

OPERATIONAL GUIDANCE NOTE: CONDUCTING A SECURITY AND JUSTICE ASSESSMENT

This is the third OGN in the assessment series. It covers issues to be taken into account when conducting an assessment. The approach should not be prescribed, but developed in line with the specific context and purpose of each assessment. This OGN does not set out a series of detailed steps or lists of questions to ask, but instead provides direction on good practice approaches and ideas on how to undertake different aspects of the assessment. You should use this as guidance when determining the specific methodology for your assessment.

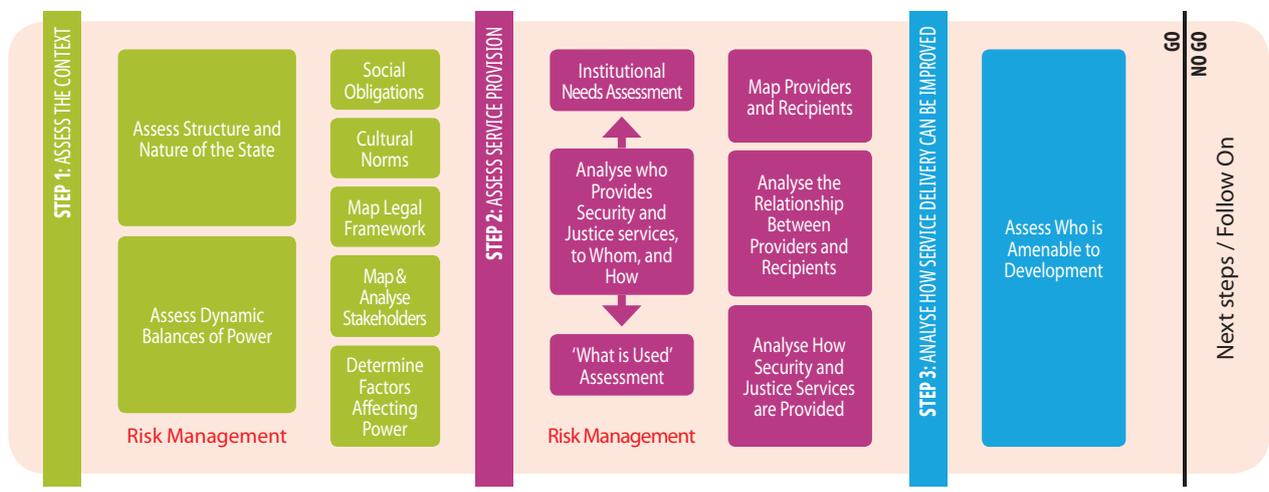
- What was covered in the Planning phase
- Coordination
 - Assembling the team
 - Practical considerations
 - Updating Terms of Reference (ToRs)

SUMMARY OF STEPS IN CONDUCTING AN ASSESSMENT

- STEP 1. ASSESS THE CONTEXT
- STEP 2. ASSESS SERVICE PROVISION
- STEP 3. ANALYSE HOW SERVICE DELIVERY CAN BE IMPROVED

Note – the steps will not always follow in sequence and you should expect to revisit each broad area as new information or events unfold.

MAP OF FACTORS FOR CONDUCTING AN ASSESSMENT



The practice note SSR Assessment, M&E and Gender in the Gender & SSR toolkit provides a useful checklist to ensure a gender perspective is fully adopted (www.dcaf.ch/gssrtoolkit)

The diagram on the previous page maps out the different operating assumptions, good assessment practices and key assessment approaches to be considered when designing the methodology for each specific assessment.

STEP 1. ASSESSING THE CONTEXT

Assessing the Structure and Nature of the State

Underlying assumption

Although there are some similarities, fragile and conflict-affected states rarely resemble Western concepts and the understandings of the 'state'. This includes Western assumptions of monopoly control over coercive and judicial powers, the extension of sovereignty throughout the territory of the state, and the security of borders. Western understandings of civil society and notions of public and private goods may not be applicable or transferable to the non-western world.

What this means

As the State and its institutions are one of the major players in security and justice development, you must carry out an accurate assessment of the structure and nature of the partner state, so that evaluations of security and justice institutions can be placed in their appropriate context.

A thorough understanding of cultural norms is vital to identify opportunities for support that are appropriate to the context and enable locally driven development of security and justice provision.

