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PROGRAMMING IN LEGAL AND JUDICIAL REFORM: AN ANALYTICAL FRAMEWORK FOR CIDA ENGAGEMENT

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EXECUTIVE SUMMARY

How does legal and judicial reform fit within the mandate of CIDA? The brief answer is that stable, equitable and just legal systems support CIDA's mandate to promote security and prosperity, if security is broadly defined to include the protection and enhancement of the quality of life of citizens, and prosperity is seen to be rooted in part in institutions and processes that favour investment, private sector initiative and economic growth. In terms of CIDA's 1995 programming priorities, reform of legal institutions and processes is integral to the promotion of human rights and to democratic development and good governance. It facilitates private sector development by establishing a secure basis for contractual relations. It can also assist in promoting the participation of women in sustainable development and in establishing a framework for environmental protection.

CIDA's engagement with legal and judicial reform programming is necessarily based upon assumptions concerning the values being promoted in such programming. Those values can be stated simply. First is a commitment to the promotion and protection of equal human rights, including the rights of individuals and communities. Second is an attachment to democratic processes of government based upon such principles as transparency, accountability and public participation. Third is a belief in the essential role played by organs of civil society in the furtherance of human rights and democracy. Fourth is a faith that legal institutions and processes can be employed in an equitable fashion to provide remedies and to help organize effective governance structures. Fifth is an acknowledgement of the mutually supportive roles that can be played by public and private sector institutions.

How does one "evaluate" a legal system? If legal and judicial reform buttresses or prompts economic and social development, what are the indicators of a well-functioning system of justice? These questions mask a morass of conflicting legal and political theories. Very often the concept of a sound legal system, properly aligned with a democratic political system, is described through the shorthand of "The Rule of Law" (or "l'Etat de droit"). That shorthand masks more than it reveals. It is simply not possible to develop an inclusively supported definition of the rule of law. It