.

57 Interview with FIDA Uganda Programme Director on lessons from engaging the Ker Kwaro in the Acholi region. Also, the Land and Equity Movement in Uganda (LEMU) has documented mediation in land cases in northern Uganda in which this issue is raised. See LEMU 2011; Examining the A-D-R-tistry of a Land Dispute Mediator in Northern Uganda, presentation to the Northern Uganda Land Partners Forum 18–19 July 2011.



Represented by BONELA, Obakeng was awarded US\$1,000 in damages after she successfully sued another woman for invading her privacy by publicly disclosing her HIV status.
© BONELA, Botswana

B.6 Public Interest Litigation (PIL) by legal and civil society organizations

Context: The use of class action or Public Interest Litigation across the region to promote rights and seek remedies for rights violations has been effectively used to repeal discriminatory provisions in the law,⁵⁸ expand opportunities for vulnerable groups,⁵⁹ protect land rights for communities,⁶⁰ and erase inconsistencies between formal and customary law that could be exploited to the detriment of vulnerable groups.⁶¹

The UN Women report on the Progress of the World's Women notes that that Public Interest Litigation has led to positive changes in women's lives by advancing the legal understanding of women's human rights under international law and confirming their enforceability at national level; by enforcing or clarifying laws already existing on the statute books, by challenging laws that should be repealed and by creating new legislation.⁶²

58 For example, in the case of *Unity Dow v Attorney General of the Republic of Botswana* (1992) which extended legal protection for women under the citizenship laws of Botswana - with women who married foreign men being able to pass on the rights and privileges of citizenship on to their children.

59 For instance, the Treatment Action Campaigns (TAC) for ARV access for pregnant women and mothers, and eventually universal access for those affected or infected with HIV/AIDS.

60 Such as, the Benet case in eastern Uganda - land rights for communities on the slopes of Mount Elgon, which had been converted to national parks without adequately compensating communities.

61 For example, in the case of *Bhe v Khayelitsha Magistrate* (2004), the Constitutional Court of South Africa declared that the rule of primogeniture under customary law was unconstitutional, because it violated women's rights including the right to inherit property under customary law.

62 UN Women (2011), *Progress of the World's Women; In Pursuit of Justice*, p16.



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PIL Case Study: Maternal Health Rights in Uganda:

At least 16 women die daily in Uganda as a result of maternal health related complications. In May 2011 the Centre for Health, Human Rights and Development (CEHURD),⁶³ a Ugandan NGO, and the families of two mothers, Sylvia Nalubowa and Anguko Jennifer, who died in Ugandan government hospitals in 2009 brought a case in the Constitutional Court of Uganda alleging the women's deaths were caused as a direct result of Uganda's failing healthcare system. The petitioners claimed that the mothers died as a result of the government's failure to fulfil its constitutional obligations to provide basic maternal healthcare to expectant mothers. The petitioners urged the court to declare that the continuous failure to implement effective policies on maternal healthcare, under-staffing resulting in an inadequate number of doctors and midwives, and the non-availability of basic maternal commodities in government hospitals amount to violations of pregnant women's rights to health and life. The first case of its kind in Africa, the constitutional court began hearing this landmark case on July 7th 2011. The petition was subsequently dismissed by the judges in 2012.⁶⁴

This study focused on the specific lessons from the Southern Africa Litigation Centre (SALC), which has specialized in using Public Interest Litigation. The Southern African Litigation Centre⁶⁵ promotes and advances human rights and the rule of law in southern Africa primarily through strategic litigation support and capacity-building. Over the last few years, SALC has undertaken strategic litigation in a number of thematic areas including HIV/AIDS, prisoners' rights, criminal justice, the right to information and general human rights. Some of the cases handled in the region include:

- i) Gay rights in Malawi: as in a number of Southern African countries, Malawi has legal provisions against homosexuality or sodomy. SALC petitioned the constitutional court to declare the provisions invalid. The case was dismissed on grounds of technicalities.
- ii) Forced sterilization of women living with HIV/AIDS in Botswana: this case bears similarities to Kenya where forced sterilization of women was practiced in the guise of preventing the spread of HIV/AIDS to children. A decision is still awaited.
- iii) Court action on prisoners' rights to a fair trial and against lengthy pre-trial detention is ongoing in Swaziland. SALC is also collaborating with BONELA to prepare a case for free access to ARVs for migrant prisoners in Botswana.
- iv) Litigating against oppressive legislation: the Suppression of Terrorism Act in Swaziland, which seeks to limit freedom of association and expression and the formation of political parties.

Arising Issues and lessons: SALC has had a number of successful cases, and reports that Public Interest Litigation is a valuable tool to address multiple claims with similar claimants seeking restitution for similar violations. However, SALC notes that there are limitations to using Public Interest Litigation especially the

63 See: <http://www.cephurd.org> – Constitutional Court Petition Number 16 of 2011

64 On June 5, 2012, the Constitutional Court ruled against the petitioners stating that upholding the petition, which urges the government to boost health services, would have forced the judges to wade into a political issue that was outside their jurisdiction. An appeal has been lodged in the Supreme Court.

65 SALC was launched in 2005 and is a joint initiative of the International Bar Association (IBA) and the Open Society Initiative for Southern Africa (OSISA). SALC is based in South Africa but operates across the southern region. including in Angola, Botswana, DRC, Lesotho, Malawi, Mozambique, Namibia, Swaziland, Zambia and Zimbabwe.



thorough and often strenuous preparatory work that must be carried out, and the number of cases that never reach fruition. Once in the justice system, the process can take from 1 to several years for individuals or communities obtain justice.

Furthermore, Public Interest Litigation is potentially counterproductive and may jeopardize the attainment of rights especially where a case is dismissed or lost, as similar claims would then be precluded from the courts. There could also be unintended results, for instance, in Malawi anti-homosexuality laws were afterwards tightened and even extended to apply to sex between women whereas previously the law only applied to sex between men.

SALC however echoes lessons identified by UN Women,⁶⁶ saying even where cases are lost, the greatest impact can be achieved where court action is part of wider campaigns for social change that spurs public debate and discussion to help ensure that progressive decisions are embraced by society as a whole. Hence, petitioners should not only focus on the legal dimensions but should also pursue advocacy, awareness campaigning and publicity prior to, during and after litigation, especially given the national contexts and the amount of resistance to subjects such as LGBTI.

Enforcement remains an impediment especially where follow-up legislation is not passed or political will remains low or mechanisms are not put in place to ensure that legal decisions are implemented. For instance, the Association of Women Lawyers in Uganda (FIDA-U) successfully challenged divorce and succession legislation in Uganda between 2004 and 2006 resulting in a constitutional court decision that the existing laws were unconstitutional on grounds of gender inequality. Six years later, this legislation is yet to be repealed and enacting new provisions has been delayed.

Moreover, PIL and human rights jurisprudence are suffering a backlash in the region. In a recent case in the SADC tribunal where SALC sought judgement on Zimbabwe's land redistribution policies,⁶⁷ the case became politically charged and following complaints and pressure from the government of Zimbabwe, the SADC tribunal has been suspended pending a review of its operations. It's reported that SADC now seeks to limit individuals and NGOs action and to only accept cases from governments. The independence of the national and regional courts is of paramount importance for PIL to be effective. SALC has ongoing campaigns challenging the weakening powers of the SADC tribunal and enhancing the capacity of the African Court of Justice and People's Rights.

In South Africa PIL has been relatively successful, perhaps more than in any other country in the region, and perhaps as a consequence of a human rights-based constitution and high levels of judicial activism. In the rest of eastern and southern Africa that lacks this culture of judicial activism and exhibits unconstructive attitudes among lawyers as regards PIL, judicial officers must be trained to be more receptive, and legal education at law schools geared towards social change. UNDP should also explore opportunities for supporting the use of PIL by promoting networking and lesson learning among institutions working on PIL in the region. Useful lessons can also be drawn from Inter-America where oppressive legislation and legal regimes including those on LGBTI and abortion have been successfully challenged through PIL. In this area, UNDP can rely on its technical expertise to support the transfer of positive lessons on using PIL to advance the rule of law and access to justice reforms in the region.

⁶⁶ UN Women (2011), *Progress of the World's Women; In Pursuit of Justice*, p16.

⁶⁷ *Mike Campbell (PVT) Ltd and others vs Republic of Zimbabwe* - This landmark case was brought to the court by 79 Zimbabweans to challenge Zimbabwe's land re-distribution policies on grounds of racial discrimination and seeking compensation for expropriation of land. The SADC tribunal found that the land policies were unconstitutional and violated people's rights. Zimbabwe rejected the ruling and petitioned SADC to overturn the case.



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B.7 Legal pluralisms: reforms to engage alternative justice mechanisms

Across the region, multiple legal systems co-exist or run parallel to each other, be they the formal court systems, traditional and religious authorities or family-based systems. In some countries, the formal legal system dominates; while in others such as Malawi, customary legal systems have been adopted and codified and exist alongside the formal justice systems. The structures for dispensing justice have evolved and expanded from traditionally appointed structures comprised of clans, elders and traditional chiefs to quasi-state systems of elected councils such as the Bashingantahe in Burundi, Gachacha in Rwanda or the Local Council Courts (village courts) in Uganda which try to incorporate more democratic principles including fair representation of women and youth.

Reforms to enhance access to justice have generally focused on the formal justice system. This can be attributed to the complexities of dealing with legal pluralities and the challenges in reforming these alternative systems given these complexities and the numerous barriers that limit access to justice especially for the vulnerable members of the community. Key issues and challenges include:



Table: Issues in Alternative Dispute Resolution Systems⁷⁵

Deep seated patriarchy and interpretation of cultural norms that perpetuate discrimination and gender inequality within these systems such as, widow and girl child inheritance and polygamy.

Power and privilege: those who command power and resources can take decisions in their own interests. They are also often resistant to change because it introduces new dimensions and erodes their power and benefits from the existing system.

Vulnerabilities of the weaker party, often women, which can be exploited.

Alternative justice systems often have elements of discrimination against women through unequal provisions for women and men, absence of sanctions against gender-based violence, and are often procedurally biased against women.

Lack of oversight and accountability to internationally accepted human rights norms and standards

Poor record keeping of decisions taken and the failure to document cultural evolution leaving interpretation to traditional authorities.

An absence of effective linkages to the formal justice system.

Forum shopping between the various available options, thus contributing to a backlog of open cases.

Social pressure placed on sections of the community not to utilize other systems of justice even where justice is not guaranteed within the alternative systems.

Despite these issues, alternative justice systems increase the options for those who cannot access the formal justice systems and also serve over 80% of the population who utilize their services within the communities. Hence, despite their weaknesses, it is rational to work with these systems by identifying entry points, studying the systems, piloting approaches geared at addressing the issues raised and influencing these legal systems to be responsive. Lessons have been drawn from interventions in Malawi (constitutional recognition and application of customary law), Burundi (peaceful settlement of land disputes by the Bashingantahe) and Uganda (community dialogue by FIDA-U and cultural leaders - Ker Kwaro Acholi to address violence against women in the Acholi sub-region of northern Uganda), where efforts have been made to engage alternative legal systems to enhance access to justice. (See *case study matrix 5, annex 1*).

Arising issues and lessons include:

- i) In Malawi, it has been shown that integrating alternative justice mechanisms into the constitution is a formal recognition of the Traditional Authority's role in community dispute resolution. Overall, the Traditional Authorities provide faster and more accessible justice, however, if inherent weaknesses are not addressed the Traditional Authorities will continue to reinforce and practice customs that do not reflect international human rights standards and norms.

68 Also see UN Women (2011), *Progress of the World's Women; In Pursuit of Justice*, p72.



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- ii) In the FIDA-Uganda experience, strengthening collaboration with cultural leaders was critical to transforming communities. Through community dialogues facilitated by FIDA-U,⁶⁹ communities in the Acholi sub-region reported that their culture has a huge impact on perceptions on the practice of domestic violence. It is therefore critical to adopt culturally sensitive approaches that advance positive aspects of culture while discouraging aspects that undermine women's rights.
- iii) FIDA-U appropriated international human rights standards on the rights of women as contained in CEDAW and enshrined in the national constitution and other legislation into cultural norms and standards. Together with the Ker Kwaro Acholi and communities, new standards were agreed that were culturally acceptable and enforceable, while still upholding the basic human rights standards on the rights of women in cases of sexual or gender-based violence.
- iv) The need to ensure effective referral mechanisms and linkages between the alternative and the formal justice mechanisms was highlighted in all case studies. The absence of clear linkages and referral mechanisms between the two creates a gap that is likely to exacerbate existing gender biases and inequalities especially where complainants have no choice in determining where and how far to take complaints.
- v) The Bashingantahe in Burundi has played a key role in settling land and family disputes through mediation and fostering cohesion in an otherwise tense setting. The institution currently requires revitalization and capacitation in light of the new, tense setting of post-conflict Burundian society.
- vi) In adjudicating cases, Bashingantahe rely heavily on custom and tradition in accordance with their training. Again, there are specific examples to show that culture is not static and the Bashingantahe have adopted new standards and norms that promote equality and the rights of women, such as those on equal inheritance of land or property by both boys and girls.
- vii) National legal and social reforms are needed to support the work of alternative justice systems. Specifically, in Burundi long-awaited land reforms are critical to enforce decisions and to strategically address land disputes given the potential to spark further conflict. Other laws that need to be revised are those that govern inheritance by girls, are relevant to a rapidly growing population and inelastic land resources, and those that will facilitate land titling and administration.
- viii) Oversight mechanisms are needed to ensure that traditional authorities do not overstep their mandate, and that the rights of vulnerable groups are upheld. There are issues of corruption, poor capacity and knowledge of procedures and statutory law among the Traditional Authorities which can be minimized through establishing and strengthening oversight mechanisms and benchmarking positive approaches.

69 FIDA Uganda, 2011: Domestic Violence Project - Community Dialogues in Northern Uganda, FIDA-U with support from Australian Development Cooperation, April 2011.



BONELA raises awareness and understanding around HIV issues also through public campaigns and forums.
©BONELA, Botswana

B.8 HIV/AIDS and the law

The HIV/AIDS epidemic has resulted in suffering, discrimination and stigma for those affected and infected with HIV/AIDS and the deaths of millions. Africa is the worst affected region in the world with over 34% of people worldwide living with HIV in 2009 residing in southern Africa, and 31% of new HIV infections and 34% of all AIDS-related deaths occurring in this region.⁷⁰ In Botswana, for instance, the estimated HIV prevalence rate for adults aged 15-49 in 2009 was 24.8% and the estimated number of people of all ages living with HIV in 2009 was 320,000⁷¹ making it one of the worst affected countries in the world.

The Global Commission on HIV and the Law recently held a regional dialogue in Africa (3-4th August 2011 in South Africa)⁷² where trends and issues surrounding HIV and the law were discussed. The dialogue focused on several aspects including HIV and criminal law, women and girls, children, intellectual property rights and access to medicine. Findings encompassed: the trend towards criminalization of HIV transmission such as the N'djamena model law in West and Central Africa that recommends a new offence of criminal HIV transmission; the existence of oppressive laws and practices that discriminate against women because of their HIV status for instance, mandatory HIV testing of pregnant women, compulsory disclosure and forced sterilization; the absence of legal protection for women living with disabilities, sex workers, sexual minorities, migrant women and refugee women; and deficient domestic violence legislation on marital rape that has contributed to an increase in infections among married couples.

70 Global Commission on HIV and the Law Fact Sheet - Regional Dialogue in Africa.

71 www.unicef.org/infoby country/botswana-statistics.html

72 Africa Regional Dialogue on HIV/AIDS and the Law; 3-4 August 2011, Pretoria, South Africa.



Other issues raised include the intensified vulnerability of sexual minorities including LGBTI and men who have sex with men within existing legal provisions and an escalation of human rights abuses such as “corrective” rape, murder and proposed laws such as the Anti-Homosexuality Bill in Uganda.

This study focused on innovations and interventions in 3 countries including BONELA in Botswana (access to justice for minority and marginalized groups affected by HIV/AIDS including workers, migrant women, prisoners and sexual minorities), KELIN in Kenya (protection of property rights for women and widows affected by HIV/AIDS); and ASWA in Mozambique (protection of sex workers’ rights). UNDP facilitated a regional conference in Pretoria⁷³ and can draw lessons on proactively supporting efforts by civil society and governments in applying the law to promote the rights of those affected or infected by HIV/AIDS especially given its devastating impact in the region. (See *case study matrix 6, annex 1*).

Arising issues and lessons

- i) Botswana’s National Strategic Framework for HIV/AIDS (NSF II 2010-2016) sought to reduce the spread of HIV/AIDS, however only a modest decline in prevalence has been recorded among women and other vulnerable groups largely because the structural causes of discrimination have not been addressed, such as, cultural attitudes to fertility and social migration patterns that have seen an increasing population of migrant workers. In addition, women are considered less powerful, particularly when negotiating sexual relationships. These attitudes are reflected in the legal system, for instance, in the case of sexual assault in marriage, which is not recognized as marital rape and therefore has inefficient legal recourse.
- ii) Additional safeguards are needed in the law to promote rights of vulnerable women from domestic violence and sexual assault that are directly linked to increased HIV transmission. Even where new legislation has been passed, vulnerability to HIV remains almost unchanged due to non-implementation.
- iii) KELIN has worked through existing cultural structures that include traditional elders (in the Cultural Structures Project) to tackle attitudes and norms that discriminate against women and children - especially those affected by HIV/AIDS. This coupled with systematic legal and human rights awareness has resulted in positive and sustainable outcomes for women affected by HIV/AIDS in the locales of intervention. The Cultural Structures Project is an effective mechanism that could be used to address not only violations of property and inheritance rights, but also other traditions that breach human rights and contribute to HIV risk and vulnerability.
- iv) Oppressive laws that hamper support to sexual minorities should be repealed and progressively repressive legislation must be averted. For instance in Mozambique, the Law on Human Rights and the Fight against Stigma and Discrimination of People Living with HIV/AIDS (2009), criminalizes the intentional transmission of HIV and has been used by sex workers’ customers to prosecute sex workers for deliberate transmission of HIV, hence increasing the sex workers’ vulnerability.
- v) Existing legislation in some eastern and southern African countries still outlaws sex work posing a threat to commercial sex workers, by providing the police and other parties the opportunity to arbitrarily arrest and to harass sex workers.

