

## Justice and Accountability

### Key points

1. An effective, fair and accessible justice system is a strong mechanism of accountability. It is a key guarantor of the rule of law, an essential element of democratic politics.
2. Legal empowerment strategies improve the accessibility of justice systems and help citizens demand accountability from officials. Basic legal knowledge – and the threat to use the law to seek redress – can be a powerful deterrent, and serve to hold local actors to account.
3. Non state justice systems tend to be more accessible to poor people, but are often biased against vulnerable groups. Donors may support state policy or civil society groups to help address these issues.
4. Guaranteeing accountability *within* the justice sector can be achieved through a range of external and internal oversight mechanisms that tackle discrimination and corruption.

### 1. Introduction

The purpose of this Briefing Note is to provide a conceptual and practical overview of how justice systems contribute to accountability. It aims to inform DFID programming choices. It is part of a series of Accountability Briefing Notes produced by DFID. Further information, including practical guidance on how to design programmes, can be found in DFID guidance on Safety, Security and Accessible Justice.

Accountability refers to the processes, norms and structures that require powerful actors (governors) to answer for their actions to another actor (the governed), and/or suffer some sanction if the performance is judged to be below the relevant standard.

The Briefing Note introduces the various accountability functions played by a justice system (section 2). It illustrates the relevance of ‘high-level’ justice sector accountability relationships for political governance and state-building (section 3). It then explains how poor and excluded individuals and groups can use state and non-state justice systems to demand accountability from power-holders and obtain redress (section 4). It also stresses the ways in which accountability relationships need to be strengthened within justice systems (section 5). Finally, it identifies implications for DFID (section 6).

## 2. Accountability functions of a justice system

A country's justice system defines, interprets and enforces the formal, legal, and regulatory 'rules of the game'. In an accountable system of governance, these are standards which should be respected by all individuals and state officials. This Briefing Note focuses on the accountability of public organisations and power-holders, but a country's legal framework also provides for the accountability of individuals, communities and private organisations.

DFID's [Briefing Note on Accountability](#) defines the key elements of accountability. It shows that a justice system is a mechanism of 'strong' accountability because it requires more than information and explanation. It enables adjudication and the application of sanctions if public action is inadequate or inappropriate when judged against agreed standards. Victims can obtain redress and compensation.

### *Three key components are essential to provide 'strong' accountability*

- **Norms and standards:** These are used to assess the behaviour and performance of public officials. They can be based on universal values such as human rights. They are often set out in laws and regulations.
- **'Answerability':** The different parties (defendants, plaintiffs or witnesses) are called upon to answer to allegations, justify their actions or provide information. In criminal cases, prosecution services, investigative judges or defence lawyers gather evidence and present their different perspectives.
- **'Enforceability':** adjudication is followed by sanction or compensation where appropriate. A judge may decide on guilt or innocence, penalties or compensation. A court order can stop detrimental actions. Police, prisons, bailiffs, debt-collecting agents all play a part in enforcing judgements.

#### **Box 1: The main components of a justice system** (see also Diagram 1, page 15)

- Legal framework (constitution, statutes, case law);
- Police, including non-state mechanisms (security guards, neighbourhood watches);
- Social crime prevention initiatives;
- Prosecution services;
- Legal profession, including legal aid lawyers and public defenders, professional training and standards institutions;
- Judiciary and the courts (including magistrates and higher state courts for civilians, and military court structures);
- Council of Chiefs and other traditional rulers as well as customary or traditional courts;
- Parliament and parliamentary oversight committees;
- Attorney General and other government lawyers;
- Alternative dispute resolution mechanisms, including mediation and arbitration;
- Penal system (prisons for remand and sentenced prisoners, probation services);
- Bodies responsible for law reform, legal aid and human rights;
- Oversight organisations, including Human Rights Commissions, judicial oversight bodies, police oversight bodies, complaints bodies, Ombudsmen;
- The Ministries to which sector institutions are accountable;
- Civil society organisations concerned with the justice sector including Bar Associations, police associations, human rights groups, legal aid or penal reform organisations.

