

THE DANISH  
INSTITUTE FOR  
HUMAN RIGHTS

EXCERPTS FROM

# “THE CONCEPT”

BY BENT VASE

EDITED BY ERIK ANDRÉ ANDERSEN

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## PREFACE FROM "THE CONCEPT"

This book is not a textbook about human rights but a book describing a number of processes applicable for the implementation of human rights. The book describes the thinking and the principles and tools contained in the **Flow of Justice** concept developed by the Danish Institute for Human Rights. It describes how the concept has developed in connection with specific assignments in several countries over a number of years, and the book contains descriptions of these assignments in the form of cases. The management philosophy is described. The planning principles applied are reviewed and the use of indicators and indicator systems is demonstrated, primarily by examples. The strategic thinking, which forms the basis for DIHR's work with the **Flow of Justice** and related national reforms, as well as with state reporting to the UN Treaty Bodies, is also described. Finally, the book describes DIHR's partnership concept and work methods in relation to the practical application of the **Flow of Justice**.

**Bent Vase** holds a Graduate Diploma in Business Administration, Majoring in Organization and is also a Vocational Educationalist. His background encompasses the Royal Danish Air Force as well as private industry where he has worked with business development and strategic and organizational development at management and board level. Since the late 1980'ies, he has been corporate management adviser and sparring partner to the top management in a number of large and medium-sized enterprises. During the same period, he has increasingly acted as adviser and coach in relation to the implementation of human rights in cooperation with the Danish Institute for Human Rights.

**Erik André Andersen** holds a Master of Science in Geography and a Ph.D. in Political Science (Eastern Europe). During the 1990'ies, he headed the Information Center on Eastern Europe at the University of Copenhagen while also being a Ph.D. student there as well as Senior Researcher at the Copenhagen Peace Research Institute. Since 1998, he has been employed at the Danish Institute for Human Rights as Project Manager and Senior Researcher.



# ABOUT THE ORIGIN OF THE BOOK

There are several reasons for this book. First and foremost, it is conceived as a handbook both for the Institute's project managers and for the staff of the numerous partners of the Institute with whom the book's concepts and tools are applied. It is also intended as guidance to those politicians and senior managers who face the decision whether a partnership with the DIHR is the right choice for them. In a partnership it is important to know who the partner is, what the partner represents and what the partner can deliver.

The book constitutes an attempt to document the methods that DIHR applies and has applied – through a rule of law principle based on the Universal Declaration of Human Rights and its inherent principles about democracy – in its endeavours to promote the implementation of human rights.

Donors and many others who have been in contact with the Institute and its partnership projects have questioned the role of the Institute, as a National Human Rights Institution, in relation to assuming state- and society-building projects and to the focus of the Institute on this area. Consequently, the book seeks to describe the rationale behind this focus and the unique possibility which precisely a National Human Rights Institution has. That is, being a catalyst for state- and society-building processes, as such an institution with its outset in the Universal Declaration of Human Rights and the Paris Principles can have a clear

and transparent agenda without any other direct or indirect political intent.

The book's concepts have been developed in cooperation with a large number of persons with very different educational backgrounds and originating from a number of different cultures. In this connection it must be stressed that the specific knowledge and experience forming the basis of the concepts have been created over a period of more than 10 years by the Institute's international project managers, and they have made it not only possible but also increasingly imperative to describe this knowledge base systematically in order to ensure a sort of institutional memory.

The challenge has been to describe this knowledge and experience without having to refer to an entire library of books on theory and various evaluations. I have chosen to describe what we have actually been thinking and what we have actually been doing. At the same time, a number of international project managers have described what actually happened in their projects. This approach means that it is not possible to point specifically to which theory or literature lies behind the thinking. Consequently, this is not an ordinary textbook but a book describing – what we did, - how we did it, - the rationale behind it, - and what have been the results.

I have attempted to describe the topics of the book to a level where each concept and related

tools can be applied in practice. Consequently, there are some overlaps and internal references; however, when reading the book in its entirety, the reader will obtain an insight into the different angles of approach applied around the individual concept. The book as such is an attempt to present a single point of reference for those processes where we perform as catalyst in the countries where DIHR is working with state- and society-building.

This book would never have materialized had it not been for former and present international project managers' involvement in its creation. Neither would it have seen the light of day, had Erik André not worked untiringly as editor and process coach.

Bent Vase  
Copenhagen, 2010

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## AFGHANISTAN

Strategic plan for Civil Society and Human Rights Network (CSHRN).

Civil society dialogue about strategy and the role of strategic planning in the promotion of human rights and organized civil society (2006).

Strategic development seminar for CSHRN with the participation of 48 human rights organizations from 18 Afghan provinces (2007).

Seminar and general assembly for CSHRN including approval of vision, mission and key result areas for the network (2008).

Updating of strategic plan as permanent agenda item on the CSHRN annual general assembly (2009).

DIHR's reporting wheel used as inspiration and guideline for Afghanistan's UPR reporting.

## AFRICAN COMMISSION FOR HUMAN AND PEOPLES' RIGHTS

Adviser to the Commission in relation to the preparation of its first strategic plans and action plans (1997-2007).

## BURKINA FASO

Strategy and action plan with the Ministry for Human Rights approved by government (2008).

Setting up of donor basket and development of project catalogue by the Ministry (2009).

## CAMBODIA

Value document approved by the Council of Ministers as point of departure for the legal and judicial reform strategy (2002).

Establishment of the coordinating body for the justice sector "Permanent Coordination Body", "Project Management Unit", and a donor-government cooperation structure: "Technical Working Groups", all under the "Council for Legal and Judicial Reform" (CLJR).

"Legal and Judicial Reform Strategy" approved by the Council of Ministers (2003).

Action plan and project catalogue for the implementation of the legal and judicial reform strategy approved by the Council of Ministers (2005).

Management and planning guide for the justice sector (2009).

Model court project approved by the High Level Working Group of the CLJR (2006), and implemented with donor basket funds.

Goals, standards and criteria for the Cambodian courts approved by the CLJR High Level Working Group (2008).

Development of integrated indicator system for the legal and judicial reform approved by the CLJR High Level Working Group (2007).



## **EAST TIMOR**

Strategy for the justice sector approved by the coordinating body for the justice sector "Council of Coordination" (2010).

## **GUATEMALA**

Planning unit established in the Ministry of the Interior (1998).

Planning method approved by ministerial decree (2000).

Strategic plans for the Ministry of the Interior and its directorates (police, migration authorities and prison services) approved as policy (2000) and annually updated and revised every third year since then.

Planning manual developed and approved by the Ministry of the Interior (2001) and on-going training of police and prison services since then.

New Act on Prison Services (2003).

Establishment of coordinating body for the justice sector ("Instancia Coordinadora del Sector Justicia").

Planning base developed and approved by "Instancia Coordinadora del Sector Justicia", and process and programme for development of the flow of justice developed and approved by "Instancia Coordinadora del Sector Justicia".

## **HONDURAS**

Establishment of the High Commission for Justice "Alta Comisión de Justicia" comprising the three state powers, the ombudsman as well as the law revision secretariat (2004).

Total overview of legislation in force developed and updated annually (2005).

Rights-based law review in the areas of family law including children's rights, environmental law and agricultural law.

Method developed for undertaking rights-based law review within a specifically defined part of the legislation (2005-2007).

Analysis of family law including children's rights received by Congress and under consideration in the permanent committee (2009).

Law reform method approved as official national method by the High Commission (2009).

## **MALAWI**

Strategic plan for the ombudsman and coaching regarding capacity building and in this connection development of a concept for network of case-handling institutions/ organizations (2000).

## **MONTENEGRO**

Vision document, strategic plan and project catalogue for the Ministry of the Interior (2005).

The police school transformed to police academy (2005).

## **MOZAMBIQUE**

Establishment of coordinating body for the justice sector "Conselho de Coordenação da Legalidade e Justiça" (CCLJ) (2001).

Adviser for the justice sector in connection with the formulation of the Integrated Strategic Plan for the Justice Sector (PEI) (2003).

Formulation of justice vision document through a broad, participatory process (2000) and update (2008).

In this connection given input to the work of the Constitutional Commission on amendment of the Constitution.

As part of the PEI process given input to process and tools for integrated planning.

Integrated Strategic Plan for the justice sector (PEI II) approved by the Council of Ministers (2008).

## **SERBIA**

Vision document, strategic plan and project catalogue for the Ministry of the Interior (2003).

Vision document for the justice sector prepared as a discussion paper by civil society network in cooperation with representatives of the Supreme Court and the rest of the justice sector (2003).

Adviser to the Supreme Court concerning priority projects with point of departure in the vision document (2004).

Design of concept for reform of the education of judges (with the Ministry of Justice) (2004).

Adviser to the Ministry for Human Rights (Union Ministry with Montenegro) in cooperation with the European Centre for Minority Issues (ECMI) (2006), including:

Strategic plan for the Union Ministry.

Development of method for rights-based law review and two complete law reviews and implementation plans for Serbia and Montenegro respectively, as well as

Validated method and manual and training material on reporting to the Council of Europe and UN treaty bodies (the Reporting Wheel) in cooperation with ECMI (2006).

## **SOUTH AFRICA**

Planning and policy unit for the justice sector established (1995).

Management and planning system, including system for donor coordination, developed (1996).

Justice Vision 2000 (1997).

Reorganization of the justice sector (1997-2000).

Restructuring of Parliament (1997-1998).

First strategic plan for Parliament (2001).

Sustainable integrated planning fully implemented in Parliament (2005).

## **TANZANIA**

Systematic strategic planning for the Law Reform Commission, including capacity building of the Commission as well as development of validated law reform process, including tools (2000-2006).

## **YEMEN**

Rights-based criminal law review as the basis for facts-based dialog.

First national dialogue conference with more than 300 participants (2008).

Establishment of project structure for the implementation of criminal law reform approved by the Prime Minister and Cabinet (2008).

Second national dialogue conference on implementation of recommendations from the first conference (2010).

# PART 1

# CHAPTER 1

## **ABOUT THE DEVELOPMENT OF DIHR'S FLOW OF JUSTICE CONCEPT**

This book is not a traditional textbook on human rights; it is a book describing a number of processes that can be employed towards implementing human rights. The book is based on the assumption that the human rights principles enshrined in the UN Universal Declaration of Human Rights (10 December, 1948) apply and **must** apply to all human beings and that this is in accordance with our individual psychology as human beings as expressed in our mutual feelings for each other and our desire to be able to create a good life for ourselves and our family, while at the same time respecting all individuals, who, after all, share the same psychological goals. Human rights are the ground rules making this possible. A simple way of looking at this is by reviewing the separate articles in the Universal Declaration (Figure 1) asking the following question: Should this article apply to me as a

person, should it apply to my family, should it apply to my local community, should it apply to my country – and if so, why should it not apply to other countries, to other families, and to other human beings? Where should the limits be drawn, and why should there in fact be any limits to whom these principles should benefit, and whom they should not? Thus the book's basic tenet is that there should be a constant endeavour aimed at extending these principles to everyone, because only this way may a peaceful world be created with a framework making it possible for each individual to develop according to his or her own potentials, maintaining a sense of responsibility towards others and the surrounding society – the society which is responsible for affording those same possibilities for development to everyone.

**FIGURE 1.**

The Universal Declaration of Human Rights

**PREAMBLE**

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

**ARTICLE 1.**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

**ARTICLE 2.**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

**ARTICLE 3.**

Everyone has the right to life, liberty and security of person.

**ARTICLE 4.**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

**ARTICLE 5.**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**ARTICLE 6.**

Everyone has the right to recognition everywhere as a person before the law.

**ARTICLE 7.**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**ARTICLE 8.**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**ARTICLE 9.**

No one shall be subjected to arbitrary arrest, detention or exile.

**ARTICLE 10.**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**ARTICLE 11.**

- (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
- (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

**ARTICLE 12.**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

**ARTICLE 13.**

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

**ARTICLE 14.**

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

**ARTICLE 15.**

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

**ARTICLE 16.**

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**ARTICLE 17.**

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

**ARTICLE 18.**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

**ARTICLE 19.**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

**ARTICLE 20.**

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

**ARTICLE 21.**

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

**ARTICLE 22.**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

**ARTICLE 23.**

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

**ARTICLE 24.**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

**ARTICLE 25.**

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**ARTICLE 26.**

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.



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**ARTICLE 27.**

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**ARTICLE 28.**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**ARTICLE 29.**

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

**ARTICLE 30.**

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

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The purpose of this book is to describe the way of thinking and the concepts and tools behind the Danish Institute for Human Rights' (DIHR's) **flow of justice** concept. The present introductory chapter describes how this development process has evolved and why we see the value-based management principle as an important instrument in realizing the fundamental human rights principles.

It started out being a specific management task, but in time we became increasingly aware of the beneficial combined effect of a team incorporating knowledge of each area and its methods (police, courts, prisons, prosecution, government ministries, etc.), and likewise possessing knowledge of the context being worked in – a legal knowledge both profound and sweeping with regard to each professional topic and human rights as well as skills and knowledge about participatory management principles. It became more and more evident that this combined knowledge would be able to create political will, motivate law reform, as well as motivate result and service focused planning and budgeting; it was similarly apparent that method development and clear goals – based on and derived from the human rights principles as the underpinning value base – were to a large extent “the secret/the cause.” Furthermore, the will to leadership was fostered, because purpose, objectives and methods were perceived as reasonable by the individuals involved. Thereby, management tools like, say, indicators and reporting mechanisms came to be seen as rational aids and not an irritating waste of time because of lack of trust in the system and in individuals.

Management theory in general, and value-based management in particular, have expressed these interrelationships in various ways, so our observations and hypotheses were not especially unique. But because the

implementation of human rights was our driving motivation, we did experience how the impact and effect of our efforts were greater than what we observed and were told concerning other reform initiatives within the same area that we were working on, namely justice systems. We became more and more aware of the interdependence of the distinct elements of our projects, and thus our concept began developing; this, in fact, marked the inception of the concept which is the topic of this book. Chapter 2 deals with management, focusing on the individual human being. Chapter 3 centres on planning and planning tools and on how these may be utilized and integrated in various ways. Chapter 4 deals with indicators, largely through examples. Chapter 5 deals with strategy and strategic thinking. Chapter 6 contains reflections on national reforms as a precursor to Chapter 7, which provides a more detailed description of DIHR's **flow of justice** concept. Chapters 8 through 16 contain a number of cases describing how we have put the concept to practical use.

### 1.1 THE MINISTRY OF JUSTICE IN SOUTH AFRICA

The seeds to the DIHR **flow of justice** concept were sown in South Africa in 1995. The fledgling South African government was facing the task of constructing a new, cohesive justice system anchored in a new Ministry of Justice. This in effect meant merging 11 different departments of justice into one comprehensive Ministry and developing a new justice system capable of providing “justice to all citizens” in the nascent South Africa.

The new Minister of Justice, Dr. A. M. Omar, had discussed this formidable task with officials from the Royal Danish Embassy in Pretoria, which came only naturally since Denmark had in numerous ways supported the birth of the new regime and the new government. These same

embassy officials discussed the task at hand – or rather, the problems encountered – with the Director of what was then called the Danish Centre for Human Rights, now the Danish Institute for Human Rights (DIHR), since human rights constituted the fundamental core values for the new South African government, and because Morten Kjærum, the Centre's Executive Director, was already part of the Danish circle of advisors to the new South African Minister of Justice and his closest associates.

Morten Kjærum had experience from the Danish Refugee Council as well as the Danish Centre for Human Rights when it came to applying the integrated management and planning system, based on strategic planning and participatory management principles. For one thing, he had been member of a management team that had employed the system for many years; for another, he had applied it with his own management team as Executive Director of the Centre. Morten Kjærum felt that the system might be of interest to Dr. A. M. Omar.

As part of their visit to Denmark, a delegation from the new South African Ministry of Justice met with the present author and I was given the opportunity to explain the integrated management and planning system and its participatory principles.

The South African delegation was informed that this concept derives from a planning model originally developed by the American Management Association (AMA) in an effort to transpose military experiences from World War II into private company use; also, that the AMA model in question is used by many different companies worldwide.

It was then explained how a number of Danish companies in the early 1980's had decided to

use this model concept as a point of departure for the development of an organizational and management development concept more tailored to Danish culture as opposed to American culture; yet still with a continuous view to grooming managers who could succeed internationally.

Finally, participants were told that the experiences harvested with this management and planning system were based on the premise that the present author had been one of the key people involved in the development process when it came to adapting to Danish/European conditions, and that I had since worked as a business consultant for the companies involved as well as for other companies regarding strategic business planning based on the freshly developed concept. Furthermore, it had never been applied to public institutions or public administration; as a consequence, some adjustments would probably be called for. At the same time it was emphasized that this management system is based on core values reflecting a humane view commensurate with the human rights principles (detailed in Chapter 2). Finally, it was explained that the concept always involved outlining a specific model and work process adapted to that specific company's basic needs and situation in cooperation with top management in the company concerned.

The delegates from the South African Ministry of Justice visited a number of countries to evaluate different methods recommended to them. We don't really know why they chose our model concept – besides the fact that the underlying AMA system is tried and true, displaying consistent sturdiness throughout consistent use by many different types of companies in many countries; it has thus been applied in many different cultures.

We have described the specific case involving the South African Ministry of Justice in Chapter 8.

### 1.2 THE PARLIAMENT OF SOUTH AFRICA

Close ties existed between the South African Minister of Justice and the President of the South African Parliament. Because of this, after having worked with the Ministry of Justice for about a year, we were invited to a meeting with Parliament to explain our concept and discuss to what extent we – using this concept – might be able to aid and assist Parliament in its proposed process leading to a comprehensive restructuring. The process would aim to forge a parliamentary structure which could effectively support elected politicians in the new Parliament based on the principles enshrined in the newly adopted South African constitution. This meeting marked the starting point of a long collaboration with the South African Parliament, leading to a process of reorganization followed by an integrated planning process adhering to the same principles as those guiding our work with the Ministry of Justice.

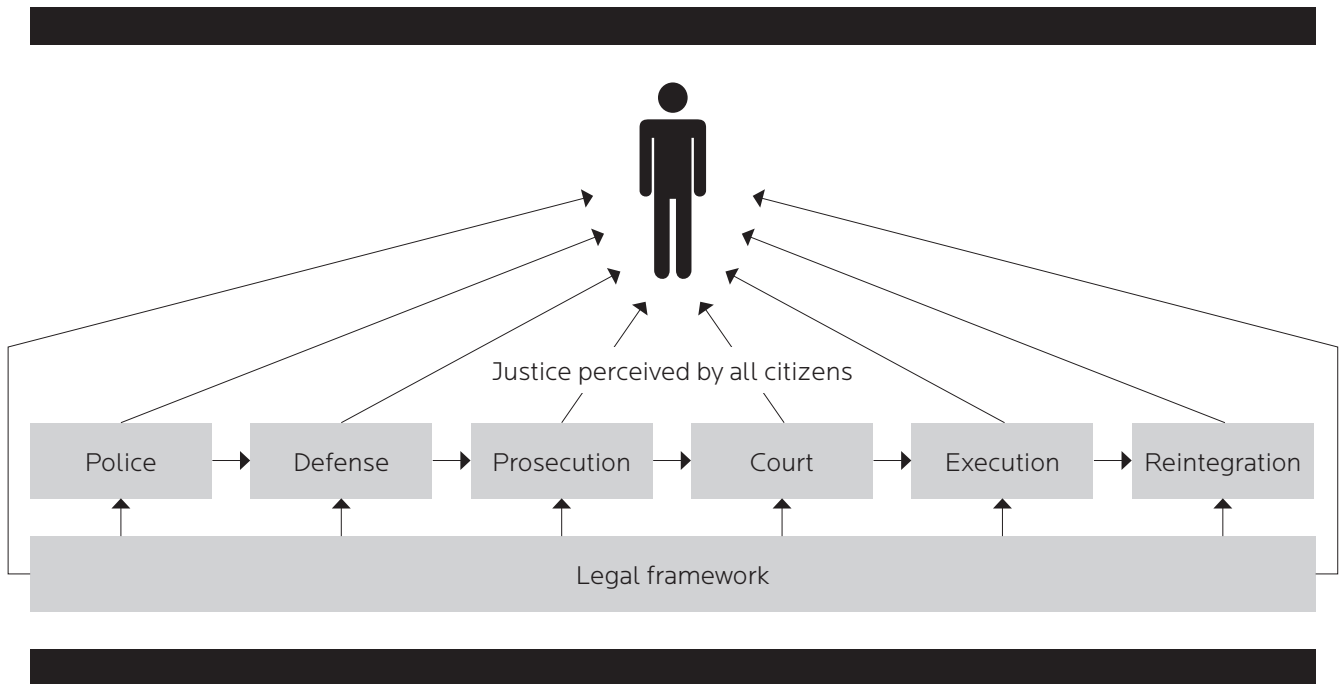
As a starting point, the restructuring process hinged upon mapping out Parliament's main functions, followed by a charting of the services which the individual members of parliament needed to be able to count on receiving; based on this, the individual functions of the parliamentary structure were determined. Management principles were laid out, and the organizational structure was described. Furthermore, the requisite elements of a capacity building programme were pinpointed. Based on this process, Parliament wished to implement an integrated planning system – this specific case is described in detail in Chapter 9.

### 1.3 THE JUSTICE SECTOR IN MOZAMBIQUE

In view of our work in South Africa, we were invited to Mozambique, where the Department of Justice wished to hear about our concept. It quickly became clear to us that the concept, i.e. its inherent way of thinking, was relevant to the situation in Mozambique, but that the model apparatus would have to be constructed in a completely different way compared to South Africa. South Africa had a very strong Ministry of Justice to begin with, in charge of creating the framework for an efficient justice system. This was not the case in Mozambique. Here it would be necessary to bring together the key actors in a forum where they could – in collaboration – flesh out a reform process. Furthermore, it was evident that such a reform would entail different adjustments of the individual actors' mandates and that the total reform process would therefore constitute a challenge significantly greater than had been the case in South Africa. We made our point of view clear and it was agreed upon to carry out a workshop with participants from stakeholder institutions where we could present our proposal for a comprehensive process. The **flow of justice** concept was developed in connection with this (figure 2).

It was clear that you would not be able to instigate a top-down strategic planning process for the entire sector, since such an approach would not respect national perceptions of the independence of the individual parties. Instead, one could spark a vision process, whereby all parties involved were given a common frame of reference and a shared perception of the justice system wished for in Mozambique as well as the problems associated with an implementation of such a system. Such a vision delineates the ideal situation strived for in the long run. A vision is thus a situation which is within view, though not immediately within reach. Subsequently, the vision document

**FIGURE 2.**  
The flow of criminal justice exercised by the formal system



would provide inspiration for the strategic planning processes instigated by the individual actors. Moreover, the vision document could provide the framework for legal reform initiatives facilitating reforms of the individual institutions.

By viewing the justice system as an array of functions devised to interact in a chain of actions, it became clear that a high level of coordination between the various functions was required, and that the system could be no stronger than the weakest link in the chain. Thus everyone had a shared interest in a comprehensive overview capable of pinpointing the weak links; thereby indicating where resources were needed and thus where help from the international community was required. Utilizing the same planning tools and the same type of planning process synchronized in time would both offer the desired overview and

improve the necessary coordination, providing all with a shared language. Moreover, such a planning system would make it much easier to integrate efforts into the national budgeting procedure and ameliorate possibilities of cooperation with international donors. By using common principles that were still individually applied by the various institutions, the sought-after individual independence was ensured. At this juncture in the late 1990's, the use of indicators was increasingly desired by many of those involved. The application of performance indicators and quantitative effect indicators formed an integrated part of the planning system. By expanding the system with impact indicators based on involvement of the justice sector as well as the entire justice system, comprising also the relevant institutions in civil society, the goal was to further dialogue between the sector and the surrounding society while at the same time accommodating the

desire for indicators (indicators are dealt with in Chapter 4).

The final element of **flow of justice** was to prepare an actual planning base for the justice system charting the entire justice system, its present status and the problem areas ahead.

Such a planning base would constitute the optimum point of departure for the vision process, as it would unveil current perceived problem areas and juxtapose these with the justice system sought after in the vision process and thus be able to develop long-term solution models. There was a general consensus as to the principles of the concept, and its way of thinking was discussed throughout the course of about a year; subsequently, a coordinating forum was appointed with a secretariat; it was decided to instigate a comprehensive, participatory vision process involving the justice system. This process was to include a number of sub-analyses in order to provide a relevant planning base. The first draft of a vision saw the light of day after a couple of years. This draft formed the kernel for planning in the individual institutions during the subsequent years. In 2004, following various preliminaries, it was decided to undertake an actual programming of hands-on initiatives in the justice sector; meaning that these programmes are now incorporated into integrated sector planning following the national rolling three-year planning cycle. The process sequence in Mozambique has been long and arduous with many challenges, but it has shown that a common frame of reference and step-by-step adherence to strategic thinking will bring the system nearer to the stated objective and that even though the vast majority of the system's managers desire to effectuate the objective, systemic inertia remains a fact of life; it thus requires time for the system to undergo the maturation process necessary in order to get

the 3 or 4 top managerial levels motivated for change. We are talking about a realization process, which many layers in each organization as well as in the entire system have to undergo. But it also shows that if this realization process does occur, developments will follow regardless of opposition at the various levels – and in the political system as well.

#### 1.4 THE MINISTRY OF THE INTERIOR IN GUATEMALA

In 1997, Morten Kjærum took part in a delegation to Guatemala; during this visit he spoke of our work in the justice sector. As a result, we were given an opportunity to introduce the concept to different Guatemalan bodies. The **flow of justice** way of thinking found resonance in the commission which had been charged with making a proposal for improving the country's justice system. The then Minister of the Interior had singled out the need for strategic planning in the Ministry of the Interior as well as the need for a coordinated cooperation between the different institutions making up the justice sector. In cooperation with the World Bank, the Supreme Court had instigated a reform project partially inspired by the principles guiding the justice reform in South Africa. Along similar lines, the Public Prosecutor was also working on a reform project inspired by the general line of thinking behind strategic planning. Regarding the development of the **flow of justice** concept, we had come to recognize that the goal had to be to work with the entire justice system; but also that the point of departure could be any of the institutions forming part of that system since each of these could do their planning on their own. We were convinced that if we could achieve results using this method, other institutions would also show interest; and that if we were given the time to demonstrate the systemic thinking, the possibility would be opened for sector thinking.

Thus we were open towards working with the Ministry of the Interior in Guatemala. We were also of the opinion that an effective implementation of human rights could only be achieved if the methods used by the institutions in carrying out their functions were in agreement with the human rights standards and that this way of thinking was highly relevant in the case of police and prison authorities. These deliberations and discussions with the Minister of the Interior and his group of managers focusing on the principle of value-based management resulted in a cooperation agreement concerning the development and implementation of a strategic planning process for the Ministry and the institutions placed under its mandate area of responsibility – including police, immigration authorities, prison authorities, and the Ministry itself along with a number of ancillary functions. This case is described in Chapter 10.

### **1.5 THE LAW REFORM COMMISSION IN TANZANIA**

In connection with the planning process involving the prison system in Guatemala, we became especially aware of the aspect of law reform and the processes conducive to these efforts if the participatory principles are adhered to; our experiences from this part of the project and from the South Africa Law Reform Commission were the reason we gladly accepted an invitation from the Law Reform Commission of Tanzania requesting to hear about our experiences with the integrated planning system and at the same time discuss the possibility of our being of assistance to the commission in its continued endeavours. The Tanzanian commission had entered into an agreement with Danida involving a more long-term collaboration, and it was agreed to initiate a strategy process as part of a project for organizational development. This task involved the development of an actual concept

delineating how a law reform commission could act as a body with a reasonably high level of autonomy while still focusing on the country's national development strategy, which was to a large extent defined by the UN Millennium Goals and the national strategy for combating poverty. The task furthermore consisted in discerning how a law reform commission could harmonize its efforts with the legislative process in an effective and constructive manner without clashing with the legislative principles guiding a democratic society. Experiences garnered from this work, spanning five years, have been incorporated into the tools currently being used by DIHR for charting national legislative structures, for charting how the rights standards become incorporated in national legislation and for elaborating programmes for law review and law reform as one of the results stemming from a vision process. Moreover, it should be mentioned that the processes surrounding the development of the law reform commission concept gave rise to establishing a network of law reform commissions throughout Southern Africa with an on-going exchange of methods and project experiences gained.

### **1.6 RIGHTS-BASED LEGAL FRAMEWORK ANALYSIS IN HONDURAS**

A law reform commission typically deals with the following types of tasks: recommending law reform based on legal analyses and surveys; developing and maintaining a database containing the laws and statutory instruments of the land; recommending harmonization of the national legislation and implementing the country's international obligations; as well as serving as a think tank and consultant regarding the preparation of new legislation, including methods for legal analysis and the preparation of decision-making background for legislation. Additionally, the law reform commission shall have the expertise required for drafting

legislation, including the use of plain language. In Honduras, our aggregate background of experience with law reform work formed the basis for the project in which DIHR has been involved since 2005, to perform an analysis of the entire national legal framework with a view to implementing human rights standards – right by right. This case is described in Chapter 11.

### 1.7 PLANNING BASE FOR THE JUSTICE SECTOR IN GUATEMALA

Our cooperation with the Guatemalan Ministry of the Interior meant that, in year 2000, the coordinating body of the justice sector asked DIHR to prepare a planning base for the justice sector as an initial move towards outlining a vision document for the entire Guatemalan justice sector. This case is dealt with in Chapter 12. As part of completing this assignment, and working with the planning units in the justice sector's institutions, we prepared a model for effectuating a vision process that involved the entire justice system, which is to say the justice sector as well as civil society in a broad sense, including academia, etc. DIHR is not involved in the carrying out of this particular project, as the justice sector could not find funds to finance it. Instead, the process is primarily led by the planning units of the Ministry of the Interior and of the Supreme Court, supported by local consultants.

#### 1.7.1 Establishing planning units is part of the concept

It should be added that the Ministry of the Interior's planning unit has been familiarized with our methods throughout the course of several years; the unit has coached more than 200 individuals in this process thinking and thus has substantive experience when it comes to engaging in our breed of participatory process. Besides, the unit has prepared guidelines and manuals concerning the principles of planning and management, as has been the case with

similar planning units in the South African Parliament as well as the Ministries of Justice where we have worked. It is part and parcel of our concept that a planning unit is established within the institutions working with the concept and that this planning unit - as part of the training - prepares educational material as well as a planning manual containing tools and principles clearly indicating how the integrated planning system should mesh with the national, rolling three-year MTEF (Medium Term Expenditure Framework) system.

