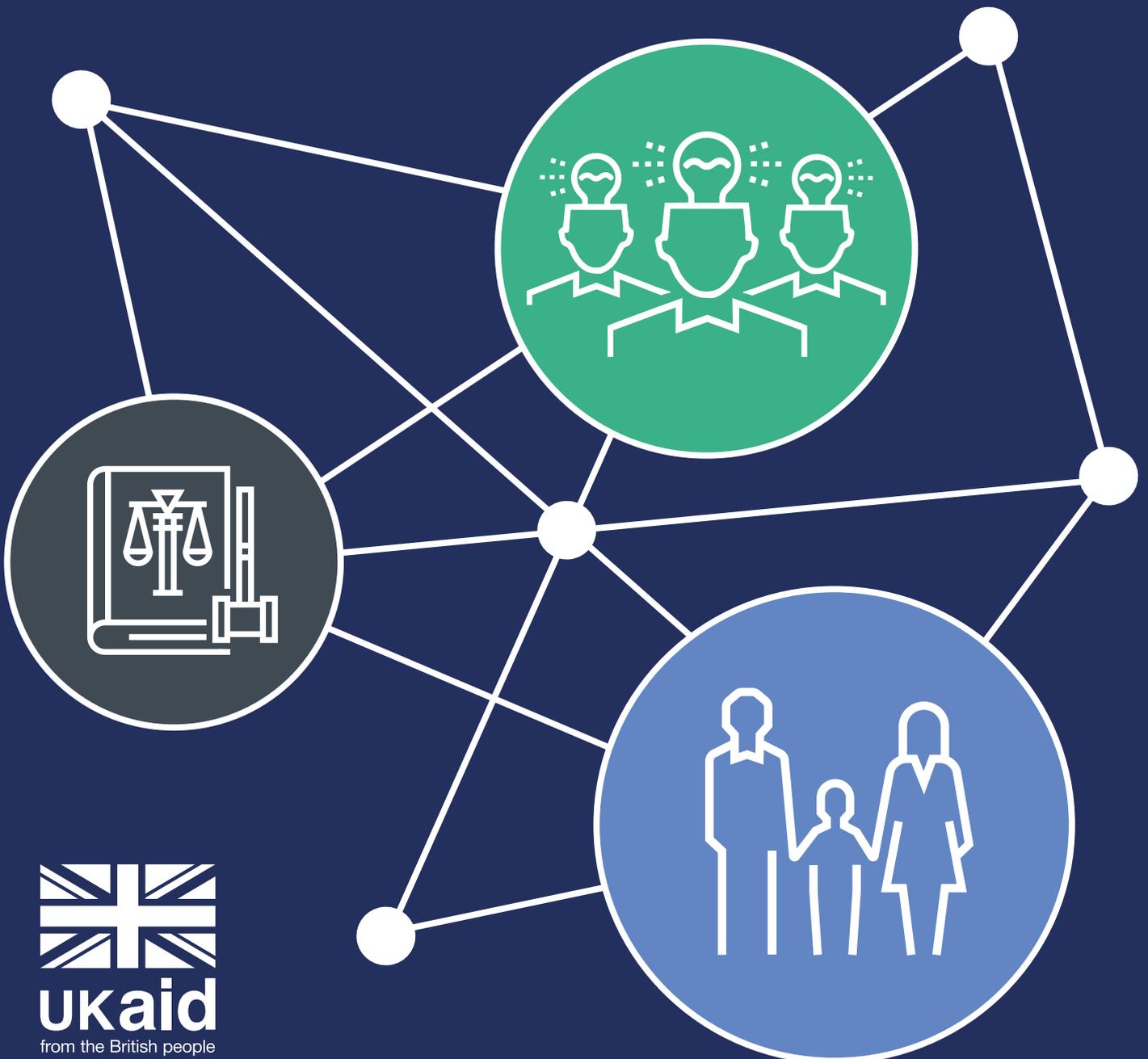




Political Economy Analysis – Guidance for legal technical assistance

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Summary

Political economy analysis is about understanding how change in relation to rule of law and international development is embedded within and shaped by political and economic relations that interact and are particular to each context. These political economy dynamics determine the distribution of power and resources within any given society and must be taken into account when attempting to achieve change.

Political economy analysis is important in the justice sector because rule of law and dispute resolution processes reflect the rules of the game about who wins and who loses in the allocation of power and resources.

Using political economy analysis in legal technical assistance can help to ensure more relevant and effective assistance that sustainably addresses concrete problems. It can also help to avoid the risk that poorly targeted assistance might inadvertently exacerbate existing power structures in a way that was not intended.

The following steps can assist in integrating a political economy analysis lens:

STEP 1 Identify and obtain agreement on the specific problem to be addressed.

STEP 2 Analyse the problem and why it persists using:

- justice chains; and
- considerations of structure (formal institutions like laws and policies, and informal norms like patriarchy and religious beliefs) and agency (the interests, incentives and ideas that drive the stakeholders involved, and their relative power)

STEP 3 Consider how the problem might be solved locally and what role legal technical assistance can usefully play.

Using political economy analysis in legal technical assistance can help to ensure more relevant and effective assistance that sustainably addresses concrete problems.

Introduction

This paper has been developed by the UK's Rule of Law Expertise Programme (ROLE UK), which is funded by the Department for International Development (DFID). ROLE UK contributes to rule of law initiatives aimed at reducing poverty and increasing access to justice in developing countries, through supporting the provision of pro bono legal and judicial expertise.

This paper provides guidance for legal experts, managers, organisations, networks or partnerships providing legal and judicial support in developing countries to ensure that learning about effectiveness in the development field is brought to bear on legal technical assistance. It has been developed for use by those involved in the design and delivery of interventions supported by ROLE UK. However, it has wider relevance for any legal experts and organisations providing technical assistance, peer-to-peer support and training across a wide range of justice sector needs. Recognition of the need to take context seriously to inform development practice, as well as an acknowledgement of the fundamentally political nature of development processes, has led to growing use of political economy analysis (PEA).

This paper outlines how political economy approaches can be used in undertaking legal technical assistance. The paper first outlines the political nature of rule of law and justice reform and related challenges for legal technical assistance. Second, it explains what political economy analysis is and its relevance for the justice sector. Third, it provides guidance on issue-based political economy analysis that legal experts can draw on to inform and situate their deployment strategies. Further readings are included for those wishing to explore the topic in more depth.