### *Informal institutions often determine how accountability works in practice*

The formal accountability of public officials is defined by statutory law and regulations. However, social norms and relations influence how formal accountability is actually exercised. At the local level, accountability can be channelled through informal, customary or traditional norms and mechanisms, often a more influential source of local standard-setting and dispute resolution than formal systems.

### *Justice systems offer channels of ‘horizontal’ and ‘vertical’ accountability...*

DFID’s definition of accountability distinguishes between horizontal and vertical accountability (see Accountability Briefing Note). A justice system is an important channel for **horizontal accountability** because state entities can use legal and judicial proceedings to demand answers from and sanction other state entities. Even a president is subject to the decisions of a country’s highest court (see section 3).

The separation of powers between different branches of government is key. A strong, independent and well-respected judiciary can provide a check on the arbitrary exercise of state power. However, leaders may attempt to undermine this accountability channel if it threatens their interests, such as by removing judges.

A country’s justice system can also be used as a channel of **vertical accountability**. This describes the way in which state entities can be held to account by citizens and non-citizens taking steps to formally claim their rights and seek redress. For example, action can be taken against powerful officials accepting bribes from illegal loggers, as shown in DFID’s publication on [Illegal Logging](#) (see section 4).

Legal empowerment and access to justice are essential to enable the public to use justice systems as an effective accountability channel. Knowledge of the law and access to advice and to fair dispute resolution mechanisms can be a powerful source of empowerment for the poor and socially excluded.

### *... but justice systems often suffer from weak capacity, capture and bias*

In many countries, justice systems are prevented from playing their accountability functions through a lack of resources and weak capacity. Bias and capture can also prevent the equal enforcement of laws.

**Bias** in a justice system will prevent the poor and excluded from accessing their rights because of institutionalised obstacles. Laws may discriminate against certain sections of society, such as denying women equal inheritance or property rights. Courts are often physically inaccessible; lawyers too expensive; proceedings may not adequately protect victims of crime. Measures to enhance fairness and accessibility include both legal empowerment strategies and institutional reforms (see section 4).

**Capture** can include corruption such as prison guards seeking bribes to perform day-to-day tasks. It also refers to undue influence, for example when the police are used in the interest of the ruling party at election time, or if judges fear for their lives when deciding a case against a powerful politician. Strengthening internal and external accountability within a justice system is one way of tackling capture (see section 5).

### 3. The rule of law: upholding political accountability

#### *A fair and effective justice system is an important guarantor of the rule of law*

A country's constitution and legal and regulatory frameworks provide the formal 'rules of the game' against which individuals and organisations can be legally held to account. These can permeate informal norms and popular expectations (and vice versa). The rule of law provides fair standards, open and independent processes and effective mechanisms for holding power holders accountable.

The term 'rule of law' is not necessarily value-laden: it requires only that there is law, equally applied to every body. For example, in Nazi Germany or Apartheid South Africa, public officials respected laws and instructions that were morally abhorrent. DFID uses the UN definition (Box 2), which offers a substantive content incorporating human rights and democratic principles.

#### **Box 2: What is the rule of law?**

The rule of law refers to 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.

Key principles include: the 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.<sup>1</sup>

The **judiciary**, one of the three branches of government, is mandated with applying the constitution and the law, adjudicating disputes and issuing decisions and sanctions in line with these standards.

However, the courts are only one component in the **administration of justice**. They need to work with others in order to reach fair judgements that can be implemented. For example, fair and effective prosecution is essential: prosecutors review, advise on and prosecute cases, ensuring that the law is properly applied. Humane and secure prisons are necessary to detain sentenced prisoners. Political authorities need to allow independent and impartial adjudication. The police in particular have a role at the front-line of the justice system. They are often the principal 'accountability institution' with which members of the public interact on a regular basis.

The rule of law also requires **parliaments** to debate bills and enact laws. New legislation should be publicly announced once officially approved ('promulgation').

#### *The rule of law is a principle which goes beyond the justice sector*

The rule of law sets standards that apply to all, including politicians and bureaucrats in the executive branch of government. This can be an important check on political

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<sup>1</sup> UN Secretary General Report [The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies](#) (2004)

leaders and officials – a restraint so that they do not act ‘above’ the law. It can curtail the powers of the legislature and executive so that they respect the equality of all citizens. A number of mechanisms are described below (see Box 3). DFID can help strengthen these mechanisms, or enable civil society organisations to use them.

