

Local perspectives:
foreign aid to the
justice sector

Summary of Findings

The meaningful participation of beneficiaries in aid programmes directed to human rights reform is crucial to their success. Their views on ways to improve them deserve serious attention.

In interviews with beneficiaries in four countries we were told that aid for reform has had an impact. In the justice sector (the focus of our study) foreign aid has facilitated constitutional development and legislative reforms and helped expand civil society and transform the justice system. Aid programmes have helped introduce human rights concepts into public consciousness and public institutions in societies where such notions were once seen as subversive.

We were also told that human rights assistance can be wasteful and even do harm. Badly conceived and implemented programmes have sheltered repressive regimes from scrutiny, wasted vital resources and distorted domestic institutions. Donors sometimes promote inappropriate models and put their foreign policy interests before human rights. They can be unreliable partners, subject to quick fixes and too much attention on "exit strategies".

Success depends on many factors, not least paying more attention to local perspectives. This summary sets out some of the main issues. It offers signposts that we hope will be useful to both donors and beneficiaries looking for ways to strengthen the impact of human rights assistance.

"... a dynamic treatment of a complex subject." (Iris Almeida, Director, Rights and Democracy, Montreal, Canada)

"It is extremely interesting and challenges us to think about our programmes in a holistic way." (Mary Ndlovu, Legal Resources Foundation, Zimbabwe)

"The report is excellent. I only hope that donors and beneficiaries alike will pay close attention to it." (Richard E. Messick, co-director, Legal Institutions Thematic Group, World Bank, USA)

This summary is also available in French and Spanish. If you would like to order the Main Report or copies of the Summary, please see details inside the flap.

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OVERVIEW

Donor agencies are devoting more of their aid to human rights. In the past decade, interest in governance, the rule of law, democracy, and the empowerment of particular groups (the very poor, women, children) has led donors to study the links between human rights and development. Some agencies are now “mainstreaming” human rights – re-conceptualising much of their development assistance in terms of specific rights (such as rights to housing, to food, etc.). These trends look set to continue.

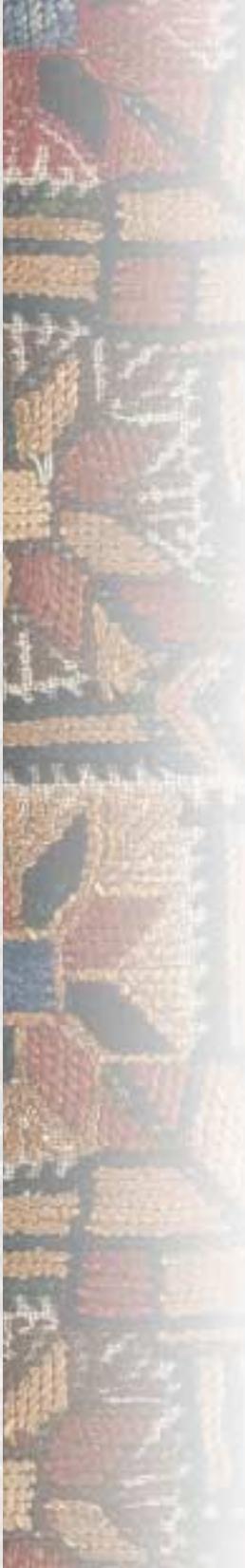
The growth in human rights assistance raises many questions. Some are about impact, effectiveness and coherence. Others concern *relationships* – between development and human rights, between official and private forms of aid, and, crucially, between donors and beneficiaries of aid.

One can look at these questions from many perspectives: that of bilateral donor agencies, anxious about providing aid to a government whose commitment to reform is weak; that of private foundations, preoccupied by the nature of “partnership” with NGOs in the south; or that of the individuals whose rights are at risk, and who are in urgent need of more effective and fair justice institutions.

We chose to focus on the perspective of national institutions and organisations that receive human rights assistance. Donors have usually led discussions on making aid more effective. The views of beneficiaries have generally received too little attention. Yet beneficiaries are fundamental to reform efforts. What do they think are the main problems? What do they believe would make aid more effective?

“Human rights assistance has had an enormous impact. Without the support of the donors since 1991, Cambodia would have no NGOs, no democratic constitution, no free press and no hope.” (Khmer human rights activist)

Beneficiaries told us that human rights assistance has been crucial to the success of reforms in their countries. Nevertheless, they had many criticisms and believed improvements of many kinds could be made. Their meaningful participation in reform is a condition of its success – their views deserve close attention. This *Summary* presents the main points that emerged from our interviews, and that are set out in detail in a longer study.