1 Rule of law development and justice reform as inherently political



Justice and rule of law support in developing countries has often been characterised by top-down, overly technical approaches. These have been based on assumptions about what justice provision should look like, rather than what justice mechanisms are intended to achieve. This follows the long-standing practice of international support to justice reform being grounded in legalistic approaches to rule of law and justice provision, where solutions are pre-defined and often based on legal traditions of the donor country. The emphasis of international efforts has often been on strengthening specific organisational and infrastructural components of the justice sector (such as courts, prosecution services, addressing case backlogs, providing legal aid), or on legal change (reforming the content of law).

At the same time, we know that advances in rule of law and in the quality of justice provision are historically the result of political and institutional change, as well as changes in wider attitudes and beliefs in society. Rule of law is a political outcome that reflects an agreement about the 'rules of the game' regarding social, political and economic interaction. It involves agreeing and applying the rules and systems that define social, political and economic conduct, including for rulers and elites. The *content* of the law is not politically neutral. It may be more oriented, for instance, to poverty reduction, addressing inequality, or to affirming patterns of inequality, and importantly is the result of political processes, which may be more or less inclusive, representative or participatory. Thus, the process by which rulers, powerful groups and society more generally become bound *in practice* by a commonly agreed and predictable set of rules about justice is deeply political.

Rule of law reform is further complicated by the fact that often justice support takes place in contexts of legal pluralism. Customary justice is often a prevalent feature of how disputes get resolved and may be more readily accepted, trusted and accessible by the local population than the formal justice system. It is now also accepted by many development experts that we should not assume that achieving the rule of law necessarily requires progression away from legal pluralism towards the consolidation of a state-provided unitary judicial system. This means that legal assistance needs to take account of legal pluralism.

● We know that advances in rule of law and in the quality of justice provision are historically the result of political and institutional change, as well as changes in wider attitudes and beliefs in society.

Finally, the justice sector in much of the developing world is often deeply politicised and susceptible to capture by powerful interests. It cannot be assumed, for instance, that the judiciary is independent, or that training will, in itself, alter the incentives that allow powerful interests to buy or influence justice outcomes. Moreover, powerful actors may resist changes that improve judicial oversight, independent adjudication or effective rights protection where these threaten vested interests, even in spite of formal commitments to support such changes.

International support to justice reform therefore necessarily involves taking account of the political nature of the task. This includes understanding context-specific realities in order to make the most of opportunities for change and be realistic about what is politically viable and what role external legal assistance can play.

2

What is Political Economy Analysis?



In recent years there has been a move in the development sector to engage more systematically with the political nature of developmental change – be that in regard to strengthening education outcomes, addressing corruption, or improving access to justice. This has taken different forms of political analysis, more recently through political economy analysis approaches.

At its most basic, PEA involves understanding the interaction between structure and agency.

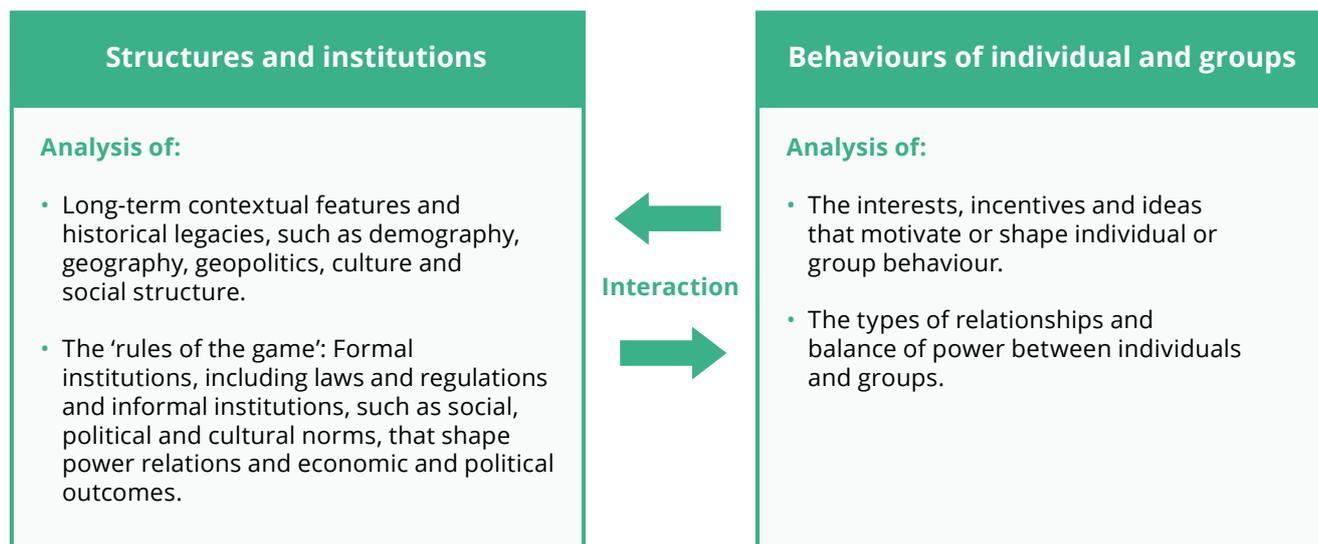
- **Structure** relates to long-standing historical legacies (such as ethnic composition or class inequality) and formal and informal institutions (such as laws and policies on the formal side and patriarchy or religious beliefs on the informal side). Both formal and informal institutions play a role in shaping social, political and economic outcomes – and in many cases informal institutions have the strongest influence. These features shape the prevailing power relations in any given society.
- **Agency** describes the capacity of individuals and groups to make choices. Existing structural conditions will shape this – giving more or less power, resources and voice to certain groups in society over others. At the same time, different stakeholders may either support or contest structural conditions. People tend to generally accept the status quo and prevailing power relations. However, people can also mobilise to achieve change (think of women contesting patriarchy to win the right to vote, the civil rights movement agitating for equality, or labour unions confronting corporate management, for instance). In addition to being shaped by the structural constraints of power and resources, people's behaviour tends to be influenced by their interests (what people believe benefits them), incentives (what motivates people) and ideas (what people believe in).

Political economy analysis examines how people's actions or agency rub up against structures in support of either the status quo, or of change – and in turn, how structures can limit their capacity

● Context specificity is central to Political Economy Analysis. What is true for one context does not apply to another.

for action. At the core of PEA is understanding the power relations that characterise any given society, and how these change over time. This dynamic is captured in Figure 1.