### **Box 3: What are the main judicial channels of accountability?**

**Judicial review:** this can involve an assessment of whether a particular statute is compatible with the constitution or a court scrutinizing the legality of an administrative decision or action by the executive. In South Africa, the Treatment Action Campaign was able to challenge a government decision not to provide antiretroviral treatment to pregnant mothers infected by HIV/AIDS. The Constitutional Court ordered the government to provide treatment.

**Electoral disputes adjudication:** disputes regarding the results of elections need to be resolved fairly so as to preserve the legitimacy of the electoral process, and in some cases prevent violent contestations. DFID’s assistance to the 2006 elections in the Democratic Republic of the Congo included training and material support to judges to enable them to resolve election disputes fairly and promptly.

**Individual prosecutions:** political leaders can be brought to account individually in the courts. ‘Immunity from prosecution’ can protect heads of state or government, ministers and parliamentarians from frivolous claims in their official capacity. In serious cases, however, immunities can be lifted. DFID supported the Zambian government to prosecute former President Chiluba and his officials in the criminal court in Zambia and to take civil action in the High Court in London to recover looted assets. DFID provided \$2 million to help finance the Zambian Task Force on Corruption’s activities. In 2007, the London High Court ordered Chiluba to repay £23 million stolen from the Zambian people. This successful prosecution sent a clear message that the rule of law applies to all, including the highest political figures.

### ***The rule of law is an essential element of democratic politics...***

Democratic politics provides a framework to ensure that all people are included in determining how a society makes choices - through elected representatives, guaranteed fundamental freedoms and inclusive citizenship. It is not determined by a specific set of institutions and is not limited to elections. Rather, it is characterised by a set of principles and values, such as accountability, equality and participation.<sup>2</sup>

The rule of law and democratic politics are mutually reinforcing. The rule of law provides some of the foundations for democratic politics to flourish. It is weakened when political power becomes personalised, discriminatory or repressive.<sup>3</sup>

A justice system is required to give effect to laws enacted by democratic parliaments. Such laws can be seen as the expression of the ‘social contract’ between state and citizens. This social contract becomes meaningless if public choices of elected representatives are ignored or cannot be implemented.

Equal citizenship and political equality (e.g. right to vote, freedom of expression) require equality before the law and non-discrimination. In effectively functioning systems, the rule of law guarantees these essential rights (e.g. equal protection and

<sup>2</sup> See [DFID Governance, Development and Democratic Politics](#) (2007)

<sup>3</sup> For more details see USAID Guide to Rule of Law Country Analysis (2007).

benefits of the law; prohibition of arbitrary arrest and detention, regardless of political views or ethnicity, etc). It also protects the right to life by governing the legitimate use of force by state actors (e.g. by the police or gendarmerie during peaceful protests).

### *... and the rule of law is an essential part of state-building strategies*

The rule of law is a fundamental basis on which to engage in processes of state-building since these involve complex negotiations between sources of authority and legitimacy. The rule of law plays a key part in state-building's three core elements:

- (i) A **political settlement** can be reflected in agreed 'rules of the game', often expressed through a Constitution - which defines the organisation and power of state entities and the fundamental rights of citizens.
- (ii) The '**survival**' functions of a state include processes of state-consolidation such as developing the capacity to negotiate, explain, gain acceptance and enforce 'the rules of the game' over a territory and its population. This requires the basic capacities found in the justice sector.
- (iii) The '**expected**' functions of a state include the ability to enable the resolution of societal disputes according to accepted norms.

In periods of transition, there may be an explicit demand for holding political leaders to account for extremely grave crimes, especially in the aftermath of civil wars or authoritarian regimes. **Transitional justice mechanisms** enable countries to pursue accountability for the worst abuses. Box 4 highlights a range of options.

#### **Box 4: How is the UK supporting transitional justice mechanisms?**

**International criminal law:** high level political figures and senior officials, such as the instigators of the Rwandan genocide, have been held to account individually by international tribunals. The FCO funds the International Criminal Court, the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda.