Examples of how this can be done

a. Assess the type and extent of social rights and obligations between the State and the citizens. These include relations between the State and its peoples (for example, forms of different social contracts), and specific cultural social obligations that may arise between groups or because of certain behaviours. Remember that there may be differences between central or urban and

The ability of donors to influence the various security and justice actors in the partner country is limited. Even when donors sufficiently comprehend an actor's self-interest, there may be little a donor can do to sway that actor's behaviour. At the same time, any type of donor activity will affect the system itself (whether desired or unintended).

In reality, this means accepting the narrow range of donor influence, and ensuring that all assessment activities are conducted in line with a risk management approach. The question is not whether there will be an unintended consequence, but rather what to do when that consequence occurs.

Understanding the relationship between the State and the individual is key to determining the environment in which support will be provided. However, in many countries, the social obligations that exist between non-state actors (such as tribes, families, or communities) may be much stronger. This must be taken into consideration when suggesting options for support or recommendations. An example of this using the Albanian concept of besa can be found on the ISSAT Assessment Webpage.

countryside or rural communities, as well as between different ethnicities.

Specific activities that support this aspect of the assessment include:

- Mapping the differences between relationships suggested by the legal framework in the country and what occurs in reality.
- Asking direct questions to different groups within the community regarding what the citizen expect (or should expect) from the state and what the state demands of its citizens with respect to security and justice provision.
- Working with country experts (for example anthropologists, historians and social scientists) to access information on the social relationships and obligations in particular contexts.

In addition to ensuring an understanding of the prevailing cultural norms during the planning phase, it is important to recognise social and cultural change and differences during the field phase. You should consider including national representatives on the team, partnering with local academic or cultural institutions, or including an anthropologist to assist in interpreting given contexts.

b. You should map out the legal framework in order to place the security and justice sector within its institutional context. This should include as far as possible:

- The subsidiary rules that regulate the activities of the security services, such as the military's 'rules of engagement' and the police's 'use of force and firearms'.
- The rules ensuring the independence of the judiciary and those defining responsibilities within the judicial branch (budget, organisational management, career management, oversight and control).
- The criminal chain procedures (with special attention paid to the links between police and prosecution services, the role of judicial police, and procedures related to crimes committed by security forces).
- The procedures by which land and property are registered – loss of or abuse of title to land and property are often major security and justice issues in countries.
- The process to lodge a complaint against a state employee for an alleged transgression of law, whether the supposed misconduct is criminal or administrative in nature.
- The rules that define and govern the relationship between state and non-state security and justice providers.
- The various managerial systems that security and justice sector institutions use to gather, collate, analyse, and use information.

c. Look at the function of training institutes and academies, at how they operate and the messages that they instil in those who pass through their doors. These have an important role in influencing longer-term change in the way institutions work, priorities and organisational structures.

d. You should undertake as comprehensive a stakeholder analysis as possible. As this also impacts on assessing the dynamic balances of power, it is covered below under the next heading.

Assessing the Dynamic Balances of Power and Identifying Points of Leverage

Underlying assumption

Security and justice development is primarily a political undertaking. This means that the balances of power within the host/recipient country will be challenged by any reform activities (remember there will be many different power relations). Remember that relationships of power are rarely simple: individuals or groups can be joined on some issues and diametrically opposed on others; the relative levels of influence can be in constant flux. Power is often connected to personalities, rather than post

holders, so a true picture can be difficult to determine.

What this means

Instead of just focusing on institutional and capacity analysis, you must place your analyses against the larger perspective of actor, community, and organisational self-interest. This will help to take into account the realities of how, to whom (and why) security and justice services are provided. Assessments must, first and foremost, scrutinise and situate dynamic balances of power across a range of relationships.

Most relationships are 'political' by nature. This means that the balance of power is defined by the self-interests of competing actors. These interests can be irreconcilable. When looking at the relationships between different actors in the security and justice sectors, remember that in addition to individual self-interests, people are often driven by the interests of networks, groups or organisations. All of this can create competition between different parties. Cultural norms and historical legacies may also play a strong role in deciding which of the competing parties is more powerful, excluded or included.

