

Appendix 1

Master questionnaire

African Human Security Initiative (AHSI) 2

Country assessment on crime and criminal justice

INTRODUCTION

AHSI2 is a follow-up project to AHSI1. The latter provided for a core network of seven established African non-governmental organisations that benchmarked the performance of eight African governments in respect of broad human security issues. This was measured against the commitments taken at the level of the African Union heads of state meetings and thus served as a process that complemented the peer reviews that are undertaken in terms of the African Peer Review Mechanism (APRM) of the New Partnership for Africa's Development (NEPAD).

The purpose of the AHSI2 project is to use the opportunity created by the peer review concept to complement the formal NEPAD/APRM process by focusing on the criminal justice system in selected countries identified for APRM review. Through this process, AHSI2 will build the capacity of an expanded membership and local partners to undertake research on security issues. The eventual objective is that this should facilitate work orientated towards the Peace and Security Council of the AU.

By timing its outputs so as to inform and complement the APRM process in each country, AHSI2 will exploit the opportunity to broaden the application of

the APRM approach and principles to those areas currently outside the focus of the review.

Background information on the project

At the 2004 Annual Bank Conference on Development Economics (ABCDE conference) the World Bank emphasised that there is a need to focus on the security of developing countries. Security was defined as a public good that was conditional for development. The main concern was with state repression and ineffective security and justice systems. Development in Africa thus requires a secure environment – encapsulated by the so-called ‘security first’ or ‘security and development’ approach. Human security requires, first and foremost, an appropriate, functioning state system. This project aims to encourage greater focus on state responsibility and capacity to provide security. It will do so by focusing on the efficacy of the criminal justice system in each country. Specifically, the focus will be on the nature of crime and the state of the police and judiciary. In doing so the project will be informed by a fundamental concern for respect for human rights and the rule of law as the key requirements for democracy, security and development. In order to build confidence among both the public and the political leadership in countries where respect for human rights and the rule of law have largely been absent, the benefits of these values will be well demonstrated.

Aims

The specific aims of the project are:

- To complement the work of the Africa Peer Review Mechanism in areas not covered by it and to mimic the formal APRM process in its methodology and in the development of appropriate frameworks to support the implementation of national commitments and obligations.
- To provide governments with empirical evidence on the status of criminal justice and its impact on political processes in their countries. This involves working with them to develop a set of realistic and informed recommendations for each area to help bridge gaps between national commitment and implementation.

- To identify the structural and other inherent weaknesses in the criminal justice systems, and encourage policy dialogue and public awareness of the broader implications of crime on the consolidation of democracy.
- To support the development and build capacity amongst a core network of partners in an area where civil society organisations are traditionally the weakest in Africa, namely content work on crime and justice matters.

Questions

This document provides a guideline for each of the five countries that will be reviewed in this process in terms of AHSI2. Country specificities will be taken into account through a process of indigenisation by the local partners who will be involved in the study. The AHSI2 secretariat will render technical support through all the phases of the research.

The review aims to assist and monitor the implementation capacity in each of the areas listed below:

- Adherence to regional/international instruments
- Participation in regional institutions working on combating crime
- Crime
- Policing
- Prosecution
- The judiciary
- Access to justice
- Juvenile justice
- Customary justice

For each section, key questions are posed and these are followed by some indicators which serve as a guide in the assessment process.

Regional and international standards

A list of regional and international protocols, conventions and standards that were adopted for managing crime and enhancing the efficiency and effectiveness of the criminal justice system on the continent is given below. The aim is to assess the country's commitment to these guides and explore alternatives

that have had the same effect. Other guides that have not been mentioned but are applicable for the country should be included and all sources must be cited. Add all other necessary indicators.

Question 1: Has country ratified or acceded to all relevant African instruments aimed at curbing crime?

Question 2: How has it fared at implementing the various African instruments aimed at controlling crime?