### 1.8 NATIONAL LEGAL AND JUDICIAL REFORM IN CAMBODIA

DIHR has worked with civil society projects in many countries, among these are Cambodia (since the late 1990's); in 2000 – 2001, this work had lead to a solid understanding of the Cambodian context and an excellent network. At this point in time, our Cambodian partners felt that it would be expedient to introduce our **flow of justice** concept to the Cambodian government. We arranged a meeting with advisors to the Cambodian Council of Ministers and presented a briefing regarding our concept. This resulted in an invitation from the Council of Ministers to a meeting where we could expound the concept and discuss possibilities for how our concept might be useful to the Cambodian government. Here it should be mentioned that a human rights advisor from the Institute was already working in the legal office of the Ministry of the Interior; and that, the year before, an advisor had been stationed with the educational department. Therefore, the government did have a certain knowledge of the Institute and its working methods.

The **flow of justice** concept was presented at a session with representatives from the entire justice system in Cambodia. We placed great emphasis on explaining the value-based management concept and the importance of



shared core values when facing major reform initiatives. The feedback from the Council of Ministers included a desire to have a value document drawn up based on a participatory process. By a value document, we meant the bedrock of values on which a legal reform was to be based; as well as an outline of initiatives to be launched in order to implement the core values in question. Proposals for such a process were prepared in collaboration with advisors and the Council of Ministers' Department, and the process was designed in a manner making it possible for the value document to form basis for a reform of the justice sector which was integrated with the on-going administrative reform and with the Cambodian strategy for combating poverty. First, the process consisted in defining value concepts and then to define the values to be attached to the individual concepts. Second, it consisted in defining the criteria to be met in a Cambodian context in order to implement the values in question; and, finally, in outlining the initiatives to be launched in order to meet these criteria. These initiatives have later proved to be largely identical with the indicators that can be utilized for implementing the Cambodian reform of the justice sector.

The value document was approved by the Cambodian Council of Ministers and subsequently a process was instigated to prepare an action plan for implementation. This action plan hinged upon a strategic plan for the justice sector consolidating all reform initiatives; based on this, a project catalogue as a key to donor coordination was prepared; this project catalogue now forms the basis for the sector's cooperation with the international community. This case is described in Chapter 13.

### 1.9 MODEL COURTS IN SEVERAL COUNTRIES

As a corollary to this process, a model court project has evolved focusing on 2-3 courts to be totally upgraded as described in the strategy,

involving buildings, infrastructure, personnel, education, etc. The Cambodian model court project builds on experiences gained from similar projects in South Africa as well as from years of cooperation with the courts in Tanzania and the justice sector programmes mentioned previously. In principle, this is a project which designs and implements a comprehensive court administration project as a pilot programme which may be up scaled for use at the national level.

### 1.10 THE JUSTICE SECTOR IN SERBIA

In the Balkans as well, DIHR enjoyed close cooperation with the structures of civil society before conditions were normalized after the Balkans War. These structures were the reason why, very early on after the fall of Milosevic, DIHR was invited to Serbia in order to present our **flow of justice** concept to the Ministry of the Interior as well as the Ministry of Justice. This resulted in an agreement to launch a vision process in both ministries. The process in the Ministry of the Interior evolved as planned, producing a strategic plan as well as an auxiliary catalogue of projects to guide donor coordination. The strategic plan gave rise to a new structure for the ministry as well as the police, each function having prepared a business plan at a level allowing financial programming. This case is described in Chapter 14.

At the official presentation of the vision document, DIHR was approached by a representative of the Ministry of the Interior in Montenegro requesting that a similar process be launched in that country, which came to pass over a two-year period. This case is described in Chapter 15.

The planning in the Ministry of Justice did not proceed as foreseen because of a change of ministers and, later, a change of government

following the 2003 election. Yet it remained a strong wish among the key persons involved in the process and in civil society to continue a development that could lead to a judicial reform and an adjunct reform of the ministry. Hence, the process was redefined in order to present a value document. This document was prepared by a think tank consisting primarily of representatives of Serbian civil society. The value document was presented to a panoply of stakeholders and has since served as basis for the reforms planned under the new government. In the intervening period, DIHR has served as advisor to the Supreme Court regarding the development of a planning base and identification of strategic projects to be launched on the Supreme Court's own initiative.

Because of the unique circumstances surrounding the drafting of the value document, it was necessary to establish a DIHR office able to function as a secretariat. First the secretariat was to be anchored in the Ministry of the Interior as well as the Ministry of Justice; towards the conclusion of the project in the Ministry of the Interior, part of the secretariat was transferred as a planning unit in the Ministry, whereas the rest came to function as secretariat for the value document process. This proved an advantage, since the Ministry for Human Rights in Serbia-Montenegro expressed an interest in collaborating with DIHR; to begin with, this collaboration could be rooted in the secretariat; it was later moved to this ministry as implementation came under way.

#### **1.11 NATIONAL REPORTING TO UN TREATY BODIES**

The Ministry for Human Rights was interested in collaborating towards a strategic process, developing a method ensuring anchorage in the government administration concerning reporting to the UN treaty bodies; as well

as a component focusing on integrating human rights standards into Serbian as well as Montenegrin legislation. Taken together, these three components formed a basis for the development of the DIHR model for national reporting to international treaty bodies.

The model is built on the fundamental view that the reporting process must be seen as help to self-help for the individual country in question, not as a control mechanism where the international community dictates the national agenda. The model is described in Chapter 5. A similar project is under way in collaboration with the Ministry for Human Rights in Burkina Faso, where the development of a national strategy and action plan for implementing human rights is being discussed as well, following the same principle adopted in South Africa and also described in Chapter 5.

#### **1.12 FACTS-BASED DIALOGUE PROCESSES IN YEMEN**

In 2006, the Danish Ministry for Foreign Affairs requested DIHR – as part of the "Arab Initiative" programme in Yemen – to contribute to establishing dialogues about human rights between the Yemeni government and organized Yemeni civil society in order to improve knowledge about and understanding of human rights in general and in the state apparatus in particular.

Since its very beginnings, DIHR has nurtured close relationships with the international human rights network and civil society in many countries thus obtaining a strong international reputation among civil society also in the Arab world as a serious and responsible cooperation partner.

DIHR has experience with similar networks from a number of countries and especially from Afghanistan in relation to civil society and

human rights networks in an Islamic state. As a consequence, DIHR could relatively quickly establish good relations to universities and take on the role as catalyst for establishing a formal NGO network consisting of important Yemeni NGOs. Based on the work to establish this platform it was also possible to enter into a dialogue with the government of Yemen on the idea of a facts-based dialogue and how this could be anchored and organized.

We had the opportunity to present the **flow of justice** concept to the government (Minister of Justice, Minister of Religious Affairs and Minister of Human Rights) including our experience with ministries for human rights and their role as a government focal point and catalyst for the implementation of human rights and democracy. We discussed the meaning of rule of law principles and the fact that DIHR is dedicated to the objective that human rights must be implemented through the principle of rule of law based on human rights principles and that as a consequence a harmonized legal hierarchy constitutes one of the first steps to focus on, including the importance of participatory processes in the preparation and subsequent implementation of legislation. The conceptual model for rights-based law review and its potential e.g. as the basis for dialogue were touched upon. Such strategic considerations are described in Chapter 6.

Yemen is an Islamic state. This means wanting sharia law as an integrated part of the state's formal legal hierarchy.

The challenge to the implementation of human rights is that the value base for the legal hierarchy does not contravene the human rights principles and to which degree the human rights standards and norms can be incorporated (i.e. the degree of harmonization).

The government clearly expressed its wish to engage this challenge and that both Yemen and the international community would benefit from the possibility of a balanced dialogue based on facts with the purpose to identify and implement all that is without problems and then find good solutions to the problematic areas one by one and step by step. The government found the principles and tools presented interesting and not in opposition to the government's policy; it was agreed that based on the discussions held and in cooperation with the Ministry for Human Rights we should prepare a proposal for a dialogue process. This was the foundation stone for DIHR's facts-based dialogue concept.

The concept is now applied in several contexts while also being an integrated part of the **flow of justice** concept. The Yemen case is described in Chapter 16.

### 1.13 CIVIL SOCIETY AND HUMAN RIGHTS NETWORK IN AFGHANISTAN

Since the fall of the Taleban, DIHR has been active in Afghanistan in relation to the establishment of a civil society and human rights network. This network was interested in entering into a constructive dialogue with the Afghan government and public authorities and not least the Independent Afghan Human Rights Commission and wanted to hear about our work in other countries.

This was the beginning of a long cooperation with the network and especially the network secretariat on organizational and managerial strengthening of the network and especially with a view to strategic development of the network itself and in connection with the realization of various kinds of objectives.

Today the network is a well organized national network with more than 60 member

organizations and a recognized civil society actor and actor in a large number of other areas. It is to no small degree the experiences from the activities of this network which form the basis for the facts-based dialogue finding its form and the integration of this dialogue concept with the **flow of justice** concept. Chapter 17 describes the Afghanistan case.

#### 1.14 THE FLOW OF JUSTICE CONCEPT IS BASED ON PRACTICAL EXPERIENCE

As is evident, the DIHR **flow of justice** concept has evolved during the course of several years through practical work at the top as well as at the intermediate level in ministries, national parliaments, independent national and international commissions as well as national and international civil society organizations. The concept is outlined with regard to national reform efforts and the implementation of human rights with an emphasis on justice systems, since the purpose of this book is to describe the DIHR **flow of justice** concept which focuses on these areas. The **flow** concept is applicable to other sectors as well; **viz.** sectors such as health, education, agriculture, business, etc. However, it should be stressed that the concept's value set as described in Chapter 2 remains the underpinning line of thinking regardless of the area to which the concept is applied.

As is also apparent, the concept has been developed based on our work in very different countries, spanning four continents. Several of these are so-called transitional countries, passing from dictatorship to democracy or from war to peace. In these instances, the **flow of justice** concept is particularly apt because it is involving, participatory and long-term; and because its logic and structure are conducive to creating overview and order in the often unstructured conditions characterizing transitional societies. Finally,

it should be stressed that the concept is valid for any democracy regardless of its stage of development and thus may propitiously be used for the general efficiency improvement and promotion of human rights.

## PART 2

## CHAPTER 8

# THE SOUTH AFRICAN EXPERIMENT – AN INTRODUCTION

By Karin Poulsen

The strategic planning model has proven a marvellous and sympathetic way of transforming what at first may seem intransigent. We therefore recommend it unreservedly to anyone who is seriously intent on transforming systems, ways of thinking and ways of doing things. It is a catalyst for change and transformation.

Essa Moosa, Director of Planning Unit,  
Department of Justice, South Africa.

### THE FIRST ENCOUNTER

One picture stands out very clearly from my initial meeting with post-apartheid South Africa. I was on my way to my first meeting with the Minister of Justice, Dr. A.M. Omar. Only a few months earlier, he had been sworn into preside over a Ministry which had been the main vehicle in generating and executing the horrors of apartheid. As I entered his offices in Cape Town, he immediately closed the door behind me. Because, as he said, "I can't trust anyone!" During negotiations prior to the elections in 1994, the parties entered into a national compromise with a view to safeguarding a peaceful transition. One element of this compromise was that the civil servants of the state administration would keep their jobs under the new dispensation. The corridors and cubicles of the Department of Justice were therefore staffed by people – mostly white South African males – of the old order. They were the ones the Minister felt he could not

trust – yet. When leaving his offices, I had a real sense of the complex and astronomical nature of the South African project: to inject a common vision of justice for all in a society born by and bred on differences and mistrust.

### THE LEGACY

Apartheid established and consolidated a polarization of South African society. The state was generating and implementing apartheid laws and regulations. The non-governmental sector was seeking to protect the marginalized groups in society and to provide basic services in the absence of a legitimate state. Since 1994, South Africa has tried to bridge the gap between state and civil society in the pursuit of a common vision of justice for all. But the past is not easy to overcome. The government apparatus is still populated by civil servants of the old order. As mentioned above, when the interim Constitution was drawn up in 1993, the African National Congress (ANC) accepted the compromise of guaranteeing civil servants a constitutional right to remain in their positions after the April 1994 democratic elections. The contemporary state administration is therefore composed of a rather thin layer of newcomers at the level of ministers and top management. The actual implementers of new laws and programmes that seek to usher in a new South African epoch are in fact the same civil servants who loyally implemented apartheid laws and regulations. The South African Department of Justice is an outstanding example.

Like the state administration, the non-governmental sector faces considerable challenges. During the apartheid era, the non-governmental organizations mushroomed to the point where South Africa in 1994 harboured more than 50,000 organizations - from urban-based professional organizations to rurally based advice offices and service providers. The challenges are two-fold: most organizations have encountered a serious brain drain since many of the newcomers in government and state administration have been sourced from the non-governmental sector. Furthermore, the organizations are seeking to realign their approach and come to terms with their new identity as potential partners of government – the state is no longer the ultimate enemy, but a sparring partner in reconstruction and development. The non-governmental human rights organizations are no exception.

Apart from such challenges, there are also a number of major positive spin-offs: civil society can, for instance, forge constructive alliances with their former colleagues who are now in government – a window of opportunity which many successfully seek to exploit.

The new South Africa essentially holds the potential of implementing human rights at the national level through a combined effort by state and civil society. Yet the question remains how to bring this partnership into effect. The South African Department of Justice has spearheaded such an exercise - an experiment that might contribute to the development of a new way of thinking concerning the implementation of rights in a developmental context.

### **THE PROJECT**

When the Government of National Unity came into power after the election in 1994, every Department faced the tremendous task

of promulgating a new order, including the implementation of international commitments at the national level. In the case of the South African Department of Justice, Dr. A. M. Omar, the Minister of Justice, from early on identified the need for a comprehensive transformation exercise, targeting the Department itself as well as the broader justice sector. He was left with a Department that had been one of the prime promulgators of apartheid and was now supposed to unlock the apartheid structures and programmes in order to promote justice for all. He could have chosen a short-sighted approach – implementing projects on an ad-hoc and short-term basis, which would ease but never cure the symptoms of apartheid. He chose the long-term approach, namely to embark upon a comprehensive planning exercise that would reach every corner of his Department and set new standards for the administration of justice altogether.

After the 1994 election, the Minister approached the Danish Ministry of Foreign Affairs (Danida) to seek advice and financial assistance concerning the establishment of such a planning exercise. Denmark had been at the forefront in the struggle against apartheid and was held in high esteem by the ANC. The Danish Institute for Human Rights came on board as advisers on what became the **Rationalization and Transformation of the Administration of Justice in South Africa Project**, which ran from mid-1995 to mid-2001. The project encompassed the drawing up of a strategic plan for the transformation of the administration of justice in South Africa; implementation of prioritized programmes identified in the plan; as well as change management training programmes for Department officials to sustain the planning exercise. The project was unique in the sense that it merged the strategic planning methodology of the corporate world with the

strong human rights ethos and value set of the non-governmental human rights sector; a two-pronged approach which has offered an innovative and all-encompassing gateway to the modernization of an antiquated bureaucracy like the Department of Justice and to the revamp of a complex and latently conservative sector like the justice administration.

### **A NEW VISION**

A Planning Unit was established to drive the transformation process in close conjunction with the Minister. The unit was instituted as an interim structure in the absence of a new top management team that was still in its inception. The unit was charged with drafting the strategic plan entitled **Justice Vision 2000 ... and Justice for All**. The basic inputs for the plan were already in place. Since mid-1994, the minister had hosted a panoply of legal forums on issues like access to justice, crime, and legal education, as well as a number of informal consultations. The forums and consultations reflected the voices of the justice administration, including the courts and prosecutorial services, the legal profession, academic institutions, and non-governmental human rights organizations, including paralegals. These inputs served as the planning base from which the unit compiled the strategic plan.

Even though the Department of Justice was still in the initial stages of restructuring and to some extent re-staffing the Department, the Planning Unit consulted closely with senior Department officials. The notion was that many of the officials would remain in the Department and should thus feel ownership in the plan from the very outset. A number of workshops assisted the unit in contextualizing the plan to Department needs and in sensitizing Department officials regarding inputs given by the non-governmental sector.

In mid-1996, the draft strategic plan was ready. It stipulated the new mission, vision and values of the Department with a strong emphasis on human rights, human dignity, and equality for all. It gave priority to seven key result areas or focus areas of transformation, namely:

- The Department of Justice
- Courts and other structures administering justice
- Crime, safety and security
- Access to justice
- Human resource development
- The legal profession
- State legal advice and legislative services

For each key result area, the strategies, goals and key success indicators were outlined to provide guidance as to how each focus area of transformation should be translated from words into action. And action plans furnished ways of implementation, indicating the line functions in the Department responsible for implementation as well as milestones and time frames.

The planning process was, however, not always an even one. Sentiments of guilt, mistrust and, at times, even hatred surfaced in the midst of workshops and daily consultations. It was indeed a dramatic centrifuge of past and present which unfolded right in the Department's corridors. It remained a challenge to keep the ultimate goal in sight and stimulate a conciliatory atmosphere which would bring the – otherwise conflicting – parties together.

The draft plan was subject to national hearings in the nine South African provinces. More than 1,400 justice officials and non-governmental organizations provided their comments. The result was a large number of oral and written inputs that were incorporated into the final edition of the plan. In addition, the document



was translated into plain language to make it accessible to everyone - from the senior official to the administrative clerk. The new vision of the Department of Justice was officially launched by the Minister in September 1997 and the plan was distributed to each of the 15,000 justice officials in the country, to semi-autonomous institutions like the Human Rights Commission and the Gender Commission, to the legal profession and academic institutions, and to non-governmental human rights organizations. An abridged and simplified version was developed for public distribution.

The strategic plan served as the basis for a series of white papers on justice produced by the Policy Unit, which was established by request from the Minister as part of the project. This unit was partly comprised by former Planning Unit members. White papers were issued concerning the legal profession, legal aid, structures and functioning of the courts, and the judiciary. The papers underwent national hearings and were tabled before Parliament. Today, they constitute government policy. The top management team is currently charged with policy development in the Department.

### **BOX 8.1: ORGANISATION**

#### **PLANNING UNIT (1995-1997)**

The Planning Unit was located outside the premises of the Department of Justice and it served as an independent unit with reference to the Minister of Justice. This set up was necessitated by the fact that the minister hesitated to incorporate the functions of the Planning Unit into the department until a new top management team had been established. The departmental newcomers would according to the minister be more open towards change and thus enable a sustained

continuation of the project than the officials from the old dispensation.

#### **CORPORATE PLANNING TEAM (1998-2001)**

The Corporate Planning Team was located inside the Department of Justice and it was established on request by the minister and with reference to the minister and his new top management team. The aim was to secure a continued promotion of the transformation process in the department. The mandate of the Corporate Planning Team included strategic planning, rolling course catalogue and donor coordination. On top of this the team became a central function in the general departmental coordination of activities. The team also advised and assisted the Minister of Justice on an ongoing basis.

#### **POLICY UNIT (1998-2001)**

The Policy Unit was located inside the Department of Justice and it was established on request by the minister and with reference to the minister. The unit was in charge of the compilation of the white paper(s) as well as general policy development in relation to the transformation process. The unit also advised and assisted the minister on an ongoing basis.

Today the functions of the Corporate Planning Team and the Policy Unit have been integrated into the Department of Justice.

## **BUILDING CAPACITY**

To ensure that Justice Vision 2000 became a living document, the Planning Unit strove to incorporate the planning system into the Department of Justice. Today, the Department updates the strategic plan on a rolling 12 month cycle basis in order to adapt the plan to changing societal circumstances and to improve the plan based on lessons learned. Simultaneously, the plan serves as a monitoring tool to measure the success rate of implementation. The planning process will continuously involve Department officials at both head office and provincial level on a consultative basis so that the plan will remain the property of the whole Department.

From the outset, the Planning Unit trained Department officials through extensive consultations when drafting the strategic plan. Strategy teams comprised of departmental line managers and their staffs were established. These teams contributed to the finalization of the strategic plan. Initially, the intention was to constitute the teams as permanent structures in the Department. However, at the request of the minister, a Corporate Planning Team was charged with the ongoing strategic planning process to ensure impartiality and change. The team, consisting partly of former Planning Unit members, gradually handed over its functions to the departmental structures; today, the top management team is in charge.

Apart from the incorporation of the planning system into the Department of Justice, the Planning Unit designed and implemented change management training programmes in conjunction with the Chief Directorate for Human Resources Development. The training programmes were aimed at sensitizing Department officials regarding the new vision for the Department as well as the management skills required for implementing the plan; including management of a diversified

workforce and project management.

Furthermore, the programmes had a strong team-building element. The Department is somewhat heterogeneous in the sense that a considerable segment of the officials (mainly white) are from the old order whereas the newcomers (mainly black) are generally from the non-governmental sector or from the business community. Not only do these different groupings have different values. They also come from different organizational cultures. The old guard are civil servants who have been socialized in the bureaucratic set-up for years, whereas the newcomers are not used to operating in accordance with a bureaucratic *modus operandi*. The team building processes sought to reconcile these different groupings and bolster the strength of management teams at all levels - from the Director General and his Deputy Directors General to the sub-units at the provincial level.

The training needs of the Department of Justice were identified through a rolling job interview system that also included needs analysis; the results of which informed the design of course modules and the establishment of an 18 month course calendar. The rolling course catalogue will ensure that training needs of the Department are addressed as they emerge. It will also provide the Chief Directorate for Human Resources Development with a means of capturing and implementing human resource development in a broad sense.

**FROM PLANNING TO IMPLEMENTATION**

**BOX 8.2: MAIN OUTPUTS IN SHORT**

**PLANNING AND BUDGETING MANUAL**

The manual provides guidelines for how the Department of Justice should administer the strategic planning process as well as how the action plans can be aligned to the departmental budgetary procedures. It will secure that the department itself can finance the transformation programmes and in the longer term minimize the departmental dependency on international donor funds.

**ROLLING COURSE CATALOGUE**

The course catalogue contains the totality of course activities in which departmental officials can participate – from management development courses and team building courses to technical and specialist courses such as courses in human rights. The rolling course catalogue is regularly updated by the Department of Justice.

**WHITE PAPERS**

The Minister of Justice converted the white paper into a range of white papers on matters pertinent to his administration. The white papers have the strategic plan as their point of departure and have further developed a range of relevant policy areas. Special focus is granted to the judiciary, the legal profession and legal aid. The white papers have been tabled before Parliament and constitute the government's national legal policy.

**FACILITATION OF DONOR COORDINATION**

The international donor community requested at an early stage that the Department of Justice installed a more

coordinated administration of donor funds. The project has trained departmental officials to that effect and has established appropriate structures and procedures.

**SUPPORT OF PREMIER PROJECTS**

The project has supported the following premier projects: A TV series in 15 parts on SABC 2 about the transformation of the justice sector (the series was rated one of the most popular amongst both black and whites); training of lay assessors (as part of installing more trust in the legal system); training of justice officials in women and human rights, including prevention of domestic violence; conferences for the business community with respect to securing funds for the implementation of certain projects in the strategic plan.

To promote change in the shorter term, the Minister of Justice and the Planning Unit extracted 30 so-called premier projects from the strategic plan - three to four projects from each of the seven key result areas. Through comprehensive donor coordination exercises, the Planning Unit secured international donor funds for the projects, supplemented by departmental funds. The projects covered a wide span of interventions, such as improving the corporate image of the Department of Justice; establishing user-friendly courts; preventing violence against women; establishing a national paralegal training institute; human rights training of judicial officers; placement and subsidy of law graduates from disadvantaged backgrounds; and capacity building and legal drafting skills.

Even though the Department of Justice held the overall responsibility for the implementation of projects, the Department entered into partnerships with non-

governmental human rights organizations and other civil society bodies on certain projects. Justice Vision 2000 generally highlights the role of civil society in making the new vision come true at grassroots level and specifically promotes partnerships between the Department of Justice and the non-governmental sector on targeted activities. This notion is based on the recognition of the human rights knowledge and skills embedded into the non-governmental human rights organizations as well as the close proximity between these organizations and the rural and urban communities. For instance, in the case of the premier projects, non-governmental human rights organizations have contributed to the establishment of user-friendly courts and the prevention of violence against women; the National Paralegal Association played an essential role in the establishment of a national paralegal training institute; and the black lawyers' associations have been centrally involved in the placement and subsidy of law graduates from disadvantaged backgrounds.

Apart from the premier projects, the strategic plan was implemented through action plans under each of the seven key result areas. Since strategic planning is closely linked to the budgeting procedure of the particular organization involved, the budgeting of programmes to be implemented is part and parcel of the whole exercise. Hence the Planning Unit was instrumental in prioritizing and realigning the Department's budget to accommodate the implementation of the new vision. A planning and budgeting manual was produced by the Chief Directorate for Corporate Services with a view to aligning the strategy work with the government's budgetary procedures (the so-called Medium Term Expenditure Framework – MTEF). Thus the words do not remain on paper, but are translated into action in the most

direct way possible, namely by ensuring that implementation – in this case of human rights at the national level – is financially secured.

### **TANGIBLE SPIN-OFFS**

The project produced a range of results that were not foreseen in the initial design of the intervention, but which came about as an organic and progressive part of the process.

### **A UNIFIED DEPARTMENT**

A Rationalization Committee was established by the Department of Justice to facilitate the rationalization of the 11 apartheid-based departments into one unified structure. The 11 structures each had their own discrete organizational structures, procedures and systems, laws, training programmes, management plans, personnel administration standards, and financial management systems. The committee, comprised of representatives of all the departments in the previously fragmented justice system, completed its tasks of rationalizing matters relating to personnel, finances, administration and legislation, including a new organization for the Department of Justice. The organization was designed in accordance with the strategic plan processed by the Planning Unit in order to make it representative and to incorporate the functions necessary to implement the strategic plan. The Public Service Commission approved the new organization.

### **A MODEL COURT BLUEPRINT**

Courts are the cornerstone of justice. They dispense justice to the public and for the public. Their ultimate purpose is to resolve disputes justly and in accordance with the law. By doing this, the courts inspire and nurture public confidence in the administration of justice and the certainty of the law. The courts interact with the public and they serve the public interest. In order to carry out their functions efficiently,

the courts need to be properly resourced with regard to personnel and infrastructure. And in order to enhance their service delivery to the public at large, the courts will also have to become more user-friendly and accessible.

The idea behind the model court concept developed by the project is to create court venues and nurture a court ethos, which will ultimately meet the needs of the public – the users of the system – in full. This will contribute to building the desired degree of public confidence in the courts. The model courts, spearheaded in certain identified pilot centres, will gradually evolve into a catalogue of values and standards of service which every court building in South Africa should measure up to. Once the pilot(s) have been successfully implemented, the concept could be rolled out and implemented countrywide. As a general rule, the model should be tailor-made to the South African context with a number of minimum standards that would be indispensable. Countries like South Africa will hardly be able to roll out a luxury model.

Yet this concept can only be implemented successfully if it becomes a project of joint enterprise between the sector agency in charge and the communities at large. In other words, the public should also have a say in what they consider to be essential features for the establishment of a model court. This would eventually include the involvement of non-governmental organizations.

Components that need to be considered in the development and implementation of a model court include:

- External building design (attractive buildings with no intimidating features, appropriate security features);

- Internal office design (citizens advice desks in lobbies where enquiries can be made, appropriate signposting, comfortable waiting rooms, separate waiting rooms for opposing litigants and their witnesses, clean and adequate toilet facilities);
- Provisioning administration (IT and communication devices, stationery and forms, posters and information brochures about the court and its facilities and procedures as well as on relevant justice issues including legal aid, community dispute resolution, human rights issues);
- Service delivery (training of staff to ensure service excellence);
- Legal aid for indigent people (should be available in the court or nearby);
- Easy access to counselling and mediation as these processes are designed to provide early settlement of disputes or to prevent disputes from arising in the first place (judicial officers must be sensitized to the advantages of mediation and counselling, the availability thereof, and the circumstances under which their use is appropriate).

It is important to note that the model court should not only be friendly to the court users, but also to its service providers. The environment in which they work must be conducive to their well-being and enable them to provide an efficient and user-friendly service.

#### **EFFECTIVE COURT MANAGEMENT**

Structures were transformed at district levels to achieve more effective and efficient court management and administrative systems. Previously, the same officers performed judicial and administrative functions. The objective of this restructuring was to separate the judicial and prosecutorial functions from the administrative ones in order to make the judiciary more independent, to provide judges and prosecutors with more time to perform

their legal tasks, and to establish a more professional and user-friendly administrative set-up.

### THE CHALLENGES

After the project expired, Business Against Crime offered its technical advisory services to the Department of Justice. Business Against Crime is an association of private companies in South Africa assisting the state administration with reform and change as part of their corporate responsibility charter. The Danish Institute for Human Rights advocated the inclusion of the Business Against Crime services and succeeded. The services of the project and DIHR have therefore been retained.

Justice Vision 2000 provides a new road map for the administration of justice in South Africa. But if we for a moment look to the past to probe the appearances of the justice system under apartheid, the potential hindrances awaiting the Department of Justice on the road to justice for all become evident. During the Truth and Reconciliation Commission hearings, the wife of a death-row survivor gave this ghastly description of the judiciary under the old dispensation:

The judiciary enforced every aspect of apartheid from the most petty and degrading to the most murderous and genocidal. They sent people to jail for walking the streets of their own country without a pass; for using "white" facilities; for loving someone of the wrong colour; for trying to live, or set up businesses outside of ghettos and Bantustans. They sent people to jail or the gallows, knowing full well that they had not had a competent defence. They gladly accepted statements that had obviously been secured through torture. They enforced legislation that silenced the

press. They presided over commissions of inquiry that whitewashed security force excesses and corruption. They upheld the grand theft of the homes and lands of black people. They punished opponents of their system (for theirs it was) with the harshest array of cruelties, including banishments, house arrests, hard labour, lengthy jail sentences and, wherever they could find any pretext, death. Yet even up to now they have managed to preserve and propagate the absurdity that they were somehow above it all - impartial. The judiciary gave the system a veneer of respectability which the state could flaunt to the outside world and at the same time added steel to the hand that crushed so many people of this country.<sup>1</sup>

**Justice Vision 2000** essentially confronts this past inhuman and degrading treatment. Its roster of values with a strong emphasis on human rights, human dignity and equality is the stepping-stone for a new standard, setting and moulding of mindsets in the administration of justice. But there are still challenges in bridging the gap between vision and practice. Outside the walls of the Department of Justice, the judiciary is battling to come to terms with the new requirements. Generations of discrimination as social practice remains etched in the institutional memory and contemporary operations of the judicial agencies. It will take years to overcome. On top of this, the organizational culture of the Department of Justice is haunted by sentiments of anger and guilt between blacks and whites. But as the Minister of Justice says in the foreword to the strategic plan:

It is very clear that the past still influences the present. Although formal apartheid has been abolished, we are still challenged to heal its social and

systemic effects. This is a problem for all South African institutions, including the justice system. The development of a new justice system, one that is in line with the Constitution and its democratic values, will be a process, not an event.<sup>2</sup>

All told, the South African experiment did generate new ideas for the implementation of human rights in a transitional context that can be sensitively and successfully replicated in other countries undergoing change. The following cases will serve as illustration.