Examples of dynamic balances of power

- The privileges of a supreme judicial council vis-à-vis the Ministry of Justice;
- The role of the military vis-à-vis elected officials;
- Tensions between:
 - The police and prosecutors;
 - The Ministry of Finance and all other line security and justice agencies
 - The Executive and the Legislative
 - Security and justice providers in the capital and those in provincial / local state locations (including non-state providers)
 - Factions of ex-combatants absorbed into the Armed Forces

Assessing political will

This is often one of the hardest areas to determine, as what is said regarding commitment does not always reflect the reality. Proxy indicators for this can include:

- Has a workable budget been allocated to the department or agency?
- Have there been any delays in Parliament regarding passing relevant laws or budgets for the department or agency?
- Who is in charge of the different institutions? What level of seniority does the person have?
- What level of autonomy is there?

Although power, cooperation and competition are relevant no matter which individual, group or organisation is being addressed, this is especially important when dealing with the political elite. Given the importance of security and justice to the preservation of the privileges of those who wield power, it is improbable that the political elite will accede willingly to development initiatives that significantly erode its hold on power. You should look for areas of security and justice for which the elite have greater tolerance for development (or are seen to have greater 'political will' for certain projects to go ahead). Although there is a strong chance that these will fall in areas that are peripheral to the interests of the elite, these areas could provide possible entry points to security and justice support.

Elites are rarely monolithic. This means that, even if there appears to be strong resistance from the elite to security and justice development, there may be areas where you can find some support from some elements of the elite. These could again provide initial entry points that may be ripe for effective justice and security development, from which further and unexpected initiatives may unfold during an inception phase.

In fragile and conflict-affected states, governmental agencies are often poorly institutionalised. This can mean that individuals function simultaneously in many roles across different fields. You should not presume that the rules and regulations of an institution necessarily govern the actions of that organisation's policies and personnel. However, it is exceedingly difficult to determine what role an individual is playing at any one time, given the overlapping roles the individual embodies.

Assessments involve a high degree of subjectivity, despite the quality and scope of assessment tools employed, the 'technical and substantive' skills of the team conducting the assessment, or the depth and accuracy of the data collected.

This does not mean that assessment tools and checklists should not be utilised and continually improved. Instead, those commissioning and undertaking the assessment and trying to discriminate dynamic balances of power must recognise that judgements derived from the use of these tools are still subjective.

Because power can often adhere to the person rather than institution or role within which the individual acts, organisational roles may be less important. You should try (as best possible) to map out the personalised networks of key individuals within the ruling elite or work with partners to devise such maps.

Working in environments where power is so personalised carries a high risk that the team can empower or disempower the individuals they are engaging with.

Examples of how this can be done

a. A good stakeholder analysis is vital. In order to do this you should map the individuals, groups or networks that may be affected by, or can affect, development of security and justice services. Once these have been identified, you need to ascertain the degree of power, of influence and possible interests at stake. Undertaking a stakeholder analysis is inherently difficult due to the subjective nature of assessments and the challenges of understanding such inherently complex environments. You can reduce the impact of this (although not remove) by ensuring a wide net of sources and by working through the same questions with different target groups to view the picture from as many directions as possible.

Many of these relationships can be obscure and perplexing to donor personnel. Appearance and reality may not coincide.

Remember that donor knowledge and understanding of the partner country will be partial and incomplete. There is a natural reticence for governments to disclose information pertaining to their justice and security operations. They may not possess the data in the first place. At best, the most thorough and comprehensive assessment, utilising the best inventories, checklists and assessment tools, combined with partner country participation, will still barely scratch the surface. This is not merely a question of limited time and the scarcity of resources, but the nature of assessments. Furthermore, given that assessments are singular snapshots in time, they rarely capture the processes by which partner country's security and justice systems change or undergo change. This further curtails the knowledge and understanding.

STEP 2. ASSESSING SERVICE PROVISION

Analysing who provides security and justice services, how and to whom

Underlying assumption

The three typical types of donor-supported initiatives undertaken are: (1) institution and capacity building initiatives; (2) capacity development projects (skills acquisition); and (3) strategic policy endeavours. These are very important for long-term development; however, the impact of development in these areas is often minimal in the short-to-medium term: these can require more than ten years in order to achieve an appreciable impact on the delivery of justice and security as a public good and service. This can often mean that the poor and most vulnerable miss out on the positive impacts of security and justice development.