Figure 1: Political Economy Analysis components



Context specificity is central to PEA. What is true for one context does not apply to another. From the perspective of a development practitioner, PEA provides a useful analytical framework to help ensure that interventions are designed to be relevant and responsive to the specific conditions of the country in question. It can therefore help to move away from top-down, overly technical approaches with pre-determined solutions. Moreover, for PEA to be useful for practitioners beyond simply providing background analysis, it is increasingly applied to understand concrete development 'problems' and identify potential entry points for change.

3

How political economy analysis can be used in justice support



Given the political nature of rule of law and the justice sector, applying problem-focused PEA can help to identify particular justice problems and where reform opportunities might realistically be supported. Two points are important to underline.

First, the range of issues covered by justice reform is extremely broad. Donor-supported reforms in this area typically include: capacity development of justice providers (judges, prosecutors, legal aid providers); dealing with case back logs; building the infrastructural and technological capacity of judicial, prosecutorial and detention processes; political reform processes to advance judicial independence; support to legal reform; support to rights awareness and advocacy; legal aid; and support to addressing excessive pre-trial detention. This breadth of issues attests to the value of a problem-driven approach. Each issue involves overlapping yet distinct sets of stakeholders, relationships and justice mechanisms – as well as different constellations of interests and incentives. For instance, dispute resolution issues relating to women’s access to inheritance and ownership of land raise a different set of challenges to the problem of weak judicial independence. The problems at stake therefore need to be addressed on their own merits in order to identify contextually relevant entry points.

Second, at the same time it is important to underline that problem-driven approaches can result in piecemeal and isolated interventions if they are not embedded within an understanding of the wider political and social environment.

There are a number of ways to turn these conceptual issues into practical tools in support of legal technical assistance. These tools, developed for larger development programmes, can involve significant time investments and background research. This is not possible for the kinds of shorter-term pro bono deployments that ROLE UK supports. In this guidance note, the focus is on applying political economy analysis thinking to ‘justice chains’, with the purpose of identifying the particular features of specific justice problems and opportunities for resolving them. This is a particularly useful tool in relation to legal technical assistance because the different parts of the justice system are closely

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interconnected and therefore seeking to alter the dynamics in one part of the system requires an understanding of factors elsewhere in the chain.

What this involves is set out below for pro bono experts, organisations and managers to draw on as helpful, along with examples of how PEA thinking has informed justice work across a range of issue areas.

Practical use of PEA can involve the following three steps, discussed below:

STEP 1 Identify a specific problem to be addressed.

STEP 2 Unpack the problem to understand why it persists:

- Use justice chains to identify where blockages in the justice system lie and relevant windows of opportunity for engagement;
- Consider in each stage of the relevant justice chain – and at the wider socio-legal level – the structural and institutional impediments to reform (structure), as well as the interests, incentives and capacity for action of different stakeholders (agency).

STEP 3 Consider potential solutions to the problem and what support legal experts can provide.

In cases where the full application of the methodology described here is not feasible, it is important to integrate this type of analytical thinking and approach as far as possible in the planning and delivery of legal technical assistance work.

Step 1: Starting with ‘problem identification’

A problem-driven approach helps to ensure that pre-determined solutions are not the starting point; rather the aim is to start with a particular justice problem and identify the features that shape it. This avoids programming being driven by what donor programmes or legal experts can offer (which may or may not be helpful), rather than by what the problem itself calls for. This is a particularly important point to note in relation to pro bono legal technical assistance, where there is a risk that pro bono work is developed on the basis of highly skilled lawyers wishing to put their experience and expertise to good use in supporting the rule of law overseas, but without detailed contextual knowledge.

A problem-driven approach helps to ensure that pre-determined solutions are not the starting point; rather the aim is to start with a particular justice problem and identify the features that shape it.

Clearly identifying the nature of the problem that an assignment is helping to address is key to maximising the effectiveness of pro bono deployments and other forms of legal technical assistance. Ideally, this should begin early in the process of discussions with in-country partners/clients requesting assistance. While a request might target a particular problem, legal experts should work collaboratively with ROLE UK – or the relevant organisation facilitating and supporting the assignment – and partners/clients to discuss what the specific features of the problem are *in the context* that assistance is being sought for. The demand-led nature of some technical assistance – such as that of ROLE UK – means that the client will already have an identified problem in mind (for instance, case back-log, excessive pre-trial detention, or poor legal aid provision). However, engaging in discussions about the problem, its symptoms and context is still important. This is because there are likely to be a range of associated problems and symptoms and the first problem to be articulated may not be the fundamental root problem, but merely a symptom of it. Drilling down to the key issues by explicitly asking and discussing what the fundamental problem to be addressed is can help to avoid unfocused assistance on a range of symptoms of problems. In some cases, the partner/client may already have undergone a collaborative process of problem-identification in-country, which can helpfully inform discussions between legal experts and their partner/client. A demand-led request being made is in itself an opportunity, as it potentially reflects an existing platform for discussion among relevant stakeholders in the host country, and a strategic coalition of local reform champions.

It is critical that problem identification is done in conjunction with the partner/client in-country to ensure that there is agreement on the aims and scope of assistance. In some cases, it may not be possible to clearly identify the core problem and its features at the outset and assistance, if provided, may then need to focus, in the first instance, on getting a clearer sense of the problem that future support might be deployed to help address. While in country, building an understanding of the problem might involve brokering discussions with local counterparts (including, but not limited to the partner/client), recognising that they have deeper knowledge of different facets of the problem, might rarely have the time or incentives to be brought together to discuss, and that ultimately it is local people who will make change happen. There may be a number of related ‘problems’ and given the often short-term nature of expert deployments, it might be important to decide which of these will be the focus of support. Being problem-focused should ensure more targeted assistance that can get to the heart of the issue being faced and ultimately make legal assistance more effective.

It is also helpful to reflect critically on the role of both the in-country partner/client and legal expert and on the risks of prematurely defining the parameters of the problem – and the solution. Remember that the legal experts or organisations providing legal technical assistance are themselves significant ‘players’ who possess resources and power and are part of the political economy. The problems identified and solutions

There are likely to be a range of associated problems and symptoms and the first problem to be articulated may not be the fundamental root problem, but merely a symptom of it.

proposed may be a function of the technical assistance that is available. For instance, if training on dealing with court backlogs is perceived to be available, then the problem may be identified as a lack of capacity in this area, when actually other significant factors exist, for instance a high number of cases coming to court because of political pressure on police to make a large number of arrests. Further, in-country partners may perceive that in addition to providing technical assistance, legal experts or organisations provide a route to securing funding or influence. Those offering technical assistance need to adopt a nuanced approach, which recognises that in-country partners have the greatest legitimacy to identify needs and solutions but which takes account of how their offer of technical assistance may influence the type of need expressed.