Whereas the results of the Truth and Reconciliation Commission is a standard against which future governments will be measured to prevent repetition of past atrocities, **Justice Vision 2000** charts the course of the way ahead, although the initial parts of the journey may be partially strewn with impediments.

### **LESSONS LEARNED**

In general, **Justice Vision 2000** has maintained a momentum of change and a shared vision in the Department of Justice. The strategic planning exercise has proved an appropriate conflict management tool in a highly diversified context harbouring conflicts that could otherwise distort the ultimate objective, namely to implement human rights to the benefit of all South Africans. The experience generated in the case of strategic planning and human rights in South Africa is therefore very positive.

But it has also proven to be a long-term process with no short cuts. This is often the source of frustration and impatience on the part of the population – the end users of the envisaged changes. The South African Minister of Justice was, however, ready to face criticism in the short term rather than to encounter problems in the form of a scattered Department and a lack of delivery in the medium and long term. But the South African case is a unique one. There is a strong political commitment to transformation and change and the human resources capacity at the levels of state and civil society is above average compared to other countries in transition.

## CHAPTER 9

# AN INTEGRATED MANAGEMENT SYSTEM IN A SOUTH AFRICAN PARLIAMENTARY REALITY

By Herbes Burger and Ivan M. Nielsen

Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights. Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law. Improve the quality of life of all citizens and free the potential of each person; and build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

Preamble, the **Constitution of the Republic of South Africa**, 1996

### THE CONTEXT

The first democratic elections in South Africa, held on 27 April 1994, resulted in a new and democratic political dispensation.

The new political dispensation recognized the injustices perpetrated and legacies left by apartheid and honoured those who suffered for justice and freedom in South Africa. On 18 December 1996, South Africa enacted a new Constitution and thereby created a single, sovereign, democratic state founded on the values of human dignity, the achievement of equality, and the advancement of human rights and freedoms.

The Constitution stipulates the obligations of the new Parliament in terms of composition,

powers and procedures. The main tasks are to pass legislation; to keep oversight over state bodies and the executive; to facilitate public involvement in parliamentary processes; to appoint, remove and determine remuneration of persons in public office; to review the Constitution; and to adopt instruments and executive decisions.

The interim Constitution of 1993 created the Parliament and nine provincial legislatures. At the national level, Parliament consisted of two houses – the national assembly with 400 members and the senate with 90 members. The provincial legislatures ranged in size from 30 to 86, reflecting the differing populations of the provinces. One of the primary functions of the new senate was to protect the interests of the provinces. The final Constitution of 1996 replaced the senate with a National Council of the Provinces with 90 members. There were significant differences in the ways the two were conceptualized, but the primary function remained the protection of the interests of the provinces. Delegates to the council include six permanent members from each province, as well as four members who rotate according to the issue under discussion.

The form of the legislatures changed not only in terms of their constitutional structure, but also in how the role of the legislatures was conceived. In particular, in both the Constitution and in the minds of those involved, the legislatures of the new South Africa were to play a far more active role in running the



country, rather than merely rubber-stamping the decisions and actions of the executive. This vision of the legislatures had important implications for, say, the role of committees in the legislative process, as well as the need for wider public participation.

The roles and tasks that were to be performed by Parliament, as set out in the Constitution, necessitated a totally different administration. Inadequacies in providing the needed administration gave way to a transformation process that changed the organization and the way it conducts its business. New processes and structures were to be designed to support the new functions and tasks of Parliament.

A new organizational structure of Parliament came about through a comprehensive consultation process with relevant stakeholders. The Danish Institute for Human Rights was instrumental in providing assistance in this process. The creation of the new structure was guided by a new strategic intent to provide the services that enable Parliament to perform its constitutional functions optimally as well as new management principles, guidelines and practices such as efficiency, accountability, effective delegation of authority, and activity planning.

### **THE INITIAL STEPS**

The demands of a new Parliament in transformation called for a reorganization and improvement of services. The Speaker of Parliament, Mrs. Frene Ginwala, initiated the setting up of a project aimed at providing Parliament with a strategic planning process. The project in Parliament was initiated in July 2000 and came at a time when the management of public finances was transformed through the implementation of the Public Finance Management Act. An increased emphasis was put on the long-term

planning ability of public institutions. Apart from enabling the Parliamentary Service to plan accurately for the future, the project also assisted Parliament in meeting the new challenges as set out by this act.

Making the project work out successfully took three essential role-players: Parliament as the beneficiary, DIHR as the provider of technical advisory services, and the implementation team.

In order for Parliament to best maximize the benefit of the project, it had to be honest in stating its needs. Serious introspection was necessary so as to reveal the shortcomings of the institution. Furthermore, an open relationship built on trust had to be established with DIHR. This open, frank and to-the-bone relationship would allow Parliament to gain most from the project. On the other hand, DIHR had to be sensitive to the needs of the beneficiary. At no time could it dictate its own agenda. The success of the project hinged on the ability to define the exact needs and then to structure the solution in a way that would be acceptable to both parties.

The implementation team was the last ingredient in the successful implementation of the project. It was recognized from the start that Parliament did not have the needed capacity to implement and sustain the project on its own. This necessitated the deployment of a strategy consultant for the duration of the project, providing advice and facilitating aspects of the planning process. In addition, Parliament established a permanent post for a manager, Mr. Herbes Burger, to deal with planning. Providing technical skill to implement the project was vital.

## **PROJECT ESTABLISHMENT**

### **PROJECT IDENTIFICATION**

The Parliamentary Service established the need for the initiation and consolidation of a strategic planning process.

The strategic planning process should enable Parliament to plan for the future in a systematic and coherent manner and to monitor and evaluate progress in this regard. Also, it would promote the coordination of donor funds on the Parliament's own terms. The need for a strategic planning process was further emphasized in the review of Danida's 1996-1997 assistance to Parliament.

The immediate objective was to implement a rolling strategic planning and budgeting process by line managers of the Parliamentary Service. Such a process would lead to the overall improvement of the strategic management of Parliament, and thereby lead to an improved functioning of Parliament.

### **PROJECT SET-UP**

The project was set up to span two years, completing two planning cycles, and involving numerous activities. The initial project plans provided for flexibility, without compromising on the envisaged project outputs. During the implementation of the project, several small changes were made so as to ensure a mesh with the organization. This flexibility was one of the reasons why the project was so successful.

On 10 July 2000, the Parliament of South Africa entered into an agreement with the Danish government on financial assistance to the strategic planning project for the Parliamentary Service. Consulting support to the project was provided by DIHR.

DIHR consultants visited Parliament regularly, beginning November 2000; one was attached as strategy adviser to Parliament from 9 May 2001 until 3 May 2002. Parliament appointed a manager of strategic and business planning, Mr. H. Burger, in July 2001. Mr. Burger was responsible for the implementation of the project and regularly conferred with DIHR consultants on matters in this regard.

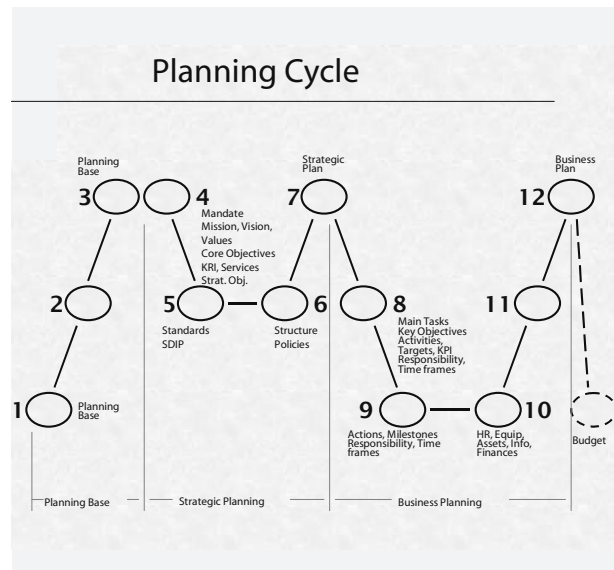
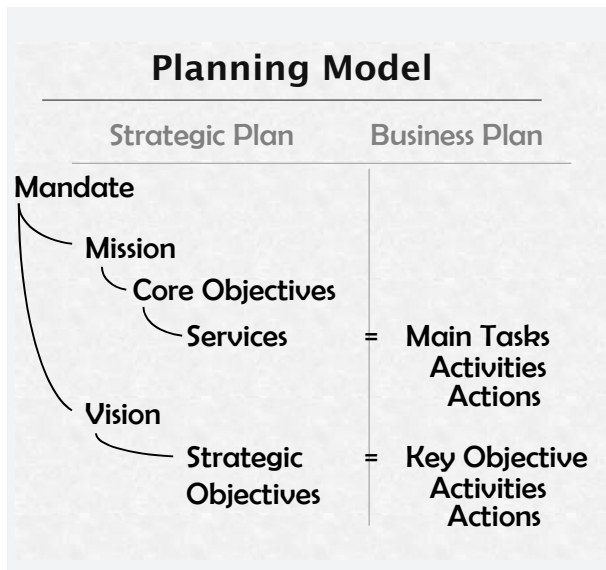
The strategic planning project came at a time when the management of public finances was transformed through the implementation of the Public Finance Management Act. An increased emphasis was put on the long-term planning ability of public institutions. Apart from enabling the Parliamentary Service to plan for the future with precision, the project also assisted Parliament in meeting the new challenges posed by this act.

The following project activities were planned:

- Development of a strategic planning process
- Holding of strategic planning sessions
- Holding of business planning sessions
- Provision of management training
- Preparation of materials

### **PLANNING PROCESS**

DIHR facilitated the process of developing a custom-built planning process and model for Parliament, taking into consideration the circumstances and factors unique to South Africa. The planning model was accepted by the Management Board, and ownership thereof was secured by their full participation in this. The process was complete, simple, and feasible to implement. The planning model ensures participation in the strategic planning process by all levels of management.



**DEVELOPMENT OF A PLANNING MANUAL**

The development of a planning manual was identified as one of the first objectives that would lead the way to improved planning. The provision of such a manual would further the establishment of a rolling planning cycle that could be institutionalized and included in the Parliamentary Service's policies.

Such a planning manual would also ensure that planning is integrated and synchronized, and that this can be done in a uniform manner allowing for easy consolidation of its component, specific plans. The planning manual should also establish and outline the relationship between planning, budgeting, performance management, and reporting.

The development of the planning manual began several years ago in a give-and-take involving the Parliamentary Service Management Board and DIHR. A planning cycle was identified, involving various levels of management in the planning process (see below).

The planning manual was compiled during the last quarter of 2001 on the basis of the developed cycle. The planning manual was then circulated among all members of the Management Board for comments, whereupon it was published and distributed to all managers.

It is envisaged that the planning manual will form part of the institutional policies and procedures. The training provided for managers was based on the planning manual.

**INTEGRATION OF THE PLANNING MODEL**

In addition, the planning model was developed to integrate with the management processes of budgeting, performance management, and reporting. These processes are set to become the driving forces in the Parliamentary Service. Linking the planning process to these processes ensured a complete management system whereby top management can determine strategic direction; obtain and allocate resources; delegate work via performance management; and monitor progress through reporting on a quarterly basis.

**STRATEGIC PLANNING SESSIONS**

Following a number of working drafts and based on information gleaned from the planning base, the Parliamentary Service’s first strategic plan was developed in November 2001. It established a format whereby the mandate, mission, vision, values, core objectives, key result indicators, services, key issues, and strategic interventions are included.

A planning session was held for the Management Board in November 2001. The Board decided that some aspects of the strategic plan needed to be reconsidered, and that the contents and quality of the plan had to be revised.

The annual strategic planning session was held for the Parliamentary Service Management Board in July 2002. The session focused on a revision of the strategic plan for the Parliamentary Service. The new strategic plan had an increased focus on the strategic objectives of the organization.

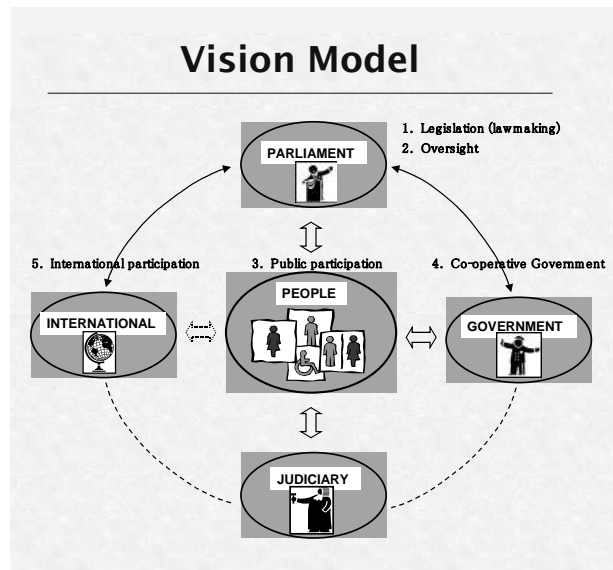
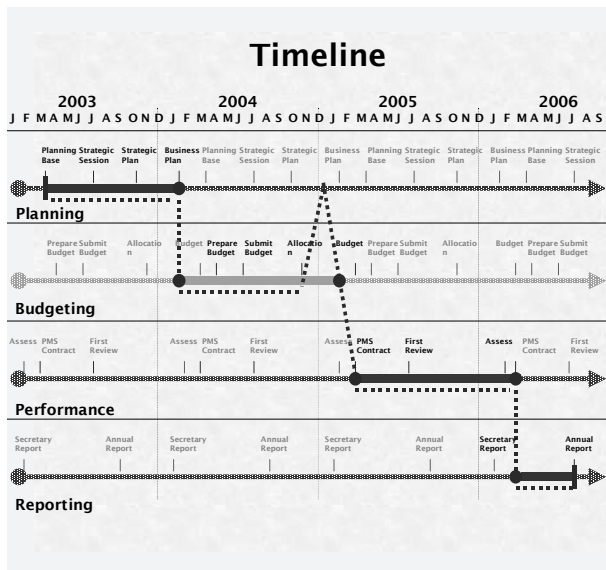
**BUSINESS PLANNING SESSIONS**

The business plans of divisions ‘unpack’ the overall strategic plan for Parliament, thereby leading to accurate budgeting, ensuring performance management, and providing regular reports on implementation.

Like the strategic planning sessions, business planning sessions are conducted annually and with all divisions. Through these sessions, plans are developed, outlining the main tasks, key issues, key objectives, activities, targets, key performance indicators, responsibilities, and time frames.

**VALUES OF PARLIAMENT**

When implementing the planning model, it proved essential to focus on the values of the organization. The values are the cornerstone of the organization and the foundation on which all its policies are based. Furthermore, the vision model and process developed for the institution is firmly rooted in the Constitution and the rights enshrined in it.



The new adopted values of Parliament are:

- **Constitutionality**

We subscribe to social justice, fundamental human rights and the democratic values of human dignity, equality and freedom as listed in the Bill of Rights, a cornerstone of democracy in South Africa.

- **People-centeredness**

We respect all our people, honor our integrity and are committed to service delivery.

- **Cooperative government**

We cooperate with other spheres of government.

- **Professionalism and good institutional governance**

We are accountable and transparent, provide value for money, are customer-focused and strive for the highest service quality.

Although it is easy to list a number of values and to communicate these to all employees, living these out remains a challenge. The delicate balance between a value-based organization and a policy-regulated organization should be maintained.

## **TRAINING AND EMPOWERMENT**

Providing a quality planning process is one thing. Making it work was quite another and meant that a considerable amount of effort and energy had to be mustered to bring the process to the fore and to encourage managers to implement this in their own environment. Apart from facilitating numerous planning sessions for managers and their components, managers were also supported through individual sessions and the development of a detailed planning manual. Still, progress could be advanced further and it was decided to add another catalyst to the process.

A local university, focusing on the development of company and business executives, was approached to develop and facilitate a training course for all managers. The course had to be based on the processes of planning, budgeting, performance management, and reporting. It had to focus on each process, eventually integrating all of them, provide linkages from one process to another, and be both practical and theoretical. Moreover, the course had to be benchmarked against best practices and international norms and standards.

Managers were subjected to both an evaluation and an assignment after course attendance. Managers qualified for certification only upon passing.

The training involved the following activities:

- Development of training modules for each process, including:
  - Learning outcomes
  - Theoretical content
  - Practical content
  - Assessment criteria
- Development and production of training materials
- Provision of training for middle and senior managers
- Training of selected managers and staff in providing this training

Also, in order to further the image of the Parliamentary mission, vision and values, materials were designed for use by Parliament. The materials included the following:

- Pamphlets on the Parliamentary Service's mission, vision and values
- Posters on the Parliamentary Service's mission, vision and values
- Conference folders
- Ring binders for managers

### **SUCCESSFUL ACHIEVEMENTS THUS FAR**

A number of events have already shown that the implementation of the strategic planning process has been very successful. The first of these is the newly established **culture of planning**. Parliament now conducts an annual strategic planning session, which includes all managers and also certain political office incumbents. Furthermore, divisions, sections and units now frequently (at least once a year, but in most cases twice) attend or even host their own planning sessions. Sessions mainly focus on the monitoring of progress and the setting of new objectives, whilst aligning the component's business and objectives with that of the institution.

A second point is the change in the attitude and behaviour of managers toward working in teams. As part of the planning sessions, the project also focused on building teams. The teams were responsible for their own planning, as well as for eventual implementation. Team development and team building sessions were mostly integrated with planning sessions and provided a dynamic thrust for realizing the objectives. The planning model was also developed in such a way that the production of a document was not seen as the only or even the main output. The main output for any planning session was the successful navigation of a management team through their business area, understanding their business outputs and reaching a consensus as to the strategic objectives they needed to set and implement. In this regard, team building played a vital role. Today the managers form a more coherent thrust, sharing information, communicating visions, and finding ways to implement the objectives set for the institution.

Thirdly, this training provided through a local university has provided managers with the needed skills to take charge of their own

components. It has succeeded in enabling managers to work within the management processes, and to know how they can access and utilize resources. It has also provided managers with a holistic and complete view of how the institution functions.

Fourthly, because of the planning process and its implementation, the institution was able to **secure more funding**. This success was due to a strong awareness of its mission, as unpacked in its core objectives, whilst also projecting a vision into the future, as unpacked in its strategic objectives. The budget allocation to Parliament in the financial year 2001/02 was set at ZAR 469 million. The budget allocation for 2002/03 was significantly increased to ZAR 627 million, an increase of 34 percent. Furthermore, additional funds were already obtained for the two financial years following these. A major accomplishment!

Fifthly, strategic objectives, now funded, were directly linked to performance management and therefore inserted into the contracts of senior managers. This has given senior managers a heightened focus on successfully implementing projects in the institution. The accompanying roll-down effect means that the organization is now truly starting to adapt to change.

Lastly, the reporting now allows managers to **track progress** on a strategic level, whilst all reporting culminates in the institution's annual full report on the achievements accomplished.

### **ADOPTION OF PARLIAMENT'S STRATEGIC PLAN**

In a real sense all the progress made in the strategic planning process, and all the achievements celebrated were aimed at a higher objective - the adoption of the full **Strategic Plan for Parliament**.

On 22 February 2005, both houses of Parliament adopted the new vision of Parliament. This was truly a major accomplishment. Furthermore, the **Strategic Plan for Parliament**, including the vision, mission, values, and the budget, was adopted on 31 May 2005. This means that the **Strategic Plan for Parliament** is now an official and public document, spelling out the intent of the institution and providing information on how this will be carried out.

## **LESSONS LEARNED**

### **DYNAMIC IMPLEMENTATION**

In order for a project of this nature to be successful, it needs to be driven. In assuring this, the beneficiary should as soon as possible find or appoint an energetic inside person or team that can lead the implementation. The person/team should also have the ability and authority to work and liaise across the whole organization. Locating the right person/team in the office of the Chief Executive Officer (CEO) is a must. Such a person or team should also bear the authoritative stamp of the CEO. In turn, the CEO should not only buy into the project, but have a personal ownership in it. Since the project will change the organization, the CEO needs to believe in it and champion it personally.

### **INVOLVE ALL LEVELS OF MANAGEMENT**

The planning model allowed for the full participation of all levels of management in the planning process. This methodology has not only ensured that all managers are informed and on-board, but also that ownership of the strategic process has been embedded in the management echelon. Managers now understand the key issues facing the organization, add inputs shaping the strategic direction, and provide innovative and creative ideas as how to implement this through their

component's business plan. The involvement in the planning process has also brought along certain benefits not specifically aimed for at the outset. The nature of the process and the involvement it necessitates has led to a situation where managers are now more aware of the outputs of other components, which in itself is now furthering a natural integration of efforts.

### **SIMPLISTIC PROCESSES**

The planning model needs to be as simple as possible. Having been trained, managers were (positively) shocked by the degree of simplicity of the planning process and how this links to other processes. The revelation that strategic planning is not some arcane art reserved for the finest of managers allowed them to apply the process in full whilst also boosting morale and the realization that they are indeed able to perform this work.

### **ANTICIPATE PROJECT CHANGES**

As in all projects, not everything can be anticipated. When changes did occur in this project, a method of adapting the activities to suit the nature of the change evolved with the mutual agreement of all parties concerned. Care was taken to keep the original aim and objective intact, but to allow for implementation strategies and activities to change. This flexibility proved a vital, if not the most important factor in the success of the project.

### **DON'T FOCUS ON A DOCUMENT**

As is often the case with strategic planning, it mostly exists only in documents. Making the strategy come alive is the real challenge and therefore the planning process was specifically designed so the document, the **Strategic Plan**, only counted for some 25 percent of the total planning output. The rest was made up of matters such as full participation,

ownership, understanding key issues facing the organization, the objectives set, team synergy and individual roles, as well as generating a positive feeling about the future among participants.

#### **VALUE OF TEAM SYNERGY**

The true value of synergy in the top team can never be underestimated. Strategy is not something that is spawned by sitting around a table, or by orchestrating a well-facilitated planning session. It percolates through the level of synergy permeating the executive team, their congruence in understanding the high level issues, and how well they resonate while crafting the objectives and strategies that propel the organization forward.

#### **SUSTAINABILITY**

The strategic planning project not only succeeded in providing sustainability through the development of materials, the integration into the institutional processes, the appointment of permanent personnel, and through obtaining an operational budget, but also through the value it added to management across the organisation. The sustainability of every project is a major success factor in leaving a legacy. Although many projects will succeed in their objectives, the risk of the organization eventually reverting to its original state remains high. By its design, the project must prepare the ground for sustainability even long after its implementation.



## CHAPTER 10

# STRATEGIC PLANNING WITH THE MINISTRY OF THE INTERIOR IN GUATEMALA

By Anders Folmer Buhelt and Luis Quiroz

Due to the accelerated transformations given at both the global and national levels, the spheres of economy, politics, technology and culture have evolved rapidly, thus modifying the conditions in which state institutions work. Hence, the need arises to develop, guide and administer the public institutions from a strategic point of view, thus allowing for the optimization of available resources as well as the smooth and rapid adaptation to the processes of modernization and institutional strengthening. We consider the implementation of strategic planning to be an appropriate tool helping the institutions to break with old paradigms and prepare for the future. It is better to plan the future than to be overwhelmed by it. The only option is to confront the challenges of the environment with intelligence, creativity and determination.<sup>1</sup>

### INTRODUCTION

When Dr. P. van Reenen and Dr. Maria Castells-Arrosa were carrying out an evaluation of the strategic planning project in Guatemala, they were told that “the only institutions in this country that have a mission, a vision, a strategy and the capacity to organize themselves, are the armed forces, the church and the business sector”.<sup>2</sup> The Guatemalan state institutions do not possess these qualities – they are, in other words, weak state institutions characterized by inefficiency, ineffectiveness and a lack of adequate strategies and policies.

According to the Committee of Experts on Public Administration, from the Economic and Social Council of the United Nations, some of the major challenges in relation to poverty reduction, the fulfilment of human rights and development in general lie precisely within such weak institutional structures and inadequate capacities of state institutions.

[W]eak institutions are likely to be a major obstacle in driving, monitoring, partnering or implementing their tasks and responsibilities engendered by the Millennium Declaration and the Millennium development goals process. The strong presumption is that countries with the weakest institutional capacities, particularly on public administration, are also the ones that lag in progress on the development goals.<sup>3</sup> The structural weaknesses of the Guatemalan state are in particular centred on justice administration and civil security services, responsibility of justice sector actors such as the Ministry of Interior, the Judiciary and the Public Ministry.<sup>4</sup>

**BOX 10.1: IMPORTANT ACTORS IN THE GUATEMALAN JUSTICE SYSTEM**

There is no Ministry of Justice, why each institution takes and executes administrative and logistical decisions independently.

The judicial organism, including the Supreme Court, appeal tribunals and other related institutions. The Supreme Court is the tribunal of major importance and has the responsibility for the total administration of the judicial organism, including budgets and human resources  
The Constitutional Court, the most important entity regarding constitutional matters

The Public Ministry, exercising penal actions and responsible for penal investigations

The General Attorney, state representative and legal assessor

The Human Rights Attorney, Congress delegate and responsible for the promotion and supervision of the human rights situation

Ministry of Interior, responsible for the security of citizens, administration of Penitentiary System, Migration and National Civil Police

Institute for Public Penal Defence, provision of free legal service

Other institutions within the justice system are for instance the Law School and the law faculties at the different universities

Coordination entities are the Coordinating Commission for the Modernization of the Justice Sector (ICMSJ) (exclusively for criminal justice) and the National Commission of Support and Follow-up for the Strengthening of the Justice Sector (CNSAFJ)

The Peace Accords, signed in 1996 after more than 30 years of civil war, have set a comprehensive agenda for the reconstruction and development of the Guatemalan society, the milestones of which are land reform, acknowledgement of the multicultural nature of society, strengthening of human rights protection and the transformation of the justice sector. Especially the **Agreement on the Strengthening of Civil Power and the Function of the Army in a Democratic Society** (1996) contains elements relevant for the justice sector. Through a range of reform proposals, the agreement outlines a vision for an improved and strengthened justice sector in Guatemala, based on respect for human rights, democracy and multiculturalism:

Security is a broad concept. It is not limited to protection against external armed threats, which is the responsibility of the army, or protection against threats to the public order and internal security, which is the responsibility of the National Civil Police [...] The security of the citizens and the state cannot be dissociated from the citizens' full exercise of their political, economic, social and cultural rights and duties. Social and economic imbalances, poverty and extreme poverty, social and political discrimination and corruption, among others, are risk factors and a direct threat to democratic coexistence, social peace and, hence, to democratic constitutional order.<sup>5</sup>

**THE HISTORY OF THE ENGAGEMENT**

Guatemalan justice sector actors, more specifically the Commission for Strengthening the Civilian State, approached DIHR shortly after the signing of the Peace Accords with the wish to initiate cooperation on a justice sector programme similar to the one in South Africa. Initial explorations into the

possibilities of launching such a programme quickly revealed that most justice sector actors were not interested, but that there were also economic interests involved, which ended with a decision on dividing the justice sector between international donors. Thus, both parties had to conclude that the time was not ripe for this kind of initiative, entailing a high degree of cooperation among justice sector actors as well as with other state institutions. As pointed out by the evaluation team, such a reaction is far from strange: "The Judiciary in all countries with an independent judiciary shields itself from interference from governments and state institutions, so projects that give rise to even the slightest suspicion that independence is threatened, are met with distrust."<sup>6</sup> This can be expected to be particularly true within justice sectors that have a history of lack of independence, such as the Guatemalan.

Through dialogue between justice sector actors, DIHR and donors, it was therefore decided to approach the issue of reform of the justice sector in a different way. Instead of one coordinated sector programme, a range of different projects with individual justice sector actors were now launched. Amongst these were projects between the World Bank and the Supreme Court, the Dutch development agency and others, and finally, between DIHR and the Ministry of the Interior. From the point of view of the Danish Institute for Human Rights, the Ministry of Interior was a natural entry point to the justice sector as it comprises some of the prime actors (National Civil Police, Prison services and Migration directorate). Of the different state institutions in Guatemala, the Ministry of Interior is hence one of the most central in ensuring compliance with the legal system, the security of persons, and guaranteeing their rights. The Ministry is thus a key component within the justice system, mandated with vital functions in

relation to the execution of judicial rulings and triggering criminal processes. Furthermore, it is incumbent for the compliance of a number of specific commitments under the vital Agreement on the Strengthening of Civil Power and the Role of Armed Forces in a Democratic Society as part of the Peace Accords.

#### **BOX 10.2: MANDATE AND FUNCTIONS OF THE MINISTRY OF INTERIOR**

The mandate for the Ministry is to formulate politics, to comply and make comply with the judicial regime related to maintenance of peace and public order, the security of citizens and their goods, the guarantee of their rights, the execution of judicial orders and resolutions, as well as migratory issues. The Ministry is responsible for the directorates of National Civil Police, Migration and Penitentiary System. The substantial objectives of the Ministry are to guarantee the security, internal order and the preservation of public and private goods; to promote the integrated development of the country through intra- and extra sector coordination at departmental level; to exercise control over people entering and leaving the country, securing them absolute guarantee for full respect of life and goods; and to fulfil the dispositions expressed by the Justice Tribunals, according to what corresponds to the Penitentiary System

However, compliance with the ministerial mandate and the ambitious Peace Accords was lacking in many areas. A main reason for this was the lack of clear administrative and organisational methodologies within these entities:

One of the greatest structural weaknesses of the Guatemalan state resides in the system of justice administration which is one of the essential public services. This system, and within it, the speed of judicial processes, is characterized by faults and deficiencies. The obsolescence of legal processes, the slowness of the processing, the absence of modern administration systems and the lack of control of functionaries and judicial employees, propitiate corruption and inefficiency.<sup>7</sup>

There was thus a general need for methods and systems that, united with political will, could facilitate and enable the effective fulfilment of state obligations in relation to the Guatemalan Constitution and the Peace Accords. Although naturally only a partial solution to such problems, DIHR and the Ministry of Interior believed that the strategic planning methodology was the most realistic and advanced approach to the strengthening of the Ministry and as such a crucial component in the achievement of a well-functioning ministry. It was therefore decided to launch a project with the purpose to introduce strategic planning in the Ministry of the Interior, thereby contributing to the strengthening of the ministry and enabling it to address adequately its mandate and duties. This methodological choice relied on the conviction that, under a uniform language and process, strategic planning provides a comprehensive perspective of the fundamental elements in the mandate of an organisation, and links them to a set of values that guides their implementation.

The project had as its foundation the agreement that the ministry would do its best to fulfil its mandate in a manner coherent with its human rights obligations stated in the constitution, the Peace Accords and

international human rights instruments – the cooperation was, in other words, founded upon the shared commitment to the promotion and protection of human rights.