What this means

In many conflict-affected and fragile states the security and justice apparatus may be captured by the elite and can be one of the major sources of insecurity and injustice. Rather than just looking at the official institutions, your assessments must concentrate on issues directly related to service delivery, the relationship between service providers and their customers, and how those relationships can be progressively improved. This means taking a bottom-up approach to identifying areas where support can be provided in the areas of security and justice.

However, remember that long-term reform is still required to provide systemic change, and the bottom-up approach should not be carried out in isolation. In order to reach a balance between long and short-to-medium security and justice development, you should use a combination of two different, but complementary, approaches to security and justice assessments. These approaches address different issues and correspond to different time frames. The two methodologies are the 'Institutional Needs' Assessment and the 'What is Used' Assessment. You need to balance the use of the two approaches depending on the condition of the country you are assessing, the resources potentially available and the commitment for donor support.

Examples of how this can be done

1. Institutional Needs Assessments involve reviewing the institutional make-up and application of the security and justice architecture in a country. You should undertake research to determine where the gaps or needs are and propose actions on how to enable the architecture to function better. In the long-term, this means helping to develop a security and justice architecture that is both effective and accountable, and accessible to the whole population. The Capacity Integrity Framework, available on the ISSAT Assessment Webpage provides a tool to carry this out.

Broadly speaking, the 'Institutional Needs' approach concentrates on 'inputs', which are the application of resources (financial, human, capital, etc) necessary to build institutional capacity to remedy an identified deficit in security and justice delivery. A judge, for example, will render an equitable and fair decision, once s/he is given the appropriate training and possesses the 'correct' skills. The passage of

This approach makes an implicit assumption that behaviours will change and institutions will meet given objectives once adequate levels of resources are 'inputted'. Whilst this may occur over a long period of time, there is a high risk that this will not be the case in the short-to-medium term.

legislation to establish a Ministry of Interior Inspector General's office, when backed with adequate financing, management, and training, will lead to a more accountable police service.

2.'What is Used' Assessments focus on how people obtain security and justice. You need to look at how a system provides the security and justice that it does, irrespective of how it should function on paper. You should focus on the provision and quality of security and justice received by a given population and ask the question how those who are receiving security and justice experience service delivery. Are there some institutions used more than others (for example, a particular part of the police force or a particular police station; or providers of customary/traditional justice, rather than the courts)? You need to look at why those providers who manage in some way to provide effective service delivery actually succeed, despite scarce resources, deficits, and deficiencies.

You should recognise, however, that there may be risks to the non-elite in giving their opinions and take care to minimise these.

Spend time talking informally to different groups about what happens when a misdemeanour is committed and where they go to get justice. This can reveal much more than is portrayed by the state structures, especially in countries or regions where the majority of security and justice is provided by non-state or quasi-state structures. The views of the elite can be very different to those of the rest of the population and it is important to understand these perspectives. Following the path through the security and justice systems in a country starting from the end user will help you map how citizens find security and justice, the overlaps between formal and customary systems, and highlight where improvements could be made to mechanisms that are actually being used.

Suggestions of the sort of questions to ask citizens are listed below, although you will have to decide on the approach taken to ask these questions depending on the context and the individual or group being addressed:

- What issues make them feel insecure/unsafe?
- What issues do they need justice provision for?
- Who do they trust to provide for their security needs?
- Who do they trust to provide for their justice needs?
- Why do they trust this individual, group or organisation?
- Why don't they trust others?
- Where/who do they go to in order to seek help/recourse if, for example, someone takes their land/assaults a member of their family/steals their belongings? What then happens after this first step?
- Why do they go to these particular individuals, groups or organisations?

The 'What is Used' approach adopts a problem-solving perspective that takes into account the power relationships and the constituencies who support existing service providers. When security and justice is provided you should look at how the result is produced and how that performance can be bettered. This approach has the added advantage that it highlights groups who are not being included in security and justice provision as a public good.

