

# Action Sheet 11: Ensuring access to justice

## Key message

1. Access to justice is a basic right as well as a key means to defend other human rights and ensure accountability for crime, violence and abuse. In paving the way for peace and national reconciliation, justice also plays an important role in addressing the causes of conflict and displacement and therefore in supporting durable solutions to displacement. Efforts to strengthen the rule of law and ensure full and equal access to justice must form part of the humanitarian response from the outset. This action sheet gives an overview of common challenges to access to justice in the context of internal displacement and provides advice on how these can be addressed.

## What is justice?

2. While the exact meaning of the term may differ from one country to another **ideas of justice** are common to all cultures and generally include notions of fairness, accountability and equity of outcome. For the purpose of this handbook, **access to justice** can be defined as the ability to obtain an adequate remedy for any harm suffered. Such remedies can take different forms, ranging from restitution or compensation for the harm done to penalties or punishment of those responsible therefore.

3. **Systems of justice** generally have two main components:

- A **body of law**, which consists of national law (constitutional, federal, provincial and municipal, and sometimes traditional or religious law) as well as international (and regional) law. The extent to which international law can be directly enforced before national institutions of justice may differ from country to country. National law, however, should be in accordance with the State's international legal obligations, including human rights law.<sup>1</sup>
- **Institutions of justice**, which include both formal (state-run) justice mechanisms – such as courts and tribunals – and informal or alternative quasi-judicial mechanisms – such as religious courts, tribal councils or grievance committees. In many post-conflict countries, transitional justice mechanisms have also been established to assist individuals and communities in dealing with the legacy of large-scale human rights violations and abuses. In some cases, regional or international justice institutions, such as the International Criminal Court, can also play an important complementary role. The different institutions of justice are addressed in greater detail in annexes I-III at the end of this action sheet.

“[We have] learned that the rule of law is not a luxury and that justice is not a side issue. We have seen people lose faith in a peace process when they do not feel safe from crime. We have seen that without a credible machinery to enforce the law and resolve disputes, people resorted to violence and illegal means. And we have seen that elections held when the rule of law is too fragile seldom lead to lasting democratic governance. We have learned that the rule of law delayed is lasting peace denied...”

Kofi Annan, Secretary General of the United Nations, Access to Justice Practice Note (UNDP, 2004)

4. The **administration of justice**, whether undertaken by formal or alternative justice mechanisms, must meet minimum standards of fairness, non-discrimination and transparency. All systems of justice should – in terms both of process and outcome – respect human rights. States have a range of human rights obligations, which their justice systems are bound to respect and protect. International involvement with and support for systems of justice similarly must be guided by human rights standards.

## Lack of access to justice in the context of internal displacement

5. The ability to access justice is essential to combat impunity and prevent and respond to protection risks and concerns. Internally displaced persons and other affected populations often however lack or have limited access to justice owing to a number of factors. Armed conflict, generalised violence and collapse of institutions and infrastructure frequently result in a breakdown in the rule of law and access to justice. In some cases, an otherwise functioning justice system may remain out of reach for displaced individuals and communities owing to discrimination, marginalisation and poverty. These and other obstacles to ensuring full and equal access to justice are outlined in table 1 below.

<sup>1</sup> For further information see Chapter \*\* on the Legal Framework.

6. Having fled their homes and lost their livelihoods as well as the protective presence of their families and communities the internally displaced may find themselves at increased risk of violence, exploitation and abuse at the same time as their access to justice and other remedies is curtailed owing to displacement. Breakdown in the rule of law and access to justice contributes to a culture of impunity, reinforces discrimination and poverty, and undermines the search for peace and reconciliation.

**Table 1: Common obstacles to ensuring full and equal access to justice**

Type	Specific Obstacles
Discrimination	<ul style="list-style-type: none"> <li>▪ <b>Discriminatory social and cultural norms and practices</b>, in particular on grounds of gender, religion, ethnic, religious or linguistic background, or other status – such as displacement – that result in lack of access to and/or discriminatory treatment within the justice system. Women as well as various minority groups often face particular obstacles in accessing justice.</li> <li>▪ <b>Chronic under-representation of women and minority groups</b> in the justice and law enforcement sectors, which can contribute to lack of attention to and understanding of protection risks faced by these groups.</li> </ul>
Normative obstacles	<ul style="list-style-type: none"> <li>▪ <b>National laws that contradict, fail to recognise, or narrowly interpret</b> human rights, including rights related to access to justice as well as rights relating to specific protection risks. For instance, national laws may fail to recognise a certain right (e.g. protection from rape), define it narrowly (e.g. definition of rape that does not include marital rape), or criminalise the victim of a violation (e.g. rape defined as adultery).</li> <li>▪ <b>Incompatibility between national law and traditional, customary or religious laws</b> and practices giving rise to a confusing and complicated normative framework. The latter are often unwritten or not widely known and thus often open to manipulation or abuse.</li> <li>▪ <b>Lack of a clear legal, institutional and procedural framework, as well as professional and ethical standards and codes of conduct</b> governing the work of justice institutions and mechanisms.</li> </ul>
Institutional / administrative obstacles	<ul style="list-style-type: none"> <li>▪ <b>Breakdown of infrastructure and institutions</b> owing to conflict, violence and insecurity.</li> <li>▪ <b>Lack of human and financial resources</b>, including lack of qualified staff and basic supplies (e.g. office space, computers, paper, and telecommunication equipment)</li> <li>▪ <b>Lack of oversight and accountability mechanisms</b> capable of preventing and addressing corruption, patronage, malpractice and abuse in the justice system</li> <li>▪ <b>Weak enforcement capacity</b>, including relating to arrest of offenders and the investigation and prosecution of cases.</li> <li>▪ <b>Lack of appeals procedures</b> for judicial review of decisions</li> <li>▪ <b>Lack of adequate victim and witness protection</b> resulting in exposure to further physical, psychological, economic or other harm at the hands of the perpetrators or individuals or groups associated with them</li> </ul>
Political obstacles	<ul style="list-style-type: none"> <li>▪ <b>Lack of separation of powers and independence of the justice sector</b> (judges, lawyers and prosecutors).</li> <li>▪ <b>Politicization or militarization</b> of public institutions, including segregation along ethnic or religious lines, which may become a source of insecurity, intimidation or violence</li> </ul>
Individual obstacles	<ul style="list-style-type: none"> <li>▪ <b>Lack of affordable and adequate legal aid</b> for disadvantaged individuals and groups, in particular women/girls and minority groups.</li> <li>▪ <b>Lack of public confidence</b> in the justice system owing to actual or perceived bias, corruption, abuse or lack of effectiveness and efficiency.</li> <li>▪ <b>Lack of public information and understanding</b> about rights, institutions and procedures for accessing justice</li> <li>▪ <b>Lack of legal, financial and social resources and support</b>, making it difficult for individuals, particularly for women, to pay for legal aid, travel to attend court hearings etc. Lack of education and/or literacy skills can also limit access to justice.</li> <li>▪ <b>Fear of reprisals, social stigma or ostracism</b> often prevents individuals, especially women and other disadvantaged groups from seeking justice, particularly in cases involving SGBV</li> </ul>