### **THE STRATEGIC PLANNING PROJECT**

The overall objective of the project was to introduce strategic planning in the Ministry of Interior through the elaboration and implementation of strategic plans, planning manuals, training, and a planning cycle linked to state budgetary processes, thereby contributing to the modernisation and institutional strengthening of the ministry with respect for human rights and democracy.

This objective was to be achieved through the establishment of a planning unit within the ministry,<sup>8</sup> whose task it was to design and facilitate the implementation of a planning cycle in a manner that would best enable the ministry to answer to the needs of the Guatemalan population. More specifically, the planning unit had the following responsibilities:

- a) development of a ministerial planning base and planning bases for the directorates,
- b) design and adoption of a planning model and a draft strategic plan, to be updated annually,
- c) training of officers,
- d) installation of corporate planning functions in the Directorates (Police, Prison, Migration),
- e) training of superior levels of direction in the Ministry and its Directorates,
- f) implementation of the complete planning system in the Ministry and its Directorates.

As mentioned, the first step was to establish the Planning Unit. Professional officers (a director and three planners) and support staff were hired, all with a high degree of technical expertise rather than a political entity. It was

a conscious decision in order to secure the distinction between the instances providing the political guidelines/input and the technical body that plans implementation accordingly. Since the former depends on the changes inherent to governmental succession, it is fundamental to this type of processes that the planning and implementation entity, in this case the Planning Unit, is defined and seen as a technical and non-politically bound instance able to implement policies provided to them. Concretely, this means that in the midst of the countless changes at the political level of the ministry, the Planning Unit has remained almost unchanged personnel-wise.

**BOX 10.3: JOB DESCRIPTION FOR PLANNING UNIT CONSULTANTS**

Coach management teams in strategic planning, based on the planning manual developed by the Planning Unit  
Facilitate the planning work in accordance with the planning cycle, as specified in the Planning Manual  
Structure and coach the building of an institutional planning base, including outlining the collection and processing of necessary basic data  
Train managers in the strategic planning philosophy, general planning, development of Project Business Plans (including action plans) in accordance with Governmental budgetary principles and systems  
Facilitate hearing processes both internally in the Ministry and its institutions and externally in relation to civil society organisations, media, donors etc  
Form part of the Ministerial work relating to donor coordination and facilitation

The integration of the Planning unit into the thinking of the political level of the Ministry presented difficulties, probably mostly due to the fact that politicians, especially in quickly changing systems, need to be able to present quick results and therefore have a tendency to ignore need for long-term planning. This was exactly one of the challenges that the project intended to address, and the difficulties were hence not surprising. During the duration of the project, the Ministers and Vice Ministers changed very often (seven and 11 different persons, respectively), and involvement by DIHR in getting access to the new Minister to present the work of the Planning Unit has been an important factor throughout the project.

**THE PLANNING BASE**

The first task of the planning unit was to develop a so-called Planning Base, which is the first step in any planning process. The Planning Base provides the sufficient level of knowledge about the current situation and its main actors, which is necessary input in identifying the gaps between the current and the desired situation. More concretely, the planning base is a contextual analysis of all external and internal aspects likely to influence the work and existence of the institution. The analysis has the purpose of identifying critical problems faced by people in the system – providers as well as clients – as well as identifying linkages and facilitating coordination.

For the planning unit, the planning base exercise included analysis of the four main actors in the ministry, i.e. the Ministerial Office and the three directorates of the police, migration and the penitentiary system. Through analyses and interviews, data was gathered with the purpose of getting as complete as possible a picture of the situation in the Ministry of the Interior, thereby providing a solid basis for the future planning processes.

In relation to the police, the planning unit collected data relating to a range of different activities, such as drugs trafficking, violent crimes (murder, homicide, robbery and other violent crimes), theft of vehicles and seizure of arms, and arrests. Likewise, data from the penitentiary system was collected, primarily focusing on the population in preventive arrest, the prison population and the execution of rehabilitation programs. Finally, data from the directorate of migration focused on the number of entries and departures, expulsions to and from Guatemala, passport issuances and foreigners with temporary or permanent permits to stay in the country.

The process of collecting data, although supported by the Minister as well as staff in the different directorates, proved to be time-consuming and difficult. There was not a culture of collecting, constructing and interpreting statistical data in a standardised manner, and an office or institution responsible for this task did not exist at the time, even though certain initiatives were underway.<sup>9</sup>

Despite these difficulties, the planning unit has managed to establish a unique collection of data which will ideally be updated every year, thereby contributing to the establishment of a library of reliable statistical data on activities of the Ministry. As such, the planning base is a valuable contribution not only to the Ministry's planning process but to Guatemalan society as such. Public use of the planning base has, however, been limited due to the lack of knowledge of its existence among civil society actors. This lack of knowledge reflects the limited communication of the planning processes in the Ministry, probably mostly due to distrust on both sides (the Ministry and the public) and a fear of being seen as political, possibly working against the immediate needs of the current Minister to show immediate results.

## THE STRATEGIC PLAN AND THE PLANNING CYCLE

The second task for the planning unit was the elaboration of a strategic plan for the Ministry and its directorates and the design of a model for annual update of this plan, a planning cycle.

A strategic plan outlines the vision, mission and values of the institution as well as the different programs that this institution intends to carry out. For each of these programs is then outlined corresponding strategic objectives, strategies and projects. In the context of the Ministry of the Interior, the development of a strategic plan naturally took its point of departure in the mandate of the Ministry. Contrary to a private company or a civil society organisation, a state institution will normally have a law-founded mandate outlining the functions of the institution, which can only be changed by law. This means that the institution cannot freely formulate its own vision, mission and values – unless it is part of a law reform – but will have to formulate these within the framework that the mandate outlines. In other words, it makes no sense for an institution in the justice sector to formulate a vision of providing education for all, if the institution's mandate establishes the responsibility to provide security for all.

In cooperation with DIHR advisors as well as staff from the Ministry and its directorates, the planning unit formulated the first version of the strategic plan. This plan had as its main aim to **“avoid partial or emergency solutions to the problems and challenges faced in the areas of security, governance and public order.”**<sup>10</sup>

But the elaboration of a strategic plan is not a one-time event, rather it is a never-ending and ongoing process. The model developed to ensure annual update of the plan, the so-called planning cycle, illustrates this.

The planning cycle is a rolling process to be repeated each year. It results in updates of the medium-term and short-term plans and objectives and in an action plan and corresponding budget for the achievement of the stated objectives. An important feature of such a planning cycle is that it describes at which level of the institution the different decisions should be made, i.e. when political input is needed, when the management team outlines the direction, and when the operational level makes the operations plans and budgets. At the same time, the timing of the planning cycle corresponds to the national budgeting system (and the MTEF-process), securing that the institution presents its consolidated budget at the correct time. The rolling planning process will allow the institution to always prioritise and focus on the interventions that are timely, at the same time as being able to allocate resources to the on-going processes and support businesses.

In Guatemala, the annual planning cycle included the following activities:

The planning cycle is a process that facilitates the systematisation of the constitutional and legal mandate, as well as the possibility of making it flow through several levels of decision and action throughout the ministerial hierarchy. At the same time, the system provides clear mechanisms for political input and guidance and for provision of periodic feedback from the political system and from civil society. In relation to the formulation of values and vision of the ministry, many participants expressed their content with these open discussions – something that most had never had the chance to discuss in this way before. In this sense, the planning cycle can be a tool for the democratisation of the exercise of public power.

To secure participation, transparency and response to social needs the planning cycle includes processes for systematic feed-back, observations and criticism from civil society actors. This cooperation proved even more difficult than initially envisaged, however. As pointed out by Luís Quiroz, director of the

MONTH	LEVEL	ACTIVITY
May	1	Presentation of strategic plan and definition of priorities according to the plan by the Ministerial Office
May-June	2	Each Directorate elaborates its strategic plan, including project list
July-August	3	The planning units of each directorate elaborate and present project plans (including logical framework and initial budgets)
September-November	4	Project teams of each directorate elaborate action plans, including time frame, detailed budgets and identification of necessary resources
December	3	The planning units of each directorate revise and consolidate the corresponding action plans
January	2	All directorates revise and consolidate their programmes and projects
January	1	Revision, adjustment and approval of all Directorates' plans and projects
February	2	Dissemination of re-adjustments
February-April	5	Elaboration of draft budget for each directorate and for the whole ministry, as well as budgetary estimates for the next three years.
February-April	2	Finalization and approval of budgets Update of planning base and strategic plan for the next year.

Planning Unit, a range of civil society actors were involved in the development of the planning base: "25 civil society organizations gave their opinions. The fact that the perspectives of both the government and the civil society were considered created a very balanced process."<sup>11</sup> This cooperation between the Ministry of Interior and civil society actors unfortunately proved to be the exception rather than the rule, and since then civil society actors have not been sufficiently included in the ministerial planning process.<sup>12</sup>

The implementation of the strategic plans developed by the Ministry with support from the Planning Unit has been slower than decided. The coordination of donor involvement and of state initiated projects and reform processes has not been as good as could be desired. However, the cooperation between the Planning Unit and the presidential planning office has been very good, and a large percentage of the projects prepared by or quality controlled by the Planning Unit has been included in the project catalogue of the central planning office.

At the same time, the full incorporation of the Planning Unit into the Ministry and its thinking was slow. It was not until after the formal closure of the project that the Minister included the Unit fully into the ministerial budget, transferred the unit physically to the main office of the Ministry, and took full use of the plans developed.

## **RESULTS AND OUTPUTS OF THE STRATEGIC PLANNING PROJECT**

One of the concrete results of the planning cycle is the **Planning and Budgeting Manual** which gives an outline of the basic concepts and general guidelines of strategic planning, including a detailed description of the planning process, planning tools, management

philosophy, management tools related to strategic planning and budgeting procedures, and as such supports the work of the planners as well gives input to the training modules.

Another product is the so-called project catalogue which presents a list of projects identified by Ministry staff to be necessary for the fulfillment of the mandate of the institution. Ideally, all these projects will be formulated within a human rights framework. As pointed out by Luís Quiroz: "**We are very careful to ensure that the projects take human rights into consideration, and the justice system has improved considerably.**"<sup>13</sup>

Once a year, the catalogue is to be presented to donors at a conference, the purpose being to ensure control and coordination of donor support. At the same time, the presidential planning office collects all reforms projects in order to negotiate priorities between the state and the international donor community. The presentation of the ministerial project catalogue has taken place only once, and the process of prioritization has been circumvented by both incoming Ministers and the international community. In other words, neither the Ministry nor the donors sufficiently respect the coordination mechanisms inherent in the catalogue. This should not be taken as an indication of the project catalogue's uselessness in a Guatemalan context – on the contrary, the amount of different donors and projects and the lack of coordination among these make this tool highly useful as it has the potential to create an overview, strengthen coordination and avoid parallel and duplicating projects and programmes. The designation of the Vice Minister responsible for the Planning Unit as the coordinator of cooperation with the international donor community has been an important step forward towards coordination and prioritisation of donor support.



The Planning Unit has produced an extensive training manual consisting of eight modules:

- Module 1: The basics of strategic planning
- Module 2: The Strategic Planning Base
- Module 3: Formulation of programmes and projects
- Module 4: Budget, monitoring and evaluation
- Module 5: Corporative planning teams and the planning cycle
- Module 6: Development of management capacities
- Module 7: Change management
- Module 8: Organisational systems

Almost 300 people, from all levels of the Ministry, have been trained in the strategic planning methodology: **"The teaching methods used are modern and require an active and practical participation of students, with exercises that prepare them for the actual use of the planning tools. That way of working was highly appreciated by students."**<sup>14</sup> The training component of the planning cycle contributes to the establishment of a group of people who have a thorough understanding of strategic planning methodology and are highly capable of implementing the methodology. At the same time, the courses contribute to ensuring a participatory work environment in which all employees know and understand the work methodologies and methods of the institution and participate in discussions and decision-making processes regarding these.

Because the turn-over in the ministry is relatively low at the non-political levels, and most people when changing jobs merely change to another department or unit rather than to a position outside the ministry, the capacities acquired through e.g. the training courses remain within the ministry, thereby creating a sound and solid basis for the implementation of the strategic planning system.

#### **BOX 10.4: TRAINING**

The training carried out by the Planning Unit was characterized by being highly practical, creative and participatory. For instance, one workshop was devoted to the treatment of the Peace Accords within the frame of the strategic planning system. The Peace Accords were analysed and it was discussed which commitment had relevance to the Ministry. The workshop resulted in the following categorisation of Peace Accord commitments:

- Concrete commitments, the execution of which is under the sole responsibility of the Ministry (such as the establishment of police presence throughout national territory)
- Concrete commitments, the ultimate execution of which is the responsibility of other institutions, but in the preparation of which the Ministry is bound to play a role (such as the creation of legislation on arms and ammunitions or civil intelligence)
- Concrete commitments, the execution or preparation of which the Ministry does not play a formalised role but the implementation of which has an impact on the Ministry (such as the 50% increase of the security budget)
- General commitments, that ought to inform all actions taken by the Ministry (such as the eradication of impunity or the promotion of respect for multiculturalism)

Another way of ensuring staff understanding of the concept of strategic planning has been the elaboration and dissemination of the so-called Blue Book. The book contains a summary of the ministerial strategic plan, describing the ministerial role within the flow of justice, including the mandate, mission, vision and values of the ministry, its key result areas and indicators, the main challenges confronting it

and the overall strategies for dealing with these challenges as well as an organisational chart of the ministry. The book is handed out to all employees in the ministry and its directorates. Furthermore, it serves as a cornerstone in relations with the press, civil society, political parties, etc.

Apart from these products, related to the general strategic planning process, the project has resulted in a range of outcomes related to the work in the different directorates. Of these, one of the most impressive ones has been the establishment of the **School of Prison Studies**, created as a pilot project within the strategic planning framework in cooperation between DIHR, the Directorate of the Penitentiary System and UNDP.

The school has trained prison guards in topics such as human rights and multiculturalism and has introduced new criteria for entering the school. Whereas before prison guards often did not even have basic education, **"now prison guards have to have 3. grade education, to take tests and do interviews in order to get into the school and follow a 3-month course before they can call themselves prison guards"** the then director of the school, Roberto Castillo, explains. **"One of the lines of work has been to encourage respect for the individual, respect for the principles that human rights establish, in order to change the mentality of the people who are responsible for the prisoners and to create sound processes of rehabilitation and resocialisation, because this is the most important function of the penitentiary system."**<sup>15</sup>

Baldomero Ramos Velez, prison guard, chief of security and now director of a prison, says that his vision of the prisons changed dramatically with the training he received: **"I found out that if you respect the prisoners, they respect you back"**. One of the important lessons taught

at the course, according to Baldomero, is that **"we are not here to judge, nor to accuse – our function is simply to provide security and possibilities for rehabilitation for the prisoners, and we cannot rehabilitate if we are violating the rights of the prisoners. The fact that they are in prison does not mean they are not human."**<sup>16</sup>

The pilot project in the penitentiary system also yielded other precious experiences – especially with regard to the relationship between the Ministry and civil society actors. Whereas this relationship has, traditionally, been characterised by a lack of communication and cooperation, the experiences in the penitentiary system proved that this need not be the rule and that there is indeed both will to and possibilities for changes. The Director of the penitentiary system instrumented a process in which civil society organisations were invited to provide observations, criticism and advice – in return, the NGOs deposited their trust in the effective actions to promote a more professional penitentiary system. This process of cooperation yielded excellent results and created a possibility for real change.

The development of a revised curriculum for the Police Academy in 2001, introducing among other things human rights, multiculturalism and the concept of strategic planning, was another significant outcome of the process. Together with UNDP, the police is now working on a revision of the curriculum and Planning Unit staff is involved in this process, ensuring continuity and exchange of experiences.

Apart from being valuable contributions to Guatemalan society in themselves, these two pilot projects serve to illustrate how strategic planning can be a tool for the concrete improvement of specific human rights just as well as it can be a tool for the improvement of

state capacities in relation to the protection and promotion of human rights in general.

### **PROBLEMS AND OBSTACLES**

The strategic planning process is an instrument of top-level management to manage participatory processes and is as such highly vulnerable to changes of political leadership. The successful implementation of strategic planning systems depends, in other words, on the commitment of not only the present government but of various successive governments to the strategic planning system and the objectives derived from this system. Thus, a minimum level of consistency and continuity in relation to methodological and substantial choices must exist in order to substantiate any chance of effective implementation. Guatemalan political culture, marked by a heritage of considerable distrust and characterised by little continuity between – and even within – elected administrations, has presented a significant challenge to this fundamental requirement.

During implementation of the project, seven different ministers have been in charge of the Ministry of Interior, and the three directorates have likewise been subject to frequent changes of top management. These changes necessitated renegotiations of agreements and periodic stalling of activities, and were as such the main reason for project delays and changes. While commitment to the process was re-established in all cases, this commitment was not necessarily wholehearted, and it was not until 2005 that a Minister took full ownership of the Planning Unit and its planning cycle. The reason for this is probably, on the one hand, the need for any politician in quickly changing systems for presenting quick results and, on the other hand, the tradition of disregarding any plans and processes developed and initiated by the predecessor. An extreme example of this

was when one new Minister brought in his own team of planners to develop reform projects without analysing what already existed – and with the intention of utilising poverty reduction funds to cover the process.

With the adoption of the planning cycle as the planning tool for the Ministry and the full integration of the Planning Unit, much has been achieved. However, for the planning to take roots, the new administration needs to accept it and continue its utilisation, and a higher level of stability in the public service would support this. Then can the strategic planning project with the Ministry of the Interior be said to have provided a contribution towards the achievement of a more democratic Guatemala respecting human rights.

## CHAPTER 11

## TOWARDS THE CONSOLIDATION OF A NATIONAL LEGAL FRAMEWORK IN HONDURAS

By Anders Folmer Buhelt and Javier David Lopez Padilla

It was an astonishing experience to be present at the signing ceremony of the Inter-Institutional Cooperation Agreement between the National Congress of Honduras, the Ministry of the Interior and Justice, the Supreme Court of Justice, the National Human Rights Commission, and the Danish Institute for Human Rights on 30 June 2005. The ceremony left no one in attendance in doubt that this was a historic moment and that the agreement was probably the first of its kind; involving as it did the three state powers of a nation as well as human rights institutions. The momentousness of the occasion was confirmed and emphasized by the heads of all the institutions present, and by the adviser to the Danish Institute for Human Rights. As stated by the President of the Supreme Court of Justice, Ms. Vilma Cecilia Morales Montalvón, at the opening of the ceremony: **"This is truly a historic moment."**

### INTRODUCTION

Honduras became independent from Spain in 1821. The country was part of Mexico for a brief period, but then joined the Central American Federation, before becoming a sovereign nation in 1938. In the beginning of the 20th century, three North American fruit companies owned the vast majority of banana plantations

in Honduras, hence controlling the largest income-generating business in the country. The three companies each allied themselves with local political parties through which they influenced Honduran politics in the first half of the century. Together with a number of other factors, this contributed to the undermining of national structures and their capacity to create and develop politics and policies guaranteeing the social stability needed for creating sustainable development and progress in the country.

In the 1980s, Honduras was surrounded by conflicts in El Salvador, Guatemala, and Nicaragua, and became a haven for the anti-Sandinista, so-called 'Contras' as well as an ally to the Salvadoran government forces fighting leftist guerrillas.

After two and a half decades of mostly military rule, a democratically elected government came to power in 1982. The same year a new constitution was promulgated, declaring Honduras a democratic and independent state, established as a free and sovereign republic based upon the rule of law and respect for the freedoms and rights inherent to all, as well as on the principle of participatory democracy, entailing participation in the public administration of all political and social sectors.

The Honduran legal system is built on the Roman legal tradition, on the *Ius Commune*, and is hence a so-called civil law system. This implies that almost every relation and every

situation in human life is regulated by law. The role of jurisprudence – case law – is almost non-existent in Honduras, as the requirements for creating precedence are quite extensive. The fact that Honduras builds upon this legal tradition predicates the legislative process and the legislators with a number of conditions– and the fact that those requirements are not met, and have not been met for a long period of time, constitutes one of the main problems in Honduras. The profusion of laws, created without respect for legal hierarchies and rules of interpretation and enacted without the proper legislative techniques makes for an incoherent legal structure that does not correspond to the social reality it is supposed to regulate, hence eroding the rule of law itself.

In the law-making process, prior legislation, specialized legislation, or other superior legislation is not necessarily considered, and the legislation regulating the area of law in question is not analyzed in order to identify needs for derogations. This results in laws including general or implicit derogations, preventing the administrators of justice from securing predictability and transparency in the application of the law. The absence of a systematic respect for the principles of good law-making causes a long list of problems in relation pivotal areas necessary to guaranteeing justice for the Honduran citizens and the development of Honduras such as access to justice, respect for human rights, investments, and property issues, thereby threatening the basis of democracy (including the balance of the state powers).

While societies built on the Roman legal tradition embody the basic rationale of constructing a society based on law, the Roman historian and orator Cornelius Tacitus once said that "Corruptissima Republica, plurimae leges" – in English "The more corrupt the

state is, the more laws it has." In other words, societies characterized by an excessive quantity of laws created without a systematic approach and without a justified background tend to give its members free reign to act outside of the legal framework. This, of course, affects the institutionalization and organization of any society.

### **PROJECT BACKGROUND**

It was Dr. Ramón Custodio López, now National Human Rights Commissioner in Honduras, who in 1994, during his tenure as member of the Commission for the Reform of the Judicial Power, proposed an initiative to resolve the complexity of the national legal system, enlisting the national institutions formally involved in the legislative process and summoning technical support from an international actor with experience within the field.

Having experienced the frustrations and problems faced by the Hondurans throughout his encumbency as president of the largest human rights NGO in Honduras, Dr. Custodio López presented the idea of cooperation to the Danish Institute for Human Rights concerning a project aimed at revising and reforming the entire legal framework in Honduras – nothing less. This was in 1997, and the Danish Institute for Human Rights, while being very interested in a project of that nature and magnitude, was sceptic as to the viability of such a project due to the immense need of political, economic and popular support in order for it to succeed.

Problems to be solved by the project

The challenges facing Honduras, stemming from a dysfunctional legal system that does not always reflect the rule of law, are present in every thread of its social and political fabric. Those challenges can be identified as follows:

**1. Laws have to be harmonized with the Constitution of the Republic and international treaties ratified by the country.**

There are many examples of laws which are not in accordance with constitutional processes or with mandates prescribed by international bodies. This affects the juridical hermeneutics and destroys society's aspirations towards structuring its legal edifice in compliance with the constitution..

**2. Laws have to be harmonized with the legal system already established.** Many instances have been pointed out in which the legislative or legal reform process did not adhere to constitutional and proper procedures. In those cases, the resulting laws do not provide the necessary certainty usually expected of a legal system.

**3. Laws have to be clear and transparent.** In this case, the challenge for Honduras is to refashion its national legal system into one that possesses sufficient simplicity to be understood and interpreted by all its users and one that does not interfere with the application of justice by the tribunals and judges. A population fully aware of the laws regulating its relations with the state apparatus as well as citizen-to-citizen relations is one of the defining characteristics of democracy and the rule of law.

**4. Laws have to be coherent and without contradictions.** In the same sense, it is necessary to have a legal system that can reinforce the application of justice without any obstacles creating confusion among the users and especially among the tribunals and judges. It is indispensable to have an integrated and interrelated legal system that can supplement and fulfil any absences of regulations and give factual responses to social needs.

**ESTABLISHMENT OF THE PARTNERSHIP AND INITIAL ACTIVITIES**

In 2000, after Dr. Custodio López had been appointed as National Human Rights Commissioner, DIHR expressed its interest to support a process of law reform – but on the condition that the project would be anchored with the three state powers, the legislative, the executive, and the judiciary. Dr. Custodio López supported this approach and initiated a long struggle towards securing the express support of the mentioned powers to the project, named Towards the Consolidation of a National Legal System.

In the beginning of 2004, Dr. Custodio López succeeded in confirming the support of the three state powers, represented by the President of the National Congress, Mr. Porfirio Lobo Sosa; the President of Honduras, Mr. Ricardo Maduro Joest, delegating project responsibility to the then Minister of the Interior, Dr. Ramón Hernández Alcerro; and the President of the Supreme Court of Justice, Ms. Vilma Cecilia Morales Montalvón.

DIHR sent a delegation to Honduras to assess support to the process and the professional capacity available towards achieving its objectives. During a number of visits between June and September 2004, it was determined that not only was there a strong support for an inter-institutional project between the three state powers, the National Human Rights Commission, and the Danish Institute for Human Rights – the available professional capacities were also found to be impressive. Hence DIHR without hesitation pledged to station an adviser in Honduras in order to launch the process.

The decision-making body of the project would be the High Commission for Justice, comprising the heads of the three state institutions, with

the National Human Rights Commissioner as an observer. The project would formally be linked to the Sector Table for Security and Justice (created as a consequence of the National Poverty Reduction Strategy), whose coordinator is also the Deputy Minister of Justice. Moreover, the parties to the project agreed that an inter-institutional working group would be established with representatives from the Centre for Legal Information and Studies (CIEL) of the National Congress, the Ministry of the Interior and Justice, the Supreme Court of Justice, the Human National Rights Commission, and DIHR. The working group was to be placed physically in the Legal Commission of the Ministry of the Interior and Justice, which had been established to answer to some of the same needs that the project intends to address, and the members of the working group were seconded by their respective institutions.

A method for the mapping of the legislation was designed in partnership in such a way that it would indicate where the need for revision was most pressing. The legislation was clustered into nine areas, in accordance with the initial proposal of Dr. Custodio López, and a number of cross-cutting issues such as gender and human rights were identified.

**BOX 11.1: THE NINE AREAS OF LAW IDENTIFIED FOR THE PROJECT:**

Administrative and fiscal (tax) law  
 Agricultural law  
 Civil Law  
 Commercial law  
 Environmental law  
 Law on ethnic groups  
 Family and Childhood law  
 Labour law  
 Penal law

**PROCESS**

The project can be described as including two different aspects, one methodological, the other mechanical. The first consists of three steps: mapping, pilot revision, and systematization of the revision. The second consists of the identification and capacity building of an adequate mechanism for updating the legal map and conducting cross-cutting law revision, as well as transfer of the responsibility for the process to that mechanism. Together, these two components will result in a consolidated legal framework.

The adviser responsible for assisting in the first phase of the project arrived in Honduras in the beginning of October 2004, and the mapping of the entire legal framework, national policies, and implementing institutions - as well as the preliminary identification of contradictions, overlaps, and gaps - were initiated.

The mapping consisted in outlining the national legislation and international obligations of Honduras, classified into the nine areas described in the textbox above. At the same time, the working group prepared an analysis of the consistency of the project with public policies defined and developed to reinforce the justice sector, such as the National Poverty Reduction Strategy.

This first phase also entailed the mapping of national institutions that are associated with each of the nine areas identified. During the process, five regional consultations were carried out, involving prosecutors, judges, litigants, legal advisors of national institutions, and members of civil society. These consultations contributed significantly not only to the analysis of the juridical problematic in the application, formulation, and interpretation of laws, but also to the creation of awareness surrounding the project, as well as to the expectations pushing

the process forward. Also, they contributed to the cross-cutting analysis of the initiatives from the international community to reinforce the justice sector and, finally, to the selection of a legal area to develop a pilot process of review and proposal of recommendations.

The mapping was expected to be completed by the end of 2004; however, the process proved more extensive and complicated than envisaged and the finalization was thus postponed until March 2005. The result, a complete map of all national and international legislation, national policies, and relevant implementing institutions, turned out to be nothing if not impressive.

The map was presented at a national event with some 400 invitees, including congress members, ministers, magistrates, as well as members of the diplomatic community, the international donor community, civil society, and the press. Speakers were the President of the National Congress, the President of Honduras, the Minister of the Interior and Justice, the President of the Supreme Court, and a representative from the Danish Institute for Human Rights.

It had been agreed at the outset to divide the project into phases in order to make it as manageable as possible, and in order to create trust and confidence in the aspiration of successfully carrying through such a large-scale project.

1 April 2005, immediately after the finalization of the first phase, the second phase was initiated - regardless of the fact that the funding for the implementation of the pilot phase had not yet been secured. The second phase of the project, the pilot phase, consists in the identification of one of the nine areas in which to apply (or test) the methodology for law

revision and proposal of recommendations for reorganization and harmonization of the law. In the final report of the first phase, a list of criteria for the law area to be selected for a pilot revision was included. Based on that, as well as the recommendations by the working group, the High Commission for Justice selected the area 'Family and Childhood Law' as subject for the pilot.

After the successful conclusion and evaluation of the pilot revision, the next step will be to systematize the methodology, the knowledge, and the know-how through applying the revision methodology in more than one area of law at a time, and through gradually involving an identified mechanism for sustainability of the process, i.e., transfer of responsibility. As part of this, a national institution for legal research, established at the National University of Honduras, will assume the role of maintaining the update of the legal framework and collaborating in doing legal and juridical research with the national institutions that have been constitutionally mandated to participate in the processes of law creation and reform.

## RESULTS

The project requires long-term commitment. This has been confirmed in the Inter-Institutional Cooperation Agreement and emphasized by the President of Honduras, Mr. Ricardo Maduro Joest, at the national presentation of the final report of the first phase. The president indeed declared it crucial that the process be considered long-term, and he encouraged candidates for the presidency and for congress to adopt a long-term vision of the project. Likewise, the Minister of the Interior and Justice stated that this project must transcend the current government and congress. In other words, the reform of the Honduran legal system is a slow and painstaking process requiring patience and



commitment from everyone involved. The overall result – a reformed legal system – will not be obtained right away. This does not mean, however, that no immediate results should be expected. In fact, some tangible results have already emerged during the course of this initial phase of the project.

One important and impressive result is the final report of the first phase, giving probably the most complete overview of the legislation applicable in Honduras. It was prepared with the involvement of stakeholders throughout the country, securing awareness and ownership and creating popular expectations, which will have to be honoured.

A second result that should be considered is the obtainment of funding for the pilot phase. This is something that should be mentioned because it is not an easy task to create belief in and support to such a large-scale project with such far-reaching consequences.

A third result, which can undoubtedly be considered no less than historic, is the Inter-Institutional Cooperation Agreement for the project, Towards the Consolidation of a National Legal Framework, signed in the Supreme Court of Justice in Honduras on 30 June 2005 by the three state powers, the National Human Rights Commission, and the Danish Institute for Human Rights with the purpose of reiterating the strong commitment of the partners in this project, and in order to secure the sustainability of the project beyond the elections in November 2005, followed by the instatement of a new government in January 2006. The Agreement expressly states the commitment of the parties, the shared responsibility, and the value base upon which the project builds, including commitments for each of the institutions as well as common commitments in force until the objectives of the project have

been achieved. This may very well be the first agreement of its kind ever, and it provides the strongest basis imaginable for the continuation, consolidation, and sustainability of the law revision process, and the subsequent possible law reform.