73 Op cit



Court registry, Kenya.
©African Legal Information Institute

B.9 ICT and the law: reforms that enhance access to the law using technology

Access to information is a powerful tool that holds great potential in promoting the rule of law and facilitating the attainment of other fundamental human rights. A number of countries in the region have enacted access to information legislation. However, challenges remain around the enforcement of these laws and physical access to information particularly in subjects considered sensitive such as, military expenditure, cabinet memos, budgetary allocations and at times legal material including judgments and legislation.

In a region where the majority (up to 50%) of the population is illiterate and legal and human rights awareness is low, laws are often not made available, simplified or translated and judgments are not routinely written or published. Poor law reporting, limited availability and inaccessibility of legal materials including primary legal information such as judgments and court decisions and secondary legal information such as legal articles and analyses compound the situation. Not only has the general public been adversely affected but also groups including judicial officers, the legal professions, academia, and students whose reliance on legal texts for various purposes is key to their effective functionality. The court system remains chiefly manual - court proceedings and judgments are handwritten - and delays in publication of such judgments often limits enforcement of decisions and creates uncertainty.



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This study examined the work of the African Legal Information Institute (African LII) whose objective is to assist jurisdictions across Africa to build and sustain internet-based law reporting portals. African LII seeks to capacitate countries to sustainably publish legal material by establishing and linking legal information institutes across the continent. Currently, pilots are already on-going or being set up in a number of countries including South Africa, Uganda, Malawi, Mozambique, Lesotho, Seychelles and Swaziland.

The programme has sought to use technology and ICT to enhance access to legal materials including laws, judgments, legal papers and analyses. Working through national level legal information institutes, the African LII has focused on the accessibility of legal judgments at national level and is looking at facilitating the exchange and sharing of jurisprudence across the region through the Chief Justice Forum in Eastern and Southern Africa. African LII has provided advice, capacity building including training, basic equipment and monitoring of interventions at the regional level. A recent assessment on Free Access to Law initiatives⁷⁴ indicated that initiatives such as the African LII have brought about a “*broad shift*” in that law has been demystified and made more accessible by the Internet. Some of the key results of African LII initiatives have been:

- Instant online access to free legal materials including law and court judgments and articles by judges, academia and publishers. Some recent court decisions have reportedly cited arguments from African LII sources.
- Students are increasingly using cellular phones to access the free online legal materials.
- The public are reportedly more likely to read the law - most of the decisions of lower courts are on the national portals for example South Africa Legal Information Institute (SAFLII). During a recent public interview of the Chief Justice in South Africa, civil society were able to access decisions taken by the key applicant - Chief Justice Mogoeng Mogoeng through SAFLII. In Malawi, where judgments are not officially published, through the intervention of African LII, a number of high profile cases including the Madonna adoption process have been put on the Internet.
- More frequent and in-depth commentary is published by journalists on court judgments.

Arising Issues and lessons: There are frequent delays in writing, presenting and publishing judgements and thus an associated delay in posting them in the system. In many cases, judicial officers still use longhand to write out court proceedings and records and not all cases are transcribed, in effect, delaying the publishing of judgments.

The dysfunctional court system hasn’t received the attention that the output (court judgements) has garnered. Access to court documents is restricted including to cause lists, case files and dockets, affidavits and proceedings, in most countries except for South Africa.

In the High Courts and lower magistrate courts in South Africa, documents are not filed in electronic formats as the whole system has yet to be digitized. In the higher (appellate) courts such as the Constitutional Court and Supreme Court electronic copies are generated, but producing multiple copies - 25 for all judges and clerks - is an additional cost. The lower courts have a greater potential for impact on the general population since most cases are registered in these courts, but yet receive less resources. It would appear that for access to information to improve at all court levels - the entire court system must be computerized.

74 See: Free Access to Law - Reaching Sustainability of Free Access to Law Initiatives; Mariya Badeva-Bright and Isabelle Moncion, August 15, 2011.



Freedom Toaster which is a kiosk that provides access to case law to those without internet connection.
©African Legal Information Institute

This computerization will require massive expenditure on expensive court systems. Currently, basic ICT infrastructure is often lacking and funding unavailable. On the other hand, it should be noted that Internet penetration in Africa is growing exponentially and currently stands at 10.9%.⁷⁵ This provides opportunities for faster and cheaper alternatives to expensive systems. In Kenya, some promising work is being carried out in less costly Intranet-based open court systems. Initiatives exist using SMS texting, as in eastern DRC, to inform victims of crime of court decisions making use of a fast growing mobile market. This is a potentially viable and cost-effective alternative to explore.⁷⁶

This current approach is limited to the formal justice system and leaves out a significant amount of jurisprudence occurring in the alternative justice systems. In reality, this would be a massive venture and also probably inapplicable given the nature of proceedings and judgments in these systems. Often, proceedings are not recorded and judgments are by consensus. Challenges often arise where appeals have to be made to the formal justice system and there are no records or written judgments to rely on.

⁷⁵ Between 2000-2010, growth in the Internet penetration rate in Africa was 2,357%. See <http://www.internetworldstats.com>

⁷⁶ See African LII, UNDP briefing paper on African LII, a project of the Southern Africa Litigation Center (SALC), 2011.



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More training and changes in attitude are required. While considerable focus has been placed on developing systems and investing in ICT hardware, very little has been done regarding training of users and in the sustainability of systems. For instance in Malawi, considerable investment has been made in hardware, but relatively little on training and attitude change for judicial officers whose basic use of ICT - including emails remains low, while Internet coverage is still inadequate. A change in mind-set would have to begin in legal training institutions.

Sustainability of the venture remains uncertain. A commercial angle has been explored in which international publishing houses have been approached to publish legal texts for purchase. However, the number of lawyers at national level is too small to sustain commercial publications and hence there is little incentive for the private sector to invest. Nevertheless, some progress has been made in mainstreaming African LII national level projects into government budgets and structures. In Uganda, UGLII has successfully integrated its Court Judgments Publication Project into mainstream judiciary programming and budgeting hence assuring sustained funding. Two magistrates have been appointed to handle the work of ensuring judgments are accessible.

In conclusion, the use of ICT as a tool to enhancing access to legal information cannot be overstated. As seen above, a number of initiatives have been implemented to enhance access to the law through simplification, publication and dissemination of legal texts, and using ICT to promote free access to the law. The use of social media in the Arab Spring revolutionized and cemented the importance of ICT to promoting the rule of law and access to information. While UNDP is already utilizing ICTs in development programming (for example in electoral and parliamentary reforms)⁷⁷, UNDP should proactively engage in ongoing regional and global discourse on the use of ICTs, especially of social media, in enhancing the rule of law. This should apprise and provide entry points for UNDP to support research or interventions in this area.

⁷⁷ See examples of the UNDP Asia-Pacific Development Information Programme at <http://www.unapcict.org/partners/undp>



SECTION

SUMMARY OF EMERGING ISSUES, LESSONS AND IMPLICATIONS FOR UNDP PROGRAMMING



SUMMARY OF EMERGING ISSUES, LESSONS AND IMPLICATIONS FOR UNDP PROGRAMMING

Transformational change is the process whereby positive development results are achieved and sustained over time by institutionalizing policies, programmes and projects within national strategies. It should be noted that this embodies the concept of institutionally sustained results - consistency of achievement over time. This is in order to exclude short-term, transitory impact.

*Definition of Transformational Change
Bureau for Development Policy, UNDP 2011*

C.1 Summary of emerging issues and lessons

UNDP has undertaken numerous interventions within the ESA region and indicators of progress are visible, from successful referendum elections conducted in Sudan and Kenya and general elections in Rwanda,

"Governments and donors have invested millions in reforming legal frameworks, in building court rooms and training justice providers to strengthen the rule of law. So why is it not working for women?"

UN Women - Progress of the World's Women, 2011 p10

Tanzania, Zambia and other countries in the region; to constitutions and laws enacted in Kenya, Zambia and Mozambique; justice institutions reconstructed in several countries; access to legal aid enhanced in Rwanda; and progress in women's rights - particularly in increased representation in political office in some countries in the region. A key issue however, is whether these interventions have contributed to transformational change and expanded people's choices to enable them to live productive lives.

Stakeholders engaged during the study overwhelmingly noted that despite positive outcomes, this has not necessarily translated into improved access to justice and sustainable development or transformational change for individuals and communities.⁷⁸ Stakeholders do, nevertheless, concede that change takes time and that these interventions are building blocks for further effort. Generally, there is a consensus that more needs to be done, perhaps pursuing a different approach if significant impact is to be attained. This is especially so given the changing global and regional contexts that demand a review of current strategies as seen in the preceding chapter. This section provides an overview of key issues and lessons that have emerged and a discussion of their implications for UNDP.

⁷⁸ Both the MDG Report 2011 and the Human Development Report 2010 *The Real Wealth of Nations: Pathways to Human Development* show positive indicators in health, education and basic living standards in the past few decades, with many of the poorest countries posting the greatest gains. However, deep gender inequalities exist, and the divide between the rich and the poor is widening and the situation of the poorest of the poor and vulnerable groups remains dire.



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C.2 Summary of emerging issues, lessons and implications for UNDP

The evolving global and regional context **requires engagement with the allocation of power and resources and renewed commitment to fundamental values and norms** in order for the African continent to develop sustainably. Without bold and contentious reforms the fragile situation in the region, shifting political structures and growing inequality will remain unaddressed. While UNDP is well established and has the technical capacity to engage with governments and partners, current development approaches that focus on technical capacity development though useful, have often been inadequate or inappropriate to address injustices and major human rights violations. This is especially the case in fragile, conflict and post-conflict situations. Improved strategic direction is required through UNDP utilizing its convening power more effectively to unite partners in seeking both political and technical solutions in difficult issues and labyrinthine situations.

Organizational mandate and the division of roles require clarification in order to optimise operations.

The co-existence of UNDP with other UN agencies including the UN Missions supported by the Department of Peacekeeping Operations (DPKO), or the Department of Political Affairs Bureau of Conflict Prevention and Recovery (BCPR) particularly in fragile and conflict settings aims at ensuring a division of roles. In practice however, the division of roles is inadequately articulated and has an impact on country programming on the rule of law, especially in handling sensitive and political issues. In some instances, where UN entities are not



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optimally fulfilling their political mandate to address the situation and⁷⁹ UNDP is not authorized to engage at the political level, its development role becomes difficult to fulfil or justify. Roles and responsibilities of the practical operation of different entities require discussion and the clarity and coherence of mandates enhanced in practice.

The structural challenges or causes of inequality in society that concentrate resources, power and privilege in the hands of a few, should be increasingly central to development interventions. Every programme environment is different and hence in-depth assessments and studies are required to support any intervention. However, addressing these structural challenges requires long-term engagement, commitment and the taking of difficult decisions. Useful assessments can be undertaken by country programmes, however for a variety of reasons (including limited funding), programming interventions do not always reflect the analyses articulated in these studies and programmes often end up addressing symptoms (training officials to investigate and prosecute rapes) instead of the structural challenges (engaging with the cultural norms behind negative attitudes towards women). The relevance of UNDP support is contingent on thorough context specific assessments and appropriate interventions.

Though long-term planning, funding and engagement are critical to address underlying complexities and vulnerabilities, **sustainable resources for funding rule of law and access to justice interventions over the long-term are scarce**. As a consequence, the projects are at times ad hoc and fragmented, ineffective and inherently unsustainable. For instance, due to budgetary constraints and annual fundraising, programming in the Access to Justice Unit in the DRC is usually for a period of a year which hampers long-term planning and cannot always take into account underlying structural challenges that require long term engagement.

With the global financial crisis, resourcing and funding has been under threat for many development agencies including UNDP. However, it should be noted that while funds are critical, it's not about funding alone. **UNDP has played a catalytic role with limited funds by supporting low cost initiatives and through facilitating in-depth assessments and studies** that have informed national governments and other partners on potential priorities and engagements. In the context of limited resources, it is possible to expand existing partnerships especially with non-traditional partners including the business community and philanthropic organizations; support governments with analyses that inform prioritization and use of scarce resources in addressing structural challenges, while also mobilizing internal resources such as skills and expertise within communities to create viable and sustainable solutions to community challenges.

The rule of law and access to justice are not ends in themselves but tools critical to the attainment of other rights. However, **a huge implementation gap exists between the enactment and enforcement of legislation**. Hence where laws have been enacted they must be enforced and where justice institutions are rebuilt, systems must be put in place for their effective utilization. This entails long-term support and commitment to reforms. For instance in Kenya, while the new constitution is a significant milestone, it will remain unfulfilled without the resources and commitment required to ensure its structured and time-bound implementation.

79 Also see: Camino Kavanah and Bruce Jones, 2011: Shaky Foundations: An Assessment of the UN's Rule of Law Support Agenda, New York University, Centre on International Cooperation, November 2011 p7. Two examples looked at include the failure to arrest 8 senior officials of the Congolese Army in the DRC on rape charges despite MONUSCO's presence and strong international support while UNDP continued to support the Military Prosecutor to investigate and prosecute sexual crimes. In Burundi, UNDP/BINUB are supporting the judiciary and other justice agencies, while extra judicial killings reportedly by the police continue without a strong message from BINUB to the government of Burundi to take measures to ensure political dialogue and end the killings.



Interventions should be geared to supporting national strategies and policy frameworks and avoiding parallel structures so as to enhance national ownership and sustainability of reforms. However, national strategies are not always anchored in the human rights framework and as such may not necessarily seek to promote the rights of the citizens. Hence, support is required to ensure that national strategies and policy frameworks reflect the aspirations of the public and seek to promote and fulfil human rights especially for the marginalized and vulnerable. This also requires a vibrant civil society that is politically conscious and technically astute and can engage with the state to influence the priorities of national strategies. Also, support for national strategies should not preclude flexibility of support especially for emerging issues and catalytic interventions.

While **many individuals and communities utilize alternative justice systems, these systems tend to exploit the vulnerable.** It's necessary to work systematically with these multiple justice systems so as to understand what works, what doesn't work, and how can these systems can be strengthened to safeguard the rights of the vulnerable and ensure fair justice outcomes for individuals and communities. Lessons from the work undertaken by FIDA-U on community dialogue with the Ker Kwaro; mediation and peaceful resolution of disputes by the Bashingantahe in Burundi; and the reform of the Traditional Authorities in Malawi can inform reforms in this area.

Ineffective linkages and murky appeal processes and structures limit people's choice to pursue legal action at a higher level of the formal justice system. This gap can be exploited by those with control over power and privilege within communities to obstruct the vulnerable from seeking statutory legal remedies. The need for clear referral structures and linkages between the formal and alternative justice systems is critical for promoting choice and attaining justice.

Integrated justice system reform is critical to ensuring that root causes and barriers are identified and addressed holistically and that justice systems operate effectively. Additionally, strong leadership is critical for pushing through bold reforms that move beyond establishing legal and policy frameworks and building institutions to strengthening service delivery, and ensuring that the public accesses and utilizes the services of the justice institutions.



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SECTION C

Though legal aid underpins the attainment of other rights, **increased awareness of rights and mechanisms to attain them has not necessarily translated into legal empowerment, increased consciousness and citizen action** for the protection and promotion of these rights. That said, CSOs across the region have initiated a number of interventions such as one-stop justice centres and utilized tools such as Public Interest Litigation that increase the opportunities for marginalized and vulnerable groups to empower themselves and enhance access to justice. More support is required to push for system-wide reforms taken from lessons learnt by CSOs.

In many countries, legal aid service provision has been left principally to CSOs. However, **the absence of national policies and government led institutional frameworks and funding limits the effectiveness of CSO interventions to legally empower communities**. Also necessary are national agencies to set standards and create oversight mechanisms so as to avoid violation of the rights of vulnerable people by unscrupulous organizations.

Complementarity to achieve transitional justice must be pursued in the current context of high levels of impunity for gross human rights violations and concerns voiced by African governments around the neutrality and utility of the ICC in the region. UNDP has played a role in transitional justice in a number of countries emerging from conflict including in Burundi, DRC and northern Uganda, but has however been ambivalent in other countries such as Kenya where it has not made a public pronouncement in the case of the Ocampo 6 (now 4).⁸⁰ A strategic and coherent approach to this issue needs to be taken and a high-level regional debate facilitated concerning national and regional capacity for criminal prosecution of crimes against humanity and integrating complementarity into long-term development planning.

International and regional treaty body mechanisms should be promoted and utilized. Every country in the sub-region except the Comoros and Tanzania have ratified the ICCPR which guarantees civil and political rights including the right to access prompt and fair justice. Some countries including Botswana, Comoros, Mozambique, South Africa and Tanzania are yet to ratify the ICESCR despite consistent advocacy from human rights groups, civil society and other stakeholders. However, delayed reporting on country status in attaining agreed human rights standards is commonplace. In addition, regional mechanisms such as the African Commission and the African Court of Justice and Human Rights have underused. The current closure of the SADC tribunal for review of its operations creates a large gap in the sub-region. With compromised national justice systems, strengthening regional treaty bodies and promoting implementation of recommendations of treaty bodies may provide an avenue for promoting the rule of law and realization of people's rights in the region.

Influencing changes in legal, policy and practice paradigms to increase protection and enhance rights of sexual minorities including LGBTI, MSM, and sex workers must be emphasised. Lessons are available in the work done by organizations such as BONELA (addressing cultural attitudes to fertility and social migration patterns within HIV/AIDS reforms) and KELIN (utilizing cultural structures to enhance access for justice for vulnerable persons such as widows) and pursuing key recommendations of the African Commission on HIV and the Law discussed in section B.5.

80 Ongoing prosecution of 6 high level officials implicated in the 2007 post-election violence including Uhuru Kenyatta, Francis Muthaura, Hussein Ali, William Ruto, Henry Kosgey and Joshua Arap Sang. This case has divided the public and development community in Kenya as to whether the ICC should play a role or local mechanisms should be used to try those implicated in the violence.



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SECTION

RECOMMENDATIONS



RECOMMENDATIONS

UNDP short-term strategic priorities:

- Step up response to critical development issues.
- Rebuild and forge new partnerships for development.
- Meet key benchmarks for organizational change.
- Step up leadership of the UN Development system.
- Reposition the UNDP “brand” in the development marketplace.