THE RESEARCH PROCESS

This brochure presents, in summary form, the main findings of a research project that began in March 1999. The research set out to gather and analyse the views of beneficiaries of human rights assistance. We asked them how aid could be applied more effectively and what they felt the main problems were. Our primary aim was to draw their views, which are often under-represented, to the attention of donor agencies.

We focused on aid to the justice sector and research took place in **Bulgaria** (May 1999), **Cambodia** (June 1999), **Guatemala** (July-August 1999) and **South Africa** (September-October 1999). The lead researcher met government officials, legal officers, staff in civil society organisations, and donor agencies. Local researchers were engaged to advise and assist the lead researcher.

Definitions

We define **“beneficiaries”** to include government, official institutions and organisations of civil society. The ultimate beneficiaries, of course, are the individuals served by these institutions. But we use the term to refer to those at national level who receive foreign aid for human rights reform.

“Donors” refers to all external providers of aid including official bilateral agencies, multilateral organisations, and private foundations or NGOs.

We use the term **“justice sector”** to refer to all national institutions, laws and policies established to administer criminal and civil justice, including legal regulation and monitoring, courts, prosecutors, parliaments, police, prisons, ministries of justice and the interior and independent institutions such as ombudsmen, etc. We also include civil society organisations that are directly involved in the administration of justice, either as parts of the system (defence lawyers) or monitors of it.

Consultation

In January 2000 we sent a draft of our study for review to over 350 individuals and organisations in 60 countries, including people we had interviewed, staff in donor agencies (of all kinds), beneficiaries in other countries, and relevant research institutions. We received over 40 substantive comments, which were taken into account when revisions were made in March–April 2000.

The Council published *Local perspectives: foreign aid to the justice sector* in June 2000. This summary is available in English, French and Spanish.

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Craig Mokhiber was the lead researcher and wrote the main report on which this summary is based. He worked from March 1999 to February 2000.

An advisory group provided general guidance and direction. The advisory group met in March 1999, November 1999 and March 2000. Its members were:

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Bulgaria **Krassimir Kanev**, Director of the Bulgarian Helsinki Committee.

Cambodia **Thun Saray**, Director of ADHOC — the Cambodian Human Rights and Development Association.

Guatemala **Frank La Rue**, Founder and Executive Director of CALDH — the Centre for Legal Action on Human Rights.

South Africa **Corlett Letlojane**, of Africa Affairs Consultancy, who previously worked for several years with Lawyers for Human Rights.

Further assistance was provided by **Dessislava Simeonova** in Bulgaria, **Chun Sath** in Cambodia, **Jorge Enrique Torres** in Guatemala and **Motlai Mashiloane** and the National Paralegal Institute in South Africa. As well, **James Sloan** undertook preliminary consultations with donor agencies in August–September 1998.

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Key findings

Beneficiaries working in both governments and independent institutions, in the four countries we studied, expressed similar concerns. The responses we received on a draft report from organisations in other countries, including donor agencies, indicated these concerns are of broader relevance. Five key findings emerge:

Give beneficiaries more authority

Those who receive human rights assistance should be in a position to direct how that assistance is used. Donors should devolve authority to local organisations as they acquire capacity.

Bridge the divide between human rights and development

Donors and beneficiaries should make further efforts to integrate human rights within broader development efforts.

Work with official institutions and stay the course

Donors should provide more support to official institutions in the justice sector, and should do so in a sustained way. Reform will take time and is unlikely to be a smooth process.

Be more strategic

More attention should be given to planning the reform process and coordinating aid. Justice should be considered as a whole sector, like health or education.

Develop more effective aid relationships

Good donor practice is not accidental. Aid will have greater impact when donors focus on local needs, encourage local capacity and rely less on imported solutions.



More local authority over human rights assistance

Aid programmes conceived and imposed from abroad are not likely to be effective or sustainable after the aid provider leaves. Ultimately, national institutions and organisations must themselves lead the reform process and determine the direction of external assistance. The effective participation of beneficiaries in aid programmes is a necessary (though not sufficient) condition of their success.