#### **BOX 11.2: INTER-INSTITUTIONAL AGREEMENT**

##### **SIXTH CLAUSE – VALIDITY**

**The present Agreement confirms the interest and firm commitment by the subscribers of the same in the name of the institutions they represent, assuring its validity until the achievement of the objectives of the project, Towards the Consolidation of a National Legal Framework (unofficial translation).**

If the project, as is expected, can continue at the same pace beyond the elections, with the same professional level and the same political support, it will be a historic process contributing significantly to the rule of law, the respect for human rights, and good governance in Honduras, as well as to the climate for foreign investment needed to secure the economic development of the country.

## CHAPTER 12

# PLANNING THE WAY TO SUSTAINABLE CHANGE: DEVELOPMENT OF A PLANNING BASE FOR THE GUATAMALAN JUSTICE SECTOR

By Camino Kavanagh and Marie Juul Petersen

### THE JUSTICE SECTOR IN GUATEMALA

In 1996, the signing of a series of Peace Accords marked the end of a brutal, 36-year-long war between the National Revolutionary Unit (URNG) and the government, during which more than 200,000 people were killed, many thousands disappeared and just as many were tortured.<sup>1</sup> Among other reforms, the Peace Accords introduced a wide range of commitments related to the reform and modernization of the justice system, including constitutional reforms; free public (criminal) defence; the impartiality and independence of the judiciary; rapid solution to conflicts and the use of alternative measures for conflict resolution; legal reforms; administrative reforms;<sup>2</sup> and, finally, the establishment of a new agenda for Public Safety.<sup>3</sup>

In addition to these organic and functional reforms, the Peace Accords also recommended the creation of an ad-hoc commission – the National Justice Commission, la Comisión Nacional de Justicia – to prepare a report and offer recommendations on matters concerning the justice sector, especially in relation to modernization, access to justice, speedier trials, and professional excellency.<sup>4</sup> Another initiative born around that same period was the creation of the Coordinating Instance for the Modernization of the Justice Sector, a body conjoining, supposedly on a monthly basis, the political heads of the four criminal justice institutions – the Ministry of the Interior,

including the directorates of Police, Migration and the Penitentiary System, the Ministry of Public Works, and the Public Criminal Defence Institute and the Judiciary. This body has the general objective to improve inter-institutional coordination and support the modernization process both at institutional and sector level.

International organizations and specifically the Dialogue Group, consisting of United Nations System institutions with a presence in Guatemala, the Organization of American States, the European Union, several embassies, and other organizations/bodies that cooperate either directly or indirectly with the justice sector institutions, have given significant financial support to the peace process and in particular, the process for reform and modernization of the justice system (chiefly criminal justice). To this support can be added the direct and indirect technical support given by external consultants and academic and research institutions, universities, human rights organizations and institutes amongst others. Between 1996 and 2004, external support to the process translated into millions of US Dollars and Euros and was executed via hundreds of projects and programmes, all with the common goal of overhauling the justice system.

Nevertheless, none of these efforts have as yet resulted in a well-functioning and well-coordinated justice sector. Nearly a decade after the signing of the Peace Accords, despite the wide range of initiatives that have been

launched and the amount of external funding that has been siphoned into the system since then, the Guatemalan state is still seriously remiss in complying with its obligation to provide justice for its citizens. In fact, a comparative study between the analyses and reports on the functioning of the justice system and the human rights situation elaborated in 1996-1997 and those elaborated in 2002-2003 clearly demonstrates that many of the same problems persist in relation to the (mal) functioning of the justice sector.

Specifically, this means that the sector (still) has difficulties dealing with a range of major problems such as:

- petty and organized crime;
- lynching;
- social cleansing in relation to, say, street children;
- the illegal operations of parallel structures;
- an increased presence of illegal private security bodies;
- continuous threats to and intimidation of justice operators, especially judges and prosecutors involved in high-profile human rights cases;
- political violence, especially surrounding electoral periods; and
- corruption.

It is clear that the individual actors within the justice sector cannot solve these problems on their own and that they need to be dealt with in a manner that ensures coordination and coherence among all actors responsible for the provision of justice in the Guatemalan society. There is, in other words, a need for the articulation of a common political vision based on the perception and sovereign will of the Guatemalan people and the justice sector's will to advance towards this vision in a transparent, systematic, and coordinated manner.

It was this very conviction that led the Guatemalan justice sector, represented by the Coordinating Instance for the Modernization of the Justice Sector, and the Danish Institute for Human Rights (DIHR) to initiate conversations regarding the elaboration of an appropriate methodology that could be used to articulate this vision and translate it into a political programme.

The elaboration of a planning base for the Guatemalan justice sector constituted the first step in this initiative and was developed in close cooperation between DIHR and the Coordinating Instance for the Modernization of the Justice Sector. A researcher from DIHR was stationed in Guatemala for one year, supported both organizationally and substantively by staff of the Coordinating Instance.

### **THE PLANNING BASE**

In order to know where you want to go – what your vision is – you need to know where you are. This basic assumption is what lies behind the conviction that the formulation of a vision for the justice sector in Guatemala requires the development of a planning base prior to this. The planning base maps out the structures, actors, functions, problems, and strengths of the justice sector, thereby providing the actors in the sector with an essential tool in their formulation of the vision and future plans for the justice sector.

Since the signing of the Peace Accords in Guatemala, an overwhelming number of analyses, reports, consultations, and other documents have been prepared on the situation of the justice system, the administration of justice, access to justice, problems facing the justice system, the situation of the individual institutions, and needs assessments of the individual institutions. Until now, however, the findings of these analyses and reports

have never been congealed into one single document in a manner that could make them of use to the sector in its planning activities.

Likewise, due to language barriers and lack of communication between international authors and national justice sector actors, many people working in the justice sector are simply never introduced to this information, thus rendering the reports' objective of providing the justice sector institutions with tools for change quite futile. In fact, most of the technical planning staff and even some high level justice system operators seldom see these reports and therefore are unaware of the changes or the extent of the changes that need to be made within their own institutions.

Naturally, the purpose of the planning base was not to present another such diagnosis or report on the (mal)functioning of the Guatemalan justice system. Instead, for the first time, a systematization of the existing information, drawn from both internal and external sources, would be spelled out within the blueprint of one single document. The final aim of this document was to present a tool that the justice sector would be able to use as a solid foundation for the development of a vision for the justice sector.

## **PLANNING BASE STRUCTURE AND METHODOLOGY**

### **IDENTIFICATION OF KEY ACTORS**

The first step towards constructing the planning base for the Guatemalan justice sector was pinpointing the key actors in the area, according to the distinction between sector and system. Given the composition of the Coordinating Instance for the Modernization of the Justice Sector (and also due to time constraints), it was decided that the Planning Base would concentrate solely on criminal justice, leaving

open the possibility of branching out into the other areas of justice at a later date.

The Guatemalan criminal justice sector is composed of the National Civil Police, the Public Ministry, the Institute for Public Criminal Defense, the Judiciary and the Penitentiary System. With regard to juvenile justice (within the area of criminal justice), the Secretariat for Social Welfare is included in this list. Due to its political structure and mandate, the Coordinating Instance for the Modernization of the Justice Sector can also be added to the group of actors in the justice sector.

The justice **system** – as distinct from the justice sector - includes a wide range of actors such as the Constitutional Court, the Supreme Electoral Court, the Human Rights Ombudsman, the Ministry of Labour, the law faculties, research institutes, the Bar Association, the Executive Body's Human Rights Commission, the National Commission for the Follow-up and Support of the Strengthening of Justice, and civil society organizations working in the area of justice.

### **GATHERING, ANALYSIS, AND SYSTEMATIZATION OF DOCUMENTATION**

The second step in the elaboration of the Planning Base consisted in the actual gathering, analysis, and systematization of information on the key actors identified, according to formats delineated specifically for the Guatemalan context.

### **BOX 12.1: THE INFORMATION USED**

The actual information used in the development of the planning base, ie. the documents, statistics, analyses, interviews, newspaper articles and other media information, and diagnoses, should be information deriving from as many different sources as possible.

It is important to use not only internal information produced within the institution (such as work plans, internal statistics, reports to donors etc), but just as well external information, produced by academics, international organizations and civil society organizations (such as evaluations, surveys, analyses etc).

Laws constitute another important source of information, as these depict the mandate of the institution.

In practice, it will not be possible to gain access to all relevant information – some information might not exist and if it does, it might not be accessible. It might not be publicly available or you simply do not know where to look for it. Thus, the information used as the basis for the planning base will always constitute only a part of all relevant information. However, it is important to strive for the ideal knowledge foundation in your search for information and write down what potentially relevant information is missing as that in itself constitutes an important observation. For instance, the fact that no statistics on the number of inmates in a certain country exist, tells a lot about the institution responsible for the penitentiary system in that country and should thus form part of the planning base.

### **BOX 12.2: SOURCES TO THE PLANNING BASE**

#### **LEGISLATION**

National legislation (the Constitution, the Criminal Procedure Code, the Criminal Code, organic laws, internal rules and regulations, etc); international and regional human rights treaties and conventions ratified by the Republic of Guatemala;  
Interviews

Meetings were attended and interviews were conducted with various actors from both the justice sector and justice system, representatives from civil society organizations and the international community:

Staff members of the executive secretariat of the Coordinating Instance for the Modernization of the Justice Sector;  
Staff members of Ministry of the Interior, National Civil Police, Public Ministry, the Institute for Public Criminal Defense, the Supreme Court of Justice, the Penitentiary System, the Social Welfare Secretariat, Ministry of Education;  
Representatives of the Human Rights Ombudsman's Office;

The Coordinators and Commissioners of the National Commission for the Follow-up and Support of the Strengthening of Justice;  
The director and different members of staff of the Institute for Comparative Studies in Criminal Science;

Staff members of the executive branch of government's Planning Secretariat;  
Deans and other staff members of law faculties;

Representatives of indigenous people's organizations;

Representatives from various other national and international NGO's

Staff from different United Nations

organizations with presence in Guatemala  
 Representatives of the Inter-American Development Bank's Reform of Justice Programme;  
 Consultants working with US-AID's Justice Programme;  
 Representatives of the EU delegation in Guatemala's reform of justice and human rights programmes;  
 Representatives from the Canadian, Danish, Swedish and Norwegian cooperation agencies;  
 Independent consultants working in the field of justice.

#### DOCUMENTS

The empirical data used for the Planning Base was drawn from documents elaborated during the period 1996 to 2003. These documents can be divided into two groups: internal and external documents. The former are documents produced by the institutions themselves - strategic plans, statistics, annual reports, internal analysis' and so forth, whereas the latter are documents produced by national and international organizations and institutions such as the Myrna Mack Foundation, the United Nations Verification Mission in Guatemala (MINUGUA), the Inter-American Development Bank, universities and think tanks.. Documents produced by entities such as the Commission for Strengthening of Justice are included in this group

Through interviews and meetings with key actors, institutions, and organizations from both the justice sector and the justice system as well as through the collection of laws, reports, statistics, articles, evaluations, and other relevant material, the DIHR researcher, together with staff from the Coordinating Instance, managed to collate an extensive stock of information and documentation on

the justice sector and the justice system in Guatemala.

This information was subdivided into different planning bases – one planning base outlining the situation of the justice system in 1996; six institutional planning bases, covering the six main actors in the justice sector (the National Civil Police, the Public Ministry, the Institute for Public Criminal Defense, the Judiciary, the Penitentiary System, and the Coordinating Instance for the Modernization of the Justice Sector); and, finally, a planning base summing up the status of the sector and the system in 2002.

#### THE 1996 SYSTEM PLANNING BASE

The system planning base maps out the situation of the justice system in general in 1996. 1996 was the year the final Peace Accord was signed and the year in which the process for reform and modernization of criminal justice, formally initiated in 1992, was revitalized. Thus it can be argued that this marks a relevant starting point for measuring progress within the justice system.

In this base, the first section is dedicated to the elements comprising the organizational structure of the sector. Understanding these elements is fundamental in order to obtain a general overview of the machinery being used by the sector to execute its mandate. This section includes the following aspects:

- Policies
- Plans
- Organic structures
- Budget
- Systems
- Human resources (training)
- Human resources (management)
- Equipment
- Internal procedures

**BOX 12.3: FRONT PAGE OF PLANNING BASE DOCUMENT**

PLANNING BASE

The Justice Sector in Guatemala  
Draft Document

Restricted circulation – solely for  
consideration in the member institutions of  
ICMSJ and IDDH

Version II

Joint initiative between the Coordinating  
Instance for the Modernization of the  
Justice Sector and the Danish Institute for  
Human Rights  
Towards a Vision for Justice in Guatemala

**BOX 12.4: CONTENTS OF PLANNING BASE DOCUMENT**

Index

Abbreviations  
Introduction

Chapter I: Concepts and Methodology

Chapter II: Individual Planning Bases

First part: Situation of the system in 1996

Second part: Individual planning bases for  
the National Civil Police, Public Ministry,  
Institute for Public Criminal Defence, the  
Judiciary, and the Coordinating Instance for  
the Modernization of the Justice Sector

Chapter III: Synthesis of the Sector

List of sources

Bibliography

A second section deals with the pivotal elements in the flow of (criminal) justice. These are the functional elements in the provision of justice and thus constitute the rational foundation for the existence of the sector. They provide the Sector with the requisite mechanisms for guaranteeing an efficient and effective service. The elements of this flow are:

- Legal framework
- Presence
- Access
- Processing
- Execution
- Dissemination

The third section is related to the components of the Justice System. These include

- Support, follow-up, and strengthening
- Education
- International society

The fourth section is dedicated to possible areas of strategic intervention and cross-cutting phenomena affecting the administration of justice; including

- Atypical actors in the administration of ordinary justice (such as the army and private security outfits)
- Parallel groups
- Violence
- Lynching
- Social cleansing
- Corruption

A fifth and final section is dedicated to information on the perception – social or individual – of justice.

### INSTITUTIONAL PLANNING BASES 1996-2002

The institutional planning bases are structured differently than the sector planning base and include information from 1996 to 2002:

- Mandate
- Functions
- Responsibilities in policies and plans
- Budget
- Organization and geographical coverage
- Problems and challenges faced by the institution at the moment of the signing of the Peace Accords
- Initiatives taken by the institution in question to overcome these problems
- Current situation

### THE SECTOR AND SYSTEM PLANNING BASE 2002

Built on the outlines above, a planning base detailing the status of the whole justice sector and system as it presented itself in 2002 was then developed. The format used for the construction of this planning base follows the 1996 sector planning base. However, this format presents additional sections dedicated to considerations regarding the intimidation of justice operators and a separate section on juvenile justice.

The substance of the chapter was drawn from a combination of the sector-related issues that evolved from the individual planning bases; it can be viewed as an initial attempt to outline the problems still pending within the sector, especially with regard to sector policies. These sector-related problems are presented as pending key issues at the end of each section.

Examples of sector indicators identified through the sources of the planning base were also presented as examples and as the first draft of a work tool. They are neither exhaustive, nor are they exclusively sector-oriented.

### PRESENTATION OF THE PLANNING BASE

The final version of the Planning Base was completed in August of 2003 and presented formally to the justice sector – including the Coordinating Instance for the Modernization of the Justice Sector, the Magistrate of the Supreme Court of Justice charged with the coordination of the judiciary's modernization process, the technical heads/planners of each institution, and other high-ranking institutional representatives.

Following this presentation, working sessions were held with the heads of the individual institution planning units so as to collect their observations both on the corresponding individual Planning Bases and the sector Planning Base, particularly in regard to the **key issues** that were identified. These working sessions culminated in a final session with the Coordinating Instance's Planning Board<sup>5</sup> and key members of the Coordinating Instance's Executive Secretariat.

With these observations included, the document was formally presented to the Coordinating Instance's Executive Secretariat and thus the negotiations for a second phase of the initiative could commence. This second phase would allow for the fine-tuning of the document and should include an external analysis carried out by the Sector's Technical Board, followed by a series of consultations with key justice system actors. This in turn would allow for the socialization of the document while simultaneously creating an atmosphere of transparency in the development of the Sector's vision and future planning methodology.

### THE ROAD AHEAD

For the first time, the Guatemalan justice sector now has a document that brings together all the available information on the functioning of



the justice system. The document, produced according to the methodology outlined above, gives a clear idea of what the initial problems and challenges facing the criminal justice sector were, depending on the legal mandate and functions. As mentioned earlier, many of these problems have been dealt with through different projects and programmes, but unfortunately the fruits of the initiatives taken, if any, will not be reaped for many years to come. However, the document clearly demonstrates that, due to the current situation of the sector and the system, there are still many areas pending reform and in some cases, due to a lack of coherent planning, some of the initiatives taken to solve the initial problems have themselves caused additional problems.

The construction of the Planning Base also showed that within the field of criminal justice in Guatemala, there are certain key areas or subjects that have thus far been systematically ignored. One clear example of this can be seen in the elements making up the flow of justice, particularly in relation to access to justice and the processing of defendants and the accused; there is little empirical information available at the sector level on these elements that are so essential to the definition of a criminal policy.

On a final note, the work behind the elaboration of the Planning Base revealed the lack of coordination between the justice sector institutions, between the justice sector and other key actors and institutions within the system, and amongst the international donors as well as a serious lack of cooperation, coordination, and understanding between the justice sector institutions and the international donors.

Taking the latter into account, the planning base developed in Guatemala can be used as a tool available to all political and technical

authorities in the Justice Sector. This tool could be used as a means to ensure that political programmes can be translated into specific actions and that these actions are taken at the opportune moment and executed efficiently with the ultimate and exclusive objective of complying with the mandate of providing justice when and where justice is required.

## CHAPTER 13

# IMPLEMENTING SHARED VALUES IN A DIVIDED SOCIETY – A VALUE DOCUMENT FOR JUSTICE IN CAMBODIA

By Anders Folmer Buhelt and Mikkel Hesselgren

**“This is the most important document produced, this is our child born!”**

This is how the Council of Ministers' adoption of the **Plan of Action for Implementing the Legal and Judicial Reform Strategy** (also called the Plan of Action) was received by the Director of the Project Management Unit, H.E. Suy Mong Leang.

When the reform of the justice sector, which is one of the priorities in the so-called rectangular strategy for reform of Cambodia (see text box), was at risk of being taken hostage in a scenario characterized by influential donors with their own agendas, a lack of coordination mechanisms among the Cambodian state agencies, and a lack of Cambodian steering of the reform, an instrument for giving credibility and leadership to the Cambodian authorities was needed. The Danish Institute for Human Rights had been involved in justice sector reform processes in other countries and was thus quite familiar with different tools for approaching justice sector reforms – such as development of a planning base for the justice sector and so-called justice vision processes. However, due to the frustrating situation, a more manageable approach was needed, and therefore a **Value Document** was developed through a participatory process. This was the first of its kind – but most likely not the last.

### INTRODUCTION

In Cambodia as in any post-conflict society, reforming the justice sector is a very complicated issue. The Cambodian justice sector has had very difficult working conditions in a society, which until November 1953 was under French rule, which during the four years from 1975 to 1979 was under Pol Pot's brutal regime, which was subsequently under Vietnamese control until late 1989, and which was since a United Nations transitional administration until the first free elections were held in May 1993.

In the colonial period, public administration was a matter for French professionals and ethnic Vietnamese; few Cambodians had access to the higher levels of public administration. During the Pol Pot regime, the elite, especially the intellectuals, were among the first to be persecuted. Many intellectuals were killed while many others fled the country or were sent to re-education camps. Also, lawyers and jurists were persecuted, and word had it that there were less than 10 persons with a law degree left in Cambodia after the fall of the Pol Pot regime. Throughout the years under Vietnamese control, **ordinary Cambodian citizens were once again excluded from participating in public administration and a rebuilding of the educational tradition** has proved slow and ineffective.

Teachers are traditionally held in high esteem in Cambodia (as in other Buddhist cultures) since they – together with the parents – are the

ones taking responsibility for the upbringing and guidance of children. Due to this special status, and in spite of having been persecuted under the Khmer Rouge, it was mostly teachers who were selected to fill the vacant positions as prosecutors and judges after the end of the Khmer Rouge regime. The teachers selected for filling the positions of the justice sector were appointed for life to ensure independence and prevent political interference. One consequence of this has been that the justice sector has largely been staffed with persons without a legal background, even after the first legal professionals educated in Cambodia graduated from university.

Another fact complicating reform of the justice sector is the mix of legal traditions, with the French and Vietnamese as the most dominant, and with the international community, especially donors, influencing with their legal traditions as well.

### THE CONTEXT

Cambodian independence from France was celebrated on 9 November 1953. By this time, a French inspired civil law system was functioning in Cambodia. Lawyers, judicial staff, and other officials were recruited from the French and ethnic Vietnamese elite, and French continued to be the working language in the sector. King Sihanouk became the leader of Cambodia and strong ties were made with the USA, including military presence in Phnom Penh. In 1968, King Sihanouk signalled that he would raise no objection to the targeting of communist forces on Cambodian territory; subsequently, massive aerial bombings of sanctuaries used by North Vietnamese and Viet Cong troops in Cambodia were reported. In 1973, a total of 539,129 tons of ordnance were dropped during aerial attacks, and some 600,000 people were reportedly killed.

Former general Lon Nol conducted a successful coup against King Sihanouk in 1970 and turned Cambodia into a republic. This led to protests and support to the exile government established by King Sihanouk with Pol Pot leading its military operations. On 1 January 1973, the Khmer Rouge launched an offensive to capture Phnom Penh, which fell to the Khmer Rouge on 17 April 1975, and Democratic Kampuchea was instated.

Immediately after the instatement of the Khmer Rouge, due to the alleged threat of US air strikes, the urban population was evacuated to the countryside, which caused many deaths due to the harsh conditions under which the evacuations took place. At the same time, the economic as well as the intellectual elite was persecuted. The professionals who did not flee the country were reportedly summarily executed under the Khmer Rouge system or sent to 're-education camps'. Teachers were persecuted because the Khmer Rouge wished to install revolutionary values in the children.

The Khmer Rouge regime's attempt to instate communism as a one-step strategy is regarded among the most brutal in history; estimates of deaths under the Khmer Rouge regime vary from two to three million people during the four-year period, and all Cambodians were affected. A new Constitution 'written by the working men and women of Democratic Kampuchea' was promulgated in 1976, and the powers of state were all selected by the Angkar, the party, including the judicial power, which was organized in people's courts. Hence, all remnants of the existing legal and judicial system were abolished.

Due to continued border conflicts between Cambodia and Vietnam, the Vietnamese launched an offensive on 22 December 1978, leading to the fall of Phnom Penh on 7 January

1979. A Vietnamese-led government was established, under the umbrella of the People's Republic of Kampuchea (PRK). Vietnam was the first country to recognize the new regime, and by January 1980, twenty-nine countries had recognized the PRK, yet nearly eighty countries continued to recognize the Khmer Rouge. The fate of Cambodia was interwoven with the security interests of its Asian neighbours.

The Ministry of Justice, reinstated only in 1980, was charged with the re-establishment of the justice system. However, the appointment of a former Khmer Rouge commander as Minister was not a propitious sign. The wheels of the Cambodian judiciary did not really start turning again until 1982. The administration was faced with the enormous task of rebuilding the country and all its public institutions, including those of the legal and judicial sector, whilst battling against strong sanctions from the West.

A formal court system was not restored until the end of the 1980's and staffing the court system with effective, efficient, and knowledgeable judicial personnel became a serious problem during the reconstruction phase. Most lawyers and judges had either been killed or fled the country and therefore the Ministry had to marshal new officials from the surviving network of teachers and civil servants. The majority had, at most, a secondary school level of education and many teachers had been cogs in a propaganda machinery rather than functioning in a normal educational system. Judges were nominated for life to ensure their independence, but they were usually politically appointed and therefore any move to make independent decisions or reforms was problematic.

By 1989, the year when the Vietnamese withdrew from Cambodia, there were only few remnants of the positive aspects pertaining to the legal and justice system that had been in

place before the Khmer Rouge. The only real law that existed was that of the Cambodian People's Party. The same year, however, a new constitution was promulgated and the country was renamed the State of Cambodia. For the first time, the constitution provided a formal framework for a court system, and courts were set up throughout the country. However, independence was still far off and the knowledge base in the sector remained significantly inadequate.

In 1991, the Paris Agreements were signed and a United Nations peace keeping mission, the United Nations Transitional Authority in Cambodia or UNTAC, was established. The principle mandate of UNTAC was to set the ground for the first democratically held elections in Cambodia, and the entire administration of the country was placed under UN supervision. Concepts such as justice and the rule of law were not highlighted in the legal basis of UNTAC, and the only reference to justice would have to be inferred through the clauses on human rights and international standards. In 1992, the Criminal Code was adopted – **Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable During the Transitional Period**, known commonly today as the UNTAC Law.<sup>1</sup> Capacity building for judges and lawyers, especially defence lawyers, commenced, but the meagre salaries continued to be a problem.

After overseeing the country's first democratic elections that brought in a coalition government, UNTAC left the country in 1993. Once again, a change of regime also meant a change of name for the country. It became the Kingdom of Cambodia, and remains so today. After infighting between the two coalition parties in 1997, Hun Sen of the Cambodian People's Party took over as Prime Minister, and has since held office.

After almost three decades of armed conflict and political violence, the justice system does not meet the standards to which the country has pledged through its constitution and international obligations. According to Amnesty International, the US State Department, and Human Rights Watch, commitment to civil and political rights remains low in Cambodia, and there are reports of violations in the area of fair trial. Personal security remains a problem for all Cambodians. The circles of violence inherited from the past continue and the lack of psychiatric assistance to those who suffered most is taking its toll on society.

### **THE REFORM PROCESS**

The past reticence of the Kingdom of Cambodia to permit any structural changes within the judiciary and the administration of justice has deterred most international players from investing efforts in the justice sector institutions. Even when such investments have been made by the more lenient donors, the political commitment to follow through on reform initiatives has been minimal. However, the situation is not as simple as this.

For several years, different experts, donor agencies, United Nations agencies, etc., developed a range of strategies and plans to reform the Cambodian justice sector. However, the majority of these strategies were developed by external sources, at a significant cost, and without the assistance or inclusion of official Cambodian counterparts. These documents were never adopted formally by the Cambodian government. No exhaustive planning base, rooted in the reality of Cambodian society and Cambodian needs, was undertaken by these agencies, and few of the activities linked legal and judicial reform to other state reform initiatives.

Until 2002, no formal institutional reform structure existed, nor had any inter-institutional coordination mechanisms been developed. Except for a few examples, Cambodian ownership of processes was not on the agenda. The lack of coordination and the sizeable dissent among donors in relation to this sector should also be mentioned.

At the annual meeting between the government and major international financial agencies, the so-called Consultative Group meetings, benchmarks are agreed upon for the progress of reforms. With regard to legal and judicial reform, the benchmarks for 2005 related to the drafting and adoption of a number of laws, including criminal and civil codes and procedural codes, legislation on the organization of the judiciary, and an anti-corruption law. Some donors refused to participate until the government lives up to the agreed benchmarks. Other donors continued their support in the areas of their interest, not always in a coordinated manner.

The lack of coordination has resulted in effort redundancy, too much emphasis in certain areas, and no emphasis in others.

The described situation, and the fact that the legal and judicial institutions could hardly at that point in time be described as a 'sector', underscored the need for a so-called value process rather than a thorough planning base and subsequent sector vision process. This Value Process is described in detail below.

### **BOX 13.1: OVERVIEW OF THE MOST IMPORTANT LEGAL AND JUDICIAL REFORM DOCUMENTS**

#### **VALUE DOCUMENT**

Document describing the concepts and values deriving from the Constitution and Cambodia's international obligations, establishing criteria and actions for their fulfilment. Please refer to textbox below.

#### **RECTANGULAR STRATEGY FOR GROWTH, EMPLOYMENT, EQUITY AND EFFICIENCY**

The Rectangular Strategy outlines the economic actions agenda of the Royal Government, building on the achievements attained through the implementation of the Triangular Strategy. It selects key elements from Cambodia's Millennium Development Goals, Cambodia's Socio-Economic Development Plan 2001-2005, the Cambodia National Poverty Reduction Strategy 2003-2005, and various policies, strategies, plans and other important reform programs.

#### **NATIONAL POVERTY REDUCTION STRATEGY (NPRS)**

In order to ensure the efficiency and sustainability of social and economic development and poverty reduction, the Cambodian Government has worked intensively to formulate and implement key national strategic policy frameworks which focus on the governance action plan, improving people's quality of life, and reducing poverty. These frameworks include the First Five-year Socioeconomic Development Plan: 1996-2000, the Second Five-year Socioeconomic Development Plan: 2001-2005, and the National Poverty Reduction Strategy: 2003-2005.

#### **GOVERNANCE ACTION PLAN (GAP)**

The GAP is a roadmap towards achieving good governance bringing governance initiatives under a common and systematic umbrella framework. The GAP was approved by the Council of Ministers in March 2001. GAP II is now underway.

#### **LEGAL AND JUDICIAL REFORM STRATEGY**

The Strategy was adopted by the Council of Ministers on 20 June 2003 and is the result of a merger of the Value Document and the National Poverty Reduction Strategy within the frame of the Governance Action Plan. The Legal and Judicial Reform Strategy is the guiding document for the Legal and Judicial Reform in Cambodia.

#### **PLAN OF ACTION FOR IMPLEMENTING THE LEGAL AND JUDICIAL REFORM STRATEGY (ALSO CALLED PLAN OF ACTION)**

The Plan of Action is the document describing how to implement the Legal and Judicial Reform Strategy and comprises priority actions and corresponding interventions for each of the strategies defined for the achievement of the seven Strategic Objectives in the Legal and Judicial Reform Strategy.

#### **PROJECT CATALOGUE**

A collection of project profiles developed on the interventions in the Plan of Action identified as requiring allocation of resources outside of what can be seen as ongoing business

### **ESTABLISHMENT OF THE PARTNERSHIP**

DIHR's involvement in Cambodia dates back to 1999, when a small-scale pilot project was initiated in cooperation with the regional, non-governmental organization Asian Human Rights Commission. Its aim was to create a

planning base for further comprehensive cooperation on justice reform in Cambodia. The pilot activities focused on police reform with selected stakeholders, including the Ministry of Interior and the Cambodian Defenders Project, a local non-governmental human rights organization. As a result of the first visit of Cambodian officials to Denmark, a human rights officer from DIHR was liaised to the Training Department of the Ministry of the Interior, with the mandate of assisting the implementation of pilot activities, and preparing a planning base.

Subsequently, DIHR agreed with the Ministry of the Interior to liaison a human rights adviser to the Lawyers Group of the Ministry as of October 2001. This adviser received the mandate to facilitate justice reform initiatives and advise and build capacity in the area of legislative drafting, including the preparation of comments to the draft Criminal Procedure Code.