UNDP medium-term strategic priorities:

- Meet key enabling conditions for inclusive, resilient and sustainable development at country level.
- Improve governance and crisis prevention response and strengthen recovery to address short-term and long-term development challenges.
- Reinforce leadership in shaping development agendas.
- Secure major changes to forge a new UNDP and UN fit for the 21st Century.

*UNDP Change in Action - Lifting UNDP's Performance from Good to Great,
Issue 1- 25 August, 2011*

D.1. Summary of policy recommendations

UNDP is going through a global change process that seeks to enhance its capacity to contribute to transformational change by empowering lives and building resilient nations. Through this process, UNDP has developed both short and medium-term strategic priorities that are captured above and are in part shaped and should be shaped by the findings and key recommendations in this study.

Overall, enhancing UNDP's conceptual clarity around the key principles of the rule of law and access to justice has been successful. However **UNDP needs to revisit its approach and methodologies to deal with ever-evolving global and regional challenges and contexts.** To do this requires a thorough, specific context-based examination of the underlying causes and socioeconomic structural challenges that exacerbate inequalities and of increased application of the Human Rights-Based Approach to development that promotes participation, empowerment, non-discrimination and accountability for fair justice outcomes.

While maximizing its niche in technical capacity, **UNDP should also consistently engage in more “political” issues.** In complex contexts, UNDP should utilize its convening power to address politically sensitive issues. This also calls for a more coherent approach in practice and clarity of roles and responsibilities among the various bureaus and agencies of the UN.



UNDP should systematically engage and support alternative dispute resolution forums through dialogue, capacity-building and infusing human rights standards into cultural norms so as to promote fair justice outcomes for the majority of the people in the region.

UNDP must move from short-term, fragmented interventions to long-term programming and coherent support for rule of law and justice in the region. Lessons from support to integrated justice reform programmes and democratic governance reforms in Kenya all show that a long-term approach has substantial potential to shift policies, practices and attitudes so as to enable sustainable transformative change in communities.

To engage and lead in the practice of complementarity is necessary to deter impunity for human rights violations across the region. UNDP must engage and also support regional initiatives and mechanisms such as the African Commission and the African Court of Justice to address regional human rights challenges. In addition, UNDP should support the follow up and implementation of recommendations of treaty bodies including the Universal Periodic Review. Save for Swaziland, Tanzania and Zimbabwe, all the other countries in the region had submitted reports by November 2011 that have been reviewed by the Human Rights Council and recommendations issued.

Engage alternative voices to enhance rights awareness and political consciousness and move away from fragmented support for CSOs. Lessons from Amkeni Wakenya Civil Society Fund indicate that where concerted effort is placed on systematically engaging on specific issues, results are likely to be attained. The use of Public Interest litigation should also be supported especially at the regional level to promote public awareness and debate on contentious issues and ultimately the rights of marginalized groups and minorities.

ICT and technology are critical tools to enhance access to the law and provide an opportunity to reach millions of people using fast and often more economical technology. UNDP should adapt to new technologies and explore options for use of ICT and social media in enhancing access to justice and the rule of law.

Internally within UNDP, **the rule of law and access to justice are centres of convergence that can be utilized to enhance coherence and closer integration of interventions across the 4 pillars:** *poverty reduction and the MDGs; democratic governance; crisis prevention and recovery; and environment and sustainable development.* This requires the various departments and bureaus of UNDP to move away from individual planning towards an integrated approach to development planning including joint planning and implementation of projects across these pillars.

D.2 Other recommendations

UNDP is generally viewed as a knowledge based development organization and its niche is often highlighted as its technical capacity. Nevertheless, there's a potential risk of UNDP being perceived primarily as a funding agency by its partners due to various reasons that include UNDP managing a number of basket funds on behalf of other partners. While managing basket funds gives UNDP requisite resources, visibility and clout at national level, **UNDP needs to reassert its technical role and ensure that staff are adequately capacitated and have the requisite skills to technically engage with and advise partners and facilitate the process of identifying structural challenges and prioritization of interventions.** Capacity-building for national level staff on specific areas of rule of law and access to justice should be enhanced to tackle the global and regional challenges highlighted in this report and can be undertaken through formal specialized training or staff exchanges, sharing of experiences and lessons at sub-regional and inter-regional level.



SECTION D

Stronger programming support and quality assurance is required from the Regional Service Centre (RSC) especially in developing strategy and guidelines such as for mainstreaming the rule of law and access to justice across all development programming and for planning and implementation of interventions in complex and sensitive situations.

Documentation of processes and results remains inadequate across the region. For UNDP to be able to showcase the successes of supported interventions, **it is essential to strengthen monitoring and evaluation capacity both at regional and national level for lesson learning and documentation of processes and outcomes.**

Overall, some good examples and lessons exist where change has been verified, nonetheless, these have not been systematic in their implementation. A change in approach to long-term programming, increasing engagement with existing structures and alternative dispute resolution forums is required and it is necessary to focus on addressing causes of and structures that exacerbate conflict and hamper sustainable development and transformative change in people's lives. The rule of law and access to justice are critical in ensuring this transformative change and sustainable development.



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ANNEXES



ANNEX 1 - CASE STUDY MATRIX 1

CASE STUDY MATRIX 1: A COMPREHENSIVE REFORM PROGRAMME TO ENHANCE CONSTITUTIONALISM AND DEMOCRATIC GOVERNANCE IN KENYA FOLLOWING THE POST-ELECTION VIOLENCE OF 2007

PROJECT NAME/ TITLE	KEY ISSUES AFFECTING THE COMMUNITY	INTERVENTION
<p>The UNDP umbrella cost sharing agreement funded, supported and enhanced the activities of IIEC, KNDR, Amkeni Wakenya, and civic education carried out by the Committee of Experts (CoE) in Kenya. The project was supported by several donors⁸⁸ through a basket fund of 12.6 million US dollars managed by UNDP.</p>		
1. Support to Electoral Reforms and Constitutional Referendum by the Interim Independent Electoral Commission (IIEC)	<ul style="list-style-type: none"> • Post-electoral violence (PEV) in 2007 arising out of mismanagement of the 2007 parliamentary and presidential elections by the now defunct Electoral Commission of Kenya resulted in the loss of over 1000 lives and the displacement of hundreds of thousands of people. • The mismanagement of the elections sparked the tensions simmering within the population based on a number of grievances including inequity in resource allocation, ethnic rivalry, corruption and rising unemployment. • The IIEC was established following recommendations by the Independent Review Commission (IREC) of 2007 and subsequent enactment of the Constitution of Kenya (Amendment) Act No. 10 of 2008 to replace the defunct Electoral Commission of Kenya (ECK). 	<p>Support to IIEC included:</p> <ul style="list-style-type: none"> • Recruitment of staff and training in professionalism to add credibility to the IIEC during the discharge of its mandate. Training included: <ul style="list-style-type: none"> » Benchmarking tours for all commissioners and some staff to South Africa, India, Ghana and Australia. » A Building Resources in Democracy and Elections (BRIDGE) module course for Directors, Regional Coordinators, Constituency Election Coordinators and Deputy Registration Officers of the IIEC. • Technical Assistance: An international consultant was recruited for a period of three months (January to March 2010) to provide technical advice on the voter registration exercise that was carried out in April and May, 2010. • Establishing observation mechanisms: A booklet was developed on referendum observation and a Code of Conduct adopted. • Purchase and hiring of material to facilitate the electoral process that included, hiring an additional scanner and server and the purchase of 50 verification licenses and 100 desktop computers. • Referendum regulations were developed and gazetted and consultative meetings supported for the development of an Independent Electoral Commission Bill. • Citizens were mobilized to register through voter education and awareness programmes through media campaigns that utilized community FM radio stations, SMS broadcasts and provincial peace meetings and other media.

⁸¹ The donors included: SIDA, Finland, Norway, UNEAD, DFID, Denmark, USAID, CIDA, EU, RNE and UNDP. The Project had a total budget of 12.6 million US dollars.



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<ul style="list-style-type: none"> • IIEC was capacitated to manage the electoral reforms and processes both in the short and long term. Key components included: <ul style="list-style-type: none"> » Improved technical capacity in staff and commissioners. » Improved voter identification and registration mechanisms. » A strengthened legal electoral framework. <p>Key outcomes included:</p> <ul style="list-style-type: none"> • Enhanced voter awareness on voter registration and the referendum. An over 70% voter turnout against the targeted 60%. • Marginalized groups were reached through community FM radio stations and partnerships with civil society. • No violence or intimidation in 95% of the polling stations countrywide during the referendum. • 99% of Kenyans indicated they fully trusted the IIEC (Synovate Poll, Aug 2010) 	<ul style="list-style-type: none"> • A comprehensive package of reform was critical to address the crisis situation in Kenya. A joint approach that brought together different stakeholders was necessary in light of the massive scale of interventions required and the limited time period. However, this was a delicate undertaking for Kenya and its partners - a flawed process or outcome could easily have tipped the scales towards conflict. • The priority was the referendum, and adequate preparation was undertaken resulting in a peaceful, democratic, free and fair election. However, procedures to ensure high levels of compliance among political parties were not developed and this could impact the upcoming elections. • While the post-election violence was largely sparked by mismanagement of the elections, more deep-seated structural causes existed including ethnic rivalry between the various tribal groups, inequitable allocation of resources including land and jobs, and corruption. A number of measures have been put in place in the constitution to address some of the problems and a number of bodies such as the National Human Rights and Equality Commission, have been established to oversee the implementation of targets.



ANNEX 1 - CASE STUDY MATRIX 1

PROJECT NAME/ TITLE	KEY ISSUES AFFECTING THE COMMUNITY	INTERVENTION
2. Civic Education ⁸⁹	<ul style="list-style-type: none">• In cognizance of the misinformation, low awareness levels and high regional and political tensions that characterized the 2005 referendum, it was decided to conduct mandatory civic education.• Thirty days of mandatory civic education on the proposed constitution were carried out by the Committee of Experts.	<ul style="list-style-type: none">• Civic education was undertaken through:<ul style="list-style-type: none">a. Printing and disseminating 1.6 million copies of the proposed constitution.b. Reference group meetings.c. Preferential road shows.d. Community media-based road shows.e. Mashinani and marketplace road shows.f. Campaigns through the World Cup radio and television infomercials.g. Broadcasting dramatized television episodes of all eighteen chapters of the proposed Constitution of Kenya.h. Regional hearings in 18 districts countrywide.i. Distribution of the Harmonised Draft Constitution countrywide.j. Meetings with different organizations to enhance coordination and minimise overlaps.

⁸² This project also funded the National Civic Education Programme (NCEP II/URAIA).



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<ul style="list-style-type: none"> Enhanced civic awareness on voter registration and the referendum from pre-poll survey results in May 2010 showing that 67% of Kenyans polled were unaware of the contents of the proposed constitution. Following massive civic education, by the end of July 2010, 75% of Kenyans who intended to vote in the August 4th referendum stated that they were aware of the general contents of the proposed new Constitution of Kenya, while 30% of Kenyans stated that they had actually read the Draft Constitution. 	<ul style="list-style-type: none"> Civic Education is needed in order to understand and accept rights and responsibilities among the citizens – which is critical to maintaining and improving any constitutional democracy. It is critical to ensure that civic education does not seek to maintain the status quo but enables people to understand, question and debate the key issues within the society. It is necessary for a quality assurance framework to ensure international human rights standards are maintained.



ANNEX 1 - CASE STUDY MATRIX 1

PROJECT NAME/ TITLE	KEY ISSUES AFFECTING THE COMMUNITY	INTERVENTION
3. Support to Political Dialogue between the Coalition Partners and the Panel of Eminent Personalities	A coalition government was established in the wake of the flawed elections and post-electoral violence in 2008. A political settlement was needed to promote national reconciliation and unity.	<ul style="list-style-type: none"> • Evidence based negotiations between the coalition government partners took place supported by the Panel of Eminent Personalities (led by Former Secretary General Kofi Annan). • Research was undertaken to inform dialogue.
<p>4. Support to Civil Society for Democratic Governance (Amkeni Wakenya)⁸⁰</p> <p>Amkeni Wakenya is a Civil Society Democratic Governance facility that was founded by UNDP and other development partners to strengthen CSOs working on democratic governance in Kenya.</p>	<p>This project was in response to the need to strengthen the capacity of CSOs to mobilize communities to participate in strengthening democracy, governance, justice and Law.</p> <p>However, there were issues and challenges around “Who is civil society?” Civil society had recently been weakened by a wave of the departure of important leaders who then joined government.</p> <p>Most financial and technical support of CSOs went to larger national level CSOs with little trickling down to communities.</p>	<ul style="list-style-type: none"> • The aim of the first phase of support (2008-2011) was to enable citizens to benefit politically, socially and economically from a more accountable, just, transparent and democratic society that upholds respect for human rights and fundamental freedoms, and to support civic engagement, which empowers all people to influence public policies, through their civil society organizations at all levels. • Amkeni undertook capacity-building initiatives for CSOs and CBOs and launched the civil society week. • Support was given to establish and strengthen District Peace Committees including in Kilifi, Kaloleni and Ganze districts. This was through training in peace building skills and dialogue among families affected by the post-election violence. • People’s Monitoring Teams were established, for instance, in Wajir district where a discovery was made of misappropriation of constituency development funds from a particular project. • Supporting the NGO Disability Empowerment in Kenya by producing and distributing several IIEC materials in Braille.

83 The project funded CSOs and CBOs through the Quick Response Fund.



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<ul style="list-style-type: none"> The Two Principals reiterated their political commitments to the new constitution: President Kibaki and Prime Minister Odinga were united in the quest for the new constitution throughout 2010 and they formed a coalition government that continues to stand despite several setbacks. 	<ul style="list-style-type: none"> For any political settlement to work it must reconcile, heal and reflect the best interests of all citizens. The Kenya experience ushered in a new era of power sharing and coalition governments following flawed elections. Zimbabwe too has adopted this approach. There are key issues around what this spells for democracy in Africa and whether it's sustainable especially in light of the lessons from the Arab spring. These reforms have been undertaken outside the wider governance, justice, law and order sector, which could impact on implementation and sustainability. These reforms must be institutionalized. On the other hand, the flexibility of support has enabled the funding of high impact political interventions. The capacity of institutions such as the Ministry of Public Service to deliver agreed priorities though critical, is still inadequate.
<ul style="list-style-type: none"> Reforms reportedly reached 221,719 people directly and 930,000 people indirectly through support to CSOs and CBOs. Peace committees in Kilifi and Kaloleni and in Ganze district were instrumental in ensuring reconciliation within communities affected by post-election violence. Information was provided on the draft constitution through the distribution of thousands of copies of the draft constitution in English and Kiswahili and other relevant IIEC materials including, copies of the draft constitution, simplified copies of the draft constitution, t-shirts, posters, and fliers. Local communities were empowered to monitor the use of constituency development funds by establishing people's monitoring teams. 	<ul style="list-style-type: none"> Overall, advances have been made in strengthening capacities of some CSOs. However, on the whole, civil society remains weak, is divided (for instance, along thematic issues such as land, women, and human rights) and lacks cohesion and depth to engage effectively on democratic governance and advocate for change. For instance, CSOs lack a cohesive strategy for engaging with constitutional implementation and is largely reactive to issues as they arise. In the absence of social welfare and tangible reforms targeting economic challenges, democratic reforms remain incomplete and not grounded in everyday reality. The linking of national level CSOs and grassroots CBOs is a strategic approach that builds on strengths at both ends. In addition, proposals to further link with research institutions such as think tanks or universities, will further strengthen the quality of interventions - on advocacy and policy; programming and actual implementation and outreach.



ANNEX 1 - CASE STUDY MATRIX 1

PROJECT NAME/ TITLE	KEY ISSUES AFFECTING THE COMMUNITY	INTERVENTION
		<ul style="list-style-type: none">• Amkeni Wakenya in partnership with the Committee of Experts trained 40 Journalists from vernacular radio stations on the proposed content of the constitution.• Amkeni Wakenya partnered with both the Committee of Experts and the IIEC to promote awareness-raising initiatives specifically focusing on collaboration on the distribution of key electoral materials and spreading information on the content of the proposed constitution to Kenyan citizens. <p>NB:</p> <p>Interventions in the new programme (after 2011) will focus on human rights, access to justice and supporting devolution of powers under the decentralised system of governance as outlined in the constitution.</p> <p>Amkeni Wakenya seeks to work more with CBOs and to create networks linking national level CSOs with CBOs so as to create consciousness and political awareness about democratic governance. It's focus will be on movement building and creating change from the grass-roots.</p>



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<ul style="list-style-type: none"> • People with disabilities who were contracted as facilitators in civic education programmes initiated by other CSOs were empowered to participate in the referendum. • Partner CSOs were strengthened through work in advocacy, leadership, networking, and institutional and organizational management. • Improved organizational governance and leadership ability has been witnessed, including improved staff, board and management committee relationships, improved strategic planning processes and increased skills. • Effective and strategic partnerships with and among key democratic actors were established and strengthened. 	<ul style="list-style-type: none"> • While seeking to reach as wide a population as possible, there is the potential to spread too thin (by giving small grants to many partners) and not having tangible impact overall. • In a number of cases, interventions by CSOs do not target the structural gaps and root causes of issues within communities primarily due to weak analysis and limited funding. • There are issues around UNDP's role in funding arrangements such as umbrella funds, whether UNDP is a conduit for resources or whether it can play a role supporting initiatives aimed at raising political consciousness and targeting structural challenges and potentially shifting political power.