**Domestic prosecutions:** trials can also be held domestically or with a mix of domestic and international judges to assist in maintaining impartiality. The FCO supports the Sierra Leone Special Court. Those under trial include Charles Taylor, former President of Liberia. In Rwanda, DFID funded the monitoring of grassroots genocide trials ('gacacas') by the NGO Penal Reform International, improvements to prison conditions, and training of paralegals.

**Truth and reconciliation:** non-judicial mechanisms are also important to aid reconciliation, collecting testimonies and gathering evidence to find the truth about past events. To assist the peace process, DFID supported the publication of the Guatemalan Truth Commission's report on human rights abuses during the 36-year civil war. DFID also helped the Rwanda National Unity and Reconciliation Commission and the Uganda Amnesty Commission.

**Reparations and restitutions:** victims and their families can be left destitute by human rights abuses. Reparations or a return of illegally seized property can help restore livelihoods. Morocco's Equity and Reconciliation Commission has recommended direct and equal financial compensations to women relatives of victims, rather than a smaller, indirect share through male relatives. The Commission has benefited from advice from the International Center for Transitional Justice, which receives DFID core-funding.

#### 4. Access to justice and legal empowerment as strategies to improve accountability

Poor people use non-state and state justice systems to settle disputes between individuals, communities or with private organisations. Justice systems also provide a channel to hold officials to account, and obtain redress for human rights violations or maladministration. They can be used as a channel of **vertical accountability** between individuals and the state or local power-holders vested with authority, such as traditional leaders. Box 5 lists different ways by which poor people use these channels.

##### **Box 5: How can poor people use the law to hold local officials and power-holders to account?**

**Traditional, customary law, norms and practices:** it can be difficult for poor people, especially women or those from minorities, to hold traditional or religious leaders to account when these actors abuse their powers or settle local disputes in ways that are unfair or corrupt. However, it may be possible to: appeal within the traditional system; ask for the help of a community based organisation to seek a fairer outcome; or even bring the case to a local state court. In Bangladesh, DFID has funded NGOs work with *shalishes* – a local arbitration system – to ensure that they take women’s rights better into account. In Nigeria, DFID-funded Community Law Centres now offer women the option to have their disputes handled by trained female mediators.

**Administrative law:** Local state officials can be held to account through administrative law. For example, regulations govern how people acquire land title, abide by environmental rules, access health services, buy or rent a home, or acquire permits to open businesses. Internal oversight units, ombudsmen or public complaint bodies can receive complaints against officials violating these regulations. Some countries have specialised administrative, land or employment courts that can hear cases.

**Criminal law:** officials and local power-holders can be prosecuted, and if found guilty, fined or even jailed, when they commit a crime. The police, prosecutor, and judge need to be willing to take on the case in an impartial manner – which may not be politically feasible because of local patronage. In Eastern DRC, DFID funded the NGO Avocats Sans Frontières to facilitate mobile courts and reach remote areas. For the first time in decades, soldiers, police officers or mayors are being held to account for crimes committed during the conflict – such as rape or property grabs.

**Civil law:** individuals or communities can hold to account officials for a breach of contract or statutory duty. Assets recovery or property claims are often civil cases. The cases against former President Chiluba of Zambia included criminal and civil claims (see box 3).

**Human rights law:** international, regional and constitutional human rights norms and standards can seem very distant from local realities. However, local human rights groups can protect the most vulnerable, intervene on their behalf, or even bring a case to court. The UK’s Global Conflict Prevention Pool is helping the Human Rights Ombudsman’s Office in Colombia to put ‘Community Defenders’ into remote areas where communities are at risk from violent attack due to the conflict. Community defenders have helped people understand their rights, documented allegations of human rights abuses, and provided highly visible support to communities at risk.

### ***Non state systems can be an accessible channel of accountability...***

Traditional, customary or informal justice systems play an important role in the lives of poor people, especially in contexts where the official justice structure is largely absent or incapable. Hard data are difficult to come by, but it is estimated that around 80% of disputes are resolved through these channels. Traditional rulers, religious leaders, village elders, local elites – even illegal groups such as paramilitary or guerrilla groups that control an area – may be asked to arbitrate disputes.

