

THE FUTURE OF DEVELOPMENT ASSISTANCE

In September 2014, the Global Development Network issued a call for essays on the Future of Development Assistance – in association with the Bill and Melissa Gates Foundation.

The GDN received 1470 submissions from 142 countries. The winning essays can be found at: <http://gdn.int/html/page11.php?MID=3&SID=24&SSID=80&SCID=55>

The GJG submitted an essay on: **The Importance of Data and Information Technology in the Justice Sector**

Extracts appear below.

For years it seems, we have been tinkering nervously at the edges of an area that goes to the essence of human need. Why have we not grasped the criminal justice sector as we have, say, the supply of food, education or health services? Why has ‘justice’ been left in the hands of judges and lawyers as if only the initiated with their ‘magical knowledge’¹ are able to determine ways of resolving right and wrong in a way that society recognises as just and fair?

The establishment would respond: because it is more complicated than that. Clearly it is complicated, but are the intricacies of the human body any less complex? And the health ‘sector’ seems to have done a pretty good job at getting its services out to the most remote village, so why is the justice sector so far behind? One academic with long experience of justice development in three continents put it this way:

“Today’s heavy emphasis on judges, lawyers and courts is analogous to what the public health field would look like if it mainly focused on urban hospitals and the doctors staffing them, and largely ignored nurses, other health workers, maternal and public education, other preventive approaches, rural and community health issues, building community capacities, and nonmedical strategies (such as improving sanitation and water supply).”²

While efforts have been made in the last 10 years to bring justice closer to the people, the emphasis on themes or target constituencies that match the current priorities in donor capitals, or perceived needs, has in general produced a fragmented set of outcomes. The notion that the ‘rule of law’ is stronger today or that it is central to economic development are moot points when one glances around the world.

Three problems with the way international assistance programmes in the criminal justice sector are fashioned.

Design: missing the context

¹ Markus Weilenmann, *Legal Pluralism: A New Challenge for Development Agencies in Access to Justice in Africa and Beyond, Making the Rule of Law a Reality*, 2007, Penal Reform International and Bluhm Legal Clinic of the Northwestern University School of Law, National Institute for Trial Advocacy (NITA)

² Stephen Golub, ‘Beyond Rule of Law Orthodoxy: the legal empowerment alternative’, *Rule of Law series no 41* October 2003. Democracy and Rule of Law Project. Carnegie Endowment for International Peace

“Law reform projects seem to be based on the unspoken Weberian assumption that because a particular legal system is found in countries which are developed, that legal system will help countries to be developed. There is no proof of this.”³

International donors love sending in teams of consultants to design interventions.⁴ The consultants are ‘experts’ in their own countries and, as experts, will therefore know the answer to the justice problems confronting a country which may share their legal system and language but otherwise will have nothing else in common. A British police officer and specialist in finger prints sat forlorn in an office in Lilongwe, Malawi. He explained that he had come to assist the Malawi Police Service develop their capacity in forensic evidence to solve crime, but had discovered that the most common building materials used by people were wood and straw. He was cutting short his visit.

Those commissioning a ‘design’ like symmetry and coherence. They like to give a bit to everyone (addressing the ‘whole’ sector) and favour the odd set piece they can wave a flag over. Donors have their pet projects, agendas and biases. But for all the talk of ‘harmonisation’ and ‘co-ordination’ the aid provided rarely amounts to either, in part because the sector is so fragmented (and operates in siloes rather than as a coherent unit) and in part because no one wants to be co-ordinated.

Implementation: quick wins or quick profits?

Maxims and aphorisms abound on the importance of maximising participation and even culinary metaphors are introduced citing the wonders of ownership in ‘cooking’ change. As with most truisms, they are true but they ring hollow to local ears. Time is not taken to consult with a broad range of ‘stakeholders’ and there is deep confusion in whom to invest ‘ownership’ in any justice reforms. On the one hand there is a risk that by investing in the legal establishment, you risk elite capture (and a return to the status quo ante) and by investing in society, you alienate the establishment who push back against any of the reforms tabled. For large corporations administering multi-million dollar contracts, the time and expense taken in consulting with stakeholders may not sit well with their shareholders.

Sustainability: a donor mantra

The international community has directed millions of dollars at justice systems (erecting buildings, providing fleets of cars, boxes of computers, etc) and loaning even more (through the World Bank) to install hi-tech case management systems and establish new ‘speedy trial’ procedures and special courts – and then throwing up its collective hands when the host country proves unable to maintain it all or service the loan.

³Amanda Perry, ‘International economic organizations and the modern law and development movement’ in Making Development Work: Legislative reform for institutional transformation and good governance. Ed. A Seidman et al (New York: Kluwer Law International, 1999).

