

## **THIRD REGIONAL CONFERENCE ON JUSTICE AND DEVELOPMENT**

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### **Introduction**

Justice is an area of increasing importance in development cooperation, and UNDP views it, as closely related to democratic governance, poverty eradication and human development. Poverty eradication is a process of developing human capabilities and choices, in order to promote sustainable livelihoods. Laws and legal systems can be either an enabling or obstructing factor to this process. Accordingly, access to justice and justice sector reform are explicit areas of programming within UNDP's governance practice.

A comprehensive legal framework and a well functioning justice sector is also a well-recognized pre-condition to attract foreign investment and to spur economic growth. This assertion has sometimes led to legal reform programs that overemphasize the need to increase the capacity of the courts and the judiciary to deal with civil and commercial matters. From UNDP's developmental perspective a well functioning justice sector is one of the foundations for democracy because it guarantees the rights of individuals against violations, including unfair or discriminatory treatment by state organs and institutions. In that sense, rather than simply a mechanism to foster economic growth access to justice is more importantly a means to prevent and overcome human degradation and poverty.

UNDP has therefore become significantly active in justice sector reform programming over the past years. The organization has also witnessed a growing demand for support to the justice sector in conflict or post-crisis situations. This has prompted us to pay particular attention to the interlinkages between justice, peace and security, and the knowledge that we have acquired in supporting justice reform in places like Mozambique, Timor Leste, Afghanistan among others is now being used in new post-conflict zones.

### **How does UNDP support Democratic Governance and Justice Sector Reform?**

UNDP has programmes in 166 countries and a permanent presence in 135 countries through its country offices. In 2001 support for governance programmes, constituted 60% of UNDP's global portfolio, with the area of access to justice and human rights as one of the most rapidly growing. We have country, regional and global programmes, funded from both core and extra-budgetary resources, in this area.

UNDP has recently undergone a reform process which is helping to transform it into a practice-oriented and a knowledge based organization. Accordingly our programming has become totally demand-driven (demands come from country programmes), and a network of 75 policy advisors, on all the 7 thematic areas of the organization<sup>1</sup> have been recruited in the last two years. The policy advisors, who come under the Bureau for Development Policy, are located in the HQ in New York, in our nine sub-regional resource facilities (SURFs)<sup>2</sup>, and in our governance thematic resource center in Oslo. Even though each one of the Policy Advisors focuses primarily on providing policy support to the cluster of UNDP country offices in his/her sub-region, they can integrate multi-disciplinary teams to provide support to any of the UNDP COs, as needed. The organizations thematic and cross-thematic networks<sup>3</sup> are helping UNDP to generate, identify, codify and share knowledge.

These reforms were seen as necessary to help the organization narrow its focus and deepen knowledge in its areas of competency in order to provide the best possible support to developing countries.

The current approach of UNDP also focus more strategically on partnerships both in the North and in the South, as well as, on promoting capacity development for local ownership and sustainability of the development process.

### **How has UNDP Responded to the Justice Sector Reform Process in the Latin America and Caribbean Region?**

The Latin America and Caribbean Region has experienced more than fifteen years of justice sector reforms in recent times. Considerable efforts were made by national and international agencies to facilitate access to justice for the poor, and to establish procedural, legal and judicial reforms throughout the Region.

In particular the reform of the criminal justice system, within the framework of the democratic transitions of the last two decades, has enhanced the linkages between justice and human rights, especially the rights of the poor people, indigenous people, minorities and disadvantaged groups.

In spite of recognizable progress in many areas, the overall results of the reform process are not commensurate with the efforts and resources that were put into it. Results are often tentative, isolated and not sustainable. This Third Regional Conference has been instrumental in identifying some of the bottlenecks. The challenge for all of us is

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<sup>1</sup> Democratic Governance, Environment and Sustainable Energy, Poverty reduction and MDGs, HIV/AIDs, ICT for Development, Crisis Prevention and Recovery and Capacity Development. 29 of these are Governance advisers on (Access to Justice and Human Rights, Parliamentary support, electoral systems, decentralization and local governance, public administration and anti-corruption, Access to Information and civil society dialogue)

<sup>2</sup> Panama, Port of Spain, Beirut, Bratislava, Kathmandu, Bangkok, Addis Ababa, Dakar, Pretoria

<sup>3</sup> With a total of about 2,000 people for all UNDP thematic areas, comprising policy advisors, CO based staff, programme staff and HQ based staff

therefore, to implement recommended solutions in order to overcome the present constraints and perhaps, identify and address other constraints.

Notwithstanding the fact that our primary focus at UNDP has been to provide support to the strengthening of the formal justice and legal systems, our involvement in various reform processes in the past few years has underlined the need for the involvement of all stakeholders in the process and not only the formal actors, as well as the need for national consensus building. We have also learned the importance of looking at alternative methods of dispute resolution, national reconciliation efforts, and homegrown solutions, when formulating reform programs.