7. It is important to note that victims and witnesses as well as their families and wider communities can be exposed to serious risks as a result of their efforts to seek justice. This includes acts or threats of physical violence, destruction of property, harassment, intimidation, and/or social exclusion at the hands of the perpetrators, the authorities or the community itself. The internally displaced and other disadvantaged individuals or groups, including minority groups, are often particularly vulnerable to such threats. In addition, men and women who speak out and seek justice for acts of gender-based violence, including sexual violence, often risk being ostracized by their family or community and may themselves face severe punishment. Survivors of rape have been forced to marry their rapists or been arrested, detained, and sentenced to imprisonment or other forms of punishment, in some cases to death.

**Note!** Seeking justice is not without risks. Before taking any action ensure that victims/survivors as well as relevant staff and partners **understand the risks involved**, always **respect confidentiality**, and **never disclose information about protection incidents without the informed consent of the victim/survivor**.

### The role and responsibility of the State

8. The State carries primary responsibility for maintaining law and order and ensuring full and equal access to justice for everyone within its jurisdiction. This includes ensuring that all institutions and agents of the State – including the courts, the police, prosecutors and prison authorities – respect and protect human rights. To that effect States are required to:
- Take all appropriate legislative, administrative and other action to **prevent** violation of rights
  - **Investigate** violations effectively, promptly, thoroughly and impartially
  - **Prosecute** or take other action against those allegedly responsible
  - Provide the victims with full, equal, effective and safe **access to justice**, and
  - Ensure that just **remedies are provided and enforced** by institutions of the State

### The role of human rights and humanitarian actors: the protection response

9. Efforts to strengthen the rule of law and improve access to justice should form part of the protection strategy from the outset of an emergency. Such efforts should be based on a comprehensive assessment and analysis of the situation on the ground, including a solid understanding of existing formal as well as informal justice mechanisms. A comprehensive approach is needed, combining efforts to ensure access to justice and results in the immediate term with longer-term structural and system-wide efforts. The table below, together with Annex I, lists some activities which could prove helpful in this regard.

In our work we can ...	
<b>General</b>	
<b>Assessment and Analysis</b>	<ul style="list-style-type: none"> <li>▪ Ensure that protection assessments include matters relating to the rule of law and access to justice, including (i) whether IDPs and affected individuals are able to access justice and obtain remedies for any harm suffered; (ii) the main obstacles they face in this regard as well as activities that can be undertaken to support their capacity to access the justice system; (iii) the capacity of the justice sector and other relevant institutions, such as the police, prosecutors, and the prison system.</li> </ul>
<b>Coordination</b>	<ul style="list-style-type: none"> <li>▪ Ensure that matters relating to rule of law and access to justice are addressed by the protection working group and are closely coordinated with all relevant actors, in particular with the national authorities as well as with international human rights and development actors and, as appropriate, peace-keeping forces.</li> </ul>
<b>Legislative reform</b>	
<b>Legal reform</b>	<ul style="list-style-type: none"> <li>▪ Review national laws, policies and practices and consider whether human rights are adequately recognised in and protected by law. As appropriate, advocate with, and offer relevant authorities assistance to, revise or adopt new laws, policies or practices. This may include signing and ratifying international or regional human rights instruments which the State has not signed on to.</li> <li>▪ Engage with alternative justice mechanisms – such as religious or traditional dispute</li> </ul>