Step 2: Unpack the problem to understand why it persists using justice chains

Once there is a clear justice problem in mind to centre assistance around, PEA can help to usefully unpack the factors that sustain the problem. This is important because problems are rarely just the result of lack of capacity, or legislation, but rather reflect particular interest structures or power relations that are harder to shift. Analysing and asking why the problem persists can help to dig down to ensure that assistance gets to the root of the problem. If the problem is presented as one of pre-trial detention, for instance, asking why this problem persists could highlight a range of drivers – including weak due process principles in law, poor case management systems, inefficient judicial and court processes, or high levels of arrest. Similarly, then asking why these underlying problems exist can help to work back to what the nub of the problem is.

To drill down to justice problems and why they persist, a two-step process is involved that uses justice chains to assist in analysing the political economy. First, justice chains are constructed to understand the particular blockages at different stages of the justice system (noting that judicial processes are often not linear). Second, relevant stages of the justice chain are unpacked, considering the political economy dynamics *within* the stage, and in relation to the wider legal and political context. This is set out in steps 2a and 2b below.

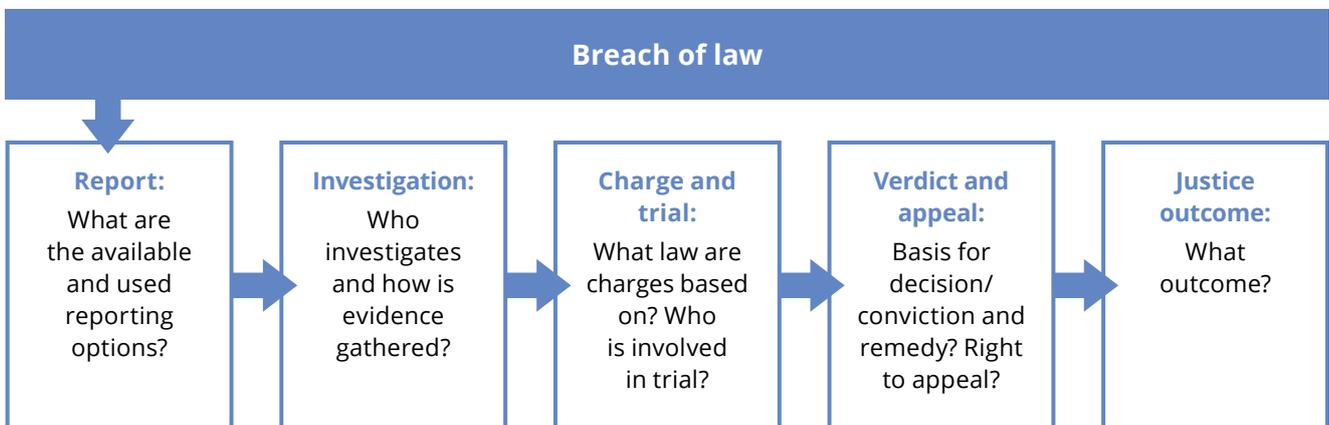
Throughout the process of looking at the component parts of the justice chains it is important to ensure that the wider socio-political and legal context is kept in mind. This will have a bearing on the particular political economy components of the different stages of the chain. Relevant factors to consider in relation to this wider context would include, for instance, the nature of the criminal justice system; prevailing political discourses on crime and insecurity and human rights; and real and perceived levels of crime and insecurity (see Box 1 on page 19).

Those offering technical assistance need to adopt a nuanced approach, which recognises that in-country partners have the greatest legitimacy to identify needs and solutions but which takes account of how their offer of technical assistance may influence the type of need expressed.

Step 2a: Constructing the relevant justice chain

It is helpful to situate the problem within the justice chain to understand where the particular blockage lies, what might be driving it earlier in the justice chain, and what opportunities might exist to address it. Justice chains take account of the different stages of dispute resolution, grievance or criminal justice process. Using justice chains makes it possible to unpack in more detail the stakeholders involved, their interests and what drives their decisions at different points of the chain (including laws, and institutions like patriarchy or cultural beliefs). At the same time, it is possible to see how the problems identified at different points in the chain are connected to other points in the chain and to the wider socio-political and legal system. A basic justice chain involving criminal justice procedure is set out below.

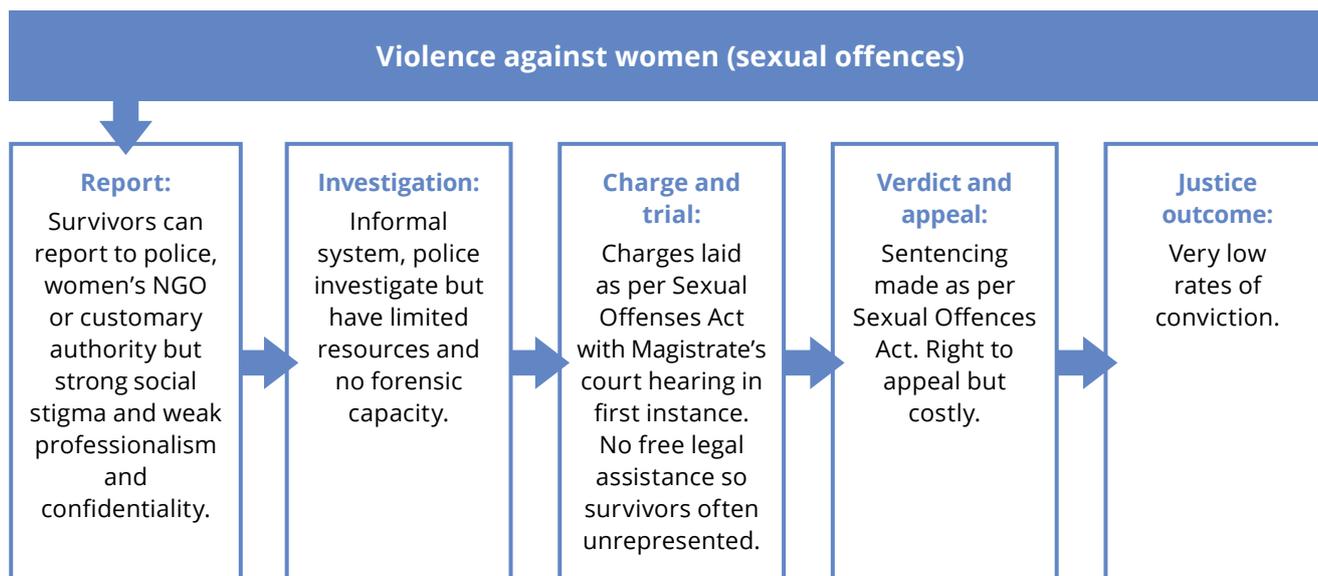
Figure 2: Formal justice chain: Breach of law



These chains work best as a template structure that can be populated and adapted as is relevant to each context and to the justice issue at hand – across civil and criminal justice issues. The point is to draw attention to the wider processes involved in the justice chain to understand how a problem fits within it, focusing attention on drivers earlier in the chain.