Non State Justice and Security systems (NSJS) tend to be more immediately accessible, both geographically and culturally: for example, illiterate rural community members can apply to village elders or local committees with more ease than urban-based courts. These systems may be more likely to respect local customs and norms, have greater local legitimacy, and strengthen social capital. Where they work well, they can empower people and lead to real, local-level accountability.

### ***... but donors need to work with Non State systems with caution***

However, deficiencies of NSJS systems are manifold and can include: discriminatory norms, corruption, abuse of power, non-compliance with human rights standards, inhumane or degrading punishments, and lack of accountability to the public for their decisions. The party able to muster most authority is likely to determine the venue, process and thus the likely outcome. In many contexts, women are not allowed to occupy positions of authority within these processes.

It is difficult for donors to intervene directly in NSJS systems to strengthen their accountability and fairness. Instead, donor approaches tend to favour working through the state or civil society to influence NSJS<sup>4</sup>. For example, donors can:

- facilitate the development of state policy towards them (e.g. enact legislation to define and regulate NSJS systems; require systems to comply with human rights standards or constitutional provisions);
- fund the activities of civil society organisations (e.g. help ensure fairer outcomes and assist NSJS systems to become more responsive to the needs of minorities and women; conduct or help establish alternative NSJS systems to which cases can be appealed; train personnel).

The right approach will depend on an assessment of the characteristics of the system. Working with it in a constructive way may be best. Donors should not make assumptions: for example, in Northern Nigeria there is evidence that women prefer *sharia* courts because they are cheaper, more accessible, and more predictable – despite serious weaknesses. Donors should also not assume that state systems do not suffer from similar challenges, such as discrimination. In some cases, however, it may be preferable not to engage with NSJS, or even see them dissolved as part of an overall justice sector strategy. Where NSJS systems violate basic human rights, donor engagement is both inappropriate and unlikely to achieve reform.

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<sup>4</sup> For practical guidance, see the 2004 DFID [Briefing Note on Non State Justice and Security Systems](#).

### **Box 6: Strengthening non state systems' accountability in Malawi and Nigeria**

In Malawi, DFID works with the Catholic Justice and Peace Commission to enhance the accountability of non-state systems. For example, a CBO supported by the project has helped an orphan challenge a village headman and regain access to his property. The project also trains chiefs and helps record cases.

In Ekiti and Enugu States of Nigeria, DFID has supported the training of traditional rulers and customary court judges in the use of simplified procedural guidelines that guarantee fair hearing. In addition, to improve transparent decision-making, traditional rulers have been trained to introduce a case record keeping system.

In Jigawa and Enugu States, DFID has been supporting Informal Policing Structures. Neighbourhood Watches and Vigilante groups have acquired skills and capacity to enable them to work within the scope of legality, whilst also increasing their respect for human rights. By integrating their roles and activities within the operations of the formal police, greater oversight and accountability in the operations of the groups is achieved.

### ***Legal empowerment strategies are effective...***

Poor people attempting to access local justice can face many barriers, including: excessive legitimate and illegal costs (transport costs, court fees, bribes); time, distance and delays; discrimination (in the substance of the law, and during the procedures); or cultural obstacles (complex procedures, use of non-vernacular or technical language). However, basic legal knowledge – and the threat to use the law to seek redress – can be a powerful deterrent to hold local actors to account.

Legal empowerment refers to the use of legal services, often combined with socio-economic initiatives, to alleviate poverty and improve governance. Civil society organisations can provide a range of para-legal and legal services for poor people seeking to use state and non-state systems (see Box 7 for details). They can also monitor human rights, lead public debates and produce media reports. While these activities may lack the power or authority actually to sanction an individual or organisation (enforceability), they can play a critical part in developing awareness and contribute to a wider culture of accountability. Nevertheless, the potential for civil society action is liable to be constrained if the broader system is unresponsive.