Regional/international instruments

- Universal Declaration on Human Rights, 1948
- African Charter on Human and People's Rights, 1981
- UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules 1985), 1985
- Conference on Security, Stability, Development and Cooperation, 1991
- The Kampala Declaration on Prison Conditions in Africa, 1996
- SADC Protocol on Combating Illicit Drugs, 1996
- Nairobi Declaration on the Problem of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, March 2000
- Protocol against the Smuggling of Migrants by Land, Sea and Air (GA 55/25 annex 11), 2000
- Protocol to Prevent, and Suppress and Punish Trafficking in Persons, especially Women and Children (GA 55/25 annex 11), 2000
- United Nations Convention against Transnational Organised Crime (GA resolution 55/255), 2000
- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, 2001
- Declaration and Plan of Action on Control of Illicit Drug Trafficking and Abuse in Africa, 2002
- Protocol on the Control of Firearms, Ammunition and other Related Materials, 2002
- UN and AU anti-corruption codes

Cite dates of ratification and how these have been domesticated and membership dates to any of the bodies listed below. Document the extent of compliance. If not ratified, give evidence of other codes or policy instruments that have been implemented and to what extent they meet the objectives.

Regional institutions working on combating crime

- African Commission on Human and People's Rights
- Africa Institute for the Prevention of Crime and the Treatment of Offenders
- Conference of Central, Eastern, Southern Africa Heads of Correctional Services East African Police Chiefs Cooperation Organisation
- International Law Enforcement Academy Southern African Regional Police Chiefs Cooperation Organisation
- Regional Centre on Small Arms and Light Weapons in the Great Lakes and Horn of Africa Region
- Southern African Development Community, Drug Control Committee
- Southern African Forum Against Corruption 1999
- United Nations Interregional Crime and Justice Research Institute

Question 3: In complying with these instruments, how has the government dealt with capacity constraints?

Attempts must be made to disaggregate all data by key demographic variables such as gender, province and location.

CRIME

Crime in Africa is argued to be a developmental concern rather than a law enforcement issue. Weak institutional capacity for effective policing, coupled with a dearth of basic information on crime and criminal justice statistics such as prosecutorial, court and prison data, hamper efforts to make appropriate diagnostic solutions. Whilst such statistics do not necessarily suffice for a clear and concise indication of levels of crime, they provide a clear indication of the operations, and at times the efficiency and effectiveness of the criminal justice

system. In this section, attention will be on analysing the extent of crime in the country.

Incidence of crime

- Levels of crime/prevalence of crime/perceptions of crime
- Use police reports/existing survey data/victimisation surveys/anecdotal evidence from the media reports (corroborated)
- Provide evidence on organised crime
- What are the common crimes that females commit?
- Measures effected to combat various types of crime, such as white collar crime
- The current situation of corruption/perceptions on levels of corruption
- Current problems and solutions relating to corruption in the criminal justice system/problems and solutions at the investigation and prosecutorial level/problems and solutions at the trial level
- Role of the media in bringing corruption to light/general measures taken to prevent corruption/constitutional provisions for guarding against corruption
- Parliamentary reports on high level crime/prominent cases of corruption in the country and how this has been resolved
- Evidence of international/regional cooperation in corruption control
- Levels of drug trafficking
- How has drug trafficking been combated?
- Give evidence of human trafficking
- Illegal migrants and xenophobia/protection of minorities' rights and refugees
- Money laundering/indicate measures take to implement the recommendations on anti-money laundering

Prosecution

Many countries have directorates of public prosecution (DPP) that are responsible for prosecuting trials and appeals on behalf of the state, provide legal advice to law enforcement agencies on investigations and bureaus and departments on measures to reform the criminal law and in the institution of criminal proceedings.

Ideally, the Office of Public Prosecutions operates independently of government. In many cases, ultimate authority for authorising prosecutions lies with the Attorney General. Because this post is associated with a political role, it is desirable that this function should be carried out in a non-political (public) service. In most circumstances, the prosecutorial powers of the attorney general are delegated to the DPP. This section scrutinises the efficiency of this department.