During a mission in late 2001, a presentation for the high-ranking officials of the justice sector led to the agreement to prepare a Value Document for Justice. This document was merged with the National Poverty Reduction Strategy within the frame of the so-called Government Action Plan, and a Legal and Judicial Reform Strategy was the result. This was adopted by the Council of Ministers on 20 June 2003. The Legal and Judicial Reform Strategy, based on the Value Document, is the guiding document for justice reform in Cambodia. These documents are all described in the text box above – and the Value Document in more detail in the text box below.

After the adoption of the Legal and Judicial Reform Strategy (henceforth "the Strategy"), focus has been on its implementation. The most important document towards the implementation of the Strategy is the Plan of Action, establishing a long list of strategies,

priority actions, interventions, etc., leading to the accomplishment of the Strategy.

## **PROCESS**

Due to the problems faced by the Cambodian justice sector, justice reform has been given much attention; international donor agencies have focused on such reform and invested significantly in its success.

According to a project document from 2001 by the World Bank on justice reform, there was no coordination at that time among donors or between donors and authorities and reform initiatives were driven by donors.<sup>2</sup> The development of plans, strategies, and policies was presided over by expatriates with little or no involvement from official Cambodian counterparts, which resulted in very little ownership on the side of the Cambodians. Furthermore, capacity building of relevant officials and institutions has not been a strategy.

Moreover, there was a lack of communication and coordination between the Cambodian ministries and the various reform bodies. Among other things, this meant that the legal and judicial institutions could not be seen as comprising a sector in the true sense, but had to be considered solely as individual institutions functioning in parallel with little interaction or coordination. Therefore the efforts invested in justice reform had not resulted in the expected changes, nor had they been linked sufficiently to ongoing reform activities in other sectors.

In late 2001, DIHR had discussions with the Cambodian authorities on the development of a comprehensive planning base, offering an analysis of the justice sector institutions, their strengths, weaknesses, problems, and challenges as institutions and as a sector providing a basis on which to conduct a vision process for the justice sector. At this point

in time, the Cambodian authorities found themselves in a situation where they promptly needed to show their willingness and capacity to take charge of the justice reform and display competent and resolute leadership in order for the reform not to be managed and decided upon by the international community. As mentioned, the Cambodian justice sector simultaneously found itself at a stage when it could hardly be characterized as a sector proper. Therefore, a complete planning base exercise and a subsequent full-fledged vision process did not seem to be the solution to their wishes and needs at that particular juncture.

At a seminar with the participation of high-ranking officials from the justice sector institutions, H.E. Sum Manit, the Chair of the Permanent Coordination Body, did not hesitate to suggest a process defining the values on which to base a justice reform as the first necessary step towards claiming leadership and ownership of the justice reform. This would postpone or replace the development of a comprehensive planning base and a traditional vision process. The DIHR mission welcomed this idea and this challenge, and spent the following many hours and days together with its counterpart, the Permanent Coordination Body, on designing a process and methodology for the definition of the value base for the justice reform – the Cambodian Value Process. Thus, aside from such a value process being an entirely new invention, the consequences of the proposal would be quite far-reaching.

**BOX 13.2: Important actors in the Cambodian legal and judicial reform**  
**Council for Legal and Judicial Reform**  
 The CLJR is the decision-making body in the Legal and Judicial Reform hierarchy. The CLJR is comprised of the Ministers of the justice sector and other high-ranking

officials from the sector institutions, and is co-chaired by the Senior Minister of the Council of Ministers and Chair of the Supreme Council for State Reform and the Supreme Court President. The CLJR meets once to twice per year, when overall decisions are to be made.

#### **PERMANENT COORDINATION BODY (PCB)**

The PCB was established to have the responsibility for the operational decisions relating to the Legal and Judicial Reform. The PCB comprises the administrative heads of the justice sector institutions and other high-ranking officials and hence has power at the operational level in the justice sector institutions to allocate human resources and secure institutional commitment. The PCB has a secretariat function to the CLJR. The Chairman of the PCB, H.E. Sum Manit has played a pivotal role in the involvement of DIHR in the Legal and Judicial Reform in Cambodia, and the embarkation upon the development of a Value Document for Justice was not least due to H.E. Sum Manit.

#### **PROJECT MANAGEMENT UNIT (PMU)**

To support the PCB in its functions and in making the Legal and Judicial Reform Strategy operational, the PMU was established. The PMU has a coordinating, supporting and monitoring role in relation to the Legal and Judicial Reform. The PMU is organised in five teams each dealing with one or more of the seven Strategic Objectives of the Legal and Judicial Reform Strategy. The PMU has been the main actor in the development of the Short and Medium Term Action Plan for the implementation of the Legal and Judicial Reform



Whereas a vision process bases itself upon a thorough analysis of both the justice sector as such and of the individual institutions comprising it, the so-called planning base, the Value Process, took its outset in the fundamental framework of the justice sector, namely the Constitution and the international treaties ratified by Cambodia. The process and methodology aimed at deriving the concepts and values from the Cambodian Constitution and Cambodia's international obligations and reflecting the principles defined by the Cambodian authorities for the development of the country in the major development policies, the National Poverty Reduction Strategy, and the Governance Action Plan.

The Value Document was prepared under the auspices of the Council of Ministers and the Council for Legal and Judicial Reform. As such, the development of the Value Document was closely linked to the other on-going reform processes headed by the Cambodian government. In particular, the Value Document and the subsequent planning would serve as the implementing instrument for the National Poverty Reduction Strategy's objectives regarding the Legal and Judicial sector.

The Value Document was developed through a participatory process, involving the relevant actors from the legal and judicial institutions. Through analyses of the Constitution, international human rights treaties, and national policies, as well as thorough discussions among those involved, four concepts were defined: liberal democracy, separation of powers, rule of law, and rights of the individual. Using these four concepts as linchpins, values describing or comprising each concept were listed. For each of the values defined under the concepts, a list of criteria was developed making sure that the necessary requirements to honour each value were in place with regard to the legislative, institutional,

and procedural aspects of each value. Finally, the interventions for the fulfilment of each criterion were defined. Hence an implementation plan for the Value Document is an inherent part of the document and has served as basis for the Plan of Action.

### **BOX 13.3: THE VALUE DOCUMENT**

The Value Document defines the following four concepts, which are explained in detail in the document:

Liberal democracy

Separation of powers

Rule of law

Rights of the individual

Under each of the concepts, a number of values are listed:

#### **LIBERAL DEMOCRACY**

- Principles of representation
- Decentralisation of powers
- Promoting a free market economy
- Provision of public services

#### **SEPARATION OF POWERS**

- Division of functions between the three branches of government
- Checks and balances
- Independence of the judiciary

#### **RULE OF LAW**

- The hierarchy of laws
- Predictability
- Transparency
- Accountability
- Due process

#### **RIGHTS OF THE INDIVIDUAL**

- Personal freedoms and rights
- Property rights
- Participation
- Access to justice and the right of appeal
- Access to information

Subsequently, the Value Document contains a list of criteria for each of the values. The criteria have been identified to make sure that the necessary requirements to fulfil the value in relation to the legal and judicial sector are in place with regard to the legislative, institutional, and procedural aspects of the value. The criteria thus indicate the set of preconditions for the fulfilment of the value in question. Lastly, the interventions needed for the fulfilment of each of the criteria are listed.

The Legal and Judicial Reform Strategy contains a description of the concepts, values, criteria and interventions

The Value Document has secured a value-based logic from the definition of the values of the sector to the development of the action plan on how to achieve their implementation. Furthermore, the Value Process was initiated by the Cambodian authorities as has been described, with the DIHR providing advice and technical assistance while the Cambodians remained in the driver's seat. Therefore, the Value Document can be considered a national Cambodian document. There is, in other words, a clear national ownership of the document and the strategies and implementation plans deriving from it.

Following a proposal by the Council for Administrative Reform, the Value Document was merged with the Interim National Poverty Reduction Strategy within the frame of the Governance Action Plan, resulting in the Legal and Judicial Reform Strategy, whose goal is:

The establishment of a credible and stable legal and judicial sector upholding the principles of the rights of the individual, the rule of law, and the separation of powers in a

liberal democracy fostering private sector led economic growth.

The Legal and Judicial Reform Strategy contains seven Strategic Objectives:

Strategic Objective 1: Improving the protection of personal rights and freedoms

Strategic Objective 2: Modernizing the legislative framework

Strategic Objective 3: Providing better access to legal and judicial information

Strategic Objective 4: Enhancing the quality of legal processes and related services

Strategic Objective 5: Strengthening judicial services, i.e., the judicial power and prosecutorial services

Strategic Objective 6: Introducing alternative dispute resolution methods

Strategic Objective 7: Strengthening legal and judicial sector institutions in order to fulfil their mandates

Strategies were developed describing how to achieve each of the seven strategic objectives; priority actions were defined and clustered into short, medium, and long-term priorities, creating a complex but logical hierarchy of plans for Legal and Judicial Reform.

The Strategy was formally adopted by the Council of Ministers on 20 June 2003, and the Permanent Coordination Body was designated by the Council for Legal and Judicial Reform to make the Strategy operational by developing an action plan whose implementation would lead to the achievement of the Strategy. A national workshop to present the Strategy was conducted in December 2003 with the participation of the relevant authorities, national and international civil society organizations, and international donor and technical assistance agencies. On the basis of this workshop, five working groups with participation from state

agencies, civil society, and the international community were established to work on plans for the implementation of the seven strategic objectives, securing a participatory process and the necessary coordination and support.

Based on the concepts, values, and criteria laid down in the Value Document, and the activities listed to achieve these, also reflected in the Legal and Judicial Reform Strategy, the five working groups held discussions and, in dialogue with the relevant stakeholders, the Project Management Unit developed a proposal for a Short- and Medium-Term Action Plan, later renamed the Plan of Action, which is the primary instrument for the implementation of the Strategy. The Plan of Action, formally adopted by the Council of Ministers on 29 April 2005, contains a prioritized list of actions to be dealt with in order to implement the Strategy and lists the interventions needed to accomplish this. Among the interventions listed in the Plan of Action, the Project Management Unit identified those that require allocation of resources outside of normal ongoing business, developing them into project profiles collected in a project catalogue.

This catalogue will serve as an instrument for dialogue between the Cambodian government and the international community in relation to the funding of projects needed for the fulfilment of the Legal and Judicial Reform Strategy. Hence the project catalogue is an instrument ensuring Cambodian leadership and coordination among state institutions as well as with and among donors.

## RESULTS

As mentioned, the reform structures were not in place when DIHR became involved in the emerging initiatives towards a Legal and Judicial Reform Strategy; the basis for the reform was not very clear, and coordination

on both government and donor side was not optimal. Through the process of developing the Value Document, important discussions on the values that should form the basis of justice delivery in Cambodia were held and criteria were set up, making the values operational. A Strategy has been developed for how the justice sector should develop while safeguarding the four agreed concepts; liberal democracy, separation of powers, rule of law, and rights of the individual.

Furthermore, through a participatory process involving national and international stakeholders, an implementation plan for the Strategy has been developed and agreed upon. This way, coordination and cooperation among the sector institutions, among the international donor agencies, as well as between the two have all been greatly improved.

The institutions comprising the justice sector have shown significant commitment to the reform and to involving themselves and their human resources towards providing the basis for the reform. There are clear signs of increased openness among the institutions, especially in relation to the international community. The international donors have also focused more on coordination and communication, increasingly supporting the idea of Cambodian leadership and ownership of the reform. This is reflected in the fact that donors are much less frequently the prime movers behind establishing parallel structures for the administration and management of the reform than was the case before the adoption of the Legal and Judicial Reform Strategy. At the same time, a Technical Working Group for Legal and Judicial Reform has been established with representatives of government and donors, and this forum has served not only as a coordination mechanism, but also as a mechanism

## CHAPTER 14

# VISION PROCESS FOR THE REFORM OF THE MINISTRY OF INTERIOR OF SERBIA

By Erik André Andersen and Charlotte Flindt Pedersen

### **The authoritarian state and the civil society approach**

In states governed by an authoritarian regime it is normally difficult for DIHR to enter into a meaningful cooperation with the government structures such as, for example, the justice sector. The high-ranking officials representing the government will not be able to accept the human rights values that form the basis for any kind of cooperation with DIHR. Thus, from the outset, cooperation is extremely difficult and almost per definition excluded.

A case in point is Serbia in the late 1990s. During nearly a decade, Serbia had been ruled by various authoritarian and nationalist governments with President Slobodan Milosevic as the most prominent figure. The beginning of the "new nationalist wave" in Serbia can be dated to 28 June 1989 when Milosevic, on the symbolic 600th anniversary of the famous battle on Kosovo Pole between Serbia and the Turks, made a notorious speech at the same location in support of the Serbs living in the Serbian province of Kosovo. It proved to be the beginning of the dissolution of Yugoslavia, and new states such as Slovenia, Croatia and Macedonia appeared on the international scene in 1992, to be followed – after a bloody civil war and the signing of the Dayton Peace Agreement in late 1995 – by Bosnia-Herzegovina. Subsequently, in 1999,

Kosovo obtained the status of UN Protectorate. As of 2008, the latest developments in the ex-Yugoslavian disintegration process were the formal and internationally recognized independence of Montenegro and Kosovo.

However, during the 1990s, the state to be dealt with in this chapter was the Federal Republic of Yugoslavia, consisting of Serbia and Montenegro – and in this context more specifically Serbia. It was an authoritarian state, disguised under a semi-democratic veil, and despite occasionally very fervent demonstrations by the political opposition against the government's manipulation with electoral results, especially in the winter 1996-97, Milosevic remained in power until October 2000, when he was ousted and subsequently arrested and transferred to the International Criminal Tribunal for the Former Yugoslavia in The Hague.

During the second half of the 1990s, a way for DIHR to prepare working with the state sector in Serbia – and thereby, in the longer term, to contribute to the preparation of the situation after the foreseen fall of the authoritarian government – was to engage into cooperation with the civil society organizations working with human rights. Since the situation was similar in several ex-Yugoslavian states, it made good sense to create a network of human rights organizations. The first network meeting was held in Copenhagen in late 1998, thereby creating the Balkan Human Rights Network, and subsequent network meetings were held

in Budapest during the summer of 1999. At the time, it was necessary to hold the network meetings outside the Balkan region, because the safety and security situation did not allow the meetings to be held in neither Serbia nor Croatia, and the political balance in the network did not allow the meetings to be held in any other member country of the network. This was, however, a specific situation due to a very sensitive political predicament in 1999, when NATO bombarded Kosovo and Serbia. Although the political balance in the human rights network remained an issue to be dealt with over the next few years, the important point in this context was the access to government structures in Serbia by means of the extremely well-qualified civil society members of the human rights network with their good personal contacts in the state sector and their assessment of the political situation.

Therefore, besides supporting the civil society organizations in their work with human rights, and the organizations' mutual network support of each other across state borders in the Balkan region, DIHR - with the help of the network - got access to the high-ranking government representatives in Serbia and could begin to enter into concrete partnership cooperation with the said instances as soon as the political situation underwent a shift in the direction of more democracy and possibly a more positive attitude to human rights. Such a situation appeared after the fall of Milosevic by the end of the year 2000.

### **VISION PROCESS FOR THE REFORM OF THE MINISTRY OF INTERIOR OF SERBIA**

After the democratic changes in Serbia in October 2000 and especially after the December 2000 parliamentary elections, the reform of the security system, military and police agencies emerged as one of the top priorities of the new administration. It asked for

implementation of entirely new solutions. It was clear that essential changes were needed in almost all segments of the Ministry of Interior. The primary challenge was to address the serious problems inherited from the previous regime and at the same time to create a new idea of the future security and safety structure in Serbia and communicate this to the public. In early 2001, DIHR's International Department started cooperation with the Serbian Minister of Interior, Dusjan Mikhailovic, and the top management of the Ministry of Interior on a vision process for the Ministry based on human rights values. The FRESTA division in the Danish Ministry of Foreign Affairs agreed to fund the process.

The Ministry of Interior was the main vehicle of Milosevic comprising both the state security service, paramilitary units such as the red berets deployed in Bosnia and Kosovo involved in war crimes, as well as the ordinary police, who perceived their role in society as a force to be utilized by the ruling power elites rather than a service to the people. Some of the highest-ranking police officers were involved in criminal activity (drugs, arms, cigarettes and human trafficking) and cooperated closely with organized crime structures, which were an important part of the Milosevic economy, thereby involving the police itself in systematized violations of the law.

When DIHR Director Morten Kjærum, Corporate Planner Bent Vase and DIHR Project Manager Charlotte Flindt Pedersen met with the new Minister of Interior, Mr. Dusjan Mihailovic, in February 2001, three months after Milosevic's fall from power, the Minister listed a large number of problems facing him in the reform of the Ministry and the police.

He outlined that any reform process should take into consideration the serious security

problems in the South of Serbia, Kosovo and Metohija on the one hand, which demanded specialized professional armed units, and on the other hand secure the compliance and harmonization with EU and Council of Europe standards.

But first and foremost he had to address the serious problems inherited from the previous regime, such as:

The connection between individuals from the top levels of power, including the Ministry of Interior, and organized crime figures; widespread corruption within the police; emergence of new organized crime structures, which were protected under the Milosevic regime and fed the former regime; the unsolved war crimes as well as the need for apprehension of war criminals; and lack of efficient internal control inside the Ministry proper as well as external control especially of the police intelligence services.

He further explained that a relevant concern in reforming the Ministry derived from the fact that he did not know who was to be trusted in the Ministry in terms of who would be the main people driving the reform process; and would there be people among present line managers who had a clear interest in trying to abort the reform process? The Ministry itself was too centralized, too militarized and too insulated against any influence from local communities and public opinion; its personnel were largely politically biased. There were no mechanisms for parliamentary control; relations with Courts and Public Prosecution Offices were rudimentary; civil oversight and control did not exist at all.

Finally he stated that the perceived role of police in society, police structure and **modus operandi** were based upon obsolete legislation,

which did not reflect the fundamental need to protect and respect human rights and civil liberties, even less the need to offer an efficient police response to the immense challenges brought about by new forms of crime inside the country and in the environment.

So the task vested in the Minister to DIHR was to assist a process of strategic planning which would outline the long-term vision of the future of this Ministry entailing a new vision, new mission, new values and new structure of the Ministry and a catalogue of reform projects with the aim of creating and training a professional police force whose main mission would be law enforcement, protection of rights and liberties of the citizenry and efficient crime control subject to internal and external control. It should also involve the participation of professionals, leaders, department heads and field operatives. Partners in this project would be local and international experts in various fields and representatives of the civil and judiciary sectors contributing with their experience and their different viewpoints too. However, the primary partners would be the Ministry personnel who would be active participants in formulating the new vision.

The ambiguity of the Minister's position in relation to the employees in the Ministry and his own role during the Milosevic era determined the design of the project. First of all, he clearly stated that he did not know his future managers, thus excluding the possibility of forming a steering committee at that time – instead an advisory body was formed, the so-called Think Tank for the Reform of the Ministry, with the independent policing expert Budimir Babovic as Chairman and five other experts from the Ministry, university and police college as well as civil society. The composition of the Think Tank was designed so as to ensure appreciation and confidence in their work

internally in the Ministry as well as externally with the public.

The Think Tank was conferred with the task of defining the future mandate of the Ministry of Interior within the framework provided by two constitutions and the law on the Ministry of Interior. However, at the same time it was clear that the present constitutional framework would not remain due to the uncertainty of the future federation between Serbia and Montenegro and the fact that the constitution of Serbia adopted in 1992 under Slobodan Milosevic did not satisfy the needs of a reformed and democratic Serbia. Therefore the Think Tank adopted an approach where it used a proposal for a constitution drafted by a group of constitutional specialists under the auspices of the Belgrade Centre for Human Rights approved by the Venice Commission as point of departure for the mandate and vision for the future ministry; and it chose to disregard the law on the Ministry of Interior as everybody was aware that the present law did not fit the requirements of a democratic police service and would be changed as a result of the reform process and actually influenced by the vision document. A police expert from OSCE had carried out a thorough review of the police structures of both Serbia and Montenegro and thereby provided a detailed assessment of the needs in relation to the reform process which gave an important input to the work of the Think Tank.

In the beginning of the process, the Think Tank was challenged to reach a more holistic understanding of safety and security and thereby to choose to see the Ministry in its totality and not only as a police ministry, which had been the dominating function of the Ministry in its self-understanding as well as in the minds of others. From the outset, the task defined by the Minister was to define all

the core functions of the Ministry and not only the police. Defining the overall vision for the Ministry therefore became a very important mind-setting process.

In the first phase, from October 2001 until January 2002, the Think Tank produced an overall Vision Statement consisting of Vision, Values and Mission and key result areas for the Ministry which thereby gave an indication of the future organizational chart of the Ministry. The Vision document was submitted to the Minister and subsequently approved by him as well as by the Government, thereby securing political commitment to the process. This was important for the legitimacy of the further process where working groups headed by key line managers or future key line managers in the Ministry potentially in charge of the implementation of the reform projects outlined in the vision document were appointed by the Minister to take part in formulating the ideal ambition; the Mission; clients and partners of cooperation; services; result indicators; as well as legal and policy provisions relevant for each key result area and comparing these to a situational analysis of the present situation. All in all, 16 working groups according to the key result areas of the Ministry defined as part of the overall vision were formed as well as five sub-working groups involving some 100 Ministry employees. To assist the process, DIHR established a Project Secretariat manned by local experts and managers facilitating all the working groups in terms of methodology; expert input; organizational matters; and so forth. Thereby the process of reform of the Ministry consisted of the following units: Think Tank, Project Secretariat and working groups.

The Ministry, hitherto insulated from the rest of the world, opened up with the appointment of the working groups. As part of the process, the heads of the working groups were mandated

to develop their specific area of competence to fit the Serbian context as best they could according to EU and Council of Europe standards and thereby direct cooperation between the responsible working groups and the international players prioritizing police reform in Serbia such as the OSCE, EU, DFID, GTZ, NORAD and the different Embassies; thus it became possible and natural and in the interest of all parties. One of the first projects to be developed as a result of this cooperation was a community policing project where five pilot regions were defined for the implementation of the community policing concept. Key result area working groups such as Organized Crime, Human Resources and Education, Border Management and Migration, and Internal Control received considerable international attention and support, whereas groups such as Emergency Management, Administrative Affairs and IT support were not seen as interesting items for support from the side of donors. For the proper development of the Ministry, however, all the defined key result areas were crucial and therefore the limited funds of DIHR went to support those working groups who were not immediate partners of international donor projects, and to expose them to best practices through study tours and sparring with international experts; the main idea being that all groups should be exposed to best practices and inspired by other, mainly European countries' solutions in the course of the strategic process.

In April 2003, the final Vision document and project catalogue was presented by the heads of the working groups at a half day seminar in the Serbian Parliament to interested members of the civil society press, the Security Council of the Parliament, and to the international community. It was very well received and the Minister got the approval and support to go ahead with the implementation. Consequently,

a short version of the document was published in the Journal *Bezbednost* (Security) which is distributed to all the employees of the Ministry of Interior and the Minister presented the vision in selected cities of Serbia. A Steering Committee was formed in the Ministry to secure a systematized implementation of the Vision/strategic document consisting of the line managers responsible for the elaboration of their respective area, chaired by the Minister.

Unfortunately, as a result of the parliamentary elections in December 2003, a new government was formed with a new Minister of Interior who was reluctant to continue his predecessors' reform work and thus the systematized implementation of the vision was aborted. Fortunately, a large number of projects had already been initiated as a result of the process, and due to the participatory nature of the process, the key line managers of the Ministry owned the defined changes listed in the Vision document and were both exposed to and mind-setting for a new way of thinking.

In an interview with the DIHR evaluation team at the end of his term in 2003, Minister Dusan Mikhailovic listed the results to be the following:

In terms of organization, the results of this reform can be seen in the separation of the State Security Service from the Ministry framework. The Service was reshaped as the Security Intelligence Agency, a government agency. A Gendarmerie Corps was formed, as well as the Organized Crime Unit, the VIP Protection Directorate (no longer a State Security Unit) and the Inspector General's Office (Internal Control). In the framework of the Minister's Cabinet, three specialized Bureaus were formed: International Liaison Bureau, Citizens'



Complaints Bureau, and the Public Information Bureau. As part of the Police Directorate, a special project on community policing was established. However, the most important result was the creation of a viable self-supporting action plan for implementation of specific projects aimed at the implementation of the Vision document. Each working group formulated the necessary reform projects needed in order to implement the vision broken down into long-term goals and objectives. This gave us the Project Catalogue which, when implemented, will secure the full implementation of the Vision.

Finally, it is important to mention that DIHR's involvement in such a high-level cooperation is a direct consequence of a committed involvement in Serbia in partnership with the Belgrade Centre for Human Rights (BCHR), a well-established NGO. This constructive partnership was initiated in 1997. BCHR facilitated the access to the ministries and it provided the analytical academic and organizational backup to DIHR prior to and during the consultations.

During DIHR discussions with the ministries, parallel discussions were carried out with BCHR on its contribution to the reform process. It was agreed that BCHR would be a focal point for DIHR activities in Serbia, providing an independent resource base and acting as a sparring partner and securing early warning in case of political fluctuations. In the initial stages of the project, BCHR has served as a temporary Project Secretariat for DIHR activities and acted as a facilitator for setting up meetings, identifying persons and getting the necessary practical and legal information until the Project Secretariat was up and running.

The main concern in the cooperation with BCHR was not to compromise its independence from government and party politics as it is in its capacity as an independent source of information that BCHR is valuable to the process.

#### **BOX 14.1**

Colonel Dragan Manojlovic, Deputy Chief, Belgrade Criminal Police, joined the Yugoslav police force as a young law graduate twenty-two years ago. For seventeen years of his career he was the field operative, junior, senior and chief inspector and a precinct commander of Zvezdara (Observatory), borough of Belgrade. Zvezdara is one of the first five Serbian boroughs to introduce Community Policing.

"As a kid who grew up in that neighbourhood, I still remember our patrolman who knew everybody on his beat: parents, kids, shopkeepers, dogs, the works, the lot," says he. "The successful experiment with community policing, involving permanent beat patrolmen who knew their neighbours, was abandoned against better advice in early 1980s."

"As early as the beginning of 2000, I was very much aware of the situation created during 10 years of Milosevic's regime. I mean: you can't have a police officer carrying his pistol in the street for two weeks and then carrying an automatic rifle for another three weeks in the field in Kosovo as a simple infantryman, scared to death; then he's back in the street, in the middle of Belgrade, marked as he is by his PTSS (Post-Traumatic Stress Syndrome); of course they started to crack...! Milosevic's police was intended as an extension of the state power, a civil war army, an immense

riot squad. No wonder the citizenry was alienated: the cops were either beating them up – or sneering behind the administration counters.”

“Anyway, what we have understood from Milosevic’s era is that a police force can’t act simultaneously as a repressive arm of the government, enforcing public peace and order, and as a preventive arm, fostering contacts and mutual understanding with the citizens in order to curb crime rates. So we went for a different approach. First of all we wanted to find out what the public perceives as their problems in order to be able to reach out to the citizens. On the grassroots level, in the neighbourhoods, it’s easy to see: they care for their peace and safety; for their kids in the schools and on the street; they care about drugs, local gangs and the like.”

“The project is now in its rather advanced stage and I hope it will become the basis for a general approach all over Serbia. International help was essential; DIHR’s share not among the least important. Why learn by mistakes when other people already have the experience and are willing to share? Of course we adapted and custom tailored every foreign experience; we’re all different, aren’t we? But the principle is the same all over: police alone can’t control and contain crime, maintain public peace and order and provide for a general feeling of security for the population, which is the most important part. If the general public doesn’t feel safe, it means that we failed. Good statistics aren’t enough at all; what counts is that general feeling of safety, the crucial part of general well-being. I want my kid to go around, freely; I want him back with his cell phone and without drugs or bruises. It’s that simple.”

In autumn 2003, Colonel Dragan Manojlović gave in autumn 2003 an interview to journalist M. Vasic, part of which is published in Monique Alexis, Birgit Lindsnæs, Tomas Martin (eds.): *Rights in Action. Implementation of the Universal Declaration of Human Rights*. The Danish Institute for Human Rights, Copenhagen 2005, p.pp. 96-101.

## CHAPTER 15

# VISION AND STRATEGIC INTERVENTIONS IN MONTENEGRO: WORKING WITH THE VISION DOCUMENT IN THE MINISTRY OF INTERIOR

By Lisbet Ilkjær

When asked about what he meant more specifically by “the Danish methodology,” to which he was often referring, Branko Bulatovic, head of the Strategic Planning Unit, explained:

First, there is the Vision. Normally, we start with analyzing the problems and then try to find solutions. The Danish methodology turns things completely around. It enables us to start with the Vision, the situation we would like to see, the ideal situation. Secondly, the steps by which we can realize our Vision is characterized by a clear, systematic and logical structure. It is easy to proceed. Thirdly, the method gives full scope for ownership and commitment among the persons involved in the project. We can bring in our own thoughts and ideas. Without it, we would never have entered into this partnership.

### **BACKGROUND**

On 11 April 2003, the vision document for the reform of the Ministry of Interior in Serbia, which the Danish Institute for Human Rights and the Ministry had been working on for two years, was presented to the public, to representatives from the international community, and to representatives from the government. At the presentation, General Radosav Martinovic from the Ministry of Interior in Montenegro was present and found that the same process could be applied in the Montenegrin Ministry of Interior.

At the time, Montenegro was emerging from a perilous decade characterized by war encirclement, international sanctions, and political pressure. This had, among other things, resulted in the militarization, politicization and criminalization of the police, which constitutes the main responsibility of the Ministry of Interior. Furthermore, the undefined relationship between Serbia and Montenegro contributed to stalling reform processes within government institutions such as the Ministry of Interior, and including the police.

The Montenegrin government views the protection, safety and security of the individual as a strategic goal in consolidating a democratic society. The transformation of Montenegrin police from a force into a service organization builds on the rule of law. Furthermore, it is assumed that reform of the police is a basic precondition for the integration of Montenegro into the European Union.

In May 2003, the Ministry of Interior invited DIHR to Montenegro for an appraisal mission and initial talks on preparing a vision document. This led to the formulation of a two-year project, Support to the Reform of the Ministry of Interior of Montenegro, and the signing of a cooperation agreement regarding this project between the Ministry and DIHR in September 2003. The project was financially supported by the Danish Ministry of Foreign Affairs.

The objective of the project was an overall reform of the Ministry of Interior in Montenegro entailing law reform and a full organizational

**BOX 15.1: HISTORY**

Montenegro, literally the black mountain, is a mountainous area at the Adriatic coast north of Albania, southwest of Serbia, south of Bosnia and Hercegovina, and with a short border to Croatia at the coast. With the historical capital Cetinje well protected in the high mountains, and without strategic importance in the Balkan region, during history the country has largely remained independent from foreign rule.