ANNEX 1 - CASE STUDY MATRIX 1

PROJECT NAME/ TITLE	KEY ISSUES AFFECTING THE COMMUNITY	INTERVENTION
5. Access to Rights Programme: Strengthen Access to Justice in Kenya ⁹¹	<ul style="list-style-type: none"> This programme was established to address the key issues of concern in Kenyan communities which included: land conflict, inheritance and succession disputes, labour cases, housing rights, children's rights and environmental degradation. 	<p>Key interventions included:</p> <ul style="list-style-type: none"> Training paralegals, communities, human rights networks, judges and representatives of various groups on the proposed Constitution of Kenya and legal and human rights education. Setting up legal aid community centres in various locations. Awareness-raising campaigns, including those about the contents and implications of the constitution. Recruitment of staff, for example, a national Human Rights Officer was recruited into UNDP Kenya to contribute to the development of Amkeni Wakenya activities as well as to develop a new human rights programme. Working with and forming networks and partnerships, such as, with the International Commission of Jurists Kenya (ICJ) to train community paralegals. Two international UN events were implemented: International Day for Democracy on 15th September and International Human Rights Day on 10th December. Publications were launched, such as CORAT - a publication on succession planning - and the Final Civil Society Shadow report on the Universal Periodic Review (UPR) process was completed. Civic education of the general population by paralegals took place. Through media outreach by community paralegals, media sessions' Information Education and Communication (IEC) materials were distributed, including brochures on the proposed draft constitution and the Centre for Law and Research (CLARION) developed a simple brochure on devolved funds. Manuals were developed, for instance, on the Transitional Justice Toolkit - a survivor user's manual, to engage the TJRC. Capacity building activities were completed for CSOs, CBOs and communities. Research was conducted which included IAAK research activities on the effectiveness of policies in dealing with inequality.

84 UNDP and SIDA funded and partnered with: Kenyan Human Rights Commission (KHRC); International Commission of Jurists (ICJ); Legal Resources Foundation (LRF); Action Aid International Kenya (AAIK); Kituo Cha Sheria; Centre for Law and Research International (CLARION); National Council for People with Disabilities; NEPAD and APRM (New Partnership for Africa's Development and the African Peer review Mechanism); and the National Civic Education Programme (URAI - NCEP II).



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<ul style="list-style-type: none"> • The legal framework was strengthened with the formulation and enactment of bills, laws and policies such as the Internally Displaced Persons Policy. • Legal aid community justice centres have been set up as an alternative to the formal justice system and to give grassroots communities the opportunity to access the justice system. • Participation and mobilization of the local population on issues of human rights, equity and devolved funds has increased. For instance, local residents have developed relationships with the local administration, enhancing transparency and accountability on how devolved funds (apportioned by central government) are managed. • Awareness has been raised in the grassroots on various human rights issues. • The use of vernacular language material and programmes has improved accessibility to information for people with low literacy. 	<ul style="list-style-type: none"> • Civil society is fragmented and lacks a united voice through which to push through its agenda. • Many organizations have faced internal problems, including high staff turnover, that affect their management and project implementation. Moreover, increasingly, donor funding has been aimed at programming and turned away from institutional components such as staffing, salaries, office space and equipment. This hampers operations of the CSOs and increases reliance on volunteers, often not well trained, to carry out community-based work. • The scale of certain problems faced by communities is not always matched by the scope of intervention and small, piecemeal projects are implemented that cannot make a significant contribution to ameliorating the issues. • A key challenge is in ensuring the sustainability of community initiatives to access justice and human rights. • Solid research has contributed to a strong evidence-based approach to advocacy. Proof lies in the number of issues raised such as on inequality that were incorporated into the new constitution.



ANNEX 1 - CASE STUDY MATRIX 1

PROJECT NAME/ TITLE	KEY ISSUES AFFECTING THE COMMUNITY	INTERVENTION
<p>6. Judicial Review Programme⁹²</p> <p>This review was conducted as part of a larger Agenda 4 comprehensive review that targeted constitutional and institutional components including the police, and parliament</p>	<ul style="list-style-type: none"> The majority of reforms in the wake of the 2007 post-election violence in Kenya targeted the government and other institutions that played an important role in the breakdown of the rule of law but generally neglected the Kenyan Judiciary. In 2009, a review process was commissioned to investigate the key detrimental issues in the judicial system. 	<p>The review process occurred through:</p> <ul style="list-style-type: none"> Consultation with stakeholders, including public outreach and awareness campaigns through print media. Research and documentation on the state of administration of justice and its impact on the MDGs in Kenya in light of Agenda Item 4 - long-term issues on constitutional and institutional reforms notably key issues in the judicial system. Training of judiciary staff on significant cross-cutting issues that included gender and environmental mainstreaming. Technical support from consultants, technical and professional expertise, equipment, workshop facilities and stationery.
<p>7. Democratic Governance and Human Rights progressively enhanced⁹³</p> <p>The project supported National Human Rights Institutions as a key counterpart in the promotion and protection of human rights for all at the national level.</p>	<ul style="list-style-type: none"> The violence that broke out after the December 2007 presidential election precipitated the most severe human rights crisis since Kenya's independence. Over 1,000 were killed and hundreds of thousands were internally displaced or fled to neighbouring countries. Massive losses to property were incurred and there were crimes against humanity, with numerous rapes and assaults recorded. For the most part, the perpetrators of human rights violations have yet to be held accountable, signifying a critical need for political will to enable human rights protection and access to justice for victims. 	<p>Programme interventions have been through:</p> <ul style="list-style-type: none"> Monitoring the government's compliance to human rights standards in the implementation of the constitution. Capacity building for public officers, CSOs and citizens on human rights, gender equality and information on the requirement that state officers ensure the state adheres to global treaty rules on reporting and implementing recommendations arising from the reports of the MTP. Support to the National Legal Aid and Awareness programme. Technical support to national human rights institutions. Support to the launch of pilot projects to address access to justice by vulnerable and marginalized groups. Building the capacity of state actors to deliver their human rights obligations through training and workshops. Promoting alternative dispute resolution, including use of mediation and traditional justice systems. Supporting the transitional justice processes during the TJRC and thereafter.

85 This project was supported by SIDA and UNPD in partnership with the Kenyan section of the International Commission of Jurists as the implementing partner, the Kenyan Judiciary through the Kenyan Magistrates and Judges Association, Kenya Women Judges Association, East African Magistrates and Judges Association, Kenya National Commission on Human Rights, Ministry of Justice and Constitutional affairs, Kenya Law Reform Commission, Federation of Women Lawyers and the State Law Office.



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<ul style="list-style-type: none"> • The review strengthened institutional and legal frameworks and processes that support democratic governance, transformation, accountability, respect for human rights and gender equality. • A new Chief Justice, Deputy Chief Justice and the other members of the Supreme Court were recruited. Gender was taken into consideration as specified in the new constitution. 	<ul style="list-style-type: none"> • The nomination, public interview and subsequent appointment of a new Chief Justice and Deputy Chief Justice heralded a new open and transparent recruitment system of public officials. • There is a renewed trust in the judicial system and the anticipation that the top leadership of the judiciary will implement the reforms recommended in the review.
<ul style="list-style-type: none"> • The capacity of national counterparts was enhanced as was the ability of UNDP staff to apply a human rights-based approach to development programming. • Access to justice improved, with special emphasis on vulnerable groups such as women and people with disabilities.⁹⁴ • A number of constitutional bodies are being established to address key human rights challenges including gender inequality, integration and cohesion. 	<ul style="list-style-type: none"> • Poverty and inequality remain major obstacles to the realization of human rights in Kenya. This is worsened by poor governance and a lack of respect for the rule of law and a low awareness of legal and human rights among the population. • The weakness and ineffectiveness of institutions responsible for enforcement of human rights, gender equality and access to justice remains a challenge for the promotion and protection of human rights in Kenya. • There are concerns that the multiplicity of constitutional bodies might lead to overlaps, while some of the commissions lack requisite the powers to be effective for instance, for inquiry or prosecutions. • Lack of accountability for crimes committed could spur impunity. The ongoing trial of 6 high profile officials in the ICC has created massive debate and divided the country. UNDP has largely steered clear of the complementarity issue and has not publicly engaged in the ICC debate. This could undermine UNDP's credibility on such issues.

86 The programme is funded by UNDP. Partners include the Kenya National Human Rights and Equality Commission, Office of the Public Complaints and Ombudsman, NALEP, Kenya Law Reform Commission, Truth, Justice and Reconciliation Commission, Ministry of Justice, National Cohesion and Constitutional Affairs, and the Ministry of Gender.

94 Absence of specific data on how many accessed justice, for what issues and to what outcome.



ANNEX 1 - CASE STUDY MATRIX 1

PROJECT NAME/ TITLE	KEY ISSUES AFFECTING THE COMMUNITY	INTERVENTION
	<ul style="list-style-type: none"> The cycle of impunity for human rights violations needs to be broken and justice for victims and their families ensured. ICC proceedings were instituted against 6 suspects – known as the Ocampo 6⁹⁵ early this year. Kenya's government objected to the ICC proceedings citing the adoption of a new constitution and other reforms paved the way for it to carry out its own investigations and prosecutions. 	<p>NB: UNDP is in the process of developing an integrated human rights programme that builds upon the earlier support programme while responding to key issues and gaps highlighted in enhancing the cohesiveness and impact of project support.</p>
Access to Justice for Marginalized groups ⁹⁶	<p>Over 56% of Kenyans live below US\$ 1 per day, thus when legal assistance is required it is inaccessible to them due to the costs involved.</p> <p>The brunt is borne in rural areas and for the socially disadvantaged including women, religious and ethnic and other minorities, persons living with HIV/AIDS, and people with disabilities.</p>	<p>Interventions occur through:</p> <ul style="list-style-type: none"> Community justice centre initiatives such as the one in Nyando. Legal education and empowerment for the marginalized. Research on whether new policies, laws and the constitution are pro-poor. Use of media to ensure the continuity and documentation of the programme on access to justice. Working through partnerships and networks and enhancing capacity through training. Conducting workshops for capacity building. Creating forums for Kituo in policy and decision-making platforms. Publication and dissemination of policy and legislative briefs. Promoting the rights of minorities and indigenous peoples by ensuring they are catered for in the constitution and advocated for in pro-poor policies and legislation.

95 The ICC named and filed charges against six high-profile Kenyans, including politicians and businessmen, as key suspects in the violence that erupted after disputed elections in December 2007. The six include: Uhuru Kenyatta, Francis Muthaura, Hussein Ali, William Ruto, Henry Kosgey and Joshua Arap Sang.

89 The programme is funded by UNDP and its implementing partner is Kituo Cha Sheria (Legal Advice Centre)



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<ul style="list-style-type: none"> • Building strategic partnerships with communities. KITUO cemented its partnership with community networks through the launching of four Community Justice Centres (Nyahuriaden, Nairobi Devolved Funds Watchdog (NDFW), KICODI and KCBO-Net). • Improved self-representation with a focus of creating a critical mass of Kenyans as drivers of change. • Publication and dissemination of policy and legislative briefs such as, working with Housing Coalition members to develop a simpler version of Kenya's First Report on Economic, Social and Cultural Rights. • Enhanced inmates' right to participate in referendums emanating from a case at the Shimo la Tewa Justice Centre that set off Public Interest Litigation. 	<ul style="list-style-type: none"> • In the absence of baselines and an evaluation, it's not possible to establish to what extent the programme has impacted on poverty and enhanced access to justice among the target group. • Community Justice Centres have had a positive impact in the areas of operation: However, overall access to justice is still a challenge for the rural poor. Many of the centres are urban and cannot easily be accessed and also continue to apply traditional legal aid approaches that require clients to come to the legal aid clinic instead of working where the communities are located. • A number of challenges exist including the slow pace of national reforms, insecurity and threats to the lives of human rights defenders, and the activities of political agents who continue to cause endless wrangles that hinder the reform process.



ANNEX 1 - CASE STUDY MATRIX 1

PROJECT NAME/ TITLE	KEY ISSUES AFFECTING THE COMMUNITY	INTERVENTION
9. Commission for the Implementation of the Constitution (CIC)	<ul style="list-style-type: none"> • The CIC was established by the Constitution of Kenya (2010), to monitor, facilitate, coordinate and oversee the implementation of the constitution. The mandate of CIC is a mammoth task that calls for unity and positive focus by all involved. • The CIC faces the challenge of ensuring the necessary political will among the arms of government, effective coordination between all stakeholders, enactment of an enabling policy and legal framework, and fidelity to the letter and the spirit of the constitution. • The CIC feels that there is an erroneous perception that the implementation of the constitution is only about drafting certain new laws or only the ones in the Fifth Schedule. It is important to ensure that implementers in all arms of government appreciate the need for a change in laws, policies and operational regulations and guidelines. • Devolution of powers and their separation at the national and regional levels, including national and county governments, a bi-cameral legislature, and clear rules on revenue sharing, are expressly spelled out in the Kenyan constitution. 	<p>Key interventions were aimed at enabling the CIC to achieve its mandate and included:</p> <ul style="list-style-type: none"> • Civic education to educate Kenyans on the contents of the new constitution and their roles and responsibilities towards its effective implementation. • Capacity building forums on human rights and the rights approach for CIC commissioners, staff and partners. • Training workshops. • Development and review of laws such as the Constitution of Kenya (Amendment) Act 2008. • Facilitation, coordination and monitoring activities. • Meetings and consultations with different stakeholders. • Recruitment and appointments of commissioners and technical and administrative support. <p>NB:</p> <ul style="list-style-type: none"> • The constitution has failed to establish the principles that would provide the much needed direction in terms of how the country should address past human rights violations including the post-election violence and provide redress for the victims of such violence. • The new constitution should have provided a timeline to ensure that prosecutions for the post-election violence crimes take place within the shortest time possible to preclude the possibilities that the evidence required would be destroyed or lost.



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<p>Over 27 bills passed by the constitutional deadline of 27th August (1 year after the enactment of the constitution) such as the Vetting of Judges and Magistrates Bill, Judicial Service Bill and Independent Electoral and Boundaries Commission (IEBC) Bill. This process was in line with the requirements of the constitution and averted a potential constitutional crisis that could have resulted in the dissolution of Parliament</p> <p>However, key issues abound regarding the quality of the laws passed.</p>	<ul style="list-style-type: none"> • The political situation in the country has been less than ideal for the implementation of the new constitution. For example, during periods when the coalition partners have political differences, these manifest themselves when making of key decisions of national importance. • In the aftermath of the constitutional launch, there was a sense of national unity and purpose. However, the slow pace of implementation is cause for concern and is likely to frustrate the public. • Increasingly, focus and resources are being diverted to ensuring a peaceful election and less on implementing the constitution and yet, violence can only be avoided if key commitments are fulfilled to enhance equality and reduce poverty. • Implementation of key aspects of the constitution, such as provisions for gender equality, remains a challenge especially where no clear agendas, timelines and practical measures have been set to ensure that these targets are met. • Putting in place a legal framework without requisite empowerment of rights holders and the duty bearers could potentially undermine reforms. • While the focus has been on legislative reforms, considerable work is required on policy and practice reforms.



CASE STUDY MATRIX 2: ACCESS TO JUSTICE FOR WOMEN IN CONFLICT AND POST-CONFLICT SITUATIONS

Sexual and Gender-Based Violence in the Eastern Democratic Republic of Congo

KEY ISSUES IMPACTING THE COMMUNITY	INTERVENTION
UNDP Project on strengthening women's access to justice and securing and empowering populations in Kivu and Ituri.⁹⁷	
<ul style="list-style-type: none"> • Civilians, most especially women, are the greatest victims of the Congo conflict. They have been victims of violence during and after the conflict and endured violence in their communities through harmful practices and discrimination, yet they have limited access to justice. In 2009 UNFPA recorded a total of 17,507 cases of sexual violence in DRC.⁹⁸ • Specific cases include the incidents at Walikali, Busani, Pinga, Fizi. The perpetrators of this violence are both militia and armed groups including the FDLR, FARDC, Mai Mai, and also government forces. • Community protection mechanisms and the status of women and girls have eroded. Rape survivors continue to be stigmatized, suffering social and economic exclusion, and few have access to adequate medical and psychosocial care. • The reasons for the high incidence of rape are both political and social and include: <ul style="list-style-type: none"> » The use of rape as a weapon of war to cause stigma and shame and destabilize communities. » The occurrence of opportunistic rapes, for instance where armed groups such as FARD take advantage of a situation. » Rape has been used as a military strategy, for instance by the Mai Mai, to garner attention and political leverage to negotiate for political power. 	<p>There are several stakeholders working on SGBV in the Congo including the ABA, ASF and the Joint Human Rights Office - MONUSCO</p> <p>Project 1: Enhancing women's access to justice</p> <ol style="list-style-type: none"> An anthropological study was undertaken on community perceptions of the traditional justice response to sexual violence which highlighted: <ul style="list-style-type: none"> • The lack of awareness of the local population about the criminal nature of different forms of SGBV. • Why traditional and community based justice mechanisms continue to be favoured by a high number of victims. The reasons for avoiding the formal justice system included a desire to avoid exposure of the victim and family, high costs, and the system's inability to bring closure or re-establish peace and honour in the affected communities • Furthermore, in contrast to the contemporary system, the traditional justice system in Congo places the family, rather than the victim, at its centre and this has implications on reporting and addressing cases of sexual violence. Raising awareness in local communities and providing legal assistance. This consists of: <ul style="list-style-type: none"> • Outreach activities for traditional chiefs and community leaders.

90 Strengthening Women's Access to Justice: securing and empowering populations in the Kivus and Ituri, UNDP DRC, ProDoc, Project SIDA 03282011

91 UNDP ProDoc: Strengthening Investigation and Prosecution Capacity of the Military Justice System on Sexual Violence in Eastern DRC (SCR 1888 Team of Experts).