### **Box 7: Legal services for the poor**

**Legal literacy:** the provision of basic information about a legal system and how it can be used. This can be integrated with other development activities, for example reproductive health, natural resources management or housing projects, helping poor men and women become aware of their rights with regards to public services. In Sierra Leone, DFID funded a pilot in the rural Moyamba district. Youth and women's organisations were trained about peaceful methods of resolving conflict. As a result, some developed alternative methods of dispute settlements.

**Paralegal and legal advice:** help provided to individuals to deal with a particular case or situation. Paralegals are non-lawyers with a basic knowledge of the law and skills; they can be based in communities, or help navigate the formal judicial or administrative system (e.g. the Paralegal Advisory Service, in Malawi, Kenya or Benin).

**Legal aid:** the state or civil society organisations may provide subsidised or free legal consultation or representation in court, in criminal or civil cases. State-funded lawyers, bar associations, women lawyers' associations or university law students may be involved. In Nigeria, DFID has help build the capacity of the government Legal Aid Council, and has funded the setting up of Community Law Centres where poor people receive free legal information and assistance. In Somaliland, UNDP is supporting law students' training through legal clinics where vulnerable individuals can receive free advice.

**Public interest litigation:** court cases brought on behalf of disadvantaged groups or the general public against government agencies with a view to changing policy and practice. The aim can be to promote social change beyond the outcome for that particular case. In Ghana, DFID funds the Centre for Public Interest Law through the Rights and Voice Initiative. It champions the rights of disadvantaged groups such as communities affected by mining and slum dwellers by taking their cases to the law courts and seeking redress.

### ***... and legal empowerment can also be supported by donors***

In order to ensure that poor people can make best use of state and non state systems of justice, it is important for donors to consider funding legal services NGOs. These can include Bar Associations, local human rights groups, or community-based organisations. In addition to direct service provision, they can advocate on behalf of the poor and influence government policy and the behaviour of non-state actors.

It may also be useful to consider supporting other civil society initiatives, either through stand-alone programmes, or as components of larger programmes. For example, Sierra Leone's Justice Sector Development Programme, funded by DFID, has facilitated civil society participation in the development of the government-owned justice sector strategy. It is also funding civil society projects which will assist in strategy delivery.

#### **Box 8: Nijera Kori, Bangladesh**

In Bangladesh, DFID supports an activist NGO called Nijera Kori, meaning 'we do it ourselves'. The organisation works towards the mobilisation and empowerment of the rural landless poor, concentrating on the multiple economic, political and social constraints that prevent them from claiming their rights. It has assisted landless groups in playing an active role in village *shalishes* (local arbitration) which are usually controlled by local influential people. Increasingly, the *shalishes* are forced to take into account the opinions of the poor and marginalised. They are also providing better access to justice for women who are victims of domestic violence.

## 5. Who guards the guardians? Accountability within the justice sector

Corruption, weak capacity and questionable legitimacy can undermine the justice system just like any other state institution. Justice institutions – as accountability bodies – themselves need to be held to account. Programmes need to consider how best to strengthen both internal and external channels of oversight and accountability, including accountability processes that directly involve the population in formal processes (known as ‘diagonal accountability’).

### *Accountability requires balancing independence and integrity*

The judiciary and constitutionally independent bodies, such as National Human Rights Institutions, often struggle to maintain their independence and operational autonomy from the executive. As a result, they may confuse demands for accountability with illegitimate efforts to control their activities by political authorities. At the same time, their credibility will be diminished if they cannot be held to account by the public and their elected representatives, for example in order to respond to allegations of corruption or incompetence.

Separation of powers means that judicial performance is not open to government or parliamentary scrutiny in the same way as executive bodies. The mandate of National Human Rights Institutions, such as Ombudsmen, typically excludes the judiciary. Other approaches are needed which donors can consider supporting (see Box 9).

As with all reform processes, it is important to take into account the nature of the legal system and the political tradition of the country. The inherent tension between judicial independence and accountability plays out differently in different legal traditions, with their own understanding of the separation of powers. For example, in ‘civil code’ legal systems (as found in continental Europe) judicial independence can be less of an absolute value and the Ministry of Justice can have a greater role than in ‘common law’ systems (as found in the UK and most of the Commonwealth).