	<p>resolution bodies – and seek ways to ensure that these respect human rights, in particular the rights of women and children.</p>
<p><b>Public information and outreach</b></p>	
<p><b>Information and communication activities</b></p>	<ul style="list-style-type: none"> <li>▪ <i>Support public information and outreach programmes</i> aimed at ensuring that IDPs and other affected individuals <b>are aware of their rights</b>. These should include information about (i) human rights and humanitarian principles in general; (ii) the rights of IDPs and other affected individuals; (iii) the responsibility of the State and its institutions to respect such rights; and (iv) available avenues for redress, whether through the formal or the informal justice system. Activities in this regard include public awareness and educational programs, including information campaigns; workshops; trainings; and by including human rights in school curricula.</li> </ul>
<p><b>Mainstreaming of rule of law and access to justice</b></p>	<ul style="list-style-type: none"> <li>▪ Advocate to ensure that rule of law and access to justice are included in peace-negotiations and agreements, and in return, relocation and integration frameworks and agreements, and in development plans and programmes.</li> </ul>
<p><b>Supporting and strengthening the capacity of persons of concern to access justice</b></p>	
<p><b>Community mobilization</b></p>	<ul style="list-style-type: none"> <li>▪ Support efforts aimed at strengthening, mobilizing and empowering individuals and communities to protect and assert their own rights.</li> </ul>
<p><b>Legal aid and assistance</b></p>	<ul style="list-style-type: none"> <li>▪ Ensure that legal aid is available, affordable and adequate, and provided in a language that displaced persons can understand. This can, for instance, be done (i) by establishing legal clinics and information centers, including mobile clinics and/or (ii) by supporting and training networks of lawyers or paralegals that provide free legal advice.</li> </ul>
<p><b>Material or financial assistance</b></p>	<ul style="list-style-type: none"> <li>▪ Provide modest material or financial assistance to disadvantaged individuals in order to enhance their access to justice. This could include modest financial grants to pay for legal fees, interpretation, or travel cost to and from court.</li> </ul>
<p><b>Safety and security</b></p>	<ul style="list-style-type: none"> <li>▪ Take steps to ensure the safety and security of victims/survivors and witnesses seeking justice. This may include supporting the authorities or civil society groups to develop victim/witness protection programmes; advocating with relevant authorities to guarantee their safety; accompanying them to and from court; observing court proceedings; and – in exceptional circumstances – assisting them in relocating to a place where their safety can be guaranteed.</li> </ul>
<p><b>Rights of the accused</b></p>	<ul style="list-style-type: none"> <li>▪ Take steps, for instance through advocacy, to ensure that the rights of those arrested or detained on criminal or other charges are respected. This includes the rights not to be ill-treated, to be informed of the charges, and to be brought promptly before a judge (see Action Sheet **), as well as the right to fair trial (see legal section)</li> </ul>
<p><b>Reforming and building the capacity of the justice sector and other institutions</b></p>	
<p><b>Institutional reform</b></p>	<ul style="list-style-type: none"> <li>▪ Advocate and support, as appropriate, reform of institutions of justice as well as other relevant institutions, including the police, prosecutors and prison authorities.</li> <li>▪ Advocate and support the establishment of and, where these already exist, support the effective functioning of an independent national human rights institution.</li> </ul>
<p><b>Technical advice and expertise</b></p>	<ul style="list-style-type: none"> <li>▪ Offer or facilitate the provision of technical advice and expertise to build the capacity of the justice sector in the field of human rights and international humanitarian law, including as it relates to displacement. This can be done in various ways, including by (i) providing advice or legal briefs; (ii) holding trainings, workshops and seminars; or (iii) exchanging or loaning staff on a temporary basis.</li> <li>▪ Consider providing such human rights capacity-building support to other related institutions as well, in particular the police and prison authorities as well as to traditional justice mechanisms, civil society organisations and communities.</li> </ul>
<p><b>Material or financial assistance</b></p>	<ul style="list-style-type: none"> <li>▪ Consider providing modest material or financial assistance to justice institutions – both formal and informal - to facilitate and strengthen their work. This can, for instance, include office space, office or communication equipment, computers, or vehicles. Consider providing such support to other institutions as appropriate, such as the police, prosecutors, and prison authorities.</li> </ul>

10. In addition, Annex 1 provides an overview of the specific challenges encountered by the different relevant institutions of the State – the courts, lawyers, the police, the prosecutors, and prison authorities – and gives targeted suggestions on how these can be addressed.

### Key actors

11. Enhancing the rule of law and access to justice requires concerted efforts by a range of actors, foremost of which are national and local actors, including both formal and informal justice mechanisms. These include:
- **National:** The courts at all levels, including the Constitutional Court; police, prosecutors and prison authorities; Ministries of Justice, the Interior, and Education; Parliament; bar associations, lawyers and paralegals; national human rights institutions; university law departments; legally-focused specialised NGOs and civil society groups; traditional, customary or religious councils and associations; the media; IDP communities and affected populations; and the public at large.
  - **Regional:** Courts and commissions, such as the African Court and the African Commission on Human and Peoples' Rights, the Inter-American Court and Commission on Human Rights, and the European Court of Human Rights.
  - **International:** UNDP; OHCHR; DPKO and peacekeeping forces on the ground; UNHCR; UNICEF; UN human rights treaty bodies as well as special procedures of the Human Rights Council, including the Special Rapporteur on Independence of Judges and Lawyers.

