

Access to Justice



Key Message

Access to justice is a basic right as well as a key means of defending other human rights and ensuring accountability for crimes, violence and abuse. Justice plays an important role in combating impunity, ending discrimination and poverty, and paving the way for peace and national reconciliation. Efforts to strengthen the rule of law and ensure full and equal access to justice for all, including internally displaced persons, should form part of the humanitarian response from the outset of an emergency.

1. What is justice?

The exact meaning of the term might differ from one country to another but **ideas of justice** are common to all cultures and generally include notions of fairness, accountability and equity of outcome.

For the purpose of this chapter, **access to justice** can be defined as the ability to obtain an adequate remedy for any harm suffered, whether at the hands of an individual, a group, or another entity. Such remedies can take different forms, ranging from restitution or compensation for the harm done (*restorative or restitutive justice*) to penalties or punishment of those responsible (*retributive or punitive justice*).¹

“[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).

Systems of justice, formal and informal, generally have two components:

- A **normative framework** (a *body of law*), which consists of national law (constitutional, federal, provincial and municipal, and often traditional or religious law) together with international and regional law. All States have an obligation to ensure that their national law gives effect to and is in conformity with their international legal obligations, including human rights law.
- An **institutional framework**, which includes both formal (state-run) justice mechanisms, such as courts and tribunals, and quasi-judicial or alternative mechanisms, such as religious courts, tribal councils or grievance committees (*see Annexes 1 and 2 to this chapter*). In some countries, temporary mechanisms are also established to deal with transitional justice (*see Annex 2 to this chapter*). A complementary role can also be played by international or regional bodies, such as the International Criminal Court.

All systems of justice should respect human rights, both in terms of process and outcome. States have a range of human rights obligations which their legislative, judicial and executive branches are bound to respect and protect. International involvement with and support for systems of justice similarly must be guided by human rights standards.

¹ This Action Sheet focuses on rule of law and access to justice and does not address other forms of justice, such as social or distributive justice.

2. Lack of access to justice in the context of internal displacement

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, generalized 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, marginalization and poverty.

Having fled their homes and lost their livelihoods as well as the protective presence of their families and communities, internally displaced persons might find themselves at increased risk of violence, exploitation and abuse at the same time as their access to justice and other remedies is curtailed because of displacement.

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

Type	Specific Obstacles
Discrimination	<ul style="list-style-type: none"> • Discriminatory social and cultural norms and practices, particularly on grounds of gender, religion, ethnic, religious or linguistic background, or other status, such as displacement, can result in lack of access to and/or discriminatory treatment within the justice system. • Chronic under-representation of women and minority groups in the justice and law-enforcement sectors can contribute to lack of attention to and understanding of protection risks faced by these groups.
Normative obstacles	<ul style="list-style-type: none"> • National laws that do not or inadequately protect human rights. For instance, national laws might fail to recognize a certain right (e.g. protection from rape), define it narrowly (e.g. define rape as not including marital rape), or criminalize the victim of a violation (e.g. define rape as adultery). • Confusing or complicated legal framework because of overlaps or incompatibility between national law and traditional or religious laws. The latter may be unrecorded or not widely known and thus open to manipulation or abuse. • Lack of a clear institutional and procedural framework and/or professional and ethical standards and codes of conduct governing the work of justice institutions.
Institutional/ administrative obstacles	<ul style="list-style-type: none"> • Breakdown of infrastructure and institutions because of conflict, violence and insecurity, and/or lack of human and financial resources, including lack of qualified staff and basic supplies, such as office space, computers, paper, and telecommunication equipment. • Lack of oversight and accountability mechanisms capable of preventing and addressing corruption, patronage, malpractice and abuse in the justice system. • Weak enforcement capacity, including relating to the arrest of offenders and the investigation and prosecution of cases. • Lack of independent appeals procedures for review of judicial and administrative decisions. • Lack of adequate victim and witness protection resulting in exposure to further physical, psychological, economic or other harm.
Political obstacles	<ul style="list-style-type: none"> • Lack of separation of powers and independence of the justice sector. • Politicization or militarization of public institutions, including segregation along ethnic or religious lines, which may become a source of insecurity, intimidation or violence.