Some aid providers resist devolving more authority to national institutions on the grounds that, in some cases, courts, police, or government departments themselves violate human rights. Some human rights organisations are reluctant to engage with official institutions for similar reasons. Donors also have concerns about the capacity and commitment to reform official institutions.

There are difficulties in giving local actors more authority over assistance programmes. But it will rarely be the case that commitment to reform is clear-cut. Further, the purpose of aid should be to increase local capacity where it is inadequate. In the final analysis, justice reform efforts – and aid programmes to help them – will not be legitimate, effective or sustainable if beneficiaries do not support and take responsibility for them.



Bridge human rights and development

“We have but one enemy today: poverty – from which all other problems stem. This includes the weakness of the justice system and abuses that occur there. Even if the system is over-staffed, the low level of resources means that officials are under-skilled, underpaid, and under equipped.”
(Government official, Cambodia)

Aid to the justice sector would be more effective if the relation between human rights and development was more clearly understood and integrated in policy and practice. There are clear links between underdevelopment, poverty and poorly-functioning justice systems. Building justice systems that are effective – that protect human rights – requires a commitment to reform. It also requires national institutions and organisations and donors to assemble, and put to use, the range of material, technical and intellectual resources that are vital to the functioning of justice systems.

More and more institutions involved in development are adopting a rights-based approach. This emphasises legal enforcement of claims, the importance of institutions and laws to deliver on those claims, and issues of discrimination and poverty – to ensure that development benefits all sectors of the population. Such an approach is closely linked to justice sector reform and could strengthen the impact of aid.

The rights-based approach further emphasises the rights of the public, who are the ultimate beneficiaries of aid, to participate in the development of their societies and its institutions.



When to engage – and with whom?

When should aid for human rights reform be given? When should it be withdrawn? In the justice sector, which institutions should receive aid?

Donor agencies are often reluctant to provide assistance to governments with poor human rights records. When reforms stall or official institutions fail to protect human rights effectively, donors face pressure to cut back or suspend their human rights assistance programmes. Continued engagement is seen as potentially legitimising abusive practices. Withholding aid is seen as a means of leveraging reform back on track.

These questions trouble donors and beneficiaries alike. Nevertheless, beneficiaries in both government and civil society felt, on balance, that donors needed to engage and stay engaged. They felt the risks that donors incur by providing aid are outweighed by the support such aid gives to those working locally for reform.

To be sure, donors have a responsibility not to be complicit in abuses, and to take up continuing violations with the responsible authorities. But it is not inconsistent to monitor violations of human rights and provide aid at the same time. Effective human rights assistance is not possible without carefully monitoring the human rights situation in the country, including abuses. Decisions by donors as to whether to report publicly their concerns will depend on the situation. Donors with an explicit human rights mandate – like the UN – cannot be silent. The guiding principle for donors is consistency in what they say and do.

It takes time to reform justice systems to bring them into line with international human rights standards. It is unlikely to be a smooth process. When donors engage, they should stay the course.

“It is not wasteful to build capacity in times of low political will or limited freedom of action. So long as that capacity exists, and is ready to be mobilised when the opportunity arises, then aid has done its job.” (Donor official)

Beneficiaries drew attention to the following points on engagement:

Identify reform constituencies

Even where a government's commitment to reform is doubtful, aid can be usefully provided to individual reformers and pockets of reform in institutions resistant to change. Support can also go to civil society, national human rights institutions, and reformist parliamentarians. Where necessary, aid can be directed to official institutions through national NGOs.

Set a high threshold for aid cut-offs

Donors should not abandon reformers when they most need international support. Beneficiaries set a high threshold for cutting off human rights assistance to the justice sector. Aid should not be cut without first consulting local opinion, including the opinion of reformers and human rights organisations.

"What was the message?" asked an activist in Cambodia. "We are cutting off support for the rule of law, because we support the rule of law'?"

Work with the official sector

Concerns about association with abusive institutions often prevent donors from engaging fully with official justice sector institutions. State institutions are sometimes avoided, or receive token assistance, slowing the progress of reforms. Yet justice administration is a state function, and the police, prisons, courts and prosecutors are state institutions. Meaningful reform in the justice sector must involve strengthening state institutions. Where political commitment is weak, donor support for reformers in official institutions may be especially important. Aid can be well spent if it is carefully targeted to support reform processes.