To draw a chain, begin with the stage at which the problem being addressed occurs – for instance, if the problem is low levels of conviction for sexual offences, begin with the 'Verdict and Appeal' stage of the chain. Then fill in the stages before and after the 'problem' stage. Such a chain might then look like Figure 3 overleaf.

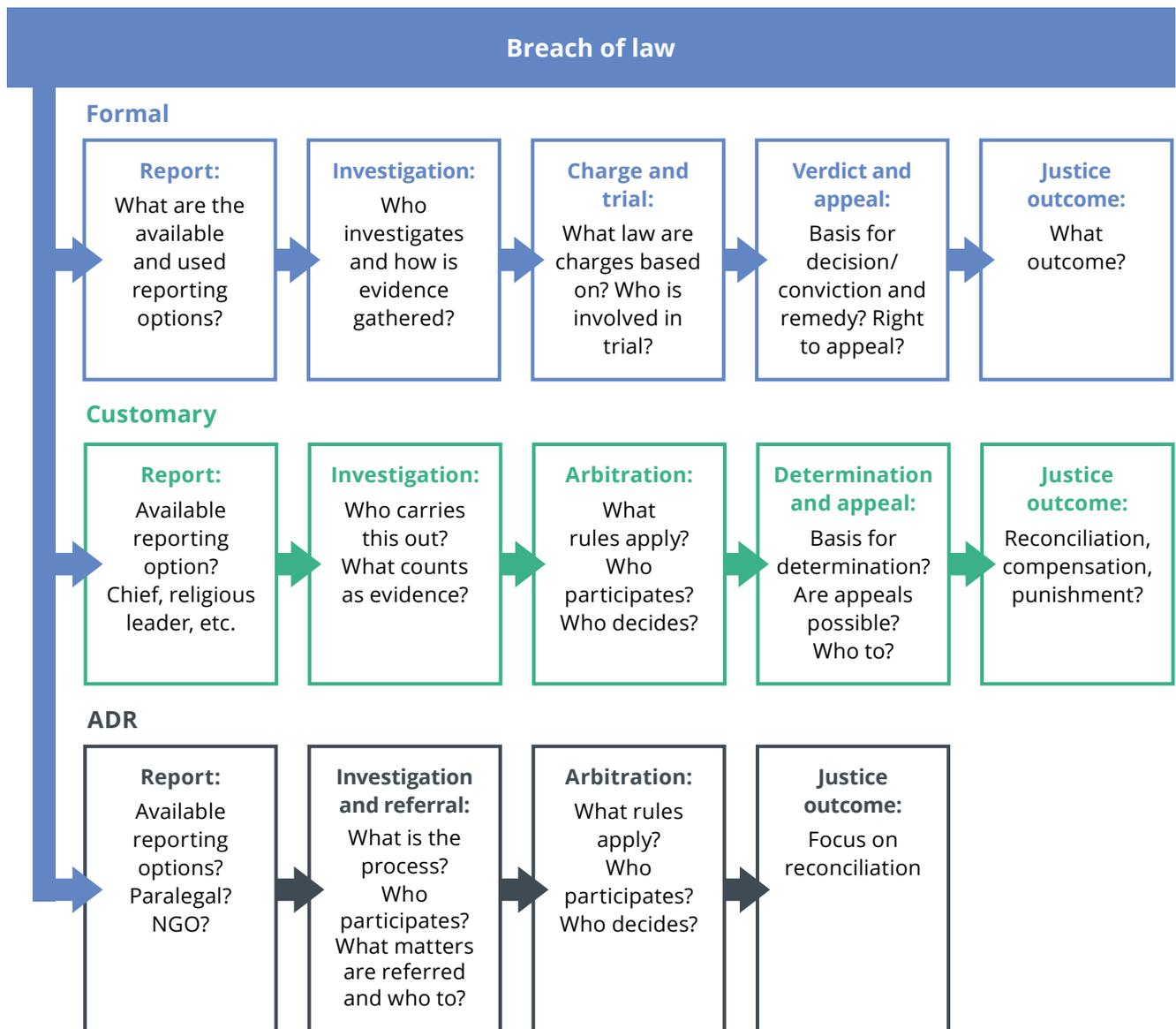
Figure 3: Formal justice chain: Violence against women



Of course, judicial processes in real life are much more complex. Rarely does the problem sit in only one link of the chain. Moreover, the formal justice chain is often just one part of a more plural legal system. Often, the reality involves multiple and often overlapping justice chains, including the formal justice system, customary dispute resolution processes, and alternative dispute resolution (ADR) by paralegals and non-government organisations. For different reasons, disputes may be resolved through one or other – or move across. This begins to complicate the justice chains available, looking something more akin to Figure 4 overleaf.

These justice chains capture in more detail the legal pluralism that characterises many justice experiences and contexts, particularly in developing countries. This might not be relevant to all justice problems but it is important to bear in mind that the formal justice system is often just one option available for seeking justice and to consider how these chains might intersect. For example, in Sierra Leone, the Magistrate's Courts can refer cases of domestic violence to the customary justice system administered by the Local Courts. Similarly, alternative dispute resolution by NGOs and paralegals may remove some cases from the formal and customary justice systems – which may have positive or negative consequences. The justice chains are a helpful way of disaggregating the stages of individual justice chains, as well as capturing the more complicated legal pluralism that is the reality in many contexts.