Type	Specific Obstacles
Individual obstacles	<ul style="list-style-type: none"> • Lack of affordable and adequate legal aid for disadvantaged individuals and groups, particularly women/girls and minority groups. • Lack of public confidence in the justice system because of actual or perceived bias, corruption, abuse or lack of effectiveness and efficiency. • Lack of public information and understanding about rights, institutions and procedures for accessing justice. • Lack of legal, financial and social resources and support, making it difficult for displaced individuals, particularly women, to pay for legal aid or transportation to attend court hearings. Lack of education and/or literacy skills can also limit access to justice. • Fear of reprisals, social stigma or ostracism often prevents individuals, especially women, from seeking justice, particularly in cases involving GBV.

Victims and witnesses and 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 and/or the community itself. Internally displaced persons 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, such as sexual violence, often face further violence, punishment or ostracism. Survivors of rape are sometimes forced to marry their rapists or are arrested, detained and sentenced to imprisonment or other forms of punishment, including in some cases to death.

Note! Seeking justice is not without risks. Always ensure that the victim/survivor is aware of the **risks involved**, **respect confidentiality** and seek **informed consent** before taking action or disclosing personal information. The safety and best interests of the victim must be a primary consideration at all times.

3. The role and responsibility of the State

The State has 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** violations 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**.
- Ensure that **remedies are provided and enforced** by institutions of the State.

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

Efforts to improve access to and administration of justice should take place within a broader framework aimed at strengthening the rule of law in the country concerned. It is important that such efforts take into account and support the primary role of the State and that they are coordinated with all relevant actors, including human rights, humanitarian and developmental actors. The need for immediate results must also be balanced with longer-term structural and system-wide improvements. The table below lists some activities that could prove helpful in this regard.



In our work we can ...

See also Annexes 1–2 to this chapter for more detailed guidance on working with institutions of justice.

General

Assessment and analysis

(See Part III.1)



- Ensure that protection assessments include matters relating to the rule of law and access to justice, including whether IDPs and affected individuals can access justice and obtain remedies for any harm suffered; the main obstacles they face in this regard and activities that can be undertaken to improve their capacity to access the justice system; and the capacity of the justice sector and other relevant institutions, such as the police, prosecutors, and the prison system.

Coordination

- 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, particularly with national authorities and international human rights and development actors and, as appropriate, peacekeeping forces.

Legislative reform

Legal reform

- Review national laws, policies and practices to assess to what extent human rights are adequately protected. As appropriate, advocate with relevant authorities and offer assistance to revise or adopt new laws, policies or practices.
- Where key human rights instruments have not been ratified by the State or where their adoption has been accompanied by reservations, advocate for the adoption and implementation of these instruments or the lifting of reservations.
- Engage with alternative justice mechanisms, such as religious or traditional dispute-resolution bodies, and seek ways to ensure that these respect human rights, particularly the rights of women and children.

Public information and outreach

Information and communication activities

(See Part IV.6)



- **Support public information and outreach programmes** aimed at ensuring that IDPs and other affected individuals **are aware of their rights**. These should include information about human rights and humanitarian principles in general; the rights of IDPs and other affected individuals; the responsibility of the State and its institutions to respect such rights; and avenues available for redress, whether through the formal or the informal justice system. Activities can include public awareness and educational programmes, including information campaigns, workshops, trainings, and integrating human rights in school curricula.

Mainstreaming of rule of law and access to justice

- Advocate with relevant actors to ensure that rule of law and access to justice are included in peace negotiations and agreements, in relocation and integration frameworks and agreements, and in development plans and programmes.

Supporting and strengthening the capacity of persons of concern to access justice

Legal assistance and advice

(See Part IV.5)



- Ensure that legal aid is available, affordable and adequate, and provided in an appropriate language. This can, for instance, be done by supporting the establishment of legal clinics and information centres, including mobile clinics, and/or by supporting and training networks of lawyers or paralegals that provide free legal advice and assistance.

Material or financial assistance

- 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 costs to and from court.