The following are some examples of UNDP's current work in support to Justice Sector reform in the LAC Region:

- In **Ecuador, Costa Rica, Panama, Argentina** UNDP is engaged in supporting consensus-building initiatives, aimed at strengthening national justice reform agenda
- In **Brazil, Venezuela and The Dominican Republic**, UNDP is supporting various programmes of legal education, particularly in relation to human rights programmes.
- In **Guatemala, Haiti, Peru and Paraguay**, UNDP is supporting various programmes within judicial and legal reform, which involve different stakeholders, namely justice ministries, national commissions, courts, attorney-generals offices, legal aid offices and civil society organizations.
- In **Colombia**, UNDP is supporting a program on justice and security sector reform in a cross section with its local governance program.

#### **The role of International Cooperation in Justice Sector Reform**

Development discourse generally defines international cooperation agencies as a stakeholder of the development process in partnership with local actors, the state, civil society, the private sector, NGOs and others.

Like most international organizations UNDP and other UN organizations have come a long way since the early days of technical assistance when donors "gave" and developing countries "received" assistance through technical cooperation. Mostly these were "stand alone" programmes, largely managed, monitored and evaluated by nationals from the donor capitals, with very little active involvement locally. Let alone ownership.

UNDP has recently articulated a model of capacity development which is premised on the idea of local ownership of development processes, equal partnerships between the international community and local institutions, pro-active engagement by developing countries in acquiring and applying relevant knowledge and capacity at individual, institutional and societal levels, and the enhancement of our supportive role as international organizations.

UNDP's current knowledge-based operation largely supports this model of capacity development, in which information is scanned locally and globally to be transformed and applied locally, and shared globally again.

Recognizing the slow pace of current reforms UNDP is about to launch a program within the Justice sector in the LAC region, with the acquiescence of 14 governments, to identify the obstacles to access to justice for disadvantaged groups. According to the project findings we will then redesign our support for justice accessibility for the poor people in the LAC region.

One issue that must be emphasized as we assess progress in the area is the need for better coordination of efforts and resources, and better collaboration on the ground, among international cooperation agencies to support development and reform programmes. The Development Assistance Committee of the OECD countries is currently engaged in an harmonization and simplification exercise targeting aid coordination. Within the UN reform of the Secretary General, UN agencies have considerably harmonized their programming cycles and procedures at country level, often joined by the WB, and supported by other development agencies, in order to maximize results, streamline process and increase cost effectiveness.

In UNDP's role as the Resident Coordinator of the UN system at country level, the organization has developed considerable skills in coordinating interaction between the government counterparts and the rest of the international community, and facilitation of local processes, namely sensitive political negotiations. These skills are being used in various instances, including in the current justice and democratic reform processes in the LAC Region.

UNDP already works on the ground with most of the international cooperating partners in this reform process. We seek to strengthen that partnership even more and work closer with IADB, USAID, IFES, EU, WB and the various governments, justice sector institutions, and national commissions, in consistently supporting the judicial reform process in the LAC Region. We will also continue to foster the sharing of lessons learned from this process, with other regions and countries, through our knowledge networks.

#### **Some Conclusions and lessons learnt**

One of the conditions for sustainable development is a strong, transparent, effective, accessible, competent and impartial justice system. As such the reform process should be made the concern of society at large.

Reformed judicial and legal systems and institutions should uphold the democratic order (as they are known to uphold impunity, abuse of power and repression, before the reform process takes place). In that respect it is important that indicators of progress and monitoring mechanisms are developed and utilized by the beneficiaries of the reform themselves. We are already supporting this process.

By fulfilling a watchdog and oversight role, civil society and the media can enhance legal education, accountability and participation. Our support must also go for non-governmental initiatives in this field.

In the LAC Region, where the gap between rich and poor is one of the widest in the world (if not the widest), it is essential to continue to address the issue of access to justice for the poor people. Lack of access to justice has become a defining attribute of poverty and at the same time an impediment to poverty eradication.

In the last decade, the development community has gained a greater awareness of the fact that legal transplants do not take root and flourish, and "stand alone" reforms whither and die. The legal system of a country has to be more of an indigenous species than an exotic import.

Each country will define its own system and find its own strategies for reform, but the need to involve civil society, the poor and indigenous people, namely women, is a common need.

#### **MDGs: An Outstanding Deficit**

The Human Development Report of 2003 focus on the 8 Millenium Development Goals, the first 7 on health, education, gender and environment and the last one on mutual accountability and a global compact for the attainment of the first 7goals.

The Millenium Development Goals are time bound, measurable benchmarks to operationalize the Millennium Declaration adopted by all Member States of the United Nations at the Millennium Summit in September of 2000. The Millennium Declaration indicates that good governance is the single most important factor for poverty eradication.

Until and unless the Justice and legal reform processes (as part of good governance) take root and flourish everywhere, humanity will have an outstanding deficit to itself.