Figure 4: Formal, customary and ADR justice chains



Step 2b: Unpacking the political economy of the different stages of the justice chains

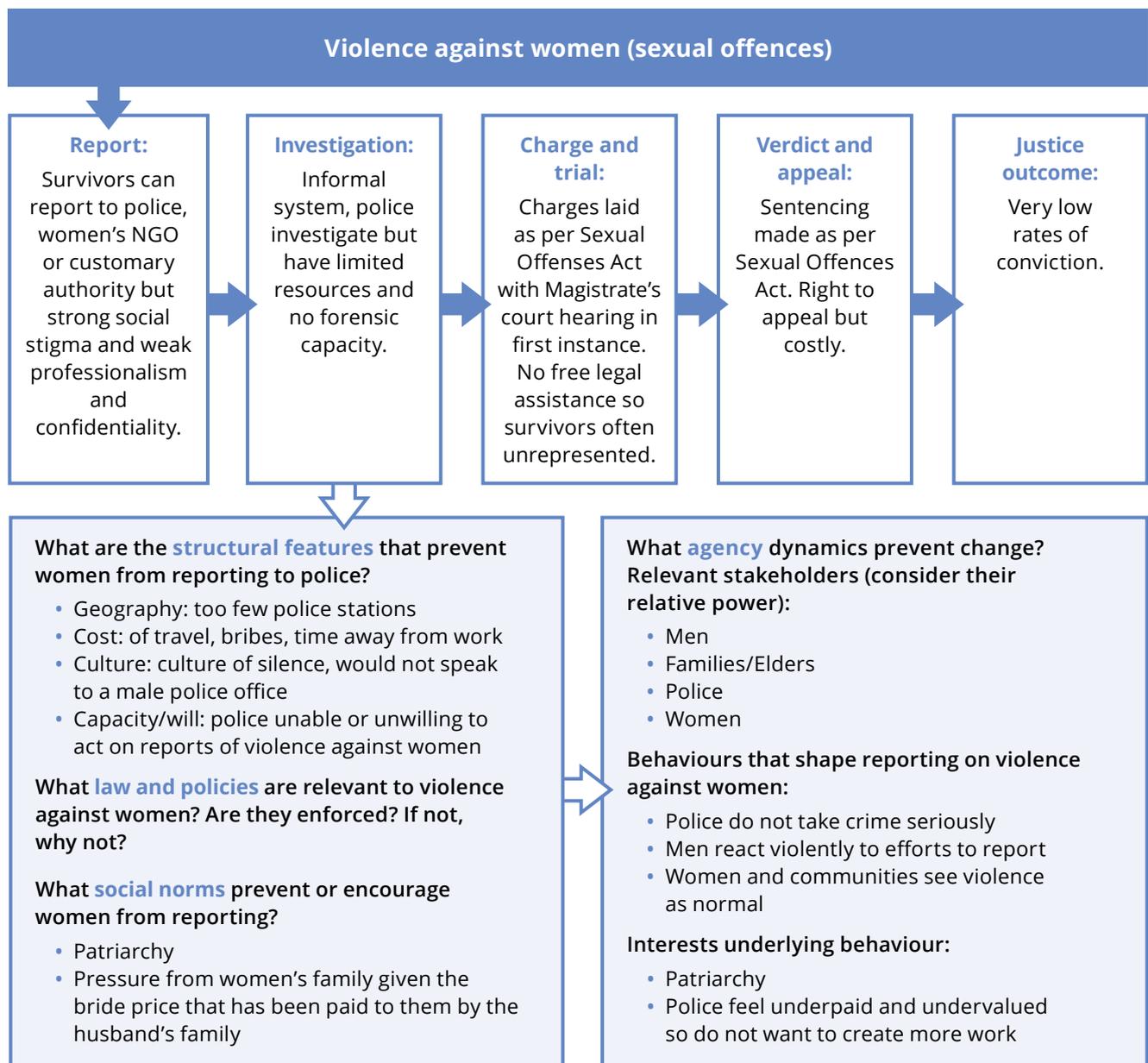
Unpacking the political economy dynamics of the justice chain involves looking more closely at both the *structure* and *agency* components, in relation to a) each stage of the chain to understand the context-specific drivers of a 'justice problem'; and b) how the stages in the chain are interconnected, and relate to the wider political economy context.

- In terms of **structure** it is useful for legal experts and their in-country partners/clients requesting assistance to think about how formal and informal institutions shape the problem confronted. Ideas and normative principles, such as human rights or due process, can also play an important role here.

- In terms of **agency** it is useful to consider the capacity and inclination for action of the relevant stakeholders involved in the justice chain, and their respective interests and motivations. This includes exploring the nature of the power relationship between them, and what resources they can draw on. Moreover, it is important to consider how their conduct is shaped by both formal law and by the wider social norms and political context. This can help to identify reform champions, opportunities for brokering or facilitating strategic alliances among different relevant actors, and the specific nature of capability or resource gaps that might be supported.

The example below sets out what it might look like to unpack one stage of the justice chain using structure and agency in order to analyse low levels of reporting of sexual violence:

Figure 5: Unpacking the justice chain: structure and agency



By thinking through the structure and agency components of different stages of the justice chain *and how they intersect*, international support efforts can more effectively identify the particular blockages that characterise a justice problem, and opportunities for engagement. For instance, trust levels relating to how cases will be treated in the investigation phase, or awareness about rates of conviction, will inform a survivor's judgement on whether to report a case or not.

A full analysis of this justice chain would entail elaborating structure and agency for each stage in the chain, and their interconnections. This level and detail of analysis will not always be possible. The important thing is that opportunities are created to undertake a 'good enough' level of analysis, ideally involving pro bono providers, in-country partners/clients and others with knowledge of the issues being analysed. The value lies in the thinking and conversation that this enables, which will surface issues that might otherwise have been missed and prompt new ideas about how to proceed. Where possible, this exercise can take the form of a workshop. Where this is not feasible, pro bono providers can apply the key principles outlined here in other ways, for instance by asking questions of their in-country partners/clients which get at issues of structure and agency, and by seeking the opinions of others with knowledge of the context, such as those involved in ongoing development programmes.

Step 3: Consider potential solutions and what support legal experts can provide

Only once the problem has been identified and unpacked should consideration turn to what support can be provided. In order to ensure that the solutions proposed are locally led and feasible, it is useful to separate this into two questions:

- What change is possible given the local context and the constraints identified by analysis?
- What role can the legal expertise or soft skills on offer most usefully and realistically play within this?

Putting considerations about what role external assistance can play in supporting change processes second is important in ensuring that solutions are appropriately tailored to the context. This can avoid a reliance on blueprints simply being transferred from one context to another, where they may not be appropriate.

Here, it is important to underline that in the short interventions typically deployed through pro bono legal expertise, structural transformation is unlikely to be achieved. However, this use of PEA of the justice chain can go a long way to ensuring that the value of both the legal expertise and soft-skills – for instance in relation to mentoring,

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relationship-building or problem-solving – of deployed experts are used to maximum effect in ways that match the realities of the justice problem and context in question.