Safety and security (See Part V.3) 	<ul style="list-style-type: none"> 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.
Rights of the accused	<ul style="list-style-type: none"> Take steps, for instance through advocacy, to ensure that the rights of those arrested or detained on criminal or other charges are respected. These include the rights not to be ill treated, to be informed of the charges, to be brought promptly before a judge and to have a fair trial (<i>see legal section</i>).
Reforming and building the capacity of the justice sector and other institutions	
Institutional reform	<ul style="list-style-type: none"> Advocate and support, as appropriate, reform of institutions of justice as well as other relevant institutions, including the police, prosecutors and prison authorities (<i>see Annexes 1-3 to this chapter</i>). Advocate and support the establishment and, where these already exist, the effective functioning of an independent national human rights institution.
Technical advice and expertise (See Part IV.4) 	<ul style="list-style-type: none"> Provide 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, for instance, be done by providing advice or legal briefs, holding trainings, workshops and seminars, and exchanging or loaning staff on a temporary basis (<i>see Annexes 1-3 to this chapter</i>). Consider providing such human rights capacity-building support to other related institutions as well, particularly the police and prison authorities and traditional justice mechanisms, civil society organizations and communities (<i>see Annexes 1-3 to this chapter</i>).
Material or financial assistance (See Part IV.7) 	<ul style="list-style-type: none"> Consider providing modest material or financial assistance to formal and informal justice institutions, or to police, prosecutors, or prison authorities, if appropriate, to facilitate and strengthen their work. This can, for instance, include the establishment of mobile courts, office space, office or communication equipment, computers, vehicles or fuel. Such assistance should be temporary, be governed by a formal agreement, and subject to continuous monitoring and evaluation.
Do you have suggestions about other activities? If so, please share them with us at hqidphb@unhcr.org	



5. Key Actors

Enhancing the rule of law and access to justice requires concerted efforts by a range of actors including:

- At the **national level**, the Courts at all levels; police, prosecutors and prison authorities; Ministries of Justice, the Interior, and Education; Parliament; bar associations and networks of lawyers and paralegals; national human rights institutions; university law departments; NGOs and civil society groups; traditional, customary or religious councils and associations; the media; IDP communities and affected populations; and the public.
- At the **regional level**, 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.
- At the **international level**, UNDP; OHCHR; DPKO and peacekeeping forces on the ground; UNHCR; UNICEF; UNODC; UN human rights treaty bodies and special procedures of the Human Rights Council, including the Special Rapporteur on Independence of Judges and Lawyers; and NGOs.

6. The legal framework

International (and regional) human rights law contains several guarantees that are of particular importance to ensuring full and equal access to justice, including:

- The **right to an effective remedy**² calls for full, equal and effective access to justice and adequate reparation for violations of human rights. The right to a remedy extends not only to the direct victim, but may also extend to the immediate family or dependents and persons who suffered harm in intervening to assist victims. Reparations should be just and proportional to the gravity of the violation and can involve, for instance, restitution (restoration to the previous situation), compensation (e.g. for physical or emotional suffering or economic loss), rehabilitation (e.g. medical care), satisfaction and guarantees of non-repetition.
- The right to **equal recognition of and equality before the law**³ requires that everyone, including internally displaced persons, 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 internally displaced persons are able to access formal or informal justice mechanisms according to specific needs.

Human rights law also protect the rights of those that are arrested or detained: the **right to liberty and security** prohibits arbitrary arrest and detention and provides minimum guarantees to those detained; and **the right to humane treatment** while in detention. The **right to a fair trial** establishes the minimum substantive and procedural principles (*due process*) applicable in criminal cases⁴.