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<ul style="list-style-type: none"> • The situation in the DRC has attracted global attention and commands high-level political commitment and action from the UN Secretary General and the international community. The passing of UN Security Council Resolution 1820 and 1888 on curbing SGBV and impunity; the appointment of a UN Special Representative on Sexual Violence in Conflict and the establishment of a Committee of Experts signifies high-level international commitment in the fight against sexual violence and particularly the use of rape as a weapon of war in the DRC. • A key objective is that cases of sexual violence falling under military jurisdiction are to be diligently investigated, prosecuted and tried. However, there have been less than 100 such cases initiated and only 19 judgments passed in the military court. • 8 paralegal centres have been established. In 2010, 183 survivors of sexual and gender-based violence benefited from paralegal services at such centres. • In North Kivu, 68 police investigators from the National Congolese Police were sworn-in in 2010, quadrupling the number of criminal investigators in this province.⁹⁹ 	<ul style="list-style-type: none"> • Despite high-level political statements and commitment made by the UN and the international community, mass rape still occurs. There are concerns that UNDP does not have the political leverage to address the structural challenges and root causes of rape in the DRC including the cultural attitudes towards women and the opportunistic tendencies by armed groups to use rape as leverage for political power. • The practical application of the role and tools used by UNDP in recovery and post-conflict situations require clarification. While MONUSCO has a political mandate, UNDP cannot effectively tackle impunity to sexual violence crimes through technical support unless it utilizes its political leverage. Some lessons can be drawn from UNDP's engagement in the Fizi New Year rape cases in which UNDP played a convening role and through political leverage was instrumental in the swift arrest and sentencing of four senior officials - including Lt. Colonel Kibibi Mutware, who received a 20-year sentence. • Political commitment in action at national level is key: President Kabila has made several policy statements on his government's plans and commitment to tackle SGBV including the Zero Tolerance Policy in July 2009, the 2009 Roadmap to prioritize the fight against impunity for sexual violence crimes and the National Strategy on SGBV. However, there are key concerns around national level political commitment and leverage to end SGBV especially given the failure to arrest and prosecute high ranking military generals, for example, in the Walikali case in which the names and identities of the perpetrators are known and in which 8 arrest warrants have been issued, but only one arrest effected.

92 www.undp.org/cpr/we-do/security-reform.shtml



ANNEX 1 - CASE STUDY MATRIX 2

KEY ISSUES IMPACTING THE COMMUNITY	INTERVENTION
<ul style="list-style-type: none">» The victimization of women by Congo's army and various militias occurs in the context of the battle for profits from 'conflict minerals' (such as tin, tantalum and tungsten for use in the mobile phone industry). Thus attacks by rebel groups and government forces on civilians have increased dramatically.» However, even with the cessation of armed hostilities, the high incidence of rape has continued – an acceptance of "normalized" rape, a situation in which civilians now perpetuate the crime.» Poor attitudes and perceptions of women remain in the Congo. Traditionally, acts of sexual violence were not considered a crime and were dealt with amongst families.• While the incidence of rape is high, only an estimated 7-10% of cases are reported, largely because victims fear reprisals and stigmatization, and due to a poor perception of the justice system. In addition, rates of attrition are extremely high, for instance in the first quarter of 2008, out of 2288 cases reported in North Kivu, only 152 (7%) were referred to the police or a judicial structure.• Congo is a vast country made up of difficult terrain and a capital – Kinshasa - far removed from the situation in eastern Congo. Furthermore, the general status of infrastructure, institutions and service delivery is extremely poor and this impacts on the effectiveness of donor-supported reforms in the region.• The formal justice system remains largely inaccessible to most communities due to geographical remoteness, poverty, ignorance of human rights and a mistrust of the judicial system due to its perceived corruption and ineffectiveness.	<ul style="list-style-type: none">• Legal clinics run by UNDP and other organizations such as ABA and local NGOs.• Counselling and legal assistance for victims and support to witnesses to participate in legal proceedings, for instance, providing transport to victims and witnesses to and from court.• Sensitizing FARDC officers and soldiers on the individual, social and legal consequences of sexual violence. <p>c. Strengthening the Investigation and Prosecution Capacity of the Military Justice System on Sexual Violence in Eastern DRC (through SCR 1888 Team of Experts) included;</p> <ul style="list-style-type: none">• Capacity building for key stakeholders including jurists, paralegals, police officers, prosecutors and inspectors on the judicial handling of cases of sexual violence and forensic evidence.• Supporting recruitment of investigators for Beni and Butembo regions.• Providing technical assistance to ongoing cases.• Facilitating computerization in the judicial system such as electronic documentation of witness statements. <p>Project II: Judicial Trial Monitoring of SGBV cases:</p> <p>This project covered:</p> <ul style="list-style-type: none">• Tracking cases of sexual violence through the justice system beginning from the reporting stage through to adjudication and enforcement.• Data collection by 9 field officers regarding reporting and court rulings relating to cases of sexual violence.• Capacity building for key stakeholders in the justice system on judicial and trial monitoring mechanisms and the creation of judicial monitoring centres within local universities, and the retraining of judges and police officers (especially the OPJ).



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<ul style="list-style-type: none"> • UNDP also created a network of paralegals and lawyers in seven districts specialized in legal assistance and also provided training to 330 paralegals in modules on impunity and sexual violence. 275 paralegals were trained in six territories in North Kivu and a network of lawyers specializing in legal assistance to victims was also created, linking barristers from North and South Kivu with NGOs of provincial commissions combating sexual violence.¹⁰⁰ • UNDP's capacity building for the Military Prosecutor's office has facilitated the investigation and arrest of at least 8 senior officials. • Rape is no longer a hidden issue in the Congo. The issue of SGBV is now open to discourse as a result of global attention. • UNDP constructed a new office block for the Special Police Unit in Goma to handle cases of sexual violence against women and children. Staff have also been trained to utilize special skills in investigative capacity, interviewing victims and the accused and have been given in-depth knowledge of the ICC and the Rome Statutes. • UNDP has facilitated improved data collection on sexual violence in eastern Congo and has produced an annual report that provides a reliable source of information. 	<ul style="list-style-type: none"> • Pursuing SGBV crimes committed by the military is a politically complex issue as it involves senior officials, formerly part of the militia and now integrated into the army. Their arrest could jeopardize the political and security situation in the country. UNDP's current approach of supporting the Prosecutor's Office with capacity-building and logistical support, while innovative, is inadequate or even inappropriate in light of the inaction by the government against implicated senior officials. Thus, UNDP must engage politically in this subject. • The DRC has enacted laws on sexual violence (July 2006), however, their implementation has been unsatisfactory and relatively little has been done to encourage their application in terms of funding and institutional strengthening. An essential issue is the poor capacity of national authorities, for example, the ability of the police to prevent and respond to sexual violence cases, and the absence of an effective sanctioning mechanism that contributes to the continued impunity to sexual violence crimes. • Focusing primarily on SGBV may be to the detriment of other issues such as land, property and succession rights that have also been negatively impacted by the war. The chain of justice in its entirety must be targeted and linked to the other legal, social and economic reforms undertaken by the different arms of UNDP (including Access to Justice and the Poverty Unit). The focus of these links should include: <ul style="list-style-type: none"> » The systematic engagement of the education system (for example by influencing the curriculum) to raise awareness, but also to positively shape people's attitudes towards women. » Improving access to microfinance in the absence of legally mandated reparations. » Re-skilling and retooling communities to address opportunistic tendencies that have emerged following the war. » Engaging with issues of legal pluralism, and other aspects the culture among the communities.



ANNEX 1 - CASE STUDY MATRIX 2

KEY ISSUES IMPACTING THE COMMUNITY	INTERVENTION
<ul style="list-style-type: none">• A multiplicity of actors work on SGBV issues in the DRC. There have been various attempts at coordination. For example, at the national level there exists an International Support Strategy for Security and Stabilization (ISSSS) - a framework for coordinating donor support in the Congo under which SGBV issues are addressed. However, in practice coordination is inadequate and there are numerous cases of overlaps and duplication, such as repeated training of the same police prosecutors in investigation and prosecution techniques by different agencies.• In response to the situation, in Goma, UNDP has utilized its convening power to establish an informal working group of international actors such as ABA, ASF and other civil society organizations on SGBV, and fielded joint missions to the region. This working group has provided support to the Military Prosecutor, for instance, through provision of informal information.• However, the political will to implement the relevant laws and reforms remains weak and this fuels the sense of impunity particularly in eastern DRC.	<p>Project III: Partnering with CSOs and other actors to reinforce the management of SGBV cases:</p> <p>UNDP has engaged with other international and local partners including ABA, ASF and the Association of Women Lawyers to train paralegals, run legal clinics and to raise awareness on SGBV.</p> <p>UNDP runs 5 legal aid clinics dealing with SGBV.</p>



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
	<ul style="list-style-type: none"> • The absence of a centralized database that would link all the government, UNDP and NGO reporting structures across the country has led to the duplication of reported cases. While the Judicial Monitoring Project is promising, it should be noted that so far more emphasis has been placed on data collection, rather than on the analysis of this data and the monitoring quality of court trials. However, there are on-going efforts to address this gap through data monitors' capacity building. Furthermore, efforts have been initiated with the Ministry of Justice to enhance its capacity to take over this pilot project and ensure its sustainability, as reliable data is critical to both capacity building initiatives and strategies. • The scale of SGBV crimes is not matched by the justice system's response. For instance, approximately 65-80% of all cases in the justice system are on sexual violence. At the current levels of investigation and prosecution, it's unlikely that victims will access justice in the foreseeable future. • UNDP must engage complementarity and transitional justice and explore options for handling mass crimes using regional human rights mechanisms or through existing national systems. The UNDP Goma office partnered with the Office of the Prosecutor at the ICC in a one-off training of prosecutors and investigators. • While the UN in the region remains focused on annual and project-based strategies, it is necessary to move away from emergency response to preventive mechanisms or interventions, requiring long term funding and planning for recovery. • Strengthening civil society and the media will support the public's engagement in sensitive issues and therefore a long-term strategy for capacity building for these bodies is required.



ANNEX 1 - CASE STUDY MATRIX 2

KEY ISSUES IMPACTING THE COMMUNITY	INTERVENTION
The MONUSCO Rule of Law Sexual Violence Unit	
<ul style="list-style-type: none">• The MONUSCO Rule of Law Sexual Violence Unit was created to support the Government of the DRC in implementing the 2009 Comprehensive Strategy on Combating Sexual Violence in the DRC.• The National Strategy on Gender Based Violence was developed by the Ministry of Gender, Family and the Child. It contains the operational plan of the comprehensive strategy, which was instigated as a priority action plan for addressing sexual violence in eastern DRC. The plan has also been integrated into the Humanitarian Action Plan and has thus become the common framework for all programmes developed by the Government, MONUC, UN agencies and humanitarian actors to address sexual violence.¹⁰¹• The unit supports the Ministry of Gender, Family and the Child to ensure the coordination of the Comprehensive Strategy on Combating Sexual Violence in the DRC by assisting UN agencies, donors and both local and international NGOs.¹⁰²	<ul style="list-style-type: none">• Developing an action plan on the implementation of the Comprehensive Strategy in consultation with the government, UN Agencies and other MONUSCO sections.• Regularly updating and following up on the work plans and budgets for implementing the strategy.• Mapping and evaluating, for example, developing indicators and regularly monitoring the implementation of activities and of gaps related to the strategic action plan. The objective being to create a central MONUSCO source for all data on sexual violence.

94 monusco.unmissions.org

95 ibid



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<ul style="list-style-type: none"> • The Sexual Violence Unit publishes a website www.monusco.unmissions.org containing information on latest developments in Kinshasa and the Kivus. • The MONUSCO unit acts as an outreach platform for all actors addressing sexual violence in DRC. It also developed a series of tools to improve its understanding of stakeholders (for example, a calendar of next steps, frequently asked questions, and a chart of coordination mechanisms,) • MONUSCO contributed to the 31st Report of the Secretary General and reports regularly within the ISSSS framework. • MONUSCO holds monthly component meetings with the government, UN Agencies and various working groups, NGOs and CSOs to streamline their activities with the overall strategy. 	<ul style="list-style-type: none"> • Despite the existence of frameworks such as the ISSSS, political will to implement and push for reform is lacking. • MONUSCO's legitimacy in the DRC has been questioned given its hesitance to implement its political mandate when politically sensitive matters such as the arrest of 8 suspected ringleaders of the mass rape in Walikali. Simultaneously, the government of DRC has not responded to some of the issues raised by MONUSCO. • The government capacity at the provincial level is inadequate and hampers implementation of the strategy. • Inadequate coordination among agencies and the government has led to overlaps and duplication of efforts reducing the potential impact of these efforts.



ANNEX 1 - CASE STUDY MATRIX 2

KEY ISSUES IMPACTING THE COMMUNITY	INTERVENTION
HEAL Africa - A holistic approach to treating victims and survivors of SGBV by linking legal, medical and psychosocial support	
<p>HEAL Africa is an NGO that runs a facility with integrated medical and psychosocial support for victims and survivors of SGBV in eastern Congo, notably in Goma and Kivu.</p> <p>It handled over 300 cases of SGBV in August 2011 of which 90% were cases of rape. Of these, approximately 40% of the cases involved minors between 13-17.</p> <p>HEAL Africa works with communities to facilitate the healing and reintegration of persons affected by rape.</p>	<p>Heal Africa's intervention has been through a holistic approach combining medical assistance, psychosocial support and legal support. HEAL Africa runs both a medical and a psychosocial centre and provides:</p> <ul style="list-style-type: none">• Medical care to rape survivors, including administering post-exposure prophylaxis (PEP) to prevent HIV and pregnancy.• Counselling for rape victims.• Legal aid by working with ABA to provide legal aid as required.• Small outreach units in villages that reach an even larger number of people. It runs 28 Wamama Simameni (safe houses) in North Kivu and Maniema villages.• Savings and loans to women to help improve their financial status.• Education to women regarding their rights and involving them in activities that facilitate healing.



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<ul style="list-style-type: none"> • Women have been trained in new skills such as baking and sewing and have been educated on their rights. Nonetheless, they still face discrimination. • The number of women and children coming to Heal Africa for medical assistance has improved general healthcare provision in Goma. • HEAL Africa personnel provide expert medical evidence in court. There is an identified need to extend this expert testimony to include physical evidence. 	<ul style="list-style-type: none"> • The integrated approach is critical to the healing and reintegration of victims of SGBV. HEAL Africa is looking beyond the legal approach and focusing on the mental and physical wellbeing of victims as well. • Much more support is required to enhance victims' and communities' awareness of the need to preserve evidence when crimes have been committed. • Capacity for gathering and analysing forensic evidence is inadequate. DNA evidence has to be taken to South Africa or the USA for analysis causing delays in processing cases. • Despite the combined efforts of stakeholders, the incidence of rape remains unacceptably high - in August 2011 at least 300 rapes were reported by women.



CASE STUDY MATRIX 3: ENHANCING JUSTICE THROUGH SECTOR WIDE REFORMS

Case Studies from the Justice Law and Order Sector (JLOS) in Uganda and Governance, Justice, Law and Order Sector (GJLOS) in Kenya

KEY ISSUES IMPACTING COMMUNITY	INTERVENTION
Uganda; The Justice, Law and Order Sector (JLOS)¹⁰³	
<p>After almost two decades (1966-1986) of political, civil and economic turmoil in Uganda, there followed an extensive breakdown of state functions including the maintenance of law and order. The Government was unable to provide the requisite infrastructure, logistics, personnel, legal and policy direction to legitimate state institutions to effectively execute their mandate. This period was characterized by: chronic systemic constraints that delayed and hampered access to justice and service delivery, ineffective planning and budgeting;</p> <p>antiquated methods and tools for investigation and prosecution; the high cost of justice due to corruption and the limited proximity of end-users to justice delivery agencies; case backlogs and a high prison population; inefficiencies and ineffective procedural guidelines and performance standards in justice delivery institutions; as well as, significant gender-based discrimination.</p>	<p>JLOS presently has a core membership of 17 institutions that are directly involved in the administration of justice and maintenance of law and order.¹⁰⁴ The sector is funded by the Sector Wide Approach (SWAp) development fund, Government of Uganda and several development partners. JLOS interventions have included:</p> <ul style="list-style-type: none"> • Capacity-building through staff training and retooling, for instance, of the PPU and Criminal Investigation departments. • Training methods that include workshops on cross-cutting issue and specialized training for state attorneys and for the police. • Planning and budgeting. • Programme implementation within the sector, for example, the National Community Service Programme. • Monitoring and evaluation of the programme. • Community policing programmes, such as, policing using various media (radio and open air sessions) as well as door-to-door and community outreach programmes. • Technical and logistical support that includes the provision of vehicles and communication equipment particularly to the police and Uganda Prison Service.

96 The Uganda Justice Law and Order Sector (JLOS) Mid-Term Final Evaluation Report, the Consulting House, Office of the GLR (Nairobi), Centre For Justice Studies and Innovation (Kampala), June 2010.

97 The sector comprises of: Ministry of Justice and Constitutional Affairs (MOJCA); Ministry of Internal Affairs (MIA); The Judiciary; Uganda Police Force (UPF); Uganda Prison Service (UPS); Directorate of Public Prosecutions (DPP); Judicial Service Commission (JSC); The Ministry of Local Government (Local Council Courts); The Ministry of Gender, Labour and Social Development (Probation and Juvenile Justice); The Uganda Law Reform Commission (ULRC); The Uganda Human Rights Commission (UHRG); The Law Development Centre (LDC); The Tax Appeals Tribunal (TAT); The Uganda Law Society (ULS); Centre for Arbitration and Dispute Resolution (CADER) and The Uganda Registration Services Bureau (URSB).



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<ul style="list-style-type: none"> • Law reform, such as, the reform of the Physical Planning law that was passed in parliament and is awaiting the President's assent. • A reduced case backlog through the Case Backlog Reduction Strategy. In family justice sector the use of alternative dispute resolution mechanisms has been embraced by judges and chief magistrates and has yielded positive results in ironing out technicalities and case backlogs. • Judicial processes have been improved to minimize the cost of doing business, for instance, the introduction of photographs for land registration and the issuing of search letters, which assist the land registry to handle fraud and forgery. • Physical de-concentration of criminal justice institutions has taken place, a process that included the construction of the Uganda Police Force headquarters and the commercial court in Kampala. • Promoting crime reduction and personal and property security. In 2009, the prevalence of crime stood at 39.6%, down from 83.1% in 2006/7 as a result of JLOS initiatives to promote safety and security of property in northern Uganda and Karamoja through community policing, which contributed to reducing violence and increasing knowledge of the law. 	<ul style="list-style-type: none"> • Further de-concentration is required to address accessibility to JLOS services, especially in northern Uganda and the Karamoja area where service delivery has, for a long time, been hindered by conflict. • Rivalry has occurred between institutions over budgetary allocations. • Mainstreaming cross-cutting issues has been neglected at sector level. For instance, the mainstreaming of gender into justice delivery remains a major challenge to the sector. • JLOS continues to face challenges in administering justice, law and order in regions that are in the transition from insurgency. • The JLOS framework was not designed to include civil society. • Individual and institutional accountability remains weak. • JLOS requires an integrated sector management information system, in order to increase, share and standardize databases. • Informal justice delivery mechanisms, including the use of Ker Kwaro in land justice administration in northern Uganda and the pilot land tribunal, have not been accorded priority - yet these mechanisms are preferred by the masses.