Go beyond "safe aid"

Where donors avoid "risky" institutions like prisons, prosecutors and police, in favour of "safe" institutions like national commissions and NGOs (and avoid "hard" forms of aid like equipment in favour of "soft" forms like training) it is unhelpful to successful reform.

"Thanks to an unbalanced approach to assistance, Cambodia now has NGOs with much capacity, and a justice system with little." (Donor official, Cambodia)

Strategic approaches

The impact of aid is reduced when it is improperly co-ordinated and planned. Reforms would be more effective if both donors and beneficiaries adopted a more strategic approach.

Justice sector reform often proceeds without clear national policies and plans and is poorly co-ordinated. Key individuals, in institutions that are to be reformed, are left out of planning processes. Donors too often rush in with inappropriate projects, fail to consult locally or do not assess where aid is needed most, and do not co-ordinate their efforts with those of other aid providers. Reforms would be more effective if both donors and the governments they assist adopted more strategic approaches.

Consider the justice sector as a whole

One practical obstacle to better planning and co-ordination is that the administration of justice is not seen in a comprehensive way, either by national governments or donors. Reform plans, and assistance programmes, proceed in a piecemeal fashion tackling individual parts of the justice system without understanding the linkages.

National governments and donors should think of justice as a sector, as they think of health, education or agriculture. This would enable them to link the many roles that different official and non-official institutions and actors play in justice reform.

Civil society groups, including human rights NGOs and lawyers' organisations, play essential roles in the delivery of justice. Their role should be recognised in planning and implementing reform and assistance programmes.

"Donor categories make no sense. According to their categories, NGOs are not part of the justice sector, and human rights is something separate from development areas like poverty reduction, or health. This reduces human rights to a sideline occupied by a small group of NGOs". (South African human rights activist)

A more strategic approach should help in identifying – from the start – the needs of groups traditionally disadvantaged by the legal system. It would also focus attention on ways to ensure that public support for reform and human rights concepts are sustained.



Strategic approaches require:

Plan reforms and monitor progress

Justice sector reforms stand a better chance of success when governments develop clear statements of policy that identify overall objectives. They should be supported by detailed plans for reforming the justice sector. Such plans should be developed nationally, in a participatory way. Donors should assist efforts to develop such policies and plans. Current information on the progress of reforms and aid projects underway or planned should be made available.

Do participatory needs assessment

There should be serious consultation with beneficiaries whenever needs are assessed.

Improve co-ordination

Reform projects in the justice sector must be better co-ordinated. Donors and beneficiaries both have responsibility in this area. Reform plans should address the issue of co-ordination. Co-ordination should be led by the government.

Safeguards for justice reforms

The needs of poor and marginalised groups should be given priority when planning, implementing and monitoring reform of the justice sector. From the start, the reform process and assistance efforts should seek to:

- **Assure access to justice**

Reform strategies should aim to remove barriers of class, race, gender, language, religion and geography.

- **Recognise indigenous systems**

Indigenous populations should be involved in the reform process, including especially decisions that will affect them.

- **Empower women**

Justice reform should strengthen the capacity of institutions to protect women from discrimination and violence (including domestic abuse, rape and trafficking) that are gender-specific.

- **Involve minorities**

Donors should seek through their programmes to empower members of minority communities.

“We are among the most poor, and the most vulnerable, and the last to benefit from domestic institutions. Donors should help directly. What message do they send if even human rights assistance is discriminatory?”(Representative of minority group in Cambodia)

Good practice for effective aid

Beneficiaries we interviewed made a number of suggestions for good practice. Some approaches were clearly seen to be more conducive to good relationships and effective assistance programmes.

“Get to know us. If you don’t trust us, don’t fund us. If you do, let us work, plan, judge. Listen to us, work with us, stay committed, avoid paternalistic approaches, and adopt one of solidarity instead.”

Beneficiaries said that donors are more likely to achieve successful results where they:

Show flexibility and ability to evolve

Donors should not impose bureaucratic approval and reporting requirements. They should respond quickly to changing local needs and devolve authority to local organisations as these acquire greater capacity.

Build local ownership and capacity

Donors should employ more local staff and use fewer foreign consultants. Project funds should be spent locally. Projects should aim to increase the autonomy of local institutions and organisations.

Balance aid

Successful reforms in the justice sector require both material and intellectual support.