The right to a fair trial: An overview

- Equal treatment before courts and tribunals
- Fair and public hearing by a competent, independent and impartial tribunal established by law
- Be presumed innocent until proved guilty
- Be informed promptly and in detail, in a language one understands, of the nature of charges
- Have adequate time and facilities to prepare a defense and to consult with counsel of choice
- Be tried without undue delay and in person
- Defend oneself in person or through legal counsel of choice; with legal counsel being offered without charge if necessary or the interests of justice so require
- Examine or have examined witnesses on the same conditions as the adverse party
- Not be compelled to testify against oneself or to confess guilt
- Not be convicted for any act that did not constitute a criminal offence at the time it took place
- Not be convicted for any offence for which one has already been convicted or acquitted
- Have a conviction reviewed by an independent appeal court
- Benefit from any subsequent decrease in punishment and be compensated for any miscarriage of justice

² 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. It is also specifically guaranteed in various provisions, including, at the international level, in Art. 8 of UDHR; Arts. 2(3), 9(5) and 14(6) of ICCPR; Art. 6 of CERD; Arts. 12, 13 and 14 of CAT; Art. 39 of CRC; and Principle 7(3)(f) of the Guiding Principles on Internal Displacement. See also, at the regional level, Arts. 7 and 21(2) of AfCHPR and Arts. 8 and 25 of its Protocol on the Rights of Women in Africa; Arts. 10, 15, 27, 63 and 68 of AmCHR; Art. 4(g) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women; Art. 9 of the Inter-American Convention to Prevent and Punish Torture; Arts. 9 and 16 of ArCHR; Art. 19 of the Cairo Declaration; and Arts. 5(5), 13 and 41 of ECHR.

³ At the international level, Art. 6 and 7 of UDHR; Art. 16 and 26 of ICCPR; Art. 5 of CERD; Art. 15 of CEDAW; and Principle 20 of the Guiding Principles on Internal Displacement. At the regional level, Arts. 3 and 5 of AfCHPR and Arts. 3(1) and 8 of its Protocol on the Rights of Women in Africa; Art. 17 of AmDHR; and Art. 3 of AmCHR. For further information see also General Comment No. 32 of the Human Rights Committee on Article 14(2007): Right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32).

⁴ Based on Arts. 10 and 11 of UDHR; Arts. 9 and 14 of ICCPR; Art. 5(a) of ICERD; Art. 15 of CEDAW; and Art. 40 of CRC. See also, at the regional level, Art. 7 and 26 of AfCHPR; Art. 17 and 30 of AfCRWC; Art. 8 AmCHR; Art. 7 of ArCHR; Arts. 6 and 7 of ECHR and Arts. 2, 3 and 4 of Protocol 7. For further information see also General Comment No. 32(2007) of the Human Rights Committee on Article 14: Right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32).

Children that come into contact with justice system are entitled to special treatment that takes into account their age, wellbeing and need for special protection. This applies both to children that are victims/survivors of crimes as well as children that come into conflict with the law. Juvenile justice, which is aimed at reconciliation rather than retribution, promotes the use of community solutions, rather judicial proceedings, and alternatives to custodial sentencing, such as counseling, probation and community service.⁵

7. International humanitarian law

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 under instructions from the State or under its direction or control. States are expected to make full reparation for the loss or injury caused.⁶

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 and 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.⁷

Basic rules, principles and/or guidelines relating to access to justice

Available at 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 IHL
- 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
- UN Standard Minimum Rules for the Administration of **Juvenile Justice** (the Beijing Rules)
- United Nations Guidelines for the Prevention of **Juvenile Delinquency** (the Riyadh Guidelines)
- ECOSOC Guidelines on Justice in Matters involving **Child Victims and Witnesses of Crime**
- ECOSOC Guidelines for Action on **Children in the Criminal Justice System**

⁵ See, in particular, Arts. 37 and 40 of CRC, and, at the regional level, Art. 17 of ACRWC. See also 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*); the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (*Beijing Rules*); Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res. 2005/20 of 22 July 2005); and Guidelines for Action on Children in the Criminal Justice System (ECOSOC Res. 1997/30 of 21 July 1997).