Outline

- The general mandate of the office of the DPP
- Views on the autonomy of the DPP's office in deciding which cases should be prosecuted
- Linkages between the DPP's office and other law enforcement agencies, such as the Anti-Corruption Commission and the Police Service
- How effective are the linkages? If not effective, what are the constraints? What can be done to enhance the linkages?
- What should be done to enhance the autonomy of the DPP's office?

Provide evidence

- What cases are normally brought before the DPP's office for attention?
- What constraints, if any, does the DPP's office face in making decisions on some of the cases brought before it? How are such constraints normally dealt with?
- Is the DPP's consent necessary for the prosecution of all cases involving corruption?
- Is there any cooperation between the DPP's office and similar institutions within the region? If so, what are the benefits of such cooperation?
- Which prominent cases have been dealt with by the DPP's office in the past three to five years? How were such cases resolved?

Policing and law enforcement

The police enforce laws passed down by government as well as protect citizens from potential and actual threats. In order to provide a safe living and working environment successfully, the police force has to rely on cooperation of the

public. Both issues become problematic in the absence of an environment that upholds the rule of law and where resources are scarce. The aim here is assess effectiveness of the police force, identify resource constraints and suggest possible measures for reform.

Question 1: Are policing institutions effectively structured and are resources adequate to ensure professionalism and integrity in public services?

Question 2: Is the police force subject to the rule of law?

- Describe resources the force has (such as the number of stations and their location), as well as any special facilities
- Outline
 - Code of conduct for the police
 - Independent bodies for monitoring police abuse
 - Ombudsman's reports on police assaults/unfairness
 - Regularity and quality of reports to treaty bodies
 - Adequacy of budgetary provisions
 - Programmes for training or development of the police force and whether and how this is used for promotions
- Give information on mechanisms that make the police accountable to other bodies in the criminal justice system, such as the judiciary

Question 3: What mechanisms have been put in place to encourage and promote effective citizen participation in policing?

- Provide evidence of legal, policy and institutional steps to ensure broad participation by all stakeholders, including community-based organisations, the private sector, media, women's groups, the disabled and minorities
- Describe the system in place, funds allocated for the processes, how sustainable are these efforts? What can be done to enhance effectiveness and ensure sustenance?

- Assess the effectiveness of these measures
- Determine the extent of private policing arrangements

Prisons

The codes that specify how prisoners should be handled pose quite a challenge for resource starved nations that also grapple with adhering to universal human rights as specified by the United Nations conventions. While the nature of prisons and prison systems do vary, there are some standards that ought to be upheld in the treatment of prisoners. The aim is to identify capacity problems in the management of prisons and propose solutions for reforms where necessary.

Question 1: Does the actual situation in prison conditions and treatment of prisoners reflect a respect for human rights and dignity?

Question 2: Are the international principles for the protection of all persons under any form of detention or imprisonment complied with?

Question 3: What are the needs of female prisoners?

- Number of inmates v number of prisons, allocation of prisoners by gender/age/offence committed, general conditions, meals, bedding, medical attention
- Incidence of illness in prisons, especially TB and HIV/AIDS
- Handling of pre-trial detainees and those who have been convicted
- Access to legal counsel
- Staff conditions, resources (pay attention to gender differences throughout)

Judiciary

The judiciary is responsible for administering justice and the term is used to collectively refer to the judges, magistrates and other adjudicators who are at the core of the system. Under the doctrine of separation of powers, it is the branch that interprets the law. To ensure justice and fairness, the judiciary has to be independent, yet many studies demonstrate that executive interference tends to

skew justice delivery in many African countries. This section aims to identify the loopholes in the administrative setup of the judiciary and how this affects the legitimacy of some of its decisions.

Question 1: Is the judiciary independent?