In some cases, in-country partners/clients may already have decided what ‘solutions’ they want external legal assistance to support, or what stage of the justice chain they would like support to focus on. Legal experts or the donor agency may also approach the task with pre-set ideas about where the solutions lie. In all circumstances, legal experts need to balance respect for locally led solutions with efforts to ensure that the solution is indeed likely to be helpful in addressing the problem at hand. This PEA guidance should be used by legal experts to work through problems and potential solutions with the *partner/client*, who will have far deeper understanding of the context and ultimately make the decision about what approach to pursue. This guidance provides analytical tools and questions to guide this process to ensure it is more likely to deliver real improvements through unpacking the political economy of the justice chain.

Box 1 below provides an example of working through the three steps set out above to identify potential context-relevant solutions to the problem of excessive pre-trial detention.

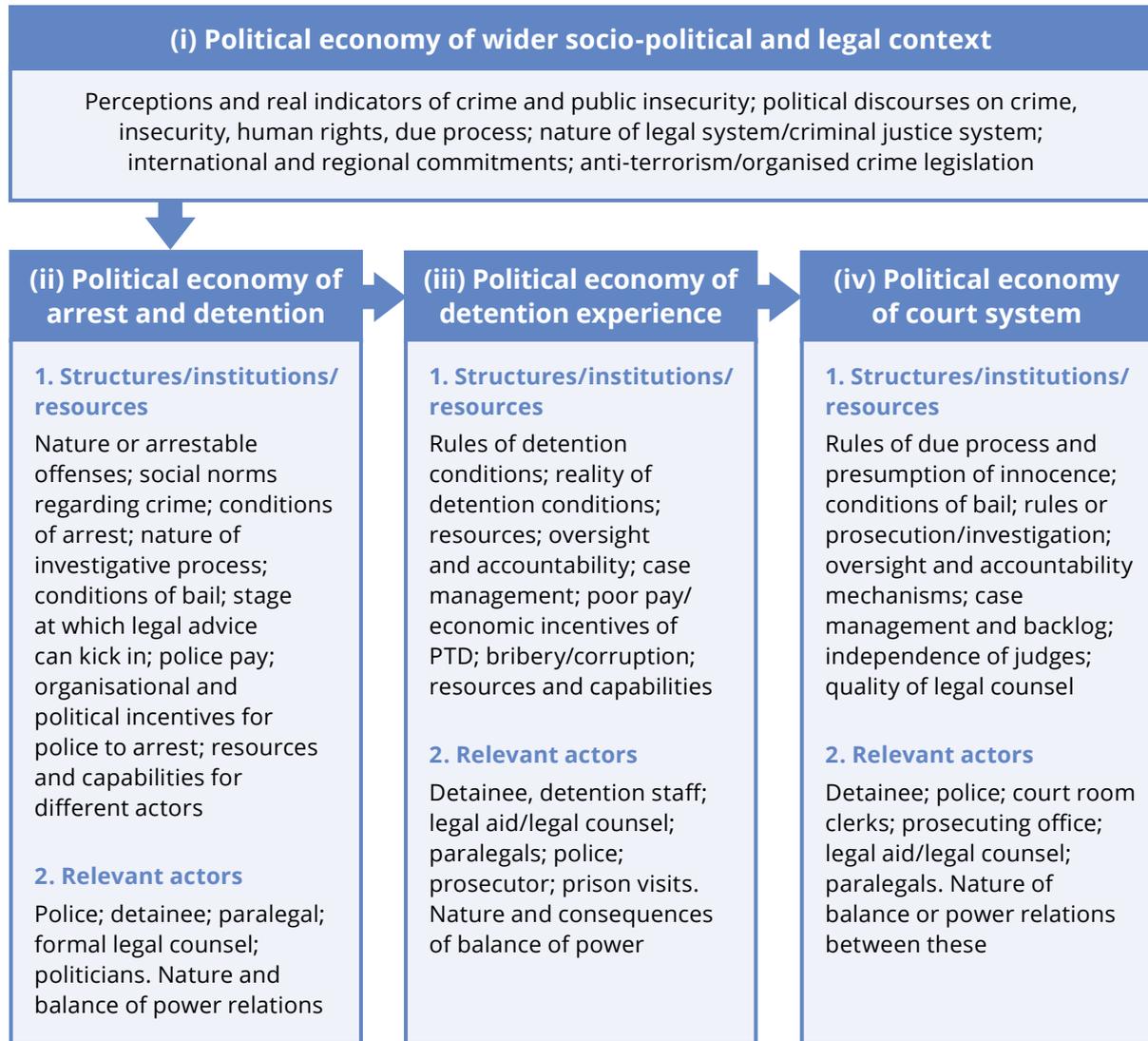
In all circumstances, legal experts need to balance respect for locally led solutions with efforts to ensure that the solution is indeed likely to be helpful in addressing the problem at hand.

Box 1: Finding context-relevant solutions to the problem of excessive pre-trial detention

Excessive and arbitrary pre-trial detention is an example where a problem-driven approach across the criminal justice chain can be used to find context-relevant solutions. Typically, support to pre-trial detention has focused on either law reform (located in stage (i) in Figure 6 below), aimed at strengthening due process measures, or legal aid for detainees (stages (ii) and (iii) of Figure 6 below). While these measures may be important, unpacking the justice chain can reveal concrete blockages and opportunities specific to the context that can inform international support and ensure it matches what is possible and most likely to be effective. This can be done using the steps below.

Box continued overleaf

Figure 6: Justice chain: political economy of excessive pre-trial detention



Source: Domingo and Denney (2013)

Step 1: Identify the problem

In this example, the justice problem is identified as excessive and arbitrary pre-trial detention (PTD).

Step 2: Unpack why the problem persists

- First, analyse the **wider socio-political and legal context** in the focus country. Consider factors such as those listed in stage i above.
- Next, **identify the key stages in the justice chain** – in this PTD example, the key stages have been identified as ‘Arrest and detention’, ‘Detention experience’ and ‘Court system’.
- Then, **consider the political economy dynamics for each stage of the chain**, in terms of structure and agency. The example above provides generic examples of the type of factors to be analysed under each stage of the justice chain around PTD. Identify key factors in relation to the problem you are identifying and list them – as per the example

on page 17 which details the key factors under one stage of the justice chain on low levels of reporting of sexual violence. Do this for each stage in your justice chain.