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

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

International humanitarian law also prohibits the conviction or sentencing of persons except following a fair trial affording all essential judicial guarantees.⁸ 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 necessary means of defense, including access to legal assistance and interpretation, if required. Depriving a person of his/her right to a fair trial constitutes a grave breach of the Geneva Conventions and can amount to a war crime.⁹



Resources

- *Access to All: A Practitioner's Guide to a Human Rights-based Approach to Justice*, UNDP, 2005. www.undp.org/governance/docs/Justice_Guides_Programming_ForJustice-AccessForAll.pdf
- *Access to Justice: Practice Note*, UNDP, 2004. www.undp.org/governance/docs/Justice_PN_English.pdf
- General Comment No. 32(2007) of the Human Rights Committee on Article 14: Right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32). www.ohchr.org/english/bodies/hrc/comments.htm
- *The Administration of Justice in Refugee Camps: A Study of Practice*, Rosa da Costa, UNHCR, 2006. www.refworld.org
- *Guide to International Human Rights Mechanisms for Internally Displaced Persons and Their Advocates*, Brookings-Bern Project on Internal Displacement, 2006. www.ohchr.org
- *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, OHCHR/International Bar Association, 2003. www.ohchr.org
- *Rule-of-Law Tools for Post-Conflict States*, OHCHR, 2006 (on prosecution, truth commissions, monitoring of legal systems, and vetting). www.ohchr.org
- *Juvenile Justice: Modern Concepts of Working with Children in Conflict with the Law*, Save the Children, 2006. www.savethechildren.org.uk



Useful websites

- United Nations Development Programme (UNDP): www.undp.org
- International Centre for Transitional Justice (ICTJ): www.ictj.org
- International Criminal Court (ICC): www.icc-cpi.int
- International Criminal Tribunal for Rwanda (ICTR): <http://69.94.11.53>
- International Criminal Tribunal for the former Yugoslavia (ICTY): www.un.org/icty
- Reports of the Special Rapporteur on the Independence of Judges and Lawyers: www.ohchr.org/english/issues/judiciary/index.htm

⁸ See e.g. Rules 100-102 of Customary International Humanitarian Law, Volume I: Rules (ICRC, 2005). See also Common Art. 3 to the Geneva Conventions; Arts. 5 and 66-75 of the Fourth Geneva Convention; Art. 75 of Additional Protocol I; and Art. 6(2) of Additional Protocol II.

⁹ See e.g. Art. 147 of the Fourth Geneva Convention; Art. 85(4)(e) of Additional Protocol I; Art. 8(2)(a)(vi) and (c)(iv) of the Statute of the International Criminal Court.

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

Institution	Description	Common challenges	In our work we can ...
<p>All</p>	<p>The term “formal justice mechanisms” includes not only the judiciary but also the police, prosecutors, and prison authorities. Like all other institutions of the State, they are obliged to respect human rights and professional and ethical standards applicable to their work, including principles of fairness, transparency, impartiality and accountability. In practice, particularly in situations of conflict and forced displacement, such institutions might 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 of IDPs and other affected populations.</p>	<ul style="list-style-type: none"> ● General breakdown of the legal, institutional and social order, resulting in disruption, closure or destruction of institutions and infrastructure ● Inadequate or outdated legislation, rules and procedures that fail to respect human rights and professional/ethical standards ● Lack of transparency, accountability and adequate oversight mechanisms ● Lack of resources and capacities, including qualified staff, adequate infrastructure and necessary equipment ● Widespread culture of discrimination, corruption, extortion, violence and abuse ● Lack of public confidence and public access to information ● Under-representation of women and minority groups 	<ul style="list-style-type: none"> ● Provide or support training on human rights law and professional/ethical standards for relevant stakeholders ● Provide short-term material support, such as office space, furniture, stationary, additional staffing support, or vehicles (for mobile courts) ● Provide technical advice and expertise where needed ● Advocate for the establishment or strengthening of institutional accountability and oversight mechanisms ● Advocate for revision of laws, regulations and procedures so these are in conformity with human rights and professional/ethical standards ● Encourage and support the strengthening of the role of women and other disadvantaged groups. ● Advocate that issues relating to the rule of law and access to justice are included in peace negotiations, settlements and development plans.
<p>Judiciary <i>(includes the courts and quasi-judicial bodies, such as tribunals and commissions)</i></p>	<p>A competent, independent and impartial judiciary 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 UN Basic Principles on the Independence of the Judiciary summarize many of its basic principles, including that hearings must be conducted fairly and in public; due process rights must be respected; and 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.</p>	<ul style="list-style-type: none"> ● Lack of resources and capacities, including qualified staff, adequate infrastructure, legal materials and office equipment ● Undue delays owing to ineffective administration and excessive case loads ● Unaffordable litigation costs ● Insecurity and violence, including lack of victim and witness protection, <i>en route</i> to and on court premises ● Undue influence or interference by other branches of government, undermining the independence of the judiciary ● Lack of legal aid and representation ● Lack of adequate mechanisms to follow and ensure that judicial decisions are respected and enforced 	<ul style="list-style-type: none"> ● Provide material support, such as legal materials/publications and/or office equipment ● Encourage and support the establishment of mobile courts and provide temporary material/technical support ● Encourage the use of informal dispute resolution systems or small claims tribunals, provided these meet and respect human rights standards ● Advocate for improved security measures, in particular for victims and witnesses as well as for judicial staff ● Encourage legal and administrative reform, including transparency, accountability and security of tenure for judges, recruitment of female judges, and streamlining of rules and procedures. ● Advocate for and support legal aid programmes

