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African Human Security Initiative (AHSI) 2 Country Assessment on Crime and Criminal Justice Master Questionnaire

1. Introduction

AHSI 2 is a follow up project to the AHSI 1. 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 of complementary peer review to that of the New Economic Partnership for Africa's Development (NEPAD's) African Peer Review Mechanism (APRM).

The **project purpose of AHSI 2** 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, AHSI 2 will build the capacity of an expanded membership and local partners to undertake research on security issues with the eventual purpose that this could facilitate work orientated towards the Peace and Security Council of the African Union.

Through timing outputs to inform and complement the APRM process in each country, the AHSI 2 will exploit the opportunity to broaden the application of the APRM approach and principles to those areas currently outside the focus of the Review.

1.1 Background information on the project

At the 2004 ABCDE conference, the World Bank emphasized the need to focus on the security of developing countries and 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 the country. This means 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 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 been largely absent, the benefits of these values will be well demonstrated.

1.1.1 Aims: the specific aims of the project are:

1. 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 implementation frameworks to support the implementation of national commitments and obligations.
2. 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 in the development of a set of realistic and informed recommendations for each area to help bridge gaps between national commitment and implementation.
3. To identify the structural and other inherent weaknesses in the criminal justice systems, encourage policy dialogue and public awareness of the broader implications of crime on the consolidation of democracy.
4. 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 – content work on crime and justice matters.

2. Questions

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

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

Adherence to Regional/International Instruments

Participation in Regional Institutions working on combating crime

Crime

Policing

Prosecuting Authority

The judiciary

Prisons

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.

2.1 Regional and International Standards

Below is 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. The aim is to assess the countries commitment to these guides and explore alternatives that have worked to 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?

(i) Regional/International Instruments

- * Declaration and Plan of Action on Control of Illicit Drug Trafficking and Abuse in Africa (2002)
- * African Charter on Human and People's Rights 1981 Solemn Declaration
- UN and AU anti-corruption codes
- * Protocol on the Control of Firearms, Ammunition and other Related Materials 2002
- * Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition
- * United Nations Convention Against Transnational Organised Crime (GA resolution 55/255)
- * UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules 1985)
- * Protocol to Prevent, and Suppress and Punish Trafficking in Persons, Especially Women and Children (GA 55/25 annex 11) 2000
- * Protocol Against the Smuggling of Migrants by Land, Sea and Air (GA 55/25 annex 111)
- * Conference on Security, Stability, Development and Cooperation (CSSDCA)
- * 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

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 how far they have gone in meeting the objectives.

Regional Institutions working on combating crime

- * SADC-Drug Control Committee
- * Southern African Forum against Corruption 1999

- * International Law Enforcement Academy Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO)
- * East African Police Chiefs Cooperation Organisation 2002
- * Africa Institute for the Prevention of Crime and the Treatment of Offenders
- * Conference of Central, Eastern, Southern Africa Heads of Correctional Services (CESCA)
- * African Commission on Human and People's Rights (ACHPR)
- * United Nations Interregional Crime and Justice Research Institute
- * Regional Centre on Small Arms and Light Weapons in the Great Lakes and Horn of Africa Region

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.

2.1.1 Crime

Crime in Southern Africa is argued to be more of 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 to give 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 analyzing the extent of crime in the country.

Incidence of crime

- (i) Levels of crime, Prevalence of crime, Perceptions of crime
Use police reports/ existing survey data/ victimization surveys/ anecdotal evidence from the media reports (corroborated)
Provide evidence on Organised crime
- (ii) What are the common crimes that females commit?
- (iii) Measures effected to combat various types of crime-e.g white collar
- (iv) The current situation of corruption, perceptions on levels of corruption/fraud
- (v) 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
- (vi) Role of the media in unearthing corruption, General measures taken to prevent corruption, Constitutional provisions for guarding against corruption

(vii) Parliamentary reports on high level crime, Prominent cases of corruption in the country and how this has been resolved

(ix) Evidence of International/regional cooperation in corruption control

(x) Levels of drug trafficking

(xii) How has drug trafficking been combated?

(xiii) Human trafficking- give evidence

(xiv) Illegal migrants and Xenophobia- Protection of minorities rights and refugees

2.1.1.a

Prosecution: This section scrutinizes the general mandate of the Office of the DPP. The main question to be explored is: What should be done to enhance the autonomy of the DPP's office?

(i)What cases are normally brought before the DPP's office for attention?;

(ii)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?

(iii)Views on the autonomy of the DPP's office in deciding which cases should come up for prosecution;

- a. Is the DPP's consent necessary for the prosecution of all cases involving corruption?
- b. Linkages between the DPP's office and other law enforcement agencies such as the Anti-Corruption Commission and the Police Service;
- c. How effective are the linkages? If not effective, what are the constraints?What can be done to enhance the linkages?
- d. Is there any cooperation between the DPP's office and similar institutions within the region? If so, what are the benefits of such cooperation?
- e. What are the prominent cases dealt with by the DPP's office in the past three to five years? How were such cases resolved?