ANNEX 1 - CASE STUDY MATRIX 3

KEY ISSUES IMPACTING COMMUNITY	INTERVENTION
	<ul style="list-style-type: none">• The production of brochures and other informational material.• Civic education activities conducted by the Judicial Service Commission and the Uganda Human Rights Commission.• De-concentrating JLOS' physical infrastructure.



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<ul style="list-style-type: none"> • The occurrence of specific human rights violations with the justice sector has been reduced. For instance, the Uganda Prisons Service provides improved medical care to prisoners especially to prisoners with HIV/AIDS. • Non Tax Revenue collections have been realized from the Ugandan Police Force's Express Penalty Scheme. The Uganda Prisons Service now brings in substantial income from farms, and uses the produce to supplement government provisions. • Service delivery in conflict-affected areas has shown improvement. Structures have been established to address war crimes including a War Crimes Division of the High Court, and specialized units in the DPP and in the police force. • Through a programme to rehabilitate offenders and divert juveniles from the justice system, rehabilitation has occurred by creating formal and non-formal education and skills training in modern farming methods. For instance, juveniles in Mbale Remand Home have been trained in poultry farming¹⁰⁵ and in Kampiringisa in metal and woodwork. • Legal and civic awareness has been enhanced using dissemination methods such as radio call-in shows and door-to-door outreach programmes. • Cross-cutting issues such as gender and HIV/AIDS have been integrated in the justice sector. For instance, the prisons service provides expectant mothers and their children with a special diet, provides assistive devices to disabled prisoners, and free ARVs to prisoners with HIV/AIDS. • JLOS' intra and inter-sectoral links and institutions have been strengthened including JLOS partnering with UNHCR • Linkages between the secretariat and PPUs have been strengthened. 	<ul style="list-style-type: none"> • Agreed deadlines were abrogated in nearly all scheduled activities, even the undertakings that were fully met were not achieved in the set period. • SIP II was designed as a reform programme but implemented (for the most part), as 'routine maintenance.' It has been suggested that at JLOS, the concept of "reform" lacks a common understanding. Leading to a programme design that does not distinguish between reform and routine maintenance. • The programme design focused more on the institutions that 'supply justice'. Minimal focus was paid to the 'demand' for justice, including promoting the needs of vulnerable groups such as women and children through provision of legal aid, and support to witnesses and victims of crime. • JLOS funding was insufficient. • The physical design of some of the facilities constructed was inappropriate. In some cases, facilities lacked amenities, some did not cater for the needs of the disabled, while others blatantly violated the rights of the accused. • Some of the investments such as cars resulted in 'dead capital' as they lacked recurrent financing for service and maintenance. Furthermore, the distribution of equipment and vehicles was not always equitable; as a result, some institutions received a surplus while other institutions' requirements went unmet. • Investment in human capital, despite numerous short-term training modules, was inadequate, yet this was a critical prerequisite to implementation. • At the district level, civil justice reforms were not prioritized for example in the commercial justice sub sector on subjects such as enforcing contracts. • The weak capacity of family justice agencies remains a critical constraining factor for enhancing access to justice.

98 The remand home in Fort Portal is currently constructing a poultry house.



ANNEX 1 - CASE STUDY MATRIX 3

KEY ISSUES IMPACTING COMMUNITY	INTERVENTION
Kenya; the Governance, Justice, Law and Order Sector¹⁰⁶ (GJLOS)	
<p>The GJLOS sector, including the criminal justice sector, in Kenya had been neglected and under-resourced for decades. It then became evident that citizens were demanding reform of the judiciary and police, and desired democracy, human rights, good governance, law and order and effective legal services from the government.</p>	<p>The GJLOS programme is funded mainly by SIDA, the government of Kenya and 15 development partners through a basket fund and through direct support to individual initiatives. The programme interventions include:</p> <ul style="list-style-type: none">• Establishing committees in GJLOS institutions to address issues such as HIV, gender and corruption.• Training staff in subjects such as record management in the Immigration Department.• Conducting study tours to South Africa and the United States.• Producing radio and TV programmes and advertisements and conducting public road shows.• Producing and disseminating material for creating awareness within the public about the GJLOS sector.• Acquiring equipment such as radios, document management equipment, vehicles, IT and fireproof storage cabinets for the Immigration Department.• Developing policies relevant to the GJLOS sector.

99 Governance, Justice, Law and Order Sector (GJLOS): An analysis of results, Swedish International Development Cooperation Agency, July 2011.



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<ul style="list-style-type: none"> • The community service facility has been rolled out in every district, including the 22 newly created districts. This has promoted the new paradigm of rehabilitative justice. • The legal profession has been capacitated to enable effective service delivery. This included training and enhancing the capacities of commercial lawyers. 	<ul style="list-style-type: none"> • Failure to invest in land justice institutions means useful adjudication systems such as, Alternative Dispute Resolution that could stem many of the disputes regarding land, is absent. • JLOS resources are managed within the MOJCA financial system because the Solicitor General is the Accounting Officer for JLOS funds. This causes unnecessary delays, hence compromising implementation efficiency. • In the case of poor and marginalized groups, including women, children and those in conflict-affected areas, so-cietal structures form barriers and act as deterrents to accessing justice even where JLOS institutions are available. JLOS requires pro-active strategies aimed at increasing its outreach capacity as well as repackaging services to overcome the barriers between it and its intended users.
<ul style="list-style-type: none"> • Policies and legislation were put in place including the Police Act. 20 bills were revised, some gazetted and others are currently being debated. • Awareness of human rights across the sector improved due to increased dialogue regarding the human rights agenda. • Planning and prioritization within the sector improved considerably, more coordination between institutions is taking place and the coordinating ministry has been strengthened. • Staff were trained particularly on topics such as corruption, human rights and HIV/AIDS. In the Kenya Police Service, curricular and training materials were adapted and an orientation toward customer service brought into many ministries, that as a result set up help desks and drafted customer service charters thereby establishing a system for processing complaints. 	<p>The monitoring and evaluation of the GJLOS programme was weakened by unavailable baselines, targets and links between programmes indicators. Poor institutional performance, weak mid-term and end of term evaluations coupled with a lack of a good quality, comprehensive monitoring system made it difficult for institutions to set priorities and resulted in the repetition of activities.</p> <ul style="list-style-type: none"> • Activities were more piecemeal than planned and synergies were lost in the process. For instance with training, the absence of a capacity building programme limited the effectiveness of single training interventions • Institutions that were key to the reforms did not perform well because they lacked strong leadership, brave decision-making and actions. Most institutions undergoing reform were unused to development cooperation and therefore had little capacity to innovate and plan effectively. • The programme's dependence on select individuals and events, on champions with political power, and on the new constitution placed the onus of success largely outside the control of the programme.



ANNEX 1 - CASE STUDY MATRIX 3

KEY ISSUES IMPACTING COMMUNITY	INTERVENTION
	<ul style="list-style-type: none">• Conducting monitoring visits to prisons and selected police stations.• Lobbying and advocating for human rights.• Reviewing and revising existing legislation.• Constructing new offices for GJLOS institutions.• Developing a service charter and a code of conduct in order to improve service delivery.• Establishing the Task Force on Judicial Reforms in 2010.• Training workshops were held for instance on HIV/AIDS, corruption and human rights.



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<ul style="list-style-type: none"> • More information was made available to the public. An increase in awareness of citizens' rights was recorded, with awareness being higher among urban residents 11% compared to 4% of rural residents. Rights awareness was found to be higher in Nairobi than other provinces at 15%. • Departments in the sector were restructured and functions streamlined. Several committees were set up in various institutions to address issues such as HIV/AIDS, gender, and corruption. • Procedures and policies were changed and new equipment purchased to improve efficiency. For example, the police service acquired new computers, radios, motorcycles and furniture. • New programmes were put in place to address issues including witness support, community policing, and the draft HIV/AIDS workplace policy. • The case backlog in the sector was reduced. • The introduction of automated data capture systems enabled institutions such as the Kenya Anti-Corruption Commission and Public Complaints Standing Committee to deliver statistical reports on their service delivery levels. 	<ul style="list-style-type: none"> • External events such as the post-election violence had a negative impact on the reforms. Many government bodies and reform institutions were questioned on their failure to ameliorate the tensions that culminated in the post-election violence. • The structures put in place to coordinate the programme began to meet less often thus diminishing opportunities for interaction. • The reform institutions did not share a common, consistent and universal vision of the reform process. Some staff members involved were uncertain of their intended individual contribution to the reform. • The programme focus was heavily skewed towards the supply side (legal and institutional reforms) of governance, justice, and law. Not enough attention was given to the demand for justice from citizens, for example, through provision of legal aid. • New legislation has been ineffectively communicated, leaving many citizens unaware of new laws or considering them to be unresponsive to citizens' needs. • Despite changes to the management and structure of the justice system, few citizens are aware of their rights to legal aid and how legal aid can be accessed. • Citizens' perception and awareness of sector reform remains poor and continued impunity within the sector has undermined public confidence in reforms.



ANNEX 1 - CASE STUDY MATRIX 4

CASE STUDY MATRIX 4: LEGAL EMPOWERMENT OF THE POOR

Case Studies from Malawi and Uganda (Paralegal Advisory Services) and Uganda (One-Stop Justice Centres)

KEY ISSUES IMPACTING COMMUNITY	INTERVENTION
Justice Centres: One-stop centres for the provision of legal aid services including, legal awareness and education, psychosocial counselling, legal advice and court representation	
<ul style="list-style-type: none"> • With over 26% of Uganda's population living below the poverty line¹⁰⁷ and several other groups vulnerable or marginalized (including the poor, elderly, disabled, sick, prisoners, youth, women and orphans), the need and demand for free or affordable legal assistance is high. • There are numerous cases of dispossessing property especially from widows and orphans, succession wrangles, criminal trespass, boundary disputes fraudulent transfers and sexual and gender-based violence. • The conflict in northern Uganda has exacerbated land-related disputes. With the cessation of the war and return of Internally Displaced Persons (IDPs) to their communities, the incidence of such disputes has increased. • Justice Centres Uganda (JCU) was established as a pilot in August 2010 to provide human rights-based legal aid to indigent and vulnerable persons in Uganda and to inform legal aid reforms in Uganda. Its mandate includes supporting the development of a legal aid policy and law and devising recommendations for an institutional framework for legal aid. 	<p>This programme is funded by the Legal Aid Basket Fund (LABF).¹⁰⁸ A head office in Kampala and two justice centres were opened, in Lira - a former conflict area, and Tororo. Over 1,000 persons have received legal assistance through:</p> <ul style="list-style-type: none"> • Legal aid, which includes counselling, legal assistance and representation. For instance, Alternative Dispute Resolution through mediation and arbitration (a hotline for on-the-spot counselling) - both in the legal aid centres and through outreach clinics, court litigation, and Public Interest Litigation. • Legal and rights awareness education in the clinic, in communities and through the media. • Community outreach activities, such as, legal education and awareness sessions, community dialogues, radio talk shows and the use of volunteers and paralegals based in the communities. • Advocacy activities at the district level. • Capacity-building through training and awareness-raising sessions for Local Councils and traditional leaders. • Development of information, education and communication (IEC) materials on land rights and children's rights. • Partnerships with other legal aid service providers in the areas in which the programme is located.

¹⁰⁰ In Lira, the percentage of those below the poverty line is 53% while those living in absolute poverty is 33%.

¹⁰¹ The LABF is a joint initiative of 5 donors including Denmark, Austria, Ireland, Netherlands and Norway. It paves the way for the Democratisation Governance Fund which will create closer links between interventions on governance, access to justice and human rights.

¹⁰² Justice Centres Annual Report 2010–2011.



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<ul style="list-style-type: none"> • A wide variety of issues have been handled, including individual claims for restitution, such as, claims for unpaid salaries and wrongful termination of contracts, and representation of clients in criminal matters including murder and land disputes. • By the end of June 2011, JCU had registered a total of 1039 legal cases, with 790 persons meeting the means and merit conditions for legal aid qualification. Of the 790 cases taken on, 12% (96 cases) were resolved through mediation and litigation.¹⁰⁹ • The awareness of human rights and dispute resolution mechanisms has improved within target communities. • The abundance of service providers has created more avenues for communities and individuals to access justice. 	<ul style="list-style-type: none"> • JCU has moved beyond the legalistic approach that focused on court representation to offering both legal assistance and advice, and psychosocial support - an approach that is critical for healing and social reintegration. • Though the majority of cases revolve around land disputes, the root causes for increased land-related disputes and violations have not been researched and analysed by JCU. Hence, the approaches used might not always be appropriate for the different regions. • Alternative systems of justice, such as traditional leaders, have been largely overlooked by the implementation strategies of the justice centres. Yet these systems are the first point of call for many Ugandans because of their social and geographical proximity. • Despite a high number of registered cases, only a small percentage are resolved, largely as a result of barriers and delays within the formal justice system. Improving the success rate of litigation efforts is dependent on revitalising the formal justice system.



ANNEX 1 - CASE STUDY MATRIX 4

KEY ISSUES IMPACTING COMMUNITY	INTERVENTION



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
	<ul style="list-style-type: none"> • Mediation may be an inappropriate methodology in many cases in which it is used. This has the potential to cause greater harm and spur impunity because cases may be “settled and not resolved” conclusively leading to forum shopping and the festering of unresolved grievances. • The absence of standards, guidelines and an oversight mechanism for mediation has resulted in mediation processes that are instead injurious to marginalized and vulnerable groups. • The current approach of dealing with individual cases, both within the Justice Centres and during outreach is inadequate for addressing a large number of disputes. Furthermore, societal structures, such as patriarchy, remain a challenge, sometimes exacerbating these disputes within the communities, hence limiting the centres’ impact.



ANNEX 1 - CASE STUDY MATRIX 4

KEY ISSUES IMPACTING COMMUNITY	INTERVENTION
Paralegal Advisory Services (PAS): legal aid for prisoners in Malawi and Uganda	
<p>PAS was initiated in Malawi¹⁰³ to address the growing challenge of lengthy pre-trial detention and overcrowding in prisons. Indigent prisoners had little or no access to legal aid and convicted prisoners had no access to an appeal. This amounted to 99% of prisoners lacking legal representation.</p> <p>The project was successful in Malawi, was extended to Uganda in 2006 and replicated in other African countries.</p> <p>Uganda's police cells and prisons are at 225% of their intended capacity, with nearly 55% of occupants - nearly 16,800 prisoners - awaiting trial.¹⁰⁴ An indicator of the unsatisfactory conditions in the prisons is the high incidence of communicable diseases such as TB.</p> <p>The aim of PAS is to ensure that detainees are aware of and able to claim their legal rights, and obtain speedy access to justice. Support is provided to facilitate the right of prisoners to bail, legal representation, and linking them to the outside world by tracing relatives and sureties.¹⁰⁵</p>	<p>In Uganda, PAS intervention has been through:</p> <ul style="list-style-type: none"> • Provision of legal advice to prisoners within the prisons facilities - working with paralegals and social workers. • Technical and logistical support, such as, supplying prison social workers with motor bikes and mobile phones to facilitate their work. • Finding files that have been lost in the system. • Identifying cases that are overdue for trial in order to facilitate priority hearings. • Providing legal advice clinics to detainees in police cells, court cells and prisons. • Providing legal training to paralegals and social workers on the functioning of the criminal justice system and the rights of suspects within it. <p>In Malawi, PAS was funded by DFID and intervention has been largely through:</p> <ul style="list-style-type: none"> • Conducting paralegal clinics in prisons to educate prisoners through practical modules on basic laws and procedures, on self-representation and on their rights. • Assisting convicted prisoners with their appeals in the high court. • Attending trials and monitoring cases to protect prisoners' rights. • Assisting in interviewing and screening of juveniles at police stations, finding their parents and diverting them from the criminal justice system. • Training prison staff and paralegals in subjects such as conflict management in prison. • The Court Camp Project, in which magistrate courts are held in prisons to hear minor criminal cases and release prisoners to serve their sentences in their communities

103 www.sascv.org Justice Delayed in Malawi's Criminal Justice System, Paralegals vs. Lawyers Hillery Anderson University of Wales, Bangor, North Wales, UK 2006.

104 Uganda Prison Service statistics as at September 2010.

105 Evaluation: Uganda Paralegal Advisory Services 2007-2010, Draft Report 6th December 2010.



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<p>In Uganda, PAS has resulted in:</p> <ul style="list-style-type: none"> • The release of up to 2,425 detainees per month from police cells and prisons, either temporarily or permanently thus relieving the inmate population. • Reduced case file congestion by screening capital cases and presenting lists of those who have been on remand for long periods of time to High Court registrars and prosecutors and requesting that they are listed for trial. • An average of 17, 455 detainees a month are provided with basic legal advice and assistance. • An average of 225 community service orders a month were issued between August 2009 and June 2010. • Catalysing change within the criminal justice institutions such as: <ul style="list-style-type: none"> » Ensuring daily suspects' parades at police stations. » Opening duplicate files when prisoners are transferred to reduce the loss of information. » Promoting an open forum for bond applications in order to eliminate corruption. • Linking the demand and supply side of the criminal justice system, for instance, tracing sureties, diverting cases from the criminal justice system (through mediation) and empowering detainees to represent themselves. 	<ul style="list-style-type: none"> • Sustainability is paramount: In Uganda, PAS is funded partly through the Legal Aid Basket Fund and partly through the Government of Uganda. The Prisons Service has trained its social workers to undertake this work to ensure sustainability. • Political will and commitment is crucial to the success of this intervention. The top leadership of the Uganda Police Force has not yet fully embraced PAS, as shown by its failure to issue written permission to operate in police stations in the project sites. Additionally, access to police cells is restricted in a number of stations countrywide.¹¹³ • The PAS project lacks effective systems, accountability and reform processes to effect wide-scale and sustainable change. Hence, despite the large number of cases dealt with so far, the prison population keeps growing and overcrowding remains a threat to prisoners' wellbeing. • Corruption is pervasive in the courts and police stations in processes such as, granting suspects non-cash bail and identifying prisoners who wish to plead guilty. Furthermore, at times, some plead guilty simply to avoid lengthy pre-trial detention. • In Malawi, there was considerable resistance to the PAS paralegals project from magistrates, police, prison officials, and lawyers. Hence it was necessary to incorporate a large-scale programme of sensitization of partners and stakeholders so as to enhance their buy-in.