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<p>Police</p> <p>The police play an essential role in ensuring access to justice. In addition to maintaining law and order, the police are usually the first point of contact in the judicial system, and take responsibility for enforcing judicial decisions. The police hold broad discretionary powers that, if misused, can result in grave human rights violations. The UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials govern the conduct of the police, including the use of force and firearms, respect for confidentiality, and treatment of detainees.</p>	<ul style="list-style-type: none"> ● Lack of resources and capacities, including delays in salary payments, lack of qualified staff and weak forensic and investigative abilities ● Targeted attacks of police staff by parties to hostilities ● Widespread culture of violence and abuse of discretionary powers, including unnecessary and excessive use of force, arbitrary arrest and detention ● Discrimination, harassment, extortion and exploitation of individuals and groups, particularly women and those of certain ethnic, religious or indigenous origin ● 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 minorities 	<ul style="list-style-type: none"> ● Provide or support training in human rights, including the rights of IDPs and professional/ethical standards ● Assist authorities with developing and implementing crime-prevention and response strategies ● Improve community-police relations, including through community policing or joint patrols ● Advocate for the establishment of appropriate accountability and oversight mechanisms that can monitor and restrict the abuse of police powers ● Advocate for the strengthening of the police's conditions of service, facilities and infrastructure ● Encourage the establishment of units and trained staff dealing specifically with sexual and gender-based crimes and with child protection issues ● Advocate for increased numbers of female police officers 	<ul style="list-style-type: none"> ● Provide or support training in case management, evidence-gathering and investigation ● Provide material and technical support to assist prosecutors in building and pursuing cases involving major human rights violations ● Advocate for the establishment of adequate criminal procedural codes and codes of conduct for prosecutors
<p>Prosecutors</p> <p>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 might be entrusted with enforcing court judgments. The UN Guidelines on the Role of Prosecutors establishes minimum standards for prosecutors, including that they perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights.</p>	<ul style="list-style-type: none"> ● Lack of resources and capacities, including qualified staff and weak investigation capabilities ● Imprecise criminal procedural codes and codes of conduct for prosecutors ● 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 ● Lack of safety and security for prosecutors and their families 	<ul style="list-style-type: none"> ● Provide or support training in case management, evidence-gathering and investigation ● Provide material and technical support to assist prosecutors in building and pursuing cases involving major human rights violations ● Advocate for the establishment of adequate criminal procedural codes and codes of conduct for prosecutors 	<ul style="list-style-type: none"> ● Provide or support training in case management, evidence-gathering and investigation ● Provide material and technical support to assist prosecutors in building and pursuing cases involving major human rights violations ● Advocate for the establishment of adequate criminal procedural codes and codes of conduct for prosecutors