After the First World War Montenegro became part of the new state, the Kingdom of Serbs, Croats and Slovenes, in 1929 renamed Yugoslavia, and after Second World War Montenegro obtained status of republic in socialist Yugoslavia. During the dissolution of Yugoslavia in the early 1990s, Montenegro did not opt for independence, but sided with Serbia and established, in 1992, the Federal Republic of Yugoslavia. In 2003 it was renamed Union of Serbia and Montenegro as a loose confederation of two basically separate states.

Since 1997 Montenegro has initiated a pro-Western reform policy and gradually loosened its political ties with Serbia, and the goal of full independence, currently supported by the Montenegrin government led by Milo Djukanovic, became one of the top issues on the political agenda in Montenegro. However, due to a mixed population and historical and personal ties with Serbia as well as political opposition to the idea of full independence, the Montenegrin population was strongly divided on this issue. A referendum about independence took place in the spring 2006, and as a result, in June 2006, the government could declare Montenegro's independence

restructuring as well as the implementation of contemporary standards and principles. The aim of this process was to enable Montenegro to chart the course for a new beginning founded on human rights and the rule of law as well as to bolster the Ministry's capacity to administer these reforms. The methodology used was based on insight and understanding of the current structures of the system as well as the ideal status of how and where Montenegro saw itself.

The first phase of the project focused on setting up structures for the reform process within the Ministry as well as the elaboration of an overall vision. The second phase focused on defining the strategic interventions necessary to implement the overall vision of the Ministry as well as the projects necessary to implement these strategic interventions. The final vision document including strategic interventions and related projects was published in June 2005.

**PROJECT STRUCTURE****COMMITMENT AND OWNERSHIP IN MONTENEGRO**

The main capacity building tool for DIHR when working on integrated planning in Montenegro was to design and coach an institutional process anchored within the Ministry of Interior. Thus partnership was a precondition for success. DIHR engaged key employees of the Ministry of Interior to be responsible for the project in order to ensure sustainable implementation of the process and methodologies developed in the partner institution.

The first task was to set up a project secretariat located within the Ministry of Interior (which was overall responsible for preparing the vision document), thereby securing coordination and communication within the Ministry as well as outside the institution. The secretariat consisted

of three key persons from the Ministry and was headed by Branko Bulatovic, the Minister of Interior's spokesperson.

In a project of this magnitude, one of the most important elements is back-up from the political leadership. In order to secure and maintain this, a steering committee consisting of the Minister, Assistant Ministers, and line managers from the Ministry was established to evaluate the elaboration of the vision document continuously and to relay their input at steering committee meetings with the project secretariat and representatives from DIHR.

However, ownership and commitment from the top is not sufficient – there must be positive acceptance from all levels of the institution. To obtain this, 29 working groups were established, representing all units within the Ministry such as internal control, administrative affairs, the special police unit, the police school, the diving unit, etc. Through the working groups, all segments of the Ministry took part in drafting the vision document – in fact, most information on strategic interventions and connected projects came from these 29 working groups. The establishment of the working groups illustrates very well the bottom-up approach taken to the process – a key element in the DIHR planning methodology and something that staff in the Ministry appreciated very much. As expressed by an expert on police, **"People from the Ministry were very happy to be part of the reform process."**

The preparation of the vision document took place within the Ministry of Interior itself. During the process, it was important for the involved persons among the ministerial staff first to be secluded in order to build up confidence and trust in each other without immediately having to deal with outside suggestions, demands,

and criticism. This working method differed from the otherwise similar process in Serbia in which outside actors were actively involved from the very beginning. Thus, in Montenegro, civil society organizations were excluded from the process until a final draft of the vision document was ready for presentation in the spring of 2005. The document was then published and exposed to comments from civil society organizations and international organizations working in Montenegro. The document was largely commented upon in positive terms – as one representative from Montenegrin civil society puts it, **"I was positively surprised at the quality of the document."** On the other hand, some civil society representatives expressed a wish to have been consulted earlier in the process, **"Civil society has in general not been well informed about processes going on in the Ministry of Interior, such as this process of writing the vision document – NGOs could have been involved and informed at an earlier stage."** Despite criticism, most NGOs were happy to be a part of the process and one NGO even suggested that a cooperation agreement between the Ministry and NGOs be formulated.

#### FACILITATION OF THE PROCESS

A consultant from DIHR acted as primary adviser for the project in Montenegro, providing expertise on strategic planning. Additionally, DIHR project managers provided ongoing input in relation to human rights values and principles while at the same time expediting a systematized exposure to best practices in terms of working methodology. Finally, a consultant on policing, Budimir Babovic, participated in the project.

The establishment of a DIHR sub-office in Belgrade contributed further to the facilitation of the project, as the office staff – together with Danish DIHR staff – was able to offer frequent

support to both the project and the people involved in terms of experience and knowledge from the process with the Serbian Ministry of Interior.

Other actors, while not formally linked to the project, have contributed valuable input to the process. For instance, OSCE – which is the primary organization involved in reform of the police in the Balkans – has provided support in form of comments, translation, and financial support to the project.

### STRUCTURAL CHALLENGES

Ownership and commitment are key elements in the partnership concept. In Montenegro, DIHR was asked by the Ministry of Interior itself to facilitate the reform process, making the first step towards partnership very easy – by taking this initiative, the Ministry had already shown ownership and commitment to the process. The second step was setting up a structure anchored within the Ministry, thereby institutionalizing this initial ownership and commitment.

It is one thing to design a project structure – quite another to make it work. In Montenegro, as in most places, it did take time for partners to adjust and fine tune the original structure to the specific context. For example, it took time to find ways of dividing responsibilities between the project secretariat and DIHR's sub-office in Belgrade in the most optimal way. However, such problems not only presented the process with obstacles – they also contributed to strengthening the partnership as problems were solved through fruitful discussions between the partners. A partnership does not evolve overnight; it has to be built, experienced, strengthened, and adjusted throughout the process.

### THE PROCESS

Taking outset in the planning base  
A proper planning base is essential for preparing a vision document. A planning base is a contextual analysis mapping out structures, actors, functions, problems, and strengths of the institution. As part of the project, the Ministry carried out a situational analysis, which is included as an annex to the vision document. Furthermore, the overall challenges that the Ministry had to overcome in order to fulfil its mandate were defined throughout the process. These challenges have then been consolidated at the end of the process, based on all the different steps in the elaboration of the document.

Some of the ministerial challenges defined during the course of the process were:

- lack of adequate legislation and norms,
- lack of proper organizational structure,
- lack of transparency and openness,
- inadequate education and training of personnel,
- lack of a proper human resource policy.

Apart from internal documents and knowledge, external documents have also been used in this process – for instance the March 2003 analysis by General Radosav Martinovic on the reform of the police in Montenegro. Another important document is the October 2001 report *A Study on Policing in the Federal Republic of Yugoslavia – An OSCE Report* by Richard Monk, a senior British police consultant to the OSCE. The document places policing in the Federal Republic of Yugoslavia within its legal, historical, political, and technical context, critically evaluating the needs and the strategies required for reform. Also, certain conclusions drafted by a group of European Union experts within the CARDS Programme analyzing the situation in the Federal Republic of Yugoslavia and lining up

significant recommendations were taken into consideration in drafting the document.

#### DREAMING THE OVERALL VISION

The first phase of the project resulted in the draft overall vision for the Ministry of Interior in Montenegro. The drafting was primarily done by the project secretariat in close cooperation with a strategic planner from DIHR and a consultant on policing. The draft vision was continuously commented upon and approved by the steering committee. Most importantly, the overall vision was consolidated throughout the project, based on input from the 29 working groups.

The **vision** statement of the Ministry is, "**The Ministry contributes to the development of a society without crime and corruption and in which the individual feels safe and secure.**"

The mission statement is phrased as follows:

The Ministry of Interior of the Republic of Montenegro is a governmental body responsible for the security of the Republic and all natural and legal individuals under its jurisdiction, as well as the governmental bodies. Also, it is responsible for maintaining a safe environment on the territory of the Republic in which all individuals are able to accomplish and develop their rights, perform their duties, and express their interests in democratic institutions.

In terms of **concepts, values, and policies**, the work of the Ministry of Interior and its institutions should, according to the vision document, be based on the rule of law, democratic governance, separation of powers, protection of human rights and freedoms; including prohibition of torture, respect of the right to privacy, proportionate use of force, legal arrest and detention, prohibition of

discrimination, professionalism, transparency, integrity, political neutrality, and accountability.

Very important in the development of a vision for an institution is its mandate. When dreaming a vision one should not be restricted to the mandate provided by law – whenever necessary, an ideal mandate should be formulated outlining what is needed in order to fulfil the mission and vision of the institution. Thus the Ministry of Interior in Montenegro analyzed its mission and businesses; based on this, an ideal mandate was then formulated. The mandate corresponded almost entirely to the mandate which was already given by existing legislation in Montenegro - except for elements involving international police cooperation, strategic planning and development as well as personnel administration and human resource policy. Subsequently, the ideal mandate was reflected in the Law on Police, adopted May 2005.

Having in mind the ideal mandate of the Ministry, three main businesses were defined as the managerial frame of the Ministry. The main businesses cover all the services that the Ministry has to provide: ministerial and support functions (e.g. cabinet, human resources, legislative/normative issues, and finance), administrative affairs (e.g. administrative internal affairs and emergency preparedness), and police affairs (e.g. criminal investigation, public peace and order, and community policing).

#### CONSOLIDATING THE OVERALL VISION IN WORKING GROUPS

In order to consolidate the overall findings, a bottom-up approach was employed. Thus each of the main businesses was analyzed in working groups comprised of line managers responsible for providing services to the relevant main business. The working groups were the following:

1. Cabinet
2. Internal control
3. Analytics
4. Normative and legislative issues
5. Human Resources
6. Duty Operations Centre
7. Finance
8. IT
9. Telecommunications
10. General issues
11. Auto Centre
12. Meals and accommodation
13. Education and training
14. Administrative internal affairs
15. Emergency preparedness
16. Criminal police
17. Crime Suppression
18. Forensics
19. Organized crime
20. Public peace and order
21. Community policing
22. Traffic safety
23. VIP protection
24. Special Police Unit
25. Special Antiterrorism Unit
26. Helicopter unit
27. Diving unit
28. Border police
29. Criminal Intelligence Unit

Throughout the second phase of the project, all 29 groups went through the steps of analyzing and defining their own objectives, services, clients, ambitions, competencies, strategies, indicators, and values; as well as carrying out a situational analysis. This process resulted in the definition of projects necessary to bring the key result area in question up to a standard and a level adequate to fulfil the purpose of that particular area (working group). Some of these projects eventually became part of the projects relating to the strategic interventions for the Ministry. This part of the project was especially facilitated by a consultant on methodology.

#### ACTIVITIES IN RELATION TO THE PROCESS

One of the most important activities consisted in continued lectures and meetings on methodology undertaken by the strategic planning adviser with the project secretariat and representatives from the 29 working groups. Furthermore, an important input was the knowledge on human rights provided by DIHR and its sub-office in Belgrade.

As part of the process, a seminar in Montenegro, **Centralization – Decentralization** of Montenegrin Police, was held October 2004 with the participation of national and international experts from civil society, the objective being to solicit constructive input to parts of the vision document. The question of centralization/decentralization is especially important for implementation of the police functions and the seminar was specifically organized to identify the possibilities and needs of decentralization of the police in a country such as Montenegro. The seminar was opened by the Minister of Interior, Dragan Durovic, and was covered extensively by both TV-stations and newspapers.

In November 2004, the project secretariat together with representatives from DIHR's sub-office in Belgrade participated in the seminar in Denmark called **The Balkans: Democratic Processes, Civil Society and State Reform**. This seminar gathered DIHR partners from Montenegro, Serbia, Croatia, and Bosnia-Herzegovina. Through presentations and panel discussions, the seminar aimed at creating a space for the sharing of knowledge and experience among regional and Danish state institutions and NGOs working on democratization projects within the Balkans; as well as offering an insight into recent developments and perspectives concerning the region.



Throughout the process, members of the 29 working groups have taken part in study tours to Denmark, Sweden, Slovenia, Malta, Spain, and the Netherlands - especially focusing on community policing, internal control, organized crime, and administrative affairs. After these trips, they disseminated reports to the Ministry summarizing their experiences and pertinent information obtained.

#### **INPUT TO THE PROCESS FROM CIVIL SOCIETY IN MONTENEGRO**

In May 2005, the Ministry sent out the draft vision document to the relevant NGOs in Montenegro; a month later, the Ministry followed up by inviting the NGOs to a seminar in order to solicit their comments. In general, all participants supported the hard work and good intentions displayed by the Ministry in elaborating such a document. Some mentioned that it was the first time in the history of Montenegro that the Ministry of Interior made a presentation like this, sharing all its findings, both positive and negative. Furthermore, the NGOs offered specific suggestions, some of which were incorporated in the vision document.

#### **CHALLENGES IN RELATION TO THE PROCESS**

Fleshing out an overall vision, while at the same time involving 29 working groups in a parallel, integrated process was highly challenging. One of the working groups (police education and training) was working very expeditiously and it was therefore decided to support this project specifically to encourage the persons involved and keep up the momentum. However, it soon became apparent that the working group was dependent on some of the decisions and structures of the Ministry and its overall vision, especially relating to human resources. One lesson learned is that dialogue and transparency within an institution going through a vision process is essential; and that

sometimes the process may be affected, as in this case, by political decisions which may not follow the same pace as the elaboration of the vision.

#### **RESULTS**

The most important result of the process is also the least tangible one. It involves a change in the mindset, in the entire way of thinking and working as applied in the day-to-day business of the Ministry of Interior in Montenegro.

The more obvious result of the process, however, is the vision document itself, running into 600 pages. This document consists of four chapters. The first chapter describes the overall vision, values, ideal mandate, mission, key result areas, and challenges; while chapters two and three contain the results from the 29 working groups. The last chapter of the vision document lists the ten strategic interventions for the Ministry of Interior in Montenegro and related projects aimed at implementing these. Furthermore, the implementation structure of the interventions is described.

Thus each challenge defined by the Ministry is addressed by a strategic intervention necessary to implement the vision. For each of the ten strategic interventions, a programme has been developed, outlining all the coordinated projects, activities and tasks that the Ministry has to embark upon in order to deal with that specific strategic intervention. The strategic intervention projects have thus evolved based on the recommendations of the 29 working groups.

#### **10 STRATEGIC INTERVENTIONS**

1. **Legislative and normative framework:** to adopt the legislative and normative reform programme necessary to implement the vision of the Ministry before 2006.

2. **Organizational structure:** to implement a structure for the Ministry facilitating the efficient and effective fulfilment of the mandate.
3. **Transparency and accountability:** to cooperate with citizens and all relevant stakeholders; informing about results and entering into dialogue about the work of the Ministry.
4. **Human resources:** to select and recruit people in accordance with the strategy concerning a human resource policy based on principles and values described in the vision document.
5. **Education and training:** to secure necessary education and training based on modern principles.
6. **Technical equipment and infrastructure:** to have premises, equipment, and technical conditions ensuring the efficient functioning of the Ministry.
7. **IT-system:** to have a unified IT-system enhancing the capacity of the Ministry in the exchange and use of information internally and externally.
8. **Organized crime:** to fight organized crime by co-operating closely with other countries in the region and globally; as well as prioritizing criminal investigation, professionalizing personnel, and creating a database.
9. **Border police:** to create a safe environment on the territory of Montenegro and to achieve higher efficiency in preventing and fighting cross-border crime; through professionalizing personnel and cooperation and information exchange with

police from other countries in accordance with EU standards.

10. **Emergency preparedness:** to create a service for the protection of natural and technical disasters in accordance with similar services in the EU; taking into account the specific conditions of Montenegro and preparing citizens and other stakeholders on how to react in such situations.

**Vision Document, Ministry of Interior of Montenegro, 2005**

#### CHALLENGES IN VIEW OF THE RESULTS

One of the most significant challenges has been the new Law on Police, which had been pending since the project began. For a long time it was very uncertain whether it would be passed or not. It was, in fact, finally passed in May 2005, stating among other things that Montenegro will appoint a new independent Director of Police. However, control and planning in relation to the police will still take place within the Ministry. Naturally, implementation of the strategic interventions would be much easier if an organizational structure were already in place. It still remains to be seen exactly what effect the adoption of the **Law on Police** will have on the implementation of the vision document. By-laws as well as a new **Law on Systematization**, defining positions and names, must first be in place.

#### THE ROAD AHEAD

The vision document is now on the table and the actual implementation of the document – the strategic interventions – are envisaged to take place in the next phase.<sup>1</sup> In that phase, the strategic intervention projects should be prioritized by the Ministry as well as formulated, designed and programmed in detail. Some

projects will require donor funding (e.g., the IT projects), whereas others can be implemented immediately (e.g., projects on transparency and accountability). Finally, some projects are already in the process of being implemented.

Several factors need to be present in order for a continued implementation of the vision document to take place. Political back-up of reform initiatives within the Ministry must continue both in relation to the vision and the various consequences of its implementation – such as the need for a reduction of the number of police officers in Montenegro. Support from the Montenegrin Parliament as well as other ministries such as the Ministry of Finance is also needed. Some of the reform initiatives within the Ministry of Interior are naturally dependent upon an overall reform of various state institutions in Montenegro. Furthermore, necessary donor funding must be made available for the Ministry in order for the vision to be carried out. It is foreseen that a forthcoming phase will also include a donor conference in relation to the different strategic intervention projects.

For a positive road ahead, one of the strongest elements rests directly within the Ministry in form of the strong sense of ownership which has only grown stronger throughout the process. Furthermore, the Ministry views the vision document as a dynamic and vibrant vision where recommendations both from inside and outside the Ministry will be taken into constant consideration, ensuring that the document will not just be shelved.

## **LESSONS LEARNED**

### **PARTNERSHIP AND LOCAL OWNERSHIP**

The successful application of processes and methodologies in the daily work and thinking of the Ministry throughout all its segments has

to do with the sense of ownership as well as a respect for the local context – elements which will be of crucial importance to sustainability.

### **INVOLVEMENT OF ALL SEGMENTS OF THE INSTITUTION**

Importance of key managers, etc.

### **POLITICAL COMMITMENT**

There can be no successful vision without political back-up. Therefore, it is a condition for entering into strategic planning processes in state institutions that there is clear interest and back-up from the political top – in order to continuously support the process as well as to make some of the necessary decisions connected to such a process.

### **TIME AND PATIENCE**

The entire project leading to a vision document in Montenegro did not cost more than 400,000 Euro. Thus the most important element in a project like this is not money – it is time. It takes time and patience to change years of old habits, and to make people understand and accept new ways of working.

### **THE ROLE OF CIVIL SOCIETY**

The project has put police reform on the agenda not only within the Ministry, but also in the minds of national NGOs and international experts. As one expert noted, "The most important outcome of this project is certainly the fact of having engaged in a process of reflection on policing matters."

Some NGOs pointed out that they had been involved too late in the process. However, the question about exactly when to involve civil society and expertise will always be a delicate balancing act. First, the partner in the process must feel comfortable with the project. As one employee said, "just a year ago it would not have been possible to hold a civil society

seminar on a strategy for the Ministry of Interior." That being said, it is also of crucial importance that civil society takes responsibility and involve themselves in processes like this.

## CHAPTER 16

# APPLYING A HUMAN RIGHTS BASED DIALOGUE APPROACH IN SUPPORTING STATE BUILDING IN A FRAGILE STATE. THE CASE OF YEMEN

By Anders Folmer Buhelt, Lis Dhundale and Mette Appel Pallesen

States are fragile when state structures lack political will and/or capacity to provide the basic functions needed for poverty reduction, development and to safeguard the security and human rights of their populations.  
OECD-DAC, April 2007<sup>1</sup>.

### INTRODUCTION

A milestone in world history was created with the adoption of the Universal Declaration of Human Rights expressing the philosophy, particularly in its Preamble and in Articles 26, 28 and 29, that states should provide adequate framework for the individual person to develop in order to achieve their full potential and promote a peaceful and prosperous society respecting human rights, the rule of law and non-discrimination and thereby contribute to a social and international order as mentioned above.<sup>2</sup>

It is the viewpoint of DIHR that societies promote social justice where the individual human being feels appreciated, treated with dignity, and experiences equal rights and justice as well as freedom to act under responsibility given by law; and that these rights and freedoms are in practice protected by the rule of law.

The rationale is that a society moving towards the provision of social justice and the

establishment of a social contract creates confidence in the population, based upon which the development of society will and can be driven from within, in the sense that the individual finds it worthwhile to think ahead and plan for the future. The challenge is to give each individual human being the opportunity to use his/her full potential under respect for the dignity and worth of other human persons in a society governed in a manner where there will be social progress and attainment of such living conditions that the individual experiences freedom to act.<sup>3</sup>

In May 1990, the Republic of Yemen was established uniting the traditional North Yemen and Marxist South Yemen. At the same time a transition towards democratization of Yemen was initiated. Yet, 20 years after having unified the country and initiated the democratization process, social and economical developments are still key challenges since social and economical developments have been hampered for years in Yemen due to e.g. historical circumstances; lack of ability by the state to control the entire country; internal conflicts; and due to economical crises. It is however not DIHR's experience that the lack of social and economical development in Yemen is due to lack of political willingness, since the Yemeni government over the past decades has entered into and committed itself to reform processes with international partners aiming at supporting the democratization process. As an example emphasizing political commitment to reform by the Yemeni government can be

mentioned that Prime Minister Mr. Mujawar gave vital support to the Yemeni penal justice reform process by endorsing all recommendations for penal justice reform at the closure of the first penal justice dialogue conference in 2008; furthermore, he asked Yemeni decision makers to take on board the conference recommendations in order to harmonize the penal justice system in Yemen with international human rights standards. Likewise, Minister of Human Rights, H. E., Dr. Huda al-Ban's commitment to the penal justice reform has been an important key. Weekly she briefs the Cabinet about progress made and challenges facing the reform process. At the same time she makes sure that the Cabinet continues to support the reform process.

Despite political commitment to reform, Yemen is now being categorized by the international community as a fragile state, a state that cannot develop from within.<sup>4</sup> Numerous definitions of fragile states exist; the most accepted probably being the OECD-DAC definition quoted in the beginning of this chapter. Being the poorest country in the Arab World and facing challenges such as declining oil production; rapidly growing population; growing water shortage; an unemployment rate of 35 percent; and corruption are among the reasons why the state has not been able to deliver basic services and meet expectations from the people of Yemen. Meanwhile, the Yemeni government has also been confronted with internal conflicts causing instability in the country. Since 2004 there has been an armed conflict in the North Western Sa'ada district between the government and Houthi rebels, internally displacing an estimated 175,000 people.<sup>5</sup> In the South the government has been confronted with a movement fighting for the separation from the Northern part of Yemen and finally there have been conflicts related to Al-Qaeda's establishment in Yemen.

Thus it is interesting to find that despite severe economical, social and internal challenges, Yemen has nevertheless moved from number 153 on the UNDP Human Development Index (HDI) in 2007/8 to number 140 in 2009 and remains in the category of "medium human development".

Since 2006, DIHR has cooperated with the Ministry of Human Rights (hereinafter the 'Ministry') on a national facts-based dialogue process focusing on penal justice reform. The partnership programme is in line with the OECD-DAC principles for engaging in fragile states and situations. Accordingly, the long-term vision for international engagement in such situations is:

[...] to help national reformers to build effective, legitimate, and resilient state institutions, capable of engaging productively with their people to promote sustained development.<sup>6</sup>

The heart of the penal reform process is to address the underlying causes of fragility and lack of security in the state. The long-term objective is for state institutions and civil society to contribute towards developing a common culture of human rights that fulfils the principle of rule of law in Yemen. The dialogue process is led by the Yemeni government and consists of three interlinked facts-based dialogues with the participation of all relevant sectors of society. With the overall objective to promote state-building resting on human rights principles, the aim of the process is to improve human rights protection in the legal framework as well as in practice. An analysis of applicable legal framework has been developed and the situation in practice scrutinized by conducting over 700 interviews with relevant actors working within the penal justice system as well as detainees and inmates. Subsequently, the

process will point to reform initiatives aiming at providing access to justice and security for the people of Yemen. Based on these processes, project design will be drawn up and programme catalogues will be developed.

In the spring 2010, reform project outlines for the following intervention areas:

- Awareness-raising on fair trial
- Codes of Conducts for law enforcement officials
- Penitentiary system
- Law harmonization
- Law reform

are in the process of being finalized and will be presented at the second dialogue conference within two months to representatives from civil society organizations; state authorities from the penitentiary system; police and the judiciary; as well as politicians and academics.

Like it was during the first dialogue conference, it is also considered crucial to provide the public with an opportunity to follow the discussions from the conference. Hopefully, the conference will also be broadcast live by Al Jazeera this time.

It is the vision of the partnership between DIHR and the Ministry that the process will be a lever and generate the public's confidence in the state and thereby be a driver for progress onwards. So far, everybody involved in the preparations of the project outline has shown tremendous commitment and consistency in the efforts to bring forward the dialogue process, which is why there are high expectations regarding the outcome of the second consultation in May 2010.

### **CAPACITATING THE MINISTRY AS A GOVERNMENTAL FOCAL POINT – A CATALYST FOR PROMOTING HUMAN RIGHTS**

It is DIHR's view that development should be led by the institutions that are or will become responsible for human rights implementation and should be defined through processes that are as involving as possible. Thus the ambition of cooperating with the Ministry in the dialogue process is to capacitate the Ministry as catalyst for promoting human rights within government policies and relevant institutions, bodies, etc.; and to take the initiative to engage in facts-based dialogues with all sectors of society on reforms to strengthen human rights, the rule of law, and non-discrimination.

In accordance with its mandate, the Ministry can be described as the governmental focal point with regard to human rights in Yemen. Such a governmental focal point has the unique position that it is a member of government and therefore has the opportunity and duty to relate any government decision to human rights and hence promote the habit of doing so. This way, such a governmental focal point can act as a catalyst with regard to government processes aiming at the effective realization of human rights. To this end, the Ministry is responsible for reporting to the UN treaty body system. This process entails information gathering; documentation of the Yemeni human rights situation; as well as taking into consideration the recommendations and conclusions from the treaty body system and refer these to relevant government decisions. Building the Ministry's capacity to develop reports, including providing the Ministry with tools to collect and process data, is part of an overall strategy to improve the protection of human rights in Yemen and create a culture of human rights at government level.

### **THE YEMENI PROCESS OF FACTS-BASED DIALOGUE ON PENAL JUSTICE**

"Dialogue is, per definition, unpredictable. You present a subject for mutual consideration and cannot know beforehand what you will eventually arrive at. And no one can know whether what they arrive at agrees with them and substantiates whatever they entered into the process with – or whether their pre-understanding and preset assumptions will be put to a test. This way you put a bit of yourself into play in a dialogue; therefore, dialogue presupposes that participants have trust in each other."<sup>7</sup>

The thinking behind applying interlinked dialogue conferences as part of the reform process is to create a forum for constructive and cross-cutting dialogue between government/state institutions and representatives from civil society organizations, media, academics, etc., and essentially create a genuine dialogue between civil society/independent groups and government. The conferences are considered to be consultation forums based on factual analyses where participants on an equal footing have the opportunity to come up with recommendations, comments and proposals for improvements. Creating a forum for dialogue is a way to bring relevant stakeholders closer to each other. Not only will they get to know one another but the aim is also to nuance and broaden the grounds for the discussion by bringing together a broader audience; i.e. decision makers, representatives from public authorities and civil society, etc. who will all challenge and enlighten each other with viewpoints and facts about practical realities from their different perspectives.

The purpose of the dialogue conferences is to provide an opportunity for key stakeholders to examine the presented analyses and discuss initiatives based upon proposals by government

and generate input and recommendations for the reform process. Thereby all key stakeholders are consulted and have the opportunity to feed into the process.

Anchoring the process in three interlinked dialogue conferences is a way to ensure that there is a shared understanding and to create broad commitment by key stakeholders including decision makers before the detailed planning is initiated.

However, full and equal participation by all may not be a possibility in all situations, but to the extent possible, the social forces of civil society should be involved to ensure a real representation and ownership from relevant members of society.

### **APPLYING THE 'THREE STEPS' DIALOGUE APPROACH TO DEVELOP REFORM PROGRAMMES:**

1) As a first step, an analysis must be made on how to reflect human rights in the hierarchy of laws as a basis for a first dialogue conference; and how to address problems and challenges facing the legal framework and its implementation in selected issue areas.

2) The second step, in light of the recommendations arising from participants who have been present, the analysis at the first dialogue conference, representing all sectors of society, is to undertake an analysis of how the legal framework is being implemented in practice. At this stage, recommendations from the two analyses and from the first dialogue conference provide a holistic picture and give a solid foundation for defining areas to be addressed in the reform process. The reform project areas are identified by clustering all of the recommendations. Working groups for each of the intervention areas are established to further develop the reform projects. It is



important that working group members are carefully selected among representatives from the implementing institutions.

With technical human rights support from the Ministry and DIHR and legal substance support from national experts, the working groups draw up project outlines that are presented at the second dialogue conference.

3) Taking point of departure in the outcomes of the second dialogue conference, the third step is to draft wider programmes, including a law reform programme, to be presented during the third conference. Various decision makers and other key stakeholders including donors are invited to participate at the third dialogue conference to provide stakeholders and donors with an opportunity to be acquainted with the reform programmes and obviously also to ensure effective and efficient project implementation by generating donor support. It should be noted that reform programmes are not implemented in practice along with the implementation of the three steps. The actual implementation of the reform programmes will take place after programme catalogues have been developed, and when national stakeholders have had an opportunity to enter into partnership with donors providing financial support to the implementation of the individual reform programme under the overall penal justice reform programme.

### **THE FIRST DIALOGUE CONFERENCE**

10 and 11 February 2008, were not two ordinary days at the office, in the court room, in the state or central prisons, at the law faculty or in civil society organisations for the 300 participants who were present at the first nationwide dialogue conference in Sana'a, Yemen, on the theme of penal justice. At the conference, participants representing state institutions, civil society, researchers, and representatives of the international community were present.

Throughout two full days, main actors in the field of penal justice had a critical discussion regarding necessary improvements and initiatives for reform within the Yemeni penal justice system. Across the conference room, shared visions for a criminal justice system protecting and respecting the principles of rule of law and human rights as such started to flourish and at the end of the conference, the participants agreed to prepare a final communiqué containing 29 recommendations for reform. In the final communiqué, the participants clearly expressed that a general harmonization and reform process of the national penal justice legislation would be a necessary step towards bringing the legal framework in line with the international human rights instruments Yemen has subscribed to. But the outcome of the conference also pointed to the need to target more concrete areas such as the general lack of data identifying and providing documentation on areas that are malfunctioning in the justice system; lack of awareness about the right to a fair trial; the need to develop principles and standards for the conduct of law enforcement officials; and that the reform process should also address how to bring the Yemeni penitentiary system in line with international standards.