### Key international legal principles and standards

12. **International (and regional) human rights law** contains several guarantees which are of particular importance to ensuring full and equal access to justice, including:
- The **right to an effective remedy**<sup>2</sup>, which calls for full, equal and effective access to justice for everyone as well as adequate reparation for violations of human rights. The right to a remedy extends not only to the direct victim, but also may extend to the immediate family or dependents and persons who suffered harm in intervening to assist victims. It can include reparations for physical or mental injury, emotional suffering, economic loss or other substantial impairment.
  - The right to **equal recognition of and equality before the law**<sup>3</sup>, which requires that everyone – including the internally displaced – has access to and is accorded fair and non-discriminatory treatment before courts and tribunals. In many cases, fulfilling this right will require the State to take affirmative action to ensure that the internally displaced are able to access formal or informal justice mechanisms. It may also require affirmative action on behalf of other marginalised groups, such as women, or ethnic, religious or linguistic minorities.
13. Those that have been arrested or detained on criminal charges are also entitled to special protection under human rights law. Firstly, the **right to liberty and security** guarantees protection against arbitrary arrest and detention and lays down certain minimum conditions, including the right to be informed promptly of any the reason for arrest and the charges involved and to be brought promptly before a judge or similar judicial officer to determine the lawfulness of arrest (*habeas corpus*). Secondly, the **right to a fair trial** lays down the minimum substantial and procedural principles (*due process*) applicable in criminal cases. These are outlined in the table below.

<sup>2</sup> The right to an effective remedy is implicit in the obligation to respect, protect and fulfill human rights and is recognized as a general principle of international law. Is also specifically guaranteed in various provisions, including: UDHR Art. 8; ICCPR Art. 2(3), 9(5) and 14(6); ICERD Art. 6; CAT Arts. 12, 13 and 14; CRC Art. 39; and Principle 7(3)(f) of the Guiding Principles on Internal Displacement. See also, at the regional level, AfCHPR Art. 7 and 21(2); AfCHPR Protocol on the Rights of Women in Africa Art. 8 and 25; AmCHR Arts. 10, 15, 27, 63 and 68; Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women Art. 4(g); Inter-American Convention to Prevent and Punish Torture, Art. 9; ArCHR Art. 9 and 16; Cairo Declaration Art. 19; and ECHR Art. 5(5), 13 and 41.

<sup>3</sup> GP Principle 20; UDHR Art. 6 and 7; ICCPR Art. 16 and 26; CERD Art. 5; CEDAW Art. 15; GC IV Art. 50(2); ADHR Art. 17; ACHR Art. 3; ACHPR Art. 3 and 5, ACHPR Protocol on Rights of Women Art. 3(1) and 8

**Table \*\*. Overview of the content of the right to a fair trial<sup>4</sup>**

<ul style="list-style-type: none"> <li>▪ equal treatment before courts and tribunals</li> <li>▪ the right to a fair and public hearing by a competent, independent and impartial tribunal established by law;</li> <li>▪ be presumed innocent until proved guilty</li> <li>▪ be informed promptly and in detail in a language one understands of the nature of charges;</li> <li>▪ have adequate time and facilities for the preparation of a defense and to communicate with council of one's own choosing</li> <li>▪ be tried without undue delay</li> <li>▪ be tried in one's presence, to defend one's self in person or through legal assistance of one's choice; with legal counsel being offered without charge if one lacks the necessary funds or the interests of justice so require</li> <li>▪ examine or have examined witnesses; to obtain the attendance and examination of witnesses on the same conditions as adverse witnesses</li> </ul>	<ul style="list-style-type: none"> <li>▪ have the free assistance of an interpreter if needed to understand the language used in court</li> <li>▪ not be compelled to testify against one's self or to confess guilt;</li> <li>▪ have a conviction reviewed by a higher tribunal according to law;</li> <li>▪ be compensated for any punishment which is conclusively shown to be a miscarriage of justice;</li> <li>▪ not be convicted for any act which did not constitute a criminal offence under national or international law at the time of the conduct (prohibition of retroactivity of criminal law);</li> <li>▪ benefit from any subsequent decrease in punishment.</li> <li>▪ not be convicted for any offence for which one has already been finally convicted or acquitted (<i>non bis in idem</i>);</li> </ul>
--	--

14. Children in conflict with the law are entitled, in addition to the above, to special treatment which takes into account their age, well-being and need for special protection.<sup>5</sup>

**International humanitarian law**

15. In general, States are considered responsible for all violations of international humanitarian law committed by agents of State, including its armed forces and other entities that exercise governmental authority or act in fact under instructions from the State or under its direction or control, and States are expected to make full reparation for the loss or injury caused.<sup>6</sup>
16. Serious violations of the law, including war crimes, crimes against humanity and/or genocide, can also give rise to individual criminal responsibility and all States are obliged to investigate, and if appropriate, punish those responsible for such crimes. This includes both the individuals who committed the crime as well as commanders and other superiors who either ordered or knew, or had reason to know, that their subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent such crimes, or punish the persons responsible.<sup>7</sup>
17. International humanitarian law also prohibits the conviction or sentencing of persons except pursuant to a fair trial affording all essential judicial guarantees.<sup>8</sup> This includes a right to: a trial by an independent, impartial and regularly constituted court; presumption of innocence; information on the nature and cause of the accusation, and to necessary rights and means of defense, including access to legal assistance and interpretation if required. Depriving a person of their right to a fair trial constitutes a grave breach of the Geneva Conventions and can amount to a war crime.<sup>9</sup>

<sup>4</sup> Based on UDHR Arts. 10 and 11; ICCPR Arts. 9 and 14; ICERD Art. 5(a); CEDAW Art. 15, and CRC Art. 40. See also, at the regional level, AfCHPR Art. 7 and 26; AfCRWC Art. 17 and 30; AmCHR Art. 8; ArCHR Art. 7; ECHR Art. 6 and ECHR P7 Arts. 2, 3 and 4. International humanitarian law also states that no one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees. See e.g. Rule 100 of Customary International Humanitarian Law, Volume I: Rules (ICRC, 2005) as well as Common Art. 3(1)(d), GC IV Art. 5, AP Art. 75 and AP Art. 6.