- Provide evidence on the extent of independence of the judiciary, such as appointment procedures, security of tenure, access to resources, dispensing of justice, enforcement of judicial decisions by the state
- Describe the process of appointing members of the judiciary as well as other top security officials
- Assess the safety of judges who are dealing with sensitive cases, for example corruption

The criminal justice process

This process follows the steps set out below and needs to be assessed at each stage:

investigation → search warrant → interrogation → arrest → indictment →
arraignment → bail → plea negotiations → trial → the verdict → appeal

- Are procedures followed timeously in dealing with suspects after a report has been filed? Find evidence of the average time that different offenders take to move through the whole process
- Where does the system stall, or does it proceed quickly? Give evidence and statistical data
- Are criminal judgments based on written law?
- Assess the effectiveness of the general criminal justice system, with emphasis on the role of the judiciary. Look at the overall system in terms of delivering results that are judged to be generally free and fair.

Access to justice

Access to justice refers to how different people – males/females, rich/poor, offenders/victims – are able to penetrate the structure entrusted with justice delivery and the satisfaction they get from it. Literature and field studies reveal that African criminal justice systems fail to cope with demands because they operate within extremely limited infrastructure and funding. How then have the countries fared in the equitable delivery of equal justice for all? The aim is to assess the efficiency and effectiveness of the system as well as identify areas that require strengthening.

Question 1: What bottlenecks exist in the criminal justice system?

Does the justice delivery system meet the needs of female victims/offenders? Use rape and domestic violence victims' experiences and records as evidence.

Question 2: What progress has been made towards gender equality in all areas of the criminal justice system?

Gather evidence of gender ratios amongst staff in the police, prison and judiciary services. Also provide information on any gender disparities in salary structures.

Question 3: What policies, legislation and strategies are in place to ensure access to justice for marginalised groups?

- Outline evidence of legal policy processes and institutional steps to ensure access to justice for marginalised groups, such as the poor, juveniles and women

- What are the social and legal problems that women face when they seek justice?
- Give evidence of resources allocated for this and show results in terms of percentages accessing such facilities by gender, age, location (rural/urban)
- Pay attention specifically to the availability of resources for the rural poor
- Specify studies carried out on the status of women versus the criminal justice system
- Gather evidence on vigilante justice

Juvenile justice

Juvenile law is mainly governed by state law and most countries have enacted a juvenile code. The main goal of the juvenile justice system is rehabilitation rather than punishment, but children, both offenders and victims, often struggle with the justice system in most African countries. The UNICEF Child Protection Unit has thus attempted to control and stabilise the child justice process in a number of countries through the provision of technical, capacity-building and financial support. This has led to the establishment of child friendly courts, arrest receptions and referral services for minors in some countries. The aim is to identify gaps in adhering to international standards in dispensing child justice.

Question 1: How has the country fared on the provision of justice to minors?

Question 2: How are the efforts to address the problem of children who have to deal with the entire justice process organised (centralised/decentralised)?

- Document the development of human rights with regard to juveniles and the enforcement of regional/international instruments
- Explain the system/reforms implemented in the country, describe the statutes that provide methods for dealing with juvenile delinquency, the number of related institutions, methods of providing for the safety and welfare of children, staffing of relevant institutions. Mention cases as evidence where necessary

- Identify the rules with which state laws must comply with regard to juvenile court procedures and punishments
- Mention problems concerning juvenile justice in the country, for example relating to pre-trial detention
- Gather evidence of alternative sentencing options

Customary justice

This section focuses on the role that non-state dispute resolution systems, typically based on customary, traditional or tribal systems of justice, may play in fostering the rule of law in post-conflict societies. The intention is to assess the potential allocation of jurisdiction between formal and customary systems of justice, approaches to adapting customary practices that may contravene international human rights standards and the limits and problems in the use of customary justice mechanisms. Explore the coexistence of formal and informal systems in the particular country. The aim is to provide guidance on the potential role of customary justice systems.

Question: What is the role of customary justice in the country and what is the position vis-à-vis the Constitution?

- Outline Africa/country-specific informal justice systems as well as evidence of restorative justice
- Indicate the nature of crime cases handled by the structures dispensing these services and identify the target group that mostly seeks or is forced to seek justice through customary structures