Institution	Description	Common challenges	In our work we can ...
<p>Prisons</p>	<p>Prisons should be included in wider justice reform programmes, and detention and imprisonment should always be subject to strict rules. 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 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: UN Basic Principles for the Treatment of Prisoners; UN Standard Minimum Rules for the Treatment of Prisoners; and UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.</p>	<ul style="list-style-type: none"> ● 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 ● Violence and abuse of prisoners and detainees at the hands of other prisoners or prison officials ● Failure to respect basic principles and standards for the treatment of prisoners, including relating to segregation of prisoners by sex, age, and criminal conviction ● Arbitrary, prolonged and excessive pre-trial detention because of delays in other parts of the justice system ● Emphasis on confinement and punishment rather than rehabilitation and eventual reintegration into society ● Outdated or abusive prison and penal legislation, rules and procedures 	<ul style="list-style-type: none"> ● Ensure regular monitoring of prison conditions and compliance with basic principles/standards. As appropriate, advocate for improvements ● Advocate for the establishment of internal and external oversight and investigation mechanisms to ensure that incidents of violence and abuse are reported, investigated and punished ● Encourage the use of non-custodial measures or alternative forms of detention aimed at facilitating rehabilitation and social re-integration of offenders ● Advocate for review and revision of prison and penal legislation, rules and procedures, and offer technical assistance to do so, if and when needed ● Advocate for greater number of female prison officials, including guards, managers, monitors and evaluators <p>Note! These activities should be undertaken in consultation with the ICRC and OHCHR where present</p>

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 might be handled by 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 might be more accessible and acceptable from a cultural or religious perspective, consume less time and resources, focus on restitution and compensation rather than punishment, and use methods, such as mediation, negotiation and arbitration, that can foster social cohesion and reconciliation.

DRS should not be seen as a substitute for 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 equipped 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 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 community structures have been disrupted, DRS might be relatively new or neo-traditional institutions that lack cultural and moral legitimacy, despite claims to the contrary. Other concerns include:

- Limited respect for basic human rights, including the principle of non-discrimination and recognized standards of fair trial and due process. In particular, DRS might 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 criminalize acts that **do not** constitute a violation of national law (e.g., sorcery, rape defined as adultery) or fail to criminalize and punish acts that **do** violate national law (e.g., rape and sexual violence, harmful traditional practices, female genital mutilation, 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 might 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 might 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 include: lack of confidentiality, transparency and accountability; lack of legal aid and representation; inadequate record-keeping; failure to provide reasons 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. These 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, such as providing 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 is 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 part of beginning the long-term process of healing among individuals, families and communities.

Peace and justice 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 might, in some cases, undermine rather than strengthen post-conflict reconciliation and peace-building in the longer term.

There are several ways to address past abuses in post-conflict societies, 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 past abuses during conflict or authoritarian rule. It generally involves a combination of complementary judicial and non-judicial strategies that might differ from one society to another. These include:

- **Prosecution of alleged perpetrators** before national courts, hybrid tribunals (such as the Special Court for Sierra Leone) or international courts (such as the International Criminal Court).
- **Truth commissions**¹⁰ 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, actual or symbolic, as appropriate for abuses suffered.
- **Commemoration** of victims and survivors through ceremonies or the construction of memorials or museums, often through conversion of sites of former abuse, such as prisons or detention camps.
- **Reconciliation initiatives**, including healing 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 might not be the appropriate solution; on the contrary, it might run counter to the interests and will of both the victims and society at large. However, efforts should 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, and the harm suffered by, **women and girls**. Rape, gang rape, forced prostitution, forced pregnancy and some other forms of sexual violence may constitute torture, genocide, mutilation, and enslavement, under international law. Such acts, however, have in general not been treated with the same seriousness as other war crimes. Neglect of patterns of gender-based abuse has entrenched impunity, limited the reach of reparations programmes, and undermined the legitimacy of transitional justice initiatives.

Strategies to strengthen transitional justice mechanisms include:

- Ensuring that questions of transitional justice, including for women and girls, are addressed in peace negotiations and settlements;
- Establishing or supporting the work of courts, tribunals, truth commissions and other justice mechanisms through financial, material or technical assistance; and
- Providing support to grassroots peace-building and reconciliation efforts.

¹⁰ Truth commissions have been established in Ecuador, Ghana, Guatemala, Nigeria, Panama, Peru, Sierra Leone and South Africa.