⁴In 2007, there were more than 150,000 separate [international fact-finding] missions to 54 countries. Vietnam played host to an average of three visits each working day. The Economist, 4 September, 2008

Similarly, effective but low-cost approaches have been discontinued because funding through non-governmental organisations is deemed ‘unsustainable’ since these organisations rely on development funding for their existence (as indeed does the aid ‘industry’ managing the funds). This narrow interpretation of sustainability (money) ignores the high value placed on this work by beneficiaries (impact). If the work is effective and economical, surely the argument for sustaining it is made?

Time for a data revolution

A lot of energy in recent times has gone into the development of justice ‘indicators’⁵ and criminal justice toolkits⁶ that seek to provide templates or ‘golden threads’ for countries with broken or dysfunctional justice systems to follow. There are all sorts of problems with this approach. The first is that it assumes there is a ‘model’ justice system anywhere that posits a standard, or standards, against which to measure – and there is not: criminal justice systems all over the world are messy. Secondly, it is putting the cart before the horse, prejudging without taking account of the evidence. You cannot monitor and evaluate what you do not know – you need the data first.

The first ‘But’: this data will be ‘siloed’ and sit inside each institution, it will not be joined-up to provide a system-wide perspective and it is unlikely it will be disaggregated to show how the system relates to women, young people and vulnerable groups or drill down to the local level. In short, it will be limited to the state’s perspective of the justice system, and within this, the perspectives of separate ministries, as well as the *suppliers* of those services.

The second ‘But’: the ‘hard’ data will lack context and nuance if not triangulated with data from the practitioners in – and users of – the system. Both categories have first hand experience of the system and can provide insight into reform processes that mere contemplation of the hard data cannot. They can talk to the reality on the ground as opposed to the theory or official story.

The aim of the data collection is to get as accurate and complete a picture as possible as to how justice and security work in the country. The data holds a mirror up to the criminal justice system and shows how the system *should* work in law and contrasts how it *actually* functions in practice. Its compelling feature when triangulated in the manner described is that it is neutral.

The Justice Audit: short background

In 2010, in recognition of the problems mentioned, the GJG conducted a baseline study of the formal justice system in Helmand province of Afghanistan for DFID. Rule of law advisers in the Helmand Provincial Reconstruction Team (PRT) cast doubt over the existence of any data worth the noun.

⁵The Vera Institute and ALTUS joint project on justice indicators at: <http://www.vera.org/project/vera-altus-justice-indicators> and Harvard Kennedy School at: <http://www.hks.harvard.edu/programs/criminaljustice/research-publications/measuring-the-performance-of-criminal-justice-systems/indicators-in-development-safety-and-justice/project-overview/approaches> and UN Rule of Law Indicators at: http://www.un.org/en/peacekeeping/publications/un_rule_of_law_indicators.pdf

⁶ Available at: <http://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html>

This first 'Justice Audit' gathered reams of data by visiting the courts, police, prosecutors, prison, lawyers and other justice actors and listing the data under institutional headings. It established that even in a 'broken' justice system, there was data and furthermore the data was instructive.

It pointed to ways in which, for instance, the popular view of the formal justice system (in summary: corrupt and ineffectual) might be addressed by: exposing the poor terms and conditions of state justice providers that left them susceptible to bad or corrupting practices; and revealing the gaps in service delivery in terms both of geography and articulated need.

Had this baseline data been available at the time of designing interventions, the international community might have avoided the high expense of constructing justice 'forts' at strategic sites (recording barely 2-3 cases per month) and questioned the assumption that while the judges and prosecutors servicing them were safe once inside the walls, they were at risk on the roads to these places of justice. The data might also have indicated that as a counter-measure to the Taliban's highly mobile, instant (and often brutal) 'justice services' the approach was unlikely to succeed.

In the event, the data gathered had little impact. In major part because the prevailing political situation was too big (focused as it was on containing the insurgency), but in very small part because the data as listed was hard to read and digest. The GJG approached the Justice Mapping Center in New York⁷ which had made inroads into policy thinking on 'reinvesting' in penal reform by developing software to map where offenders lived in state capitals around the USA and show that the overwhelming majority lived (surprise) in the same few blocks where unemployment was high and social services low.

The GJG worked with JMC following a commission from the Malaysian government for a Justice Audit of its criminal justice system. The result was a visualised presentation of the data around four dimensions: infrastructure, resources, case management and governance.⁸ At the presentation to senior government officers, the Inspector General of Police expressed his regret that he had withheld his consent to participating in the Justice Audit (as he had feared 'another' attack on the police) and saw it as a useful planning tool. The Minister of Justice expressed concern at the high number of drug users in the prisons, especially as his Ministry's policy was to treat drug use rather than punish simple drug use.⁹

This led in May 2012 to a review of the methodology applied at a meeting of practitioners from around the world at Wiston House in England with the support of the US institute of Peace (USIP).¹⁰ At this meeting, the methodology was further refined and emphasis placed upon a

⁷ www.justicemapping.org

⁸ www.malaysia.justicemapping.org

⁹ One reason for the high number of drug users in prisons was that monthly arrest figures were part of a Key Performance Indicator for the police department. It was easy for police to hang around Drug Rehab Clinics and arrest clients as they entered/exited the clinic.