2.1.2 Policing

The police enforce laws passed down by government as well as protect citizens from potential and actual threats. And in order to successfully provide a safe living and working environment, the police force has to rely on the 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 as well as the general public's participation in crime prevention initiatives.

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?

(i) Describe resources the force has- number of stations and their location- mention special facilities

(ii) Outline:

- a. Code of conduct for the police
- b. Independent bodies for monitoring police abuse
- c. Ombudsman's reports on police assaults/unfairness
- d. Regularity and quality of reports to treaty bodies
- e. Adequacy of budgetary provisions
- f. Programmes for training or development of the police force and how this is used for promotions

(iii) Give information on mechanisms that make the police accountable to other relevant bodies in the criminal justice system such as the judiciary

Question 2: What mechanisms have been put in place to encourage and promote effective citizen participation in policing?

(i) Provide evidence of legal, policy and institutional steps to ensure broad participation by all stakeholders- community based organisations, private sector, media, women's group, the disabled and minorities.

(ii) 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?

(iii) Assess the effectiveness of these measures

(iv) Extent of private policing arrangements

2.1.3 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. Whilst 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 vulnerable (female/juveniles) prisoners?

- (i) Figures of inmates vs no of prisons, allocation of prisoners by gender/age/offence committed, general conditions, meals, bedding, medical attention
- (ii) Incident of illness in prisons especially TB and HIV
- (iii) Handling of pre-trial detainees and those convicted
- (iv) Access to legal counsel
- (v) Staff conditions, resources

2.1.4

D. The Judiciary has the responsibility 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 and under the doctrine of separation of powers, it is the branch that interpret 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 set up of the judiciary and how this affects the legitimacy of some of its decisions.

Question 1: Is the judiciary independent?

- (i) Provide evidence on the extent of independence of the judiciary- appointment procedures, security of tenure, access to resources, dispensing of justice
- (ii) Describe the process of appointing members of the judiciary as well as other top security officials
- (iii) Does the state respect/observe the decisions of the courts?

The criminal justice process

This process follows the following steps that require assessment at each stage:

Investigation- search warrant-interrogation-arrest-indictment-arraignment- bail- plea negotiations-trial-the verdict-appeal

- (i) Are procedures followed timeously in dealing with suspects after a report has been filed? Give evidence of average time different offenders take throughout the process
- (ii) Where does the system stall- or moves quickly? Give evidence- statistical
- (iii) Assess the effectiveness of the general criminal justice system (overall) in terms delivering results that are judged to be broadly free and fair.

2.1.5 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 them. Literature and many 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 delivery of equal justice equitably? The aim here is to assess the efficiency and effectiveness of the system as well as identify areas that require strengthening.

National Prosecuting Authority

Question 1: Which organ is responsible for the institution and conduct of all criminal proceedings in the country?

Question 2: 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?

Evidence of gender ratios amongst staff in the police, prison and judiciary services- also give information on any gender disparities in salaries

Question 2: What policies, legislation and strategies are in place to ensure access to justice for the marginalised?

(i) Outline evidence of legal, policy processes and institutional steps to ensure access to justice for the marginalized [the poor, juveniles and women]

(ii) What are the social and legal problems that women face when they seek justice?

(iii) Give evidence of resources allocated for this and show results in terms of percentages accessing such facilities by gender, age, location [rural/urban]

(iv) Specific attention to availability of resources to rural poor

(v) Specify studies carried out on the status of women versus the criminal justice system

(vi) Evidence of vigilante justice

2.1.6 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 stabilize the child justice process in a number of countries through providing 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 cases. 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 had to deal with the entire justice process organized [centralized/decentralised].

(i) Document the development of human rights concerning juveniles and the enforcement of regional/international instruments

(ii) Explain the system/reforms implemented in the country, describe the statutes providing for methods for dealing with juvenile delinquency, no of related institutions, methods of providing for the safety and welfare of children, staffing of relevant institutions and mention cases as evidence where necessary

(iii) Identify the rules by which state laws must comply with regarding to juvenile court procedures and punishments

(iv) Mention problems concerning juvenile justice in the country – pre-trial detention Evidence of alternative sentencing options

2.1.7 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. The co-existence of formal and informal systems will be explored in each 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?

(i) Outline African/country specific informal justice systems as well as evidence of restorative justice

(ii) Indicate nature of criminal cases handled by the structures dispensing these services and identify the target group that mostly seeks or is forced to seek justice through the structures

The AHSI is composed of organizations that took the initiative to emphasize human security in Africa. **The Current African Human Security Initiative Partners are:** South African Institute for International Affairs (SAIIA), Institute for Human Rights and Development in Africa (IHRDA), Southern Africa Human Rights Trust (SAHRIT), West African Network for Peace-building (WANEP), African Security Dialogue and Research (ASDR), African Peace Forum (APFO), Institute for Security Studies (ISS)