Respect local priorities and avoid imported solutions

The objectives and priorities of justice reform should be determined locally. When donors compete, impose external priorities, follow “fads”, mix aid with other foreign policy objectives, or import their own institutional models they can slow or undermine the reform process. Donor programmes should be financially and politically disinterested.

Invest for the long-term

Donors should avoid rigid “exit strategies”, and the use of short-term indicators of success. Justice reform is a long-term process. In justice reform, sustainability cannot be measured in the short-term or solely in relation to the finances of local institutions and organisations.

Maintain a local presence

Where donors are present locally, it is easier to ensure due attention to many of the factors listed above. If they cannot be present locally, donors should consider channelling assistance through intermediary organisations present in the country (e.g. foundations, NGO consortia).

RECIPROCAL RESPONSIBILITIES

The relationship between donor and beneficiary is crucial to the success of human rights assistance programmes. A successful relationship depends to some extent on reciprocity. The views we heard – from both donors and beneficiaries – suggest three key responsibilities fall on donors and beneficiaries alike.

Transparency

Hidden agendas, whether real or imagined, inhibit the trust that is essential to effective aid partnerships. Information on the reform process and on all aspects of donor assistance should be readily accessible to the public and to the different parties actively involved.

Sustained commitment

Successful reform requires sustained commitment from governments, national institutions and donors. Reform is a long-term process.

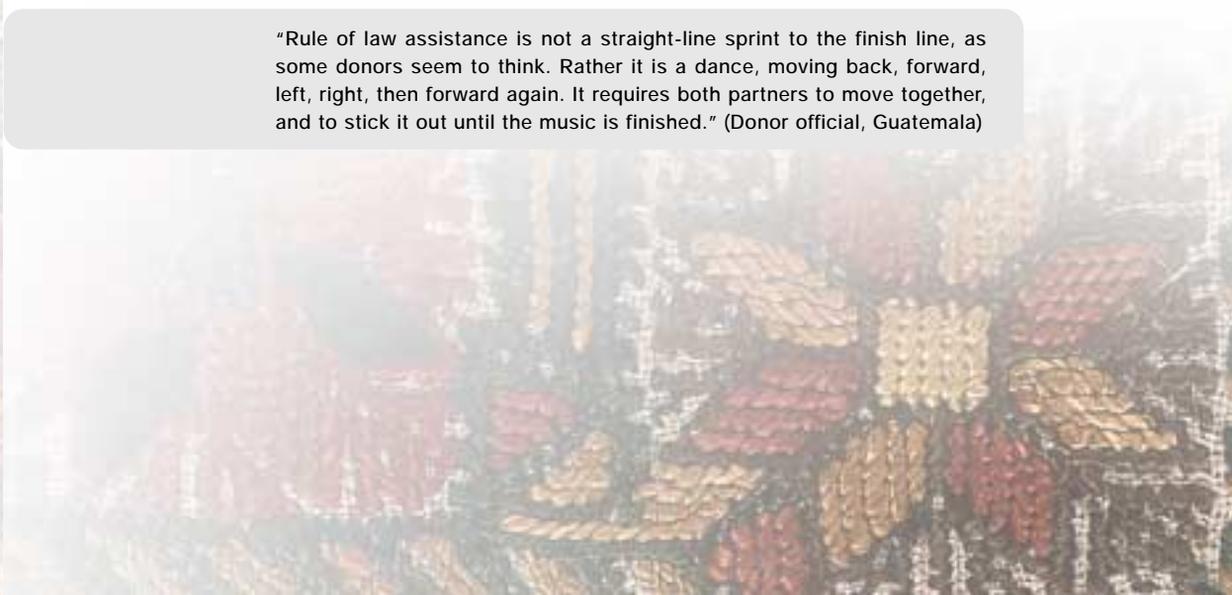
Accountability

The ultimate beneficiaries of aid should be those whose rights are in jeopardy and who need better protection. In the final analysis, aid should be judged in relation to this objective, and governments, other national institutions and donors should measure their performance primarily against this test of accountability.

Mutual accountability between donors and beneficiaries is essential to effective aid relationships.

In addition, both donors and beneficiaries should ground the reform process and assistance efforts in international human rights standards.

“Rule of law assistance is not a straight-line sprint to the finish line, as some donors seem to think. Rather it is a dance, moving back, forward, left, right, then forward again. It requires both partners to move together, and to stick it out until the music is finished.” (Donor official, Guatemala)



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