<sup>5</sup> See, in particular, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; the United Nations Guidelines for the Prevention of Juvenile Delinquency (*Riyadh Guidelines*); and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (*Beijing Rules*).

<sup>6</sup> See e.g. Rules 149 & 150 of Customary International Humanitarian Law, Volume I: Rules (ICRC, 2005).

<sup>7</sup> See e.g. Rules 151-155 of Customary International Humanitarian Law, Volume I: Rules (ICRC, 2005).

<sup>8</sup> See e.g. Rules 100-102 of Customary International Humanitarian Law, Volume I: Rules (ICRC, 2005). See also Common Art. 3; GC IV Art. 5 and 66-75; AP I Art. 71(1) and AP II Art. 6(2).

<sup>9</sup> See e.g. GC IV Art. 147, AP I Art. 85(4)(c), and ICC Statute Art. 8(2)(a)(vi) and (c)(iv).

**Basic Rules, Principles and/or Guidelines relating to access to justice**

The following rules, principles and guidelines, most of which have been adopted by States in the UN General Assembly, are based upon and reflect international human rights law and provide useful guidance for States, human rights and humanitarian workers, NGOs and civil society. See [www.ohchr.org/english/law/index.htm](http://www.ohchr.org/english/law/index.htm)

- Basic Principles and Guidelines on the **Right to a Remedy and Reparation** for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law
- Set of Principles for the Protection and Promotion of Human Rights through **Action to Combat Impunity**
- Declaration of Basic Principles of **Justice for Victims of Crime and Abuse of Power**
- UN Principles relating to the **Status of National Institutions** (Paris Principles)
- Basic Principles on the **Independence of the Judiciary**
- Basic Principles on the **Role of Lawyers**
- Guidelines on the **Role of Prosecutors**
- Principles on the Effective Prevention and Investigation of **Extra-legal, Arbitrary and Summary Executions**
- Code of Conduct for **Law Enforcement Officials**
- Basic Principles on the **Use of Force and Firearms** by Law Enforcement Officials
- Body of Principles for the Protection of All Persons under Any form of **Detention or Imprisonment** Basic Principles for the **Treatment of Prisoners**
- United Nations Minimum Rules for **Non-custodial Measures** (the Tokyo Rules)
- United Nations Rules for the **Protection of Juveniles** Deprived of their Liberty
- United Nations Standard Minimum Rules for the Administration of **Juvenile Justice** (the Beijing Rules)
- United Nations Guidelines for the Prevention of **Juvenile Delinquency** (the Riyadh Guidelines)

**Resources****Further reading**

- **Access to Justice:** Practice Note (UNDP, 2004) – available at [www.undp.org/governance/docs/Justice\\_PN\\_English.pdf](http://www.undp.org/governance/docs/Justice_PN_English.pdf)
- **Programming for Justice:** Access to All. A Practitioner's Guide to a Human Rights Based Approach to Justice (UNDP, 2005) – available at [www.undp.org/governance/docs/Justice\\_Guides\\_ProgrammingForJustice-AccessForAll.pdf](http://www.undp.org/governance/docs/Justice_Guides_ProgrammingForJustice-AccessForAll.pdf)
- **Guide to International Human Rights Mechanisms** for Internally Displaced Persons and Their Advocates (Brookings-Bern Project on Internal Displacement, 2006)
- Human Rights in the Administration of Justice: A **Manual on Human Rights for Judges, Prosecutors and Lawyers** (OHCHR / International Bar Association, 2003)
- **Rule-of-Law Tools for Post-Conflict States** (OHCHR, 2006) – includes tools relating to: prosecution; truth commissions; monitoring of legal systems; and vetting.
- Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (PUBLISHER AND YEAR?)
- The **Administration of Justice in Refugee Camps:** A Study of Practice (Rosa da Costa, UNHCR, 2006)

**Websites**

- United Nations Development Programme (UNDP) - [www.undp.org](http://www.undp.org)
- International Centre for Transitional Justice (ICTJ) – [www.ictj.org](http://www.ictj.org)
- Reports of the Special Rapporteur on the independence of judges and lawyers - [www.ohchr.org/english/issues/judiciary/index.htm](http://www.ohchr.org/english/issues/judiciary/index.htm)