### Box 9: How can judicial accountability be enhanced?

**Governance structures:** High Judicial Councils with responsibility for selection, promotion, sanctions and financial management can provide external accountability. Their composition is important in order to balance political independence and public accountability: for example a mix of senior judges, lawyers, legal academics, and parliamentarians, which does not give undue influence to politicians.

**Financial accountability:** financial dependence on the Ministry of Justice can undermine judicial independence. However, when budgets are prepared and managed directly by the judiciary, they should be scrutinised for financial propriety and respect public procurement.

**Legal accountability:** a judgement gives the legal reasoning behind a decision and any applicable sanctions. Cases can be appealed if there has been judicial error and the defence can also ask for a judge to be removed for lack of impartiality. In some countries, judicial decisions are published, demonstrating that legal reasoning has been applied to a case properly.

**Transparency, simplification and alternatives:** simple court procedures, explained and understandable for court users, can prevent corrupt behaviour. Alternatives to courts can enable dissatisfied users to use cheaper, faster mechanisms.

**Individual integrity and professional associations:** codes of conduct and declaration of assets can clarify expected behaviour and promote self-regulation. Professional associations can set these standards and, when democratic, monitor the leadership. Association of judges can enable the lower court judges to have their voices heard. Bar associations regulate the legal profession but can also hold the judiciary to account and push for changes.

Source: Transparency International [Global Corruption Report](#) (2007)

A number of international principles provide a useful starting point to assess the degree of independence and accountability of the justice system.

- The [Bangalore Principles of Judicial Integrity](#) were adopted by Chief Justices from several countries and set out six core values to guide judicial office: independence, impartiality, integrity, equality, propriety and competence, and diligence. They complement existing [UN basic principles on the independence of the judiciary](#) and the [Commonwealth \(Latimer House\) Principles on the Three Branches of Government](#) which gave insufficient attention to accountability. The Bangalore Principles can be used to develop national codes of conduct and enforcement mechanisms. They are important because they encourage judiciaries themselves to become responsible for their accountability and integrity.
- The [Paris Principles for National Human Rights Institutions](#) provide standards which can be used for constitutionally independent bodies, including regarding powers, appointments, composition, and funding. A [guide](#) has been issued to help assess such institutions.<sup>5</sup> It recommends measures to enhance public accountability through public reports and consultations.

<sup>5</sup> OHCHR / ICHR [Assessing the Effectiveness of National Human Rights Institutions](#) (2005)

### ***Accountability requires a mix of internal and external mechanisms...***

Internal accountability mechanisms are varied and can be strengthened as part of institutional reform programmes funded by donors. Improving internal supervision; internal complaints mechanisms; effective human resource management systems; codes of conduct and internal discipline can contribute to better managed and accountable institutions.

External oversight can be a powerful way of holding justice sector institutions to account. Countries usually have a 'multi-layered' system of oversight which can be assisted.<sup>6</sup> Judicial accountability mechanisms are examined in section 3 above. They of course provide external (horizontal) accountability for all justice sector institutions.

#### **Box 10: Internal accountability as an entry point in Yemen**

Can reform start with internal accountability improvements, or is it too risky? In Yemen, internal accountability has proved a successful entry point. DFID started its engagement with the police and judiciary by offering to support internal inspection units. This had several benefits: it facilitated an assessment by the organisations themselves of their strengths and weaknesses; suggested managerial improvements; and avoided commissioning external reviews which might have been ignored. It has also prompted new initiatives on the part of the police to institute regular local level performance assessments as well as encouraged other agencies, such as the public prosecutor, to look at their inspection regimes.

### ***... and accountability can involve direct participation to promote responsiveness***

'Diagonal accountability' refers to increased efforts by citizens to engage directly in processes once reserved for state agencies. State institutions themselves can seek greater participation from the public. Responsiveness to the public's priorities is often seen as an outcome of accountable institutions. In Nigeria, a survey of public perception of the police service found extremely negative views of the police. This led to significant internal changes and improvements within the police service. A follow up survey found significant increases in public perceptions of police effectiveness.

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<sup>6</sup> OECD DAC [Handbook on Security System Reform, Chapter 7.1: Democratic Oversight and Accountability](#) (2007).