For the more structured, regimented, and hierarchical institutions of security and justice development,

When taking a bottom-up approach that looks at the end-user, you may encounter requirements that are either outside of the capacity of your team to evaluate or outside of the capacity of your mandator to provide support. In such cases, coordination with other actors (for example other donors) is vital to ensure that those best placed to provide support in specialised areas become aware of the needs.

such as the military and intelligence services, or ones that require higher levels of institutionalisation, the 'Institutional Needs' Assessment may be more effective. This is also applicable if you are looking at institution building and capacity development initiatives in the area of parliamentary and budgetary oversight. For issues pertaining to 'access to security' and 'access to justice', the 'What is Used' methodology is more appropriate. A combination of the two methodologies is best for providers of service internally (i.e. justice and policing).

In areas where there is little room for manoeuvre due to limited political will or high levels of distrust by the government, a staggered approach can be taken using entry point programmes in specific areas, which allow more in-depth information to be built up over time in order to inform a wider programme.

For example, in a post-conflict scenario such as Liberia, the 'what is used' methodology may increase in prominence, given short-term political imperatives, the high use of customary justice, and the need to achieve short-term results. In a developing country such as Ghana, an 'institutional needs' approach is more likely to be suitable, given the longer time lines.

Selecting how to find out the information and what questions to ask

There are many different research methodologies that could be considered depending on the context. These include surveys, direct interviews (structured and non-structured), focus groups, network analysis, building visual maps to represent the relative importance/impact of different sectors or relationships, workshops, observation, etc. Longer-term methods such as surveys and ethnographic research, especially those that require local partners, should be commissioned in advance and mindful of the fact that there may be a need for research capacity building. The choice of methodology will need to take into account the cultural norms, level of political will for reform, security situation, time and capacity, as well as drawing on the technical or thematic knowledge of your team members. Remember that a lot of imagination and empathy may be required to determine the best way to ask certain more sensitive questions.

There are several resources that list possible questions that may be applicable, such as the OECD-DAC Handbook on SSR (<http://www.oecd.org/dataoecd/43/25/38406485.pdf>) or the UNODC Criminal Justice Assessment Handbook (<http://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html>). Links to these may be found on the ISSAT Assessment Webpage at <http://issat.dcaf.ch/ISSAT-Public-Home/Advisory-Field-Support/Assessments>.

When determining the exact methodology and formulating more specific questions, remember you will also need to verify information already received from previous assessment reports and open-source material, as well as triangulating information received on the ground from interlocutors.

Communication strategies

Communication skills are vital for undertaking assessments, and approaches with different communities must take into account the social and cultural norms. Moreover, care must be taken to manage expectations on what can be expected by those sharing their views and information. To address these issues, the team should prepare a communications strategy in advance with the mandator (although ideally a representative of the mandator should be on the team) to cover:

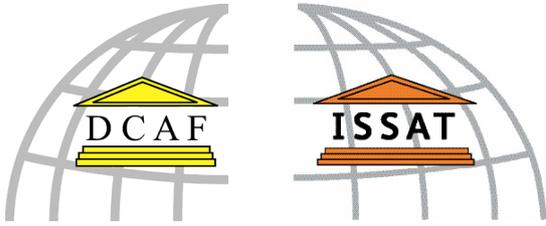
- The extent to which information can be shared with different actors;
- The extent to which the results of the assessment will be shared and how;
- Culturally appropriate ways to explain to the interlocutors how the information they give will be used;
- How do deal with possible 'expectations problems' such as NGOs expecting contracts to implement any projects that come out of the assessment;
- How to get sensitive issues on the table;

STEP 3. ANALYSING HOW SERVICE DELIVERY CAN BE IMPROVED

You will need to ascertain which constituencies are likely support what initiatives. One of the most important criteria for effective security and justice development is the support of a defined constituency within the partner country for the particular change that is to be undertaken. Assessments should match development to the constituencies that will support and/or resist them, focusing on those service providers most amenable to development.

Analysing how service delivery can be improved needs to take into account all the knowledge accrued to date in the assessment and build on ideas and suggestions gathered from security and justice service users and deliverers. This may, depending on the time available and the relative sensitivities of carrying out such an activity, involve additional external meetings to share ideas with interlocutors. You will then need to start drafting recommendations and options based on the requirements of the mandator. This is covered under the fourth OGN, which deals with the Follow on from the Assessment.

Additional areas to determine – if relevant to the needs of the mandator and required as an assessment output – are possible implementers for programme recommendations, and local capacities for monitoring and evaluation of potential programmes.



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SUPPORTING THE INTERNATIONAL COMMUNITY'S SSR CAPACITY



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