In addition to 29 recommendations put forward at the first dialogue conference, another 67 recommendations were drawn up in a legal analysis developed prior to the dialogue conference by a legal team in the Ministry with sparring from DIHR. The rationale for developing the legal analysis was not that the process should result in a one-fits-all model of penal law. National legislations vary from country to country, first and foremost because of national sovereignty and obviously also for historical and cultural reasons. Thus it is not possible to prescribe exactly how and what a state shall do without taking point of departure in contextual features. Considered

to be important first steps were supporting facts-based processes providing the Yemeni government with a tool to decide how to strike the balance in reforming the legal framework it wishes to establish for its society and at the same time honoring its international obligations.

Discussing ways to guarantee respect for the principle of rule of law in the legislation has been a key component in tailoring the analysis. In the process of developing the analysis, the legal team at the Ministry and DIHR staff therefore discussed in depth the elements in the principle of rule of law. Since Yemen is a Muslim country basing its legislation on Sharia law, it was considered particularly important to agree on a shared definition of the principle of rule of law. The principle of rule of law is therefore described in the introduction to the analysis; i.e. that rule of law constitutes a key safeguard for the protection of rights and liberties of the individual; entailing equality among citizens before the law without discrimination; and that no restrictions on freedoms of citizens can be made except by law; as well as the important element that privileges cannot be granted to certain groups except by law. Furthermore, it has been discussed how to address fundamental issues concerning rule of law such as predictability, transparency, accountability, and due process in a Yemeni legal context.

At the first dialogue conference it was also stressed that the reform process should guarantee that the public in interaction with state authorities in all circumstances is made aware of laws in an effective manner; and that the public has access to legal and judicial remedies to protect their rights. To this end, it was also stressed that the law should protect against arbitrary judgments, decisions and regulations.

The analysis has a thematic approach, taking point of departure in 34 rights dealing with justice principles that protect the rights of the individual. All rights were identified and defined by the Ministry as relevant to criminal justice.<sup>8</sup> For practical reasons, the analysis examines the protection of individual rights in the following areas: during detention and investigation, during trial, and during the execution of the sentence.

An outline of shortcomings, problem areas and proposals for recommendations for harmonization and reform of Yemeni penal laws and legislation is provided in the analysis. The analysis, for instance, draws attention to the fact that, during detention and interrogation, there is no obligation in Yemeni legal provisions to notify the suspect or the convict about all the facts and developments in his or her case. It is also recommended in the analysis to reform the penitentiary system such as prisons' physical conditions and bringing detainees' and prisoners' rights in line with international standards as well as to qualify and train prison staff.

Linking the 67 recommendations from the legal analysis and the 29 recommendations put forward at the dialogue conference has provided a broad and holistic outline of areas to be addressed in the penal reform process.

All recommendations were endorsed at the closure of the conference by H.E. the Prime Minister, who furthermore gave his support to their implementation on behalf of the Yemeni government. This commitment was quickly followed up by the establishment of a Steering Committee for the implementation of the recommendations with the Ministry as secretariat and by reviving an existing committee with the mandate to harmonize Yemeni legislation with its human rights obligations.

**THE STRUCTURAL SET-UP:**

Obviously, a reform process which is not backed up politically and by decision makers will not progress anywhere. Therefore, a structure for the reform process has been established integrating involvement and representation at the highest political level. A steering committee has been established by Prime Ministerial Decree comprising members of Cabinet in addition to an administrative committee with the participation of senior management of each of the implementing institutions. The process benefits from the involvement of decision makers, because they can identify and allocate resources within their institutions for the reform programs. To complete the structural setting, working groups have been established comprising technicians selected in relevant state institutions who will actually carry out the work on a daily basis. The working groups can also comprise specialists from outside the implementing institutions when their involvement is found relevant or necessary.

This structure has the purpose of designing a way forward, guaranteeing political commitment, providing supervision and quality control of the process, and engaging the implementing institutions and relevant qualified individuals in the preparation and implementation of reforms.

**ACTIONS FOLLOWING THE FIRST DIALOGUE CONFERENCE**

At the conference it was stressed that the reform process should guarantee that the public in interaction with state authorities in all circumstances is made aware of laws in an effective manner; and that the public has access to legal and judicial remedies to protect their rights. To this end, it was also stressed that the law should protect against arbitrary judgments, decisions and regulations.

Another feature which has been reflected in the design of intervention areas for the reform process is the lack of data and documentation on how the Yemeni justice system is performing and to what extent it is providing good services to the public. Thus, upon request from the working groups set up for each of the five intervention areas, field studies have been undertaken to collect data revealing the malfunctioning of the penal justice system. 14 questionnaires have been developed specifically targeting judges, prosecutors, defence lawyers, prison guards, police officers, detainees and inmates, etc. Data from more than 700 interviews conducted in 12 governorates throughout Yemen has also been processed. In addition, statistics, UN treaty body recommendations, independent studies and reports are included in the analysis of the justice system. An impressive report on findings based on the field study interviews is the outcome of the Ministry's extensive performance and professional approach to planning and conducting the field studies. All these findings have been provided to the five other working groups to feed into their work in the five intervention areas and the working group members are now assessing the findings and data.

Since the level of documentation and accessible data has increased incredibly due to the field studies there are high expectations as to how findings will be used by working groups, and how it will be reflected in the project outlines.

After the first dialogue conference all recommendations were clustered by the Ministry into six intervention areas: 1) field analysis to document practices; 2) awareness-raising about fair trial; 3) development of codes of conduct for law enforcement personnel; 4) penitentiary reform; 5) technical law review; and 6) law reform.

A short description of the thematic terms of reference for each of the five intervention areas is provided below.<sup>9</sup>

#### **PROGRAMME ON AWARENESS-RAISING ABOUT FAIR TRIAL**

Creating awareness of the rights and obligations covered by the principles of fair trial must be considered a precondition for full realization of the rights. Professionals such as judges, public prosecutors, police, prison staff, etc. should therefore receive training in this field to know elements pertaining to the right to a fair trial; i.e. the right to be presumed innocent until proven guilty; the right of the accused to have adequate time and facilities to prepare a defence; the right to defend oneself in person or through legal assistance; the right to call witnesses and the right to have free assistance from an interpreter. Providing systematic training for this group of people will be pivotal in terms of ensuring that the state of Yemen lives up to its responsibility as a duty bearer in this field.

A holistic needs analysis and identification of mechanisms focusing on specific target groups that can be used as a cascade into broad dissemination, say, through targeting professionals and semi-professionals in the area 'fair trial' will be elaborated. Also, cooperation with NGOs targeting specific professionals or semi-professionals or broadly through radio, television, and other media should be initiated. When this is done, the needs analysis will identify the specific needs for all target groups and the most effective distribution network for raising awareness of laws pertaining to fair trial.

#### **PROGRAMME ON CODE OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS**

Police and other law enforcing agents have monopoly on the lawful use of force, however

only when strictly necessary and to the extent required for the performance of their duty. A mechanism to avoid excessive use of force and ensure general respect for human rights including development of clear principles and standards should be developed. The codes should be used as a guideline for training and monitoring the conduct of all officials in the field of law enforcement. An outline of the content or skeleton for the codes will be drawn up by the working group which could include areas like developing a reporting mechanism for the use of force and firearms; prohibition against torture; education/training requirements; prohibition of corruption, etc. Complaint and sanctions mechanisms in cases of violation should be stated by law as well as in curricula for law enforcement education.

International standards on codes of conduct can act as inspiration and models in this process. To ensure that the plan is implemented in practice, the approach should include a revision of curricula for law enforcement education institutions and the establishment of a control mechanism.

#### **PROGRAMME ON PENITENTIARY REFORM**

In order to improve the safeguard of detainees' and prisoners' human rights within the Yemeni penitentiary system, a range of assessments have been conducted by the field analysis working to collect data to identify areas of malfunction. In addition, it has been recommended in the legal analysis to bring the conditions and human rights protection in the Yemeni penitentiary system in line with international standards; such as developing requirements for the qualifications and educational background of penitentiary staff; the need for training of personnel; development of a code of conduct for penitentiary personnel; improving the treatment of detainees/prisoners regarding use

of force; non-discrimination; and the prohibition against torture, inhuman and degrading treatment. Another area to be dealt with is guaranteeing detainees' rights to have family contact; access to medical treatment; to legal assistance; adequate living conditions, etc. Finally, standards for the physical conditions in prisons will be targeted by the working group.

#### **PROGRAMME ON HARMONIZATION OF YEMENI PENAL LAW**

The first recommendation from the final communiqué suggests the reactivation of the committee to revise the active laws and legislations in light of the international treaties pertaining to human rights ratified by Yemen; i.e. a committee focusing on the harmonization of the Yemeni legal framework with ratified international human rights treaties and conventions. The working group will study and analyze the recommendations issued by the first national dialogue conference, as well as the recommendations resulting from the legal analysis. A draft law harmonization proposal will be forwarded to the Committee responsible for the harmonization of the legal framework as well as to the Cabinet before being referred to the Parliament for adoption.

#### **PROGRAMME ON REFORM OF YEMENI PENAL LAW**

In the areas where the collected data and the different analyses have shown that law reform is needed, the relevant laws are then identified, and the package of laws are reviewed and reformed in such a way that the specific area will be regulated in accordance with the findings and recommendations in the analyses. Then the law package is adjusted in accordance with national policies and strategies guiding the specific area in question. The adjusted law package is then forwarded to Cabinet as a law reform package proposal.

In the spring of 2010, five working groups meet on a weekly basis in order to assess and discuss findings from the legal analysis and the field study and desk study material.<sup>10</sup> Based on the outcome of the working group discussions, projects are identified and projects are outlined which finally will be developed into reform programme catalogues.

These project outlines will be presented at the second dialogue conference in May 2010 where the participants will be provided with an opportunity to provide feedback and input to the presented project outlines. By presenting the project outlines, the aim is to create a shared understanding and commitment by key stakeholders and decision makers to the reform project outlines.

Feedback from participants at the second conference will be adopted into the final reform programmes and the detailed planning of the final project catalogues will be initiated. At the third dialogue conference, penal reform programmes together with the related project catalogue will be presented as discussion documents to all the various decision makers and other key stakeholders, including donors, with the purpose of obtaining support and commitment to an effective and efficient reform programme implementation.

#### **CONCLUSION**

The international community has a vital role to play in supporting the Yemeni process of state building. Lack of confidence in state institutions by the public has to be approached before development can be driven from within the state of Yemen. On a daily basis, there is interaction between the public and state authorities within the justice system, i.e. the judiciary, the police and the penitentiary systems. The assumption is that safeguarding the rights of the people will create public

confidence in the state. At the same time, the state will benefit from being able to perform and provide services in accordance with the principle of rule of law and human rights simply because the state gains power and support from the public.

Consequently, in DIHR's view, it is vital for the development of a strong human rights culture and for economical and social development as such in Yemen that a process is initiated that focuses on creating a shared understanding of and commitment to human rights among key stakeholders.

When the overall penal reform programme has been implemented by the Ministry with support from DIHR, reform programmes within the field of awareness about fair trial, codes of conduct for law enforcement officials, and penitentiary reform will have been developed and will be ready for actual implementation in practice. It is the hope that there continues to be commitment to reform by the Yemeni government, and that the international donor community will provide support to the programme implementation.

## CHAPTER 17

# CIVIL SOCIETY WORK IN AFGHANISTAN – A STRONG STRATEGY IN A VOLATILE ENVIRONMENT

By Malek Sitez and Lisbeth A. N. Thonbo

### **BACKGROUND/HISTORY**

The Bonn peace agreement in December 2001 – with its emphasis on the development of democracy and respect for human rights – and UN Security Council Resolution 1386 (2001) constituted a window of opportunity for DIHR to assist the development process in Afghanistan. DIHR took up this challenge based on two distinct comparative advantages: Firstly, DIHR's extensive experience from partnerships with civil society in countries in transition, notably the Balkan Human Rights Networks and the Human Rights Consultative Committee in Malawi. The second advantage consisted in having an Afghan lawyer on the DIHR staff.

The initial idea was to explore the possibilities for partnership with civil society to strengthen implementation of human rights in Afghanistan. At the same time DIHR initiated a close dialogue with the then newly established Afghan Independent Human Rights Commission (AIHRC) as well as with various government agencies, thus preparing the ground for a constructive dialogue between Afghan civil society and these entities.

Three initial DIHR missions to Afghanistan (in June-July 2002, October-November 2002 and August 2003 respectively), with specific focus on the potential of civil society to promote human rights, paved the way for the establishment of the Afghan Civil Society and Human Rights Network (CSHRN). The missions

identified relevant civil society organizations as well as their capabilities and studied the environment for working to promote human rights in Afghanistan.

The first mission concentrated on interviews with human rights activists and human rights NGOs in Kabul. The interviews mainly collected information on civil society and on the human rights situation in Afghanistan. The second mission facilitated the organizing of a series of dialogues between civil society, governmental institutions and international actors on human rights issues and the role of civil society in promoting human rights. During the third mission a national training seminar for Afghan women active in the field of human rights was organized. The mission also facilitated a brainstorming amongst NGOs and human rights individuals to identify main human rights issues in Afghanistan and how civil society organizations could best obtain influence in order to improve the human rights situation.

### **WORKING TOGETHER – THE BIRTH OF THE AFGHAN CIVIL SOCIETY AND HUMAN RIGHTS NETWORK**

Very early during the first DIHR missions to Afghanistan, representatives of human rights NGOs clearly stated, that a focal point or a consultative mechanism was needed to improve collaboration and coordination of activities among civil society organizations. Already at this stage the CSHRN was practically born, formally however, not until August 2004.

The main goals of the network were to build a culture of trust and cooperation among civil society organizations through the establishment of a network as a forum for coordination and cooperation on the promotion of respect for human rights, peace, democracy, and rule of law.

CSHRN joins forces to strengthen human rights implementation in Afghanistan. The members, however, are not necessarily human rights organizations but when dealing with human rights issues they act through the network. The strength of the network consists in the very broad geographical coverage and representativity, very varied skills and experience and not least the force of speaking with one, united voice. All network activities are based on a common set of values, vision and mission as expressed in the network strategy.

The network constitutes a platform for raising human rights awareness, for accessing human rights information, for the promotion of women's and children's rights and for the promotion of the right to education. In order to reach out to the public at large, the network initiated a close cooperation with the media. Through studies, training, exchange of information and round-table discussions between civil society organizations, governmental bodies, and the media, the network contributes to the process of democratization by raising human rights issues and concerns – and increasingly to suggest solutions to these issues and concerns.

CSHRN-DIHR collaborated with radio Good Morning Afghanistan (GMA) to produce the weekly human rights programme *The Voice*. The programme presents a platform for debate where representatives of civil society, government and parliament can discuss the human rights situation in Afghanistan.

*The Voice* constitutes a bridge between civil society organizations representing Afghan citizens and Afghan authorities where they can discuss human rights violations and the way to tackle human rights issues. *The Voice* plays an important role in fostering a human rights culture in Afghanistan. DIHR has trained the journalists of GMA enabling them to organize these human rights programmes.

### **RAPID GROWTH OF THE CSHRN**

Due to security reasons, the first phase of CSHRN's life was concentrated in Kabul and the network had about 25 members. The main activities were capacity building of member organizations. The network also organized a human rights radio programme to raise human rights knowledge among the population. This programme was very innovative not only in dealing with (sensitive) human rights issues but also by offering live interviews and live debates on these issues. Another key activity was to organize a series of dialogue meetings with government institutions.

In the second phase, membership had increased to about 50 members and activities expanded from Kabul to other regions of the country. Along with capacity building and coordination the network started working on advocacy programmes. During this period DIHR concentrated its support in capacity building of the network structures. Several guidelines were developed and terms of references for the network secretariat were formulated.

During the second phase, the Swiss human rights committed organization Society for Threatened People (STP) joined DIHR and CSHRN to promote human rights in Afghanistan. STP started working with CSHRN in the field of human rights education. Under this cooperation an educational manual on fundamental human rights principles in



Afghanistan was developed. STP's role has developed into offering very useful technical assistance in the fields of managerial and thematic capacity building of the CSHRN secretariat and its member organizations.

During the third - and present - phase of network activities, DIHR's role has changed from the initial capacity building on substance and organization for CSHRN. The partnership between the two institutions was strengthened. By now, CSHRN's role in the Afghan society was recognized as a national human rights movement for the promotion of a human rights culture. In 2010, there are about 70 members and CSHRN's involvement with the government of Afghanistan on main policy issues has reached a considerable level.

Today, CSHRN is supported by a small but highly skilled and dedicated executive secretariat. The secretariat has received technical capacity building in the fields of human rights, civil society, and democracy and human rights issues. The secretariat is responsible for implementation of network programmes in the fields of coordination amongst member organizations, capacity building of member organizations, advocacy etc., whereas the responsibility of actual implementation of activities lies with the member organizations as agreed from case to case. The main policy making body of the network is the Board which is elected annually by the General Assembly consisting of all member organizations. The network has established an Evaluation Committee to monitor that the criteria for membership of the network are upheld. The network has also established a Statement Committee of 5 experts from the network, who in close cooperation with the Board act as spokespersons for and issue statements on behalf of the CSHRN. The network has four

regional offices with its main office in Kabul. The network covers 23 of the 34 provinces of Afghanistan.

### **CREATING THE STRATEGY OF CSHRN**

Strategic planning is a new concept in Afghanistan and during its first phase (two years) CSHRN did not have a strategy. The network implemented its activities through work programme in the fields of capacity building, awareness raising and coordination.

The first step towards developing a strategy consisted in a gathering of CSHRN member organizations in 2006 on strategic planning. The gathering discussed the goals and opportunities of CSHRN to define the vision, mission and key result areas of the network. The gathering was facilitated by DIHR. The goal of this first event concerning strategic planning was to discuss the role of strategic planning in a human rights movement. During the meeting, member organizations worked in groups discussing the need for having a strategy to strengthen the network as a human rights movement.

The second step consisted in a second gathering on strategic planning in 2007 organized by the CSHRN executive secretariat. The goal was to formulate the results of the first strategic gathering. Representative of the participating human rights organizations presented their ideas on the formulation of a CSHRN strategy. The strategic planning process was also discussed with representatives of the Afghan Independent Human Rights Commission. The meeting resulted in a very constructive dialogue and the main points of the strategy were formulated as following:

The entire strategy is based on the following values:

**Constitution of the Islamic Republic of Afghanistan.**

**Human rights concepts.**

**Accountability.**

**Transparency.**

**Participation.**

**Access to information.**

### **CSHRN VISION**

A society based on democracy and the rule of law in accordance with human rights. A society, where people are aware of their rights and dare to claim them through the rule of law.

### **CSHRN MISSION**

To establish a capable human rights movement and to increase the understanding and the respect for human rights and the rule of law in Afghanistan.

Three **key result areas** to fulfil this mission have been identified:

**Coordination:** To expand the civil society and human rights network and to promote the mechanisms and the structure of the human rights movement.

**Capacity building:** To raise awareness, abilities and skills (theory and practice) concerning civil society and human rights concepts.

**Advocacy:** To influence state institutions and key decision makers so that they influence the legal framework and the procedures of its implementation to be in accordance with human rights principles.<sup>1</sup>

A special strength of the strategy is the use of log frames which facilitates and improves dialogue with and understanding from donors. The strategy establishes WHY the network

exists, WHAT it wants to achieve and HOW it will achieve it. Considering a membership of about 70 different organizations this is a major achievement in itself.

The approach in the strategy does not only give structure and direction to the work of the network but also takes up some of the more sensitive issues. Consequently, it does not shy away from stating clearly the threats that the network – and thus the new democratic Afghanistan – is facing.

Another very strong point in the strategy is the emphasis that it puts on internal democracy and "rule of law" in the member organizations thus presenting itself as a good example putting action to words, "... **member and partner organizations have statutes and structures that reflect values such as democracy, transparency and accountability**".<sup>2</sup>

Very ambitiously, the network has also stated in its strategy that it aims to have "**the capacity to function independently by the end of 2011**".<sup>3</sup>

Since 2007, CSHRN has implemented its programme activities within this first strategy for the network. The application of a strategy for CSHRN has assisted member organizations to better tackle a number of issues e.g.:

Understanding the concept and potential of a network, including the concept and potential of partnerships.

Being able to work strategically and understanding how this assists in achieving the goals set.

Being able to define a vision, a mission and goals.

Being able to define and formulate action plans in a strategic framework.

## RESULTS OF THE NETWORK

- Strategy developed on decreasing family violence in Herat Province and pertaining campaign officially launched in December 2009.
- A Memorandum of Understanding between CSHRN and the Ministry of Interior, Ministry of Women Affairs, AIHRC, and Afghan Women's Network prepared in order to work jointly on the implementation of the law against violence against women.
- Work on a draft law on access to information is progressing well and CSHRN is raising public awareness on the subject e.g. through the media.
- CSHRN was strongly involved in the development of the first Universal Periodic Review report of the Afghan government. The network was part of the official delegation at the review in Geneva in May 2009 and presented a joint civil society statement at the review.
- CSHRN has represented the Afghan civil society in both national and international conferences such as the Conferences on Afghanistan in Paris, December 2008, The Hague, March 2009 and London, January 2010, in all cases making statements.
- Representatives of the CSHRN secretariat participates in important national policy making meetings and became members of different committees such as the Civil Society Board of the Extractive Industries Transparency Initiative, the Advisory Board for Labour Law, the Reporting Committee on UN treaty bodies of the Ministry of Foreign Affairs, thereby bringing human rights values to all these bodies as well as increasing the visibility of CSHRN.
- An educational unit consisting of 50 trainers available to assist members and other stakeholders, e.g. UN and AIHRC.
- In its activities, CSHRN has contributed considerably to establishing a common

terminology on human rights in Afghanistan, e.g. through the development of human rights manuals, thus facilitating dialogue and creating a human rights debate.

- Elaboration of the first draft for a law on the private sector and civil society. Such a law will constitute the basis for a more productive relationship between these two potential partners regarding funding, projects and a more active role of civil society.
- Public dialogue on issues in relation to human rights issues has been influenced by CSHRN through its statements and open letters:
  - Open letter of CSHRN to the government contributed to a discussion on increased participation of women in the cabinet and the rejection of warlords.
  - Statement on civilian casualties and the demand for the establishment of a coordination board among national and international armed forces raised an essential issue.
  - Statement on the killing of the Afghan journalist Sultan Munadi led to the establishment of the advocacy group for Munadi to support and protect journalists.
  - CSHRN statement on Sharia law contributed to the amendment of the law by the president.
- As a result of the solid relationship established over the past years, national media in both Dari and Pashto including the most respected ones give broad coverage to the statements of CSHRN.
- Joint campaigns were carried out with other national and international organizations on "Justice for All", "Peace Campaign" and "Campaign against the Abuse of Children".

The network manages to function under very difficult circumstances where security considerations both politically and in the very physical sense must be included in all activities

at all times. Having managed to be present and active nationwide in Afghanistan proves the value of solid knowledge of human rights issues, of a strategic approach and of the will and ability to enter into a constructive dialogue as essential elements for successful civil society work for human rights in difficult and dangerous environments.

The constructive dialogue has proven an efficient tool. Under very delicate and volatile circumstances, the network has managed to establish a mechanism for a considerable degree of popular participation in decision-making in relation to human rights issues. Among other things, the network has improved not only the network's own but also the people's right to access to information and thus enabled a constructive dialogue between citizens and state which improves the platform for further development of democracy in Afghanistan.

# NOTES

## CHAPTER 8

- 1 Weekly Mail & Guardian, October 31 - November 6, 1997.
- 2 Department of Justice: Justice Vision 2000 ... and Justice for All. Five-Year National Strategy for Transforming the Administration of Justice and State Legal Affairs, Pretoria 1997, p. vi.

## CHAPTER 10

- 1 Unidad de Planificación: Manual de Planificación Estratégica, Ministry of Interior, Guatemala City 2003, p.1 (own translation).
- 2 P. van Reenen & María Castells-Arrosa: Evaluation of the Project 'Strategic Planning in the Ministry of Interior' Guatemala, Danish Institute for Human Rights, Copenhagen 2004, p. 29
- 3 Committee of Experts on Public Administration: Mainstreaming poverty reduction strategies within the Millennium development goals: the role of public administration, E/C.16/2003/5, UN Economic and Social Council 2003, p. 3
- 4 There is no Ministry of Justice in Guatemala. Please see text box for a list of justice sector actors in the country.
- 5 Agreement on the Strengthening of Civil Power and the Function of the Army in a Democratic Society, paragraphs 18 and 19.
- 6 P. van Reenen & María Castells-Arrosa, 2004, p. 13. The evaluation team also mentions other reasons for the justice sector actors' lack of interest in the project proposal: general opposition to changes within the justice sector; the justice sector consists of institutions with each their own characteristics, legal basis and strong professional codes; and finally that justice sector institutions are organised as professional organisations in which decisions require consent.
- 7 Agreement..., paragraph 44.

- 8 The Planning Unit became a formal part of Ministerial structures through Ministerial Decree 79/2000.
- 9 The IDB-supported project Sistema Informático de Apoyo al Sector Justicia (Information System for Support to the Justice Sector), SIASEJU, is another recent attempt to establish a database.
- 10 Unidad de Planificación: Plan Estratégico, Ministerio de Gobernación, [publisher, city] 1999, p. 1.
- 11 Velia Jaramillo et al.: "Planning and Progressing – Justice Reform in Guatemala", in Birgit Lindsnæs, Monique Alexis and Tomas Martin (eds.): Rights in Action. Implementation of the Universal Declaration of Human Rights. The Danish Institute for Human Rights, Copenhagen 2005, p. 112.
- 12 P. van Reenen & María Castells-Arrosa, 2004, p. 27.
- 13 Velia Jaramilla et al., 2005, p. 112.
- 14 P. van Reenen & María Castells-Arrosa, 2004, p. 24.
- 15 Roberto Castillo (interview by Velia Jaramilla), august 2003.
- 16 Roberto Castillo (interview by Velia Jaramilla), august 2003.

## CHAPTER 12

- 1 The report Nunca Más states that military and paramilitary groups were responsible for 95 percent of all massacres committed during the civil war, while the guerrilla was accountable for only two percent (Oficina de Derechos Humanos del Arzobispado de Guatemala: Nunca Más i Impactos de la Violencia. Proyecto Interdiocesano de Recuperación de la Memoria Histórica, Guatemala 1998).
- 2 Increased financial resources for the judiciary, the Public Ministry and the Institute for Public Criminal Defence.
- 3 Including the creation of a new police force; constitutional and legal reforms in this area;

organizational changes; the establishment of the police career track; and a strengthening of the Police Academy, among other initiatives.

- 4 Since it produced its final report, the body's mandate has been repeatedly extended and it is currently functioning under the name of the National Commission for the Follow-up and Support of the Strengthening of Justice (Comisión Nacional para el Seguimiento y Apoyo al Fortalecimiento de la Justicia). The Commission does not have the mandate to implement or to sanction, rather its objective is to serve as an advisory body in relation to the reform and modernization of justice.
- 5 The Coordinating Instance's Planning Board is made up of the Planning Heads of each sector institution.

#### CHAPTER 13

- 1 It included a basic list of crimes and penalties, provisions related to due process, access to counsel and prisons, proper treatment of detainees, pre-trial detention, search, seizure, the use of confessions, etc. It also incorporated the UN Basic Principles on the Independence of the Judiciary (G.A. Res. 40/32 of 29 November 1985 and 40/146 of 13 December 1985) and Standard Minimum Rules for the Treatment of Prisoners (Ecosoc. Res. 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977) into Cambodian law.
- 2 World Bank: Cambodia – Legal and Judicial Reform Project, Project ID KHPE71289, Report no. PID10086, 16 February 2001.

#### CHAPTER 15

- 1 A Strategic Planning Unit (previously the project secretariat) will monitor the implementation of the vision document. The same unit will be given the authority to coordinate the implementation of the strategic intervention projects. Also, the Strategic Planning Unit will be responsible for a continued update of the vision

document in cooperation with and under guidance from a steering committee. This continual update also includes additional projects needed to implement the vision and strategic interventions. A steering committee with the Assistant Ministers and the line managers, chaired by the Minister of the Interior, will continue to convene during the implementation phase. This committee will manage the complete reform programme. If need be, a project group of ministerial experts can be consulted. This group is a technical panel responsible for the overall coordination of the reform work at the technical level. Working groups will be formed consisting of individuals from the Ministry, including the responsible strategic intervention project manager. This is the forum where the projects will be developed. Finally, a reference group will be formed consisting of a pool of experts outside the Ministry of Interior including civil society in Montenegro as well as international experts. Where necessary, these experts will be involved, providing knowledge and experience. This is where the intended cooperation agreement between the Ministry and civil society organizations could be very useful.

#### CHAPTER 15

- 1 OECD-DAC: Principles for good international engagement in fragile states and situations, April 2007, Principle 3 ([www.oecd.org/fragilestates](http://www.oecd.org/fragilestates)). A similar definition is found in DFID: Eliminating World Poverty: Building our Common Future, Section 4.2, DFID, London 2009, p. 69.
- 2 See also DFID, 2009, Section 4.3, p. 69.

#### CHAPTER 16

- 3 This is expressed as "informed democratic choice" in the Constitutional Principles, Constitution of Malawi, 12 ([www.kituoachakatiba.co.ug/malawizo.pdf](http://www.kituoachakatiba.co.ug/malawizo.pdf)).

- 4 See e.g. [www.fco.gov.uk/en/global-issues/conflict-prevention/mena/yemen](http://www.fco.gov.uk/en/global-issues/conflict-prevention/mena/yemen).
- 5 See e.g. [www.un.org/apps/news/story.asp?NewsID=33039&Cr=yemen&Cr1](http://www.un.org/apps/news/story.asp?NewsID=33039&Cr=yemen&Cr1).
- 6 OECD-DAC, April 2007, Preamble.
- 7 Michael Højlund Larsen: *Praktisk Filosofi og Ledelse*. Børsens Forlag, København 2007, p. 26
- 8 The general list of human rights examined in the analysis contained: the right to life; equality before the law; protection against torture; no sanction without legal text and non-retroactivity of laws; the right to resort to the judiciary; fair trial; non discrimination; the right not to be subject to cruel, inhuman or degrading treatment during detention, trial or execution of the penalty; the right to fair compensation; freedom of belief and religion; and the freedom of opinion and expression.
- 9 The first intervention areas concerning collecting studies through field studies have been described.

## CHAPTER 17

- 1 Quoted from CSHRN Strategy Document Update March 2009
- 2 Quoted from CSHRN Strategy Document Update March 2009
- 3 Quoted from CSHRN Strategy Document Update March 2009







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