### **Box 11: What are the main external oversight and control mechanisms?**

**Executive control:** head of States and Ministries have ultimate responsibility for the performance of executive institutions. For example, the police, prisons or parastatal agencies (e.g. Law Reform Commission) should be accountable to the government for their financial and operational performance (Ministry of Interior and Ministry of Justice).

**Parliamentary oversight:** parliamentary committees can hold public hearings, scrutinise the use of public funds, be involved in senior appointments and can also promote reforms. To protect judicial independence, the judiciary may not be directly accountable to Parliament. For example, the Ministry of Justice may present and defend the judicial budget.

**Independent Bodies:** Ombudsmen, Human Rights Commissions or specialised bodies, such as Independent Police Complaints Commissions, can be mandated to oversee the performance of executive institutions. They can have investigative powers and instigate proceedings in court. International mechanisms include [UN Special Rapporteurs](#) or the [UN Human Rights Committee on Civil and Political Rights](#). In Ghana, DFID and DANIDA are supporting the Commission for Human Rights and Administrative Justice to investigate allegations of human rights abuses in mining communities.

**Media:** journalists can be trained to understand the operations of a justice system and accurately report cases to promote informed public debate. They can also facilitate understanding of the law, for example through radio programmes on legal or police issues. Justice sector institutions can also be trained to communicate better with the media – for example the police can use media to build public confidence.

**Civil society groups:** Bar Associations, Human Rights NGOs or religious groups are essential watchdogs, for example monitoring sensitive trials or conditions in prisons. NGOs or research bodies can also undertake studies and public consultations. In Nigeria, DFID supports civil society groups to work in partnership with the police to ensure accountability.

## 6. Implications for DFID

- (i) Include justice system interventions when considering how to strengthen accountability:** Country Governance Analyses are revealing the need to work more on accountability. A country's justice system provides a range of horizontal mechanisms which support democratic politics. They also offer channels of vertical accountability which can be used by citizens to enforce their rights.
- (ii) Legal empowerment is critical for accountability mechanisms to work:** Information, understanding of rights and legal assistance are critical for people to be able to employ existing mechanisms to achieve sanction or demand their rights. Without these elements, legislation, courts and other structures are essentially meaningless. DFID support to this 'demand-side' of accountability is thus important to balance 'supply-side' reforms.
- (iii) Greater consideration of high-level, rule of law accountability is new for DFID:** DFID's Safety, Security and Access to Justice policy promotes interventions that directly impact on the poorest. This remains our preferred entry point to best address poverty. However, when conditions are appropriate, DFID should also consider whether interventions with higher level accountability bodies, such as high level courts or human rights commissions, can contribute to poverty reduction (e.g. after transitions from authoritarian rule, or with progressive judiciaries).
- (iv) Rule of law and accountability apply to power holders *within* the justice sector too:** In addition to considering grassroots justice issues, DFID funded programmes also need to examine how they can strengthen accountability *within* the justice system. Blending internal and external accountability mechanisms can help to generate greater trust in the system.
- (v) Rule of law needs to lie at the heart of state building strategies:** omitting consideration of rule of law and accountability in the political settlement, state consolidation or provision of basic services has the potential to undermine state resilience and the sustainability of our governance assistance.
- (vi) Enhancing accountability is political:** political élites and officials alike are likely to resist initiatives to strengthen judicial or quasi-judicial accountability. Timing and partnerships are key: political transitions or high profile incidents can help create the conditions when assistance can be useful. Under repressive regimes, careful support to civil society can maintain pressure for change by presenting test cases and collecting evidence of abuses.
- (vii) The rule of law is relevant for DFID's partnership principles:** commitment to human rights can be demonstrated by the independence and resourcing of a country's justice system. When there are significant concerns, DFID can work with the British Embassy to monitor the situation and engage in policy dialogue.

For further advice or to share good practice, please contact the Security and Justice team in the Conflict, Humanitarian and Security Department (CHASE), or the Politics and the State team in Policy and Research Division (PRD).

**Diagram 1: Organisations that Deliver Security and Justice**