106 PAS Bi-annual progress report April 2008-March 2009 - currently PAS does not enjoy free access in Mbarara police station, and in Lira, the police station has restricted PAS visits to three days a week.



ANNEX 1 - CASE STUDY MATRIX 4

KEY ISSUES IMPACTING COMMUNITY	INTERVENTION
Prison reforms in Mozambique: strengthening national capacity and support to legal reform in the prison sector¹¹⁴	
The Mozambican government’s Prison Policy identified inadequate measures for the reintegration of prisoners, overpopulation and poor detention conditions as critical issues in its prison system.	<p>Funded by UNDP and the fund for Portuguese-Speaking African Countries (PALOP) and implemented by the Ministry of Justice, programme implementation encompasses:</p> <ul style="list-style-type: none">• Providing national and international technical advisors in both areas of legal reform, and alternatives to prisons.• Conducting training seminars, for example, for directors and senior staff of the 15 central prisons in the country.

107 www.undp.org.mz



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<p>Results in Malawi have included:</p> <ul style="list-style-type: none"> • The numbers of illegal remand warrants used by the police to detain persons fell and a substantial number of old cases have been processed by the courts. • Juveniles in conflict with the law have been diverted from the criminal justice system at police stations. • Paralegals highlighted health problems within the prisons which were followed up by health-focused NGOs. • Magistrates commented on the improved understanding of the law demonstrated by prisoners in court and noted that prisoners were entering informed pleas. • Magistrates increasingly entered the prisons through camp courts to screen the remand caseload. 	
<ul style="list-style-type: none"> • Legislation on prisons has been revised and is currently in draft form. • A draft of new legislation on alternatives to prisons has been produced. • Training for prisons staff on this new legislation on prisons and human rights has been prepared and conducted in several provinces. 	<ul style="list-style-type: none"> • This intervention highlights the need to engage with national reform processes so as to ensure an overarching policy and legislative framework is in place for the protection and realization of the human rights of prisoners.



CASE STUDY MATRIX 5: LEGAL PLURALISMS, STRENGTHENING THE CAPACITY OF ALTERNATIVE JUSTICE MECHANISMS TO ENHANCE ACCESS TO JUSTICE

Case studies - Uganda, Burundi and Malawi

KEY ISSUES IMPACTING COMMUNITY	INTERVENTION
1. Association of Women Lawyers in Uganda (FIDA-U): Enhancing access to justice for women in a post-conflict setting through community dialogues with cultural leaders¹¹⁵	
<ul style="list-style-type: none"> • In northern Uganda, women bore the brunt of a 20-year war. Individuals were maimed, tortured and women and girls raped en masse and abductees taken as wives for military officers of the Lord's Resistance Army. In addition, cases of rape by members of the government forces were also recorded. • Even after the cessation of hostilities, violence against women continues to escalate. According to the 2006 Uganda Law Reform Commission Study, domestic violence is most common in northern Uganda, where it is reported to have occurred in 78% of homes. Women are the primary victims due to cultural and societal factors that condone violence and highlight gender inequality thus making women more vulnerable. The most prevailing forms of violence include: physical, economic and sexual violence and verbal abuse. • In northern Uganda, the influence of cultural leaders is strong because the Acholi community is organized along traditional structures. Thus, even though SGBV is a criminal offence to be dealt with by the criminal justice system, most cases were handled in community structures. The traditional chiefs often apply cultural norms, which do not always measure up to international human rights standards on the rights of women. For example, perpetrators of crimes may be made to pay a small reparation and no criminal prosecution pursued. • FIDA-U specifically chose to develop interventions to mitigate the causes and consequences of domestic violence in this post-conflict setting. 	<ul style="list-style-type: none"> • At the invitation of the Cultural Leaders of the Ker Kwaro Acholi (KKA), FIDA-U initiated a series of community dialogues to explore ways of addressing the increased incidence of violence against women in the region. • These community dialogues were based on documenting and examining existing practices of SGBV, and juxtaposing the cultural approaches taken in addressing these cases to international standards in CEDAW, the national constitution and the recently enacted Domestic Violence Act. • FIDA-U worked with a retired judge with knowledge and experience of the region to engage cultural leaders in community dialogues. • Capacity building was provided for the Ker Kwaro. • Information, communication and education material were developed and disseminated for use in awareness-raising for communities, district leaders, and justice sector institutions.

¹⁰⁸ Domestic Violence Project - Community Dialogues in Northern Uganda, FIDA-U with Support from Australian Development Cooperation, April 2011.



RESULTS (OUTPUTS AND OUTCOMES)

- Community dialogues were a useful forum for participation and sharing of information. They therefore contributed to strengthening legal mechanisms to be responsive to the needs of communities and to promote ownership and to harmonize interventions.
- The participants reported a positive impact from the dialogues and stated that they learnt about various forms of violence, means of redress and types of marriage. For instance, 90% of the participants stated that cohabitation in their community equated to marriage. Although cohabitation in the statutory law doesn't allow women to own property, these communities felt this to be unfair and that this law should not be implemented. Such information was useful in advocacy efforts for the enactment of a Marriage and Divorce Bill that has been pending for over 40 years.
- A set of guidelines were developed on accepted cultural norms based on internationally accepted standards of women's rights. The Ker Kwaro is using these guidelines to resolve domestic disputes and there have already been some positive outcomes. For instance, recently, there have been cases of widows' land rights being protected, while some widows have been given access to customary land.

EMERGING ISSUES/ LESSONS

- **Strengthening collaboration with cultural leaders is critical to transforming communities.** Partner communities reported that their culture has a huge impact on perceptions and practices of domestic violence. It is therefore critical to adopt culturally sensitive approaches that advance positive aspects of the culture while discouraging aspects that undermine human rights.
- **FIDA-U appropriated international and national human rights standards on the rights of women** as contained in CEDAW, the Ugandan constitution and other legislation into cultural norms and standards. Together with the Ker Kwaro Acholi and partner communities, a new set of standards was agreed to, that was culturally acceptable and enforceable, while still upholding women's rights in cases of violence against women.
- **The need to ensure linkages between the alternative and formal justice mechanisms was highlighted** and steps are being taken to engage the justice and law and order sector to streamline this process.



ANNEX 1 - CASE STUDY MATRIX 5

KEY ISSUES IMPACTING COMMUNITY	INTERVENTION
2. Bashingantahe: Peaceful resolution of land disputes through traditional leaders in Burundi¹¹⁶	
<ul style="list-style-type: none"> • In decades of conflict, thousands of people lost their lives while hundreds of thousands lost their property, and many were internally displaced or fled to Tanzania and DRC. Since the cessation of hostilities and the Arusha Peace Accord, refugees have been repatriated on a massive scale. As a result, various conflicts have arisen where abandoned land was taken over by new communities and refugees have had to reclaim it or be resettled. • As a result, land is currently the most contentious issue in Burundi with over 70% of court cases being land disputes. There are massive delays in handling these cases in the judicial system and reportedly an increasing number of land-related murders.¹¹⁷ • The role of alternative dispute resolution forums such as the Bashingantahe has relieved the pressure on the courts and enhanced cohesion within communities because of the methodology used - mediation and conciliation. • Bashingantahe is an institution of local leaders in Burundi, comprising both men and women, that ensures social cohesion and peaceful resolution of conflict. Bashingantahe are aligned to national administrative structures and are elected at Colline (village) level. They consist of 5 members (men and women). The selection process is democratic with set criteria including that representatives must be at least 30 years of age, married (though widows and widowers are eligible) and references sought to ensure respectability and responsibility. • At the national level, the Bashingantahe come together under the National Council of the Bashingantahe. 	<ul style="list-style-type: none"> • Initially, Bashingantahe were funded by UNDP, but are now funded by UNESCO, they resolve conflicts relating, for instance, to family and land, but not to criminal matters, through mediation, and conciliation. • Their services are provided free of charge. • Where mediation fails, the Bashingantahe conduct proceedings or refer parties to tribunals or courts.

¹⁰⁹ Interview with Denys Nzohabonimana, Executive Secretary of the National Council of the Bashingantahe. Also see Jenny Theron - Resolving Land Disputes in Burundi, ACCORD, 2010.

¹¹⁰ Official numbers not available.



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<ul style="list-style-type: none"> • Numerous cases have been handled and thus channelled away from a clogged formal justice system. According to the National Council of the Bashingantahe, at least 70% of all decisions are upheld. • The Bashingantahe have prevented and resolved conflict peacefully by handling disputes, such as land issues, instead of resorting to formal justice. • Open debate on issues previously considered contentious, sensitive or taboo has been facilitated, such as, on a girl's right to inheritance. • Bashingantahe have contributed to the promotion of a culture of peace through the eradication of hate speech, genocide ideology and teachings of violence and division. 	<ul style="list-style-type: none"> • The Bashingantahe have played an important role in resolving land and family disputes through mediation and fostering cohesion in an otherwise tense setting. However, the institution requires revitalization and capacitation to continue its relevance in the new Burundian context – emerging from conflict but nonetheless still tense. • When adjudicating, Bashingantahe rely primarily on custom and tradition in accordance with their training. There are specific examples to show that their culture is not considered static and the Bashingantahe are adopting new standards and norms that promote equality and the rights of women in matters within their jurisdiction. • National legal and social reform is needed to reinforce the work of alternative justice systems. Land reforms are critical to enhance enforcement of Bashingantahe decisions and to strategically address land disputes given their potential to spark further conflict. Other legislation that requires revision relates to female inheritance and those laws relevant to the growing population, limited natural resources and land titling. • Oversight mechanisms are needed to ensure the Bashingantahe do not exceed their mandate, and that the rights of vulnerable groups, especially women and children, are upheld. Such mechanisms would also tackle reported corruption, poor capacity and knowledge of procedures and laws among the Bashingantahe. • Operations of the Bashingantahe must be linked to the formal justice system to ensure that appeals and referrals are handled effectively and justice outcomes achieved. The Bashingantahe currently do not systematically keep records of proceedings affecting the institution's ability to enact referrals to the statutory courts.



ANNEX 1 - CASE STUDY MATRIX 5

KEY ISSUES IMPACTING COMMUNITY	INTERVENTION
3. Strengthening dispute resolution through traditional leaders and their subordinate headmen¹¹⁸ in Malawi	
<p>There are approximately 300 qualified lawyers in Malawi of which only a fraction practice law. In 1999 only 9 of the 217 magistrates were professionally qualified lawyers, increasing to 21 in 2006. In addition, most police prosecutors are not legally qualified. Magistrate courts are predominantly located in urban or semi-urban areas - a journey to the closest magistrates court can be up to 50 kilometres, compounded by bad roads and expensive or unavailable transportation.</p> <p>Community policing is organized according to the administrative structure surrounding traditional leaders. The police, however, generally lack resources to respond to the community police units. Both police and magistrate courts face a significant backlog of cases.</p> <p>The Malawian constitution recognizes customary law, as applied by Traditional Authorities (TA). Malawi has two types of informal justice system:</p> <ol style="list-style-type: none"> 1. “<i>Pabwalo</i>” or “<i>mphala</i>” (in the north of the country), or dispute resolution by traditional leaders and their headmen. 2. Mediation schemes introduced at village level whereby trained mediators assist people to solve, primarily civilian, disputes. 	<p>The alternative justice systems are supported by the EU, DFID, UNDP, USAID and UNICEF. Their intervention has been through:</p> <ol style="list-style-type: none"> 1. Community awareness-raising programmes on issues related to justice and human rights. 2. Training chiefs on a number of subjects, including human rights, the constitution, gender issues, court management, dispute resolution skills and sentencing principles. 3. Developing manuals for the purpose of training trainers drawn from local government, traditional leaders, community members, NGOs, CBOs, and religious leaders (in English and Chichewa) and developing a case record system for use by traditional adjudicators. 4. The Village Mediation Programme whose objective is to promote access to justice by building the capacities of village mediators in each village cluster to mediate minor cases while complying with human rights standards and giving the parties involved leeway to devise their own solutions. 5. Conducting research and studies on land-related topics.

¹¹¹ Sourced from; Study on Informal Justice Systems – Access to Justice and Human Rights Case study report – Malawi. Annex 5 Carried out on behalf of UNDP, UNICEF and UNIFEM by the Danish Institute for Human Rights.



RESULTS (OUTPUTS AND OUTCOMES)

- The training programmes have been carried out in collaboration with CBOs or police located within the communities, who are then able to make informal follow-ups.
- TAs transfer their acquired knowledge to their Group Village Headmen and their village headmen through post-appointment briefings where rules of conduct are laid down.
- Women have been integrated into the system, for example, in Mulanje where 3 of the 6 chiefs are women at TA level, and in some TAs women's councils are designated to deal with what are considered delicate cases that require female intimacy (such as rape and domestic violence).
- Improved record keeping through the Primary Justice Programme that distributes forms for recording decisions and registering cases.
- Mediation trainers were trained in three districts. The trainers went on to train 3 Village Mediators in each village or village cluster (a total of 75 Village Mediators in each of the 6 involved TAs). The Village Mediators in the three districts had, as of the beginning of 2010, facilitated the resolution of over 800 disputes in the 6 TAs. In some places the caseload of the Group Village Head (GVH) has been reduced from 6 to 1 case per month.
- Access to information on land matters has been enhanced through a number of articles and research papers on topics relevant to land, as acknowledged in a 1999 Government study. However, less research and data seem to be available in the area of women's rights.

EMERGING ISSUES/ LESSONS

- The integration of alternative justice mechanisms into the constitution is a formal recognition of their role in dispute resolution within communities.** Overall, the TA provide faster, more accessible justice, however, their inherent weaknesses must be addressed or else the TAs will continue to reinforce and practice customs that do not reflect international human rights standards and norms to the detriment of vulnerable groups. Some of the issues raised include:
- TAs exceeding their mandates: Officially, chiefs have no power to allocate land in towns, though some reportedly continue to do so, occasionally leading to conflicts with town authorities. Chiefs are also still - without legal authority - dealing with criminal cases, and, feeling that their authority has been diminished, are seeking the restitution of their powers to order detention and impose community service.
 - Some chiefs do not have the legal competence to preside over many of the subjects that they are, in fact, adjudicating.
 - TAs at various levels receive payment from the Office of the President and Cabinet, therefore the TA structure is tied to the political party structure, and has been used to garner votes and support for the ruling party, for this reason it is believed that their independence may have been compromised.
 - The chiefs and counsellors are not necessarily neutral or impartial: Factors include; a chiefs' interest in promoting his or her authority, prestige and political influence; the respective status of the disputants; the likelihood of the case being taken to the formal state courts; and TAs, GVH and VH having family ties to one or both of the parties in a case brought before them.



ANNEX 1 - CASE STUDY MATRIX 5

KEY ISSUES IMPACTING COMMUNITY	INTERVENTION



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
	<ul style="list-style-type: none"> • Exerting pressure to reach a solution has been reported. Victims, offenders and family members or relatives are called to appear before the chief or elder and pressure applied to reach an agreement that satisfies the parties, social hierarchy, community expectations and the chief. • Chiefs have been accused of corruption in relation to dispute resolution. In addition, the traditional practice of paying tribute to chiefs (typically a chicken for the chief and his ndunas) is hard to distinguish from bribe taking. The party who provides a greater tribute may expect favourable treatment. The system has no obvious safeguards to such manipulation, thereby creating barriers to justice for some of the vulnerable people, particularly women. • The rights of vulnerable people are not protected. For instance the expulsion of suspected “witch doctors” often children whose parents have died of HIV/AIDS; forced early marriages for girls as young as 12, sometimes into subservient positions as the junior wife in a polygamous household; the tendency of customary justice to discriminate against women and children, especially in inheritance and domestic disputes; and sexual and gender-based violence. • Women’s confidentiality, privacy and integrity are not respected in informal justice systems especially in cases of rape or domestic violence. Cases are heard in an open forum, and women must stand before the entire community. This practice of communal dispute resolution results in many women remaining silent, and those who do speak up feel even more victimised by the process and that justice has been denied. • Education for women is vital to the realisation of their rights within the alternative justice systems. Unless girls’ education is promoted and women made aware of their legal rights, women’s rights are likely to continue to be violated.



CASE STUDY MATRIX 6: THE LAW, ACCESS TO JUSTICE AND HIV/AIDS

Case studies from Botswana, Kenya and Mozambique

KEY ISSUES IMPACTING COMMUNITY	INTERVENTION
1. Botswana Network on Ethics, Law and HIV/AIDS (BONELA): access to justice for minority and marginalized groups infected or affected by HIV/AIDS	
<p>Botswana is experiencing one of the most severe HIV/AIDS epidemics in the world. The estimated HIV prevalence rate for those aged between 15-49 in 2009 was 24.8% and the estimated number of people of all ages living with HIV in 2009 was 320,000.¹¹⁹</p> <p>The country's legislation relating to HIV/AIDS has been criticized for not promoting human rights and causing injustice such as, discrimination in the workplace, dismissal due to health problems, unlawful withholding of wages, unreasonable denial of leave days, incorrect diagnoses of HIV status, forced HIV testing, wrongful transmission, invasion of the right to privacy, lack of access to treatment for prisoners and for newborn babies who are non-citizens.</p>	<p>BONELA provides free legal aid to facilitate access to justice for those who suffer discrimination and other mistreatment because of their actual or presumed HIV status.</p> <p>This programme is funded by the Embassy of Finland and interventions focus on Persons Living with HIV/AIDS (PLWHA) and other marginalized populations that include: orphans and vulnerable children, people with disabilities, sexual minorities, refugees, sex workers, prisoners and migrant workers. BONELA's intervention is through:</p> <ol style="list-style-type: none"> 1. A legal clinic <ul style="list-style-type: none"> • Offering legal advice to people within the context of HIV/AIDS. • Mediating cases that are related to human rights or HIV/AIDS issues. • Engaging in litigation in cases where employees have been discriminated against on the basis of their perceived or actual HIV/AIDS status. <ul style="list-style-type: none"> » In the second half of 2007, 20 cases taken up from 37 applications, mostly regarding discrimination in the workplace. » In 2008, out of 93 applications, 53 were accepted, 18 cases were filed in court, 40 cases were in mediation and 23 cases were settled.¹²¹ » In 2010, approximately 104 cases were reportedly taken up. 2. Legal literacy and community education <ul style="list-style-type: none"> • Education and training programmes aimed at building capacity among community stakeholders to respond to HIV/AIDS in the context of human rights in their communities are conducted by an in-house lawyer. Topics discussed include, HIV and the workplace, HIV testing and confidentiality, the right to health, wills and inheritance. • Weeklong training of Focal Persons who provide a human rights-oriented response to members of their community and to whom they attend to as a part of their work responsibilities.