- Finally, consider **how the factors listed under each stage of the chain interconnect with and influence each other.**

This should enable you to work out the structure- and agency-related issues that block or enable the possibility of change. For instance, referring back to the example on PTD:

- It may be that the laws are in keeping with principles of due process, presumption of innocence, and set limits on duration of PTD, and even that key actors in the Ministry of Justice or Corrections system are in favour of addressing PTD (*stage i*).
- There may be limited space for engagement with the moment of arrest and detention at the police station (*stage ii*), if, for instance, there is limited political appetite to scrutinise police conduct, or police officers are rewarded for number of arrests and not held to account for obtaining confessions under duress.
- But further down the criminal justice chain (*stages iii and iv*) opportunities to support pre-trial detainees may prove more fruitful. Detention centre staff may be rewarded for improvements in detention centre conditions; there is more scope for transparency and accountability regarding where cases are stuck; pre-trial detainees may voice greater trust in accessible legal aid at a later stage in the chain, where it might have been seen as 'harmful' at the police detention stage; judges' performance may be measured against progress in dealing with PTD.

Step 3: Consider potential solutions

The previous steps will have helped to signal where resources, legal expertise and other soft skills might most effectively be deployed along the justice chain. Even if a request for support might be focused on providing pro bono legal aid or working with judges in Stages iii and iv, the chain analysis can provide clarity about the wider legal and political context, and how the detainees experience arrest and detention, which can help to make sure that support to, or work with, legal aid or judges is tailored accordingly.

An exercise to undertake this justice chains analysis in relation to PTD in Indonesia found that short-term measures could maximise opportunities in Stages i, iii and iv, including:

- supporting the evolving legal aid policy and use of available resources;
- creative use of existing positive relations and networks (between detainees, their families, detention centre staff and the legal aid community, and reform champions in the corrections system more generally) to support awareness-raising on availability of legal aid and effective access to this;
- investing in capacity development of detention centre staff and legal aid providers on the concrete opportunities afforded by legal aid law and policy;
- investing in legal aid clinics in law faculties.

In addition to highlighting this range of immediate possible 'solutions' the Indonesia case study resulted in some longer-term recommendations including the development of strategies to alter the balance of power between different stakeholders, lobbying and advocacy around legal change, and long-term investment in legal aid providers.

(See Domingo and Denney (2013) and Domingo and Sudaryono (2016))

Conclusion

This guidance note is intended to support critical thinking and careful, collaborative planning and action among those involved in the design and delivery of short-term legal technical assistance. In the case of pro bono work, this should involve both pro bono providers and their in-country partners/clients. Undertaking an extensive political economy analysis will not always be feasible but in order to maximise the value and relevance of external technical assistance, and its contribution to a sustained and positive impact, it is important to create opportunities to apply the principles of PEA wherever possible. This thinking is most usefully applied at the point of identifying the problem to be addressed and in planning appropriate forms of assistance. However, even in cases where legal experts are working on activities that were designed prior to their involvement, a questioning mind and consideration of PEA principles is still valuable. Deployed experts have an opportunity to meet key stakeholders, ask questions, and identify new issues and potential solutions. They can identify how activities could be adapted to increase their relevance, or recommend future activities which might get closer to addressing an underlying need identified through their work.

Key points to remember, and questions to apply, include:

STEP 1 What is the specific problem to be addressed?

Is the initial problem identified actually a symptom of a deeper, underlying issue?

STEP 2 Why does the problem persist?

- Where does the problem sit within the justice chain?
- How do 'structure' (formal institutions and informal norms) and 'agency' (the interests and incentives of the stakeholders involved) interact in relation to the issue?

STEP 3 How might the problem be solved locally, given the constraints and opportunities identified?

What role can external legal experts meaningfully play in addressing the problem, through their technical expertise and/or soft skills (for instance soft skills around mentoring, relationship-building or problem-solving)?

For further elaboration of the points raised in this guidance note please see the further reading recommended below. Feedback on the guidance note is welcomed by ROLE UK – please email info@roleuk.org.uk.

Undertaking an extensive political economy analysis will not always be feasible but in order to maximise the value and relevance of external technical assistance, and its contribution to a sustained and positive impact, it is important to create opportunities to apply the principles of PEA wherever possible.

Further reading

On the political nature of rule of law development and justice reforms see:

[T. Carothers \(2003\) 'Promoting the Rule of Law Abroad,' Rule of Law Series Working Paper 34, Washington, DC: Carnegie Endowment for International Peace.](#)

[P. Domingo \(2016\) 'Rule of law, politics and development: The politics of rule of law reform,' London: Overseas Development Institute.](#)

[P. Domingo and L. Denney \(2012\) 'The politics of practice: security and justice programming in Fragile and Conflict-Affected States,' London: ODI.](#)

[R. Sannerholm, S. Quinn and A. Rabus \(2016\) 'Responsive and Responsible Politically Smart Rule of Law Reform in Conflict and Fragile States,' Folke Bernadotte Academy.](#)

On political economy analysis see:

[M. Andrews, L. Pritchett and M. Woolcock \(2015\) 'Doing problem driven work,' Working Paper 307, Cambridge, MA: Center for International Development.](#)

[D. Booth, D. Harris and L. Wild \(2016\) 'From political economy analysis to doing development differently: a learning experience,' London: ODI.](#)

[S. Collinson \(2003\) 'Power, livelihoods and conflict: Case studies in political economy analysis for humanitarian action,' Humanitarian Policy Group Report, London: ODI.](#)

[DFID \(2009\) 'Political Economy Analysis How To Note,' Practice Paper, London: DFID.](#)

[D. Hudson and A. Leftwich \(2014\) 'From political economy to political analysis,' Birmingham: Developmental Leadership Program.](#)

On political economy analysis tools to assist in justice support see:

[L. Denney \(2016\) 'Using political economy analysis in conflict, security and justice programmes Guidance note,' London: ODI.](#)

[L. Denney and P. Domingo \(2013\) 'A problem driven approach to violence against women,' London: ODI.](#)

[P. Domingo and L. Denney \(2013\) 'The political economy of pre-trial detention,' London: ODI.](#)

[P. Domingo and T. O'Neil \(2015\) 'The political economy of legal empowerment,' London: ODI.](#)

[P. Domingo and L. Sudaryono \(2016\) 'The political economy of pre-trial detention: the case of Indonesia,' London: ODI.](#)

[LASER \(2016a\) 'Learning lessons from LASER's use of pro bono legal expertise: how legal pro bono assistance can add value to development programming,' Guidance note for donors and development practitioners, Legal Assistance for Economic Reform Programme.](#)

[LASER \(2016b\) 'Monday morning in Kigali: What do you do when you get off the plane?,' Practical guidance for PDIA practitioners, Legal Assistance for Economic Reform Programme.](#)



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