¹⁰ Under the chairmanship of Justice (retired) Johann Kriegler, former judge of the Constitutional Court of South Africa and head of the Justice Audit, practitioners from Europe (Sweden, UK, Ireland, Portugal, France, Germany), the Americas (USA, Peru), Africa (Malawi, Sudan), Asia (Malaysia, Nepal, Sri Lanka, Bangladesh, India) as well

partnership with government *and* the citizens of the country. In other words, the key word was (national) ‘transparency’ rather than (government) ‘ownership’.

In 2013, the Bangladesh Ministry of Law, through its programme of co-operation with GIZ, invited the GJG to conduct a Justice Audit of five districts. The GJG invited assistance from Northwestern University (USA) both to tap into the university’s research capacity and to open up to clinical law students this field of work. The Justice Audit was presented to the Ministers of Law and Home Affairs and other heads of institutions.¹¹

Providing government, donors and citizens with an evidence-base from which to plan

The Justice Audit is a living tool: it is updateable. It creates a central, web-based, resource for governments, justice service providers, civil society and external partners. There is no thumping great report to wade through – the practitioner can pick up the salient points in minutes. Its uniqueness lies in the focus on a data-driven approach shorn of comment and direct engagement with government and practitioners in the collection and analysis of their own data. Its added value is that it leaves the authority deputed with co-ordinating the data going forward with the software infrastructure to conduct periodic audits of future years’ data going forward.

The organization of a spectrum of data on the criminal justice system into format using graphical user interface (GUI), including geographical information system (GIS) mapping, provides the viewer with a ‘snapshot’ of the criminal justice system illustrating how the justice process works, the points of pressure and challenges that emerge and options for improvements based on good practices – at the click of a mouse.

Where the viewer doubts the way in which the data has been presented or cut, s/he can click on the baseline data and check the source of that data. Where data is incomplete (and in many countries it will be) or inaccurate (and so giving a false reading), the incentive is provided to invest in the data collection to inform sound planning.

There are several differences with this approach from others. A Justice Audit is not an event, or one-off assessment, conducted solely by an external team of evaluators; nor is it a finger-pointing exercise; nor an index of performance against which the country may be measured against other countries.

Emphasis is placed throughout on a collaborative venture between state actors, practitioners and civil society. At the beginning of each Justice Audit, a small group of national stakeholders is formed to act as a ‘sounding board’ and play an advisory role for the team at each stage of the Audit to build trust, ensure accuracy and promote acceptance and local ownership of the process.

This contributes to good governance in the justice sector in several ways. Firstly, it illustrates the value of accurate data collection and so catalyses the start of a data collection system and culture throughout the justice and security sector using a process approach; secondly, it provides a

as donor agencies (EU, Danida, DFID, USAID, INL) met at Wiston House (Wilton Park) in England between 7-11 May 2012.

¹¹ Available at: www.bangladesh.justiceaudit.org

strong evidence-base to inform planning and budget allocation – for the national authorities and international donors; thirdly, it enables practitioners to see the interlocking needs and inter-dependent nature of the parts and stages of the system and to see themselves as part of a greater whole; fourthly, it enables the public to understand the justice ‘story’ and, by improving the quality of statistics and information available to citizens empowers them with information on the progress towards the targets and the contribution they can make; and finally it provides a key tool for policy-makers in leading the development of a long-term plan for the (re)establishment of a fair and efficient justice system.

Conclusion

In a sector where it appears there is everything to do, time taken to study the situation as a whole, on the ground, is a good place to start. The report of the High Level Panel of Experts on the Post-2015 Development Agenda calls for a ‘new international initiative to improve the quality of statistics and information available to citizens...to take advantage of new technology...to empower people with information on the progress towards the targets.’¹² The Justice Audit aims to do just that. It is ‘the justice equivalent to a full medical check-up’ providing ‘a survey of all factors that contribute to the functioning of the body politic’. Its value is that it is ‘complete’ and presented in an accessible way ‘without being prescriptive.’¹³ This service is one the international community can facilitate. It can then get around the government and support it take forward a reform process at its own pace, based upon an agreed evidence base.

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¹² At: <http://www.post2015hlp.org/the-report/>

¹³ Johann Kriegler *supra* footnote 24.