¹¹² www.unicef.org/infoby country/botswana-statistics.html

¹¹³ NSF II 2010 – 2016.

¹¹⁴ Legal awareness workshop, Kodisa Lodge, 26 – 28th May 2009.



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<p>BONELA has influenced changes in legal policy and practice:</p> <ul style="list-style-type: none"> • By contributing to policy formulation and the drafting of bills by the Botswana government, such as the ongoing drafting of a law on HIV and employment. • By contributing towards the government's revised National Strategic Framework for a Response to HIV, by pushing for debate on contentious issues including the rights of sexual minorities in the context of HIV/AIDS. • Through support to the Ministry of Health to draft an HIV/AIDS training manual that will be used to train trainers, healthcare providers, doctors and nurses. <p>Strategic litigation has been used to enhance access to justice:</p> <ul style="list-style-type: none"> • HIV status is no longer a criterion in determining sentences for those convicted of rape. • Government is being lobbied to distribute condoms to prisoners. • HIV positive children of mothers who are foreign nationals now have access to ARVs. • Discussions have been initiated on the rights of LGBTI persons and sex workers and the subject of decriminalization raised. BONELA is considering a strategic case to petition for the decriminalization of LGBT on the grounds that criminalisation is unconstitutional and an infringement of human rights of LGBTI persons. 	<ul style="list-style-type: none"> • Botswana's National Strategic Framework for HIV/AIDS¹²⁰ sought to reduce the spread of HIV/AIDS. However, only a modest decline has been seen in prevalence among women and other marginalized groups largely because the structural causes of transmission and discrimination have not been addressed, including cultural attitudes to fertility, and social migration patterns that have led to an increasing population of migrant workers. Furthermore, women remain disadvantaged particularly in negotiating sexual relationships. • Botswana has not ratified or acceded to the ICESCR, which guarantees the right to health. This limits efficacy of advocacy efforts for access to universal health care and the right to ARVs for those who are not citizens of Botswana. A coalition on the signing and ratification of the International Convention on Economic Social and Cultural Rights (ICESCR) was set up in August 2011 and is developing a plan of action. • The majority of the population in Botswana utilize alternative systems of justice including the traditional or customary courts. BONELA and others have not strategically engaged these systems to influence their handling of HIV/AIDS related cases. In addition, existing services are largely urban, leaving rural communities unsupported. • Activities are skewed towards changing laws rather than on their implementation. In addition, monitoring and evaluation of data requires strengthening.



ANNEX 1 - CASE STUDY MATRIX 6

KEY ISSUES IMPACTING COMMUNITY	INTERVENTION
	<ul style="list-style-type: none"> • Radio talk shows - under the slogan “Making your Human Rights a Reality.” The show includes radio jingles and poster distribution. The show deals with HIV/AIDS and the law in the various contexts of everyday life. • The legal resources centre houses current resources to keep abreast of the developments in the law including: up to date volumes of laws of Botswana; CD ROMS of Botswana’s law reports; the laws of Botswana and mailing lists of the various courts to receive copies of recent judgments. 3. Raising awareness among LGBTI persons and sex workers, and supporting organizations in their work with sexual minorities through the provision of mentoring and training as well as office accommodation.
2. Kenya Legal and Ethical Issues Network on HIV/AIDS (KELIN): Securing property rights for widows and orphans	
<p>KELIN is a civil society organization that advocates for the promotion, respect and protection of health and HIV-related human rights with a particular focus on widows and girls infected or affected by HIV.</p> <p>Customary law in Kenya denies land and property ownership to widows after the death of their spouses.</p>	<p>KELIN’s intervention has been through:</p> <ol style="list-style-type: none"> 1. Human rights training programmes for tribal elders and the wider community. 2. Research and documentation on land and property ownership. 3. Conducting legal aid clinics to raise public awareness on health and HIV-related human rights. 4. Developing training modules on legal, ethical and human rights issues relating to HIV both in adults and children. 5. Providing free legal services to widows. 6. Community dialogue forums such as KELIN’s project, “<i>Working with cultural structures to ensure access to justice by widows and orphans</i>” in Nyakach, Muhoroni and Nyando districts in Nyanza Province. The project aims to utilize community structures (such as the Luo Council of Elders and other community leaders) to advocate the right to access, own and inherit property with particular emphasis on HIV affected widows and girls.



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<ul style="list-style-type: none"> • Preparations have been ongoing on a case, in conjunction with the Southern Africa Litigation Centre, on accessing ARVs for migrant prisoners. <p>Resolution of individual cases:</p> <ul style="list-style-type: none"> • Where clients have been wrongly diagnosed as HIV positive; infected through blood transfusions; plaintiffs' HIV statuses published; or discrimination has occurred in the workplace. • The rights of persons living with or affected by HIV/AIDS in various settings including the home and workplace has been the subject of awareness-raising campaigns. 	<ul style="list-style-type: none"> • BONELA has on occasion been denied permission by the government to conduct research since some of its topics are deemed illegal. Furthermore, participants for the studies are difficult to secure, as some issues including homosexuality and sex work remain criminalized.
<ul style="list-style-type: none"> • Elders and the wider community were trained in human rights, including the Bill of Rights, and relevant land laws, emphasising that statutory law gives women inheritance rights on an equal basis with men. • Cultural practices that contribute to the violation of the rights of widows and orphans and expose them to the risk of HIV infection were stressed and censured. • Elders were challenged to tackle the violations of women's and children's rights in their communities. • Widows and orphans were empowered by knowledge about their rights and by the recognition of these rights by their community and in their customary legal system. • Construction of 11 semi-permanent houses was facilitated using free community labour for the most vulnerable widows who had been awarded land but lacked the capacity to develop it - hence fulfilling their right to housing. • KELIN contributed to the formulation of laws, policies, strategies and programmes such as the HIV/AIDS Prevention and Control Act 2006 and The Kenyan National Guidelines for Research and Development of HIV vaccines of March 2005. 	<ul style="list-style-type: none"> • KELIN work through existing cultural structures coupled with systematic legal and rights awareness-raising has resulted in positive and sustainable outcomes for women affected by HIV/AIDS in the areas of intervention. • The Cultural Structures Project is an effective mechanism that could be used to address, not only violations of property and inheritance rights, but also other traditions at community level that breach human rights and contribute to HIV risk and vulnerability. • It is necessary to enhance access to the formal legal system as most widows and orphans find it a challenge to engage the formal system and require support to do so. • A conducive legislative and policy framework that promotes the rights of women is necessary. In Kenya, the new constitution and legislative reforms on numerous social and legal topics have ushered in a dispensation that provides a framework to protect the rights of vulnerable communities including women and children affected by HIV/AIDS.



ANNEX 1 - CASE STUDY MATRIX 6

KEY ISSUES IMPACTING COMMUNITY	INTERVENTION
3. African Alliance of Sex Workers (ASWA): Fighting stigma and discrimination against sex workers in Mozambique	
<p>ASWA is a movement led and organized by sex workers that aims to fight human rights violations against sex workers, advocate for access to services - especially healthcare, and for recognition of sex work as a profession. The injustice against sex workers in Mozambique includes:</p> <ul style="list-style-type: none">a. Forced unprotected sex.b. Expulsion from their homes by their families or neighbours.c. Public mistreatment and discrimination.d. Physical abuse and harassment by police officers as well as corruption in the police force.e. Clients' refusal to pay as contracted.	<p>ASWA is collaborating with organizations such as Pathfinder International, Population Service International (PSI), United Nations Population Service (UNFPA), Mozambican Human Rights Organization (Liga Mocambicana Dos Direitos Humanos), and the Lurdes Mutola Foundation.</p> <p>ASWA's interventions have encompassed:</p> <ol style="list-style-type: none">1. Training to sensitize the police on the human rights of sex workers.2. Awareness activities with healthcare providers to make health service provision more conducive and to end prejudice against sex workers, as well as increasing the capacity of health providers to deal with the specific health needs of sex workers.3. Community mobilization activities, conducted by peer educators in the programme, focus on the promotion of health services and preventive action (e.g. through distribution of condoms).4. Schemes facilitating attendance at clinics were established with the aim of increasing the frequency of this group accessing health facilities.5. Pressing parliament to recognize the rights of sex workers especially to ensure their health, security and the decriminalization of their profession.6. Steering the formation of sex workers' organizations in order to foster understanding of their rights and the ability to denounce cases of abuse and forced and unsafe sex.



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
<ul style="list-style-type: none"> • KELIN formulated the Cultural Structures Project (CPS) - a culturally appropriate legal solution to uphold women's inheritance rights which has succeeded in securing property and inheritance rights for many women. Since the CSP started in 2008 KELIN has taken on 84 cases involving disinheritance, of which 43 cases have been resolved in favour of the women, and 41 cases are still ongoing. CSP's approach merits consideration as part of a comprehensive rights-based response to the HIV epidemic in Kenya. 	
<ul style="list-style-type: none"> • In 2010, 75 police officers were trained and begun to develop outreach activities with their peers. • The process of responding to sex worker complaints is now less discriminatory. In some areas such as Maputo, there is strong evidence that police behaviour towards sex workers has improved significantly. However, in some areas such as Matola, complaints to police about clients are still disregarded, and there are reports of physical violence by police against sex workers. • Awareness-raising has been conducted with sex workers about their rights, safe sexual behaviour and HIV prevention. 	<ul style="list-style-type: none"> • Removing or repealing laws that hamper support to sexual minorities including LGBTI and sex workers is essential. These groups are already not protected under existing laws while an increasingly repressive legislative regime is in the offing across the region. • The Human Rights and the Fight against Stigma and Discrimination of People Living with HIV/AIDS law (2009), criminalizes the intentional transmission of HIV and has been used by sex workers' customers who use the police to prosecute sex workers for deliberate transmission of HIV thus increasing the vulnerability of sex workers.



ANNEX 1 - CASE STUDY MATRIX 6

KEY ISSUES IMPACTING COMMUNITY	INTERVENTION
<p>g. False accusation of theft from clients, which generates a risk of violence and injury to sex workers.</p> <p>g. Children of sex workers are marginalized both in school and in their social lives.</p> <p>h. Discrimination, lack of professional confidentiality, and bad service by healthcare providers leads many to avoid public health services and seek alternatives such as private medical treatment, traditional healers and self-medication risking further damage to their health.</p> <ul style="list-style-type: none">• The National Strategic Plan for HIV/AIDS (2010-2014) outlines the need to develop prevention activities specific to sex workers and to raise awareness about such work. While policies and plans may exist, the reality is different, sexual minorities and other groups such as sex workers and migrant workers are becoming increasingly more marginalized.¹²²	

115 Africa Regional Dialogue 3-4 August 2011, Pretoria, South Africa.

116 www.genderlinks.org.za Gabriel Fossati-Bellani, Deputy Director at the Lurdes Mutola Foundation.



RESULTS (OUTPUTS AND OUTCOMES)	EMERGING ISSUES/ LESSONS
	<ul style="list-style-type: none"> • Some articles in the legislation such as the Penal Code still criminalize sex work. This presents a continued threat to sex workers, by providing the police and other parties the opportunity to give legal effect to societal disapproval of sex work, and to subject sex workers to arbitrary arrest. • Supporting high-risk populations to prevent HIV, and to protect their right to work safely is essential to the reduction of HIV in Mozambique.¹²³ • Lack of access to services and vulnerability to violence makes putting awareness into action difficult. • Sex work is not a recognized profession and sex workers are seen to be rule-breakers and immoral, because they are perceived as flouting societies' perceived gender roles. • Barriers to freedom of association and expression such as political bias in the assessment of sex workers' associations have been reported, as well as falsification and manipulation of their statements by the media during interviews in the newspapers or on television. • A regulatory body is needed to regulate HIV-related discrimination by healthcare personnel and to determine the extent of HIV-related discrimination within the health sector.



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LIST OF PERSONS INTERVIEWED

NAME	TITLE	INSTITUTION
Burundi		
Oumar Diallo	Head of Governance and Rule of Law Unit	UNDP
Patricia Ntahorubuze	Gender and Access to Justice	UNDP
Francis James	Deputy Country Director, Senegal	UNDP
Ndenzako Marie Louise	Permanent Secretary	CNTB (National Land Commission)
Nduwayo Alphonsine	Member of Delegation	CNTB
Mbonayo Nicholas	Chairman of Bujumbura Delegation of the Commission	CNTB
Denys Nzohabonimana	Executive Secretary	INTAHE (National Council of the Bashingantahe)
Louis-Marie Nindorera	Country Director	Global Rights
Boubacar Diabira	Technical Assistant to the Supreme Court	Belgian Technical Corporation
Elie Ntungwanayo ¹²⁴	Secretary General	Supreme Court
Adelin Hatungimana	Coordinator des Operations	ACCORD
Pamphille Nyandwi	Head of Legal Clinic Project	ACCORD
Virginie Blanchard	Human Rights and Justice Officer	BINUB (UN)
Nathan Byamukama	Coordinator – Cross-cutting Issues of Human Rights, Gender and Environment	ICGLR (International Conference on the Great Lakes Region)
Botswana		
Nthabiseng Nkwe	Human Rights Monitoring Coordinator	Botswana Network on Law and AIDS (BONELA)
Nana Gleeson	Finance Manager	BONELA

117 Full interview did not take place due to the topic under discussion being sensitive in Burundi's prevailing context.



ANNEX 2

NAME	TITLE	INSTITUTION
Democratic Republic of Congo		
Jonas Mfouatie	Head of Office in Eastern DRC	UNDP
Sofia Candeias	Chef de Projet - Access to Justice	UNDP
Elsa Papogeorgion	Judicial Trial Monitoring Project	UNDP
Masiala Mulahuka	Programme Officer	UNDP
	Organization Representative	ABA
Chantal Naliels	Sexual Violence Unit - MONUSCO Rule of Law	MONUSCO
Mirielle Ntabuka	Head, Dynamic of Women Lawyers	NGO - Association of Women Lawyers
Colonel Christophe Mputu	Military Prosecutor (Auditor Militaire)	Military
BienVenue Kuyunga	Physician, Coordinator of SGBV Unit	Heal Africa
Emmanuel Baabo	Evaluation Officer	Heal Africa
Kaboyi Mvula	Police officer/Prosecutor (OPJ)	Police
Kenya		
Ezra Chiluba Simiyu	Programme Analyst, Democratic Governance Unit	UNDP Kenya Country Office
Jacqueline Mogeni	Programme Officer, Human Rights and Civic Education	UNDP Kenya
Zaya Yeebo	Programme Manager	Amkeni Wakenya (Civil Society fund)
Kepta Ombati	Programme Coordinator	Akiba UHAKI Kenya (Human Rights and Social Justice Fund)
Moses Owori	Coordinator, UNDP Agenda 4 Project	Ministry of Justice, National Cohesion and Constitutional affairs.



NAME	TITLE	INSTITUTION
South Africa		
Brian Kagoro	Programme Advisor, Africa Governance and Public Administration Programme (AGPAP)	UNDP RSC- ESA
Evelyn Edroma	Policy Specialist, Access to Justice/ Rule of Law and Human Rights	UNDP RSC- ESA
Evelynne Change	Programme Management	UNDP RSC- ESA
Prosper Bani	BCPR Senior Advisor	UNDP RSC-ESA
Laurent Rudasingwa	Regional CPR Programme Specialist	UNDP RSC- ESA
Rose Akinyi Okoth	Policy Specialist, Local Development	UNDP RSC- ESA
Rose Mwebaze	Policy Advisor, Climate Change	UNDP RSC- ESA
Job Ogonda	Policy Advisor, Public Administration and Anti-Corruption	UNDP RSC- ESA
Tuva Bugge	Project Officer	UNDP RSC- ESA
Amitrajit Saha	Senior Advisor HIV and Human Rights	UNDP Regional Service Centre for Eastern and Southern Africa (RSC- ESA)
Catherine (Kitty) Grant	Consultant - HIV, Law and Human Rights	UNDP RSC- ESA
Tererai Mafukidze	Programme Officer	African Legal Information Institute (African LII) - Project of SALC
Kerry Anderson	Finance and Admin	African LII
Lloyd Kuvuya	Legal Officer	Southern African Litigation Centre (SALC)



ANNEX 2

NAME	TITLE	INSTITUTION
Uganda		
Lebogang Motlana	Resident Coordinator	UNDP
Dr. Maria Nassali	Chief Executive Officer	FIDA-U - Association of Women Lawyers in Uganda
Solome Nakaweesi Kimbugwe	Feminist Activist and Chairperson	Forum for Women in Development (FOWODE)
Christine Birabwa	National Coordinator	Justice Centres Uganda
Judy Adoko	Executive Director	Land and Equity Movement Uganda (LEMU)
Enid Nambuya	Programme Coordinator	Mentoring and Empowerment Programme for Young Women (MEMPROW)
Donald Rukare	Country Director	Global Rights
Ninisiima Diana	Advocate	MMAKS Advocates
Ruth Sebatindira	Advocate	LIGOMARC Advocates
Beatrice Ngonzi	Technical Advisor/Advocate	UNFPA

Group Discussions:

- Interaction and discussions with survivors of Sexual Gender Based Violence (SGBV) at Heal Africa Transition Centre for Victims in Goma, DRC, August 2011.
- Round Table Discussion with GIZ and Bertelsmann Transformation Thinkers, Berlin September 2011 on the Rule of Law and Access to Justice.
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