### Annex 1: Practical Guide to Strengthen Formal (State-Run) Justice and Law Enforcement Institutions

Institution	Description	Common challenges	In our work we can ...
<b>All</b>	The term <b>'formal justice mechanisms'</b> includes not only the judiciary but also the police, the prosecutors, and prison authorities. Like all other institutions of the State they are under an obligation to respect human rights as well as professional and ethical standards applicable to their work, including principles of fairness, transparency, impartiality and accountability. In practice, in particular in situations of conflict and forced displacement, such institutions may face various challenges resulting in partial or complete breakdown of access to justice. In some cases, such institutions can also become a source of discrimination, violence and abuse for IDPs and affected populations.	<ul style="list-style-type: none"> <li>▪ General break-down of the legal, institutional and social order resulting in disruption, closure or destruction of institutions and infrastructure</li> <li>▪ Inadequate or outdated legislation, rules and procedures that fail to respect human rights and professional/ethical standards</li> <li>▪ Lack of transparency, accountability and adequate oversight mechanisms</li> <li>▪ Lack of resources and capacities, including qualified staff, adequate infrastructure and necessary equipment</li> <li>▪ Widespread culture of discrimination, corruption, extortion, violence and abuse</li> <li>▪ Lack of public confidence and public access to information</li> <li>▪ Under-representation of women and minority groups</li> </ul>	<ul style="list-style-type: none"> <li>▪ Provide or support training on human rights law and professional/ethical standards for relevant stakeholders</li> <li>▪ Provide short-term material support, such as office space, furniture, stationery, additional staffing support, or vehicles (for instance for mobile courts)</li> <li>▪ Provide technical advice and expertise where needed</li> <li>▪ Advocate for the establishment or strengthening of institutional accountability and oversight mechanisms</li> <li>▪ Advocate for revision of laws, regulations and procedures so these are in conformity with human rights and professional/ethical standards</li> <li>▪ Encourage and support the strengthening of the role of women and other disadvantaged groups.</li> <li>▪ Advocate to ensure that issues relating to the rule of law and access to justice are included in peace negotiations, settlements and developmental plans.</li> </ul>
<b>Judiciary</b> <i>(includes the courts as well as quasi-judicial bodies such as tribunals and commissions)</i>	A competent, independent and impartial <b>judiciary</b> is the cornerstone of a functional justice system. It ensures the rights and freedoms of individuals and functions as a mechanism of checks and balances for other branches of government. The <b>UN Basic Principles on the Independence of the Judiciary</b> summarise many of its basic principles, including that: (i) hearings must be conducted fairly and in public, (ii) due process rights must be respected, (iii) matters are decided impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, threats or interferences, whether direct or indirect.	<ul style="list-style-type: none"> <li>▪ Lack of resources and capacities, including qualified staff, adequate infrastructure, legal materials and office equipment</li> <li>▪ Undue delays owing to ineffective administration and excessive case loads.</li> <li>▪ Prohibitive litigation costs</li> <li>▪ Insecurity and violence, including lack of victim and witness protection, <i>en route</i> to and on court premises</li> <li>▪ Undue influence or interference by other branches of government, undermining the independence of the judiciary</li> <li>▪ Lack of legal aid and representation</li> <li>▪ Lack of adequate mechanisms to follow and ensure that judicial decisions are respected and enforced</li> </ul>	<ul style="list-style-type: none"> <li>▪ Provide material support, such as legal materials/publications and/or office equipment.</li> <li>▪ Encourage and support the establishment of mobile courts and provide temporary material/technical support</li> <li>▪ Encourage the use of informal dispute resolution systems or small claims tribunals, provided these meet and respect human rights standards</li> <li>▪ Advocate for improved security measures, in particular for victims and witnesses as well as for judicial staff.</li> <li>▪ Encourage legal and administrative reform, including transparency, accountability and security of tenure for judges, recruitment of female judges, and streamlining of rules and procedures.</li> <li>▪ Advocate for and support legal aid programmes</li> </ul>
<b>Police</b>	The <b>police</b> play an essential role in ensuring access to justice. In addition to maintaining law and order, the police is usually the first point of contact in the judicial system, and takes responsibility for enforcing judicial decisions. The police hold broad discretionary powers, which if misused can result in grave human rights violations. The <b>UN Code of Conduct for Law Enforcement Officials</b> and the <b>UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials</b> govern the conduct of the police, including as regards the use of force and firearms, respect for confidentiality, treatment of detainees and	<ul style="list-style-type: none"> <li>▪ Lack of resources and capacities, including delays in salary payments, lack of qualified staff and weak forensic and investigative abilities.</li> <li>▪ Targeted attacks of police staff by parties to hostilities</li> <li>▪ Widespread culture of violence and abuse of discretionary powers, including unnecessary and excessive use of force, arbitrary arrest and detention.</li> <li>▪ Discrimination, harassment, extortion and exploitation of individuals and groups, in particular women and those of certain ethnic, religious or indigenous origin</li> <li>▪ Lack of resources or expertise to prevent and respond to certain types of violence, including sexual and gender based violence and domestic violence, as well as violence committed against certain groups, such as women, children, the elderly, and ethnic or religious</li> </ul>	<ul style="list-style-type: none"> <li>▪ Provide or support training in human rights, including the rights of IDPs, and professional/ethical standards</li> <li>▪ Assist authorities with developing and implementing crime prevention and response strategies</li> <li>▪ Improve community-police relations, including through community policing or joint patrols</li> <li>▪ Advocate for the establishment of appropriate accountability and oversight mechanisms, which can monitor and restrict the abuse of police powers</li> <li>▪ Advocate for strengthening of the police's conditions of service, facilities and infrastructure</li> <li>▪ Encourage the establishment of units and trained staff dealing specifically with sexual and gender-based crimes and with child protection issues</li> <li>▪ Advocate for increased numbers of female police</li> </ul>

	others. As to the rules governing detention, see the section on prisons below.	minorities.	officers
<b>Prosecutors</b>	Prosecutors play a crucial role in the criminal justice system and often hold quasi-judicial powers. They decide which criminal cases to pursue, prosecute offenders, often supervise the police in investigating and gathering evidence, and may be entrusted with enforcing court judgments. The <b>UN Guidelines on the Role of Prosecutors</b> lay down minimum standards for prosecutors, including that they shall perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights.	<ul style="list-style-type: none"> <li>▪ Lack of resources and capacities, including qualified staff and weak investigation capabilities.</li> <li>▪ Imprecise criminal procedural codes and codes of conduct for prosecutors</li> <li>▪ Blurring of the boundaries between judicial and prosecutorial functions, especially in rural areas where prosecutors may be called upon to act as judges and arbiters</li> <li>▪ Lack of safety and security for prosecutors and their families</li> </ul>	<ul style="list-style-type: none"> <li>▪ Provide or support training in case management, evidence gathering and investigation</li> <li>▪ Provide material and technical support to assist prosecutors in building and pursuing cases involving major human rights violations</li> <li>▪ Advocate for the establishment of adequate criminal procedural codes and codes of conduct for prosecutors</li> </ul>
<b>Prisons</b>	<b>Prisons</b> should be included in wider justice reform programmes and detention and imprisonment should always be subject to strict rules. For example, the rights of prisoners must be respected and they treated in a humane and dignified manner. Pre-trial detention should be kept to a minimum and imprisonment should be used as a last resort and only where non-custodial alternatives have been exhausted or deemed inappropriate (for instance because of the seriousness of the crime). These and other rules are stipulated in: the <b>UN Basic Principles for the Treatment of Prisoners</b> ; the <b>UN Standard Minimum Rules for the Treatment of Prisoners</b> ; and the <b>UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment</b> .	<ul style="list-style-type: none"> <li>▪ Sub-standard living conditions, including overcrowding and lack of adequate shelter, sanitation, clothing, food and water, and a failure to provide needed services, such as health care</li> <li>▪ Violence and abuse of prisoners and detainees at the hands of other prisoners or prison officials</li> <li>▪ Failure to respect basic principles and standards for the treatment of prisoners, including relating to segregation of prisoners by sex, age, and criminal conviction.</li> <li>▪ Arbitrary, prolonged and excessive pre-trial detention owing to delays in other parts of the justice system</li> <li>▪ Emphasis on confinement and punishment rather than rehabilitation and eventual reintegration into society</li> <li>▪ Outdated or abusive prison and penal legislation, rules and procedures</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ensure regular monitoring of prison conditions and compliance with basic principles/standards. As appropriate, advocate for improvements.</li> <li>▪ Advocate for the establishment of internal and external oversight and investigation mechanisms to ensure that incidents of violence and abuse are reported, investigates and punished,</li> <li>▪ Encourage the use of non-custodial measures or alternative forms of detention aimed at facilitating rehabilitation and social re-integration of offenders</li> <li>▪ Advocate for review and revision of prison and penal legislation, rules and procedures, and offer technical assistance to do so, if and where needed</li> <li>▪ Advocate for greater number of female prison officials (guards, managers, monitors and evaluators).</li> </ul> <p><b><i>Note! These activities should be under-taken in consultation with the ICRC and OHCHR where present</i></b></p>
<b>Lawyers</b>	Access to adequate and affordable legal assistance and representation is a basic human right which unfortunately is often unmet in practice. In line with the <b>UN Basic Principles on the Role of Lawyers</b> all governments should ensure that people have an effective and equal access to lawyers. They should also ensure that lawyers can function with independence, that their freedom of expression and association is respected, and that measures are taken to ensure their safety if necessary.	<ul style="list-style-type: none"> <li>▪ Limited numbers of lawyers that are qualified, willing and able to provide legal services for reasonable fees to marginalised groups</li> <li>▪ Lack of expertise on human rights and displacement related issues, such as restrictions on movement and deprivation of land, homes and property</li> <li>▪ Corruption, malpractice and lack of accountability within the legal profession</li> <li>▪ Harassment, intimidation and/or physical threats or attacks against lawyers by either State or non-State actors</li> </ul>	<ul style="list-style-type: none"> <li>▪ Establish or support legal clinics and information centers that provide free legal advice and assistance</li> <li>▪ Encourage the use and training of paralegals and community focal points that can provide simple legal advice and referral services</li> <li>▪ Provide or support training to lawyers, paralegals and community focal points on human rights and other topics relevant to internal displacement</li> <li>▪ Work with bar associations and other professional bodies to improve access to and quality of legal aid.</li> <li>▪ Advocate for improved security measures for lawyers and/or paralegals</li> </ul>

## Annex 2: Alternative dispute resolution mechanisms

A range of traditional, customary or religious dispute resolution systems (DRS) operate in most societies, particularly in the developing world where up to 80% of disputes may be handled by bodies such as religious courts, tribal councils, groups of elders, grievance committees or community leaders. Such mechanisms can play an invaluable role in ensuring access to justice. Their **main advantage** lies in the fact that they may more readily available, accessible and acceptable from a cultural or religious stand-point, take less time and resources, focus on restitution and compensation rather than punishment, and use methods, such as mediation, negotiation and arbitration, which can foster social cohesion and reconciliation.

DRS should not be seen as substituting for or replacing formal justice institutions but rather as **a complementary system** aimed at improving access to justice. DRS are particularly well suited to resolve minor conflicts and disputes between people living in the same community, where reconciliation and restoration rather than retribution and punishment are needed. Formal justice, on the other hand, is best able to provide the legal and procedural guarantees needed in cases involving serious crimes, including torture, rape or murder, or serious penalties, such as long-term imprisonment.

Any involvement with DRS **must however be guided by human rights standards**. In general, such mechanisms should only be supported where they are consistent with the rule of law and respect the human rights of all groups in society. The use of DRS can in fact raise **a number of concerns**. They frequently reflect and reinforce prevailing power relationships that perpetuate discrimination based on gender, caste, religion or ethnicity. In particular, women and girls are routinely excluded from such bodies or, where admitted, often lack real authority and decision-making power. In some cases, particularly in internal displacement contexts when previous community structures have been disrupted, DRS may be relatively new or neo-traditional institutions that lack cultural and moral legitimacy, despite claims to the contrary. Other concerns include:

- Lack of respect for basic human rights, including the principle of non-discrimination and recognised standards of fair trial and due process. In particular, DRS may fail to address and provide redress for violations that predominantly affect women and girls, such as rape, domestic violence and women's property or inheritance rights.
- Use of customary or religious rules that criminalise acts that do not constitute a violation of national law (e.g. sorcery, rape defined as adultery) or fail to criminalise and punish acts that do violate national law (e.g. rape and sexual violence, harmful traditional practices, female genital mutilation (FGM), and forced and early marriage)
- Use of remedies and/or punishments that are disproportionate to the offence or fail to respect the rights or best interests of the victim. Compensation may be provided to the family or clan rather than the individual victim(s) or be provided at the expense of the victim (e.g. by forcing the victim to marry the rapist to restore family honour). Similar concerns may apply to punishment, which may be excessive (e.g. capital punishment for adultery); overly lenient (small fines for capital crimes, such as murder or child rape); amount to torture or ill-treatment (e.g. chopping of limbs); be unfair (e.g. confiscation of a family's food ration cards); or violate the rights of a third party (e.g. by offering a daughter or sister of the accused for marriage)
- Sub-standard detention and/or prison facilities and conditions and ill-treatment of detainees, including lack of food, shelter, clothing and access to medical care.
- Other concerns may include: lack of confidentiality, transparency and accountability; lack of legal aid and representation; inadequate keeping of records; failure to provide reasoning for decisions; and lack of appeal procedures.

Provided that our involvement with DRS is guided by human rights standards, **a number of activities can be undertaken** to build the capacity of DRS to play a positive protection role. Such measures can include:

- Raising awareness of and provide training in human rights and relevant standards of fair trial, due process and punishment, and minimum standards of detention and imprisonment.
- Supporting efforts aimed at reconciling and strengthening the link between traditional and religious norms and practices and human rights standards, for instance through research and constructive dialogue with and within the community.
- Working with the community to ensure that DRS are truly representative and non-discriminatory towards women and minority groups, including by ensuring that they address violations faced by such groups and respect their rights.
- Providing DRS with technical or material support, for instance in the form of meeting space, office equipment, and/or modest incentives or compensation for their work
- Advocating for a closer link between DRS and formal justice mechanisms to ensure adequate support, supervision and oversight.

### Annex 3: Transitional Justice

In many conflict and post-conflict societies, coming to terms with the legacy of large-scale human rights abuses and atrocities remains a major challenge. Confronting the past, providing justice to victims and bringing perpetrators to account is an integral element of peace-building, reconciliation and restoration of the rule of law. It is also an important factor in bringing closure and starting the longer-term process of healing for individuals, families and communities.

While efforts to bring justice for wartime atrocities and human rights violations often meet with resistance, peace and justice in general should be seen as mutually reinforcing imperatives rather than mutually exclusive aims. Failing to address questions of justice can reinforce a culture of impunity, cause further injustice to victims and survivors, and may in some cases undermine rather than strengthen post-conflict reconciliation and peace-building in the longer-term.

For post-conflict societies, there exist several different ways to address past abuses, often through a form of transitional justice. The term **transitional justice** refers to temporary judicial and non-judicial mechanisms or processes that communities adopt to come to terms with a legacy of large-scale past abuses during a society's transition away from conflict or authoritarian rule. It generally involves a combination of complementary judicial and non-judicial strategies, which may differ from one society to another. These include:

- **Prosecution of alleged perpetrators** before national courts, hybrid tribunals (e.g. the Special Court for Sierra Leone) or international courts (e.g. the International Criminal Court).
- **Truth commissions**<sup>10</sup> or other truth-seeking initiatives, including recording of survivor testimony, exhumation of victims' remains, and historical research.
- **Reparation packages** for survivors providing restitution, compensation, and rehabilitation, either actual or symbolic, as appropriate for abuses suffered.
- **Commemoration** of victims and survivors by means of ceremonies or the construction of memorials or museums, often through conversion of sites of former abuse (e.g. prisons or detention camps).
- **Reconciliation initiatives** including healing and closure ceremonies for victims and individual acts of acknowledgment, apology, symbolic payment or community service by perpetrators.
- **Institutional reform** aimed at building fair, effective and transparent public institutions to safeguard against further abuse. Such efforts often include **vetting**, i.e. the screening and dismissal of abusive, corrupt or incompetent officials from public institutions, including the judiciary, the police, military and other security services.

The choice of transitional justice mechanisms depends on the context as well as on the type, nature and scale of the abuses committed. In many cases, prosecution of offenders may not be the appropriate solution; quite to the contrary, it may run counter the interests and will of both the victims and society at large. However, efforts should at minimum be made to ensure that the most serious crimes, including rape, torture and murder, do not go unpunished.

Transitional justice mechanisms have often been negotiated, developed and implemented with little regard for the important contribution of, as well as the distinct harm suffered by, **women and girls**. Although rape, gang rape, forced prostitution, forced pregnancy and other forms of sexual violence legally constitute torture, genocide, mutilation, and enslavement, they have, with rare exceptions, not been treated with the same seriousness as other war crimes. Neglect of gendered patterns of abuse has entrenched impunity, limited the reach of reparations programs, and undermined the legitimacy of transitional justice initiatives.

Strategies to strengthen transitional justice mechanisms include: (i) ensuring that questions of transitional justice, including for women and girls, are addressed in peace-negotiations and settlements; (ii) establishing or supporting the work of courts, tribunals, truth commissions and other justice mechanisms, for instance through financial, material or technical assistance; and (iii) providing support to grassroots peace-building and reconciliation efforts.

<sup>10</sup> Truth commissions have for instance been established in Ecuador, Ghana, Guatemala, Nigeria, Panama, Peru, Sierra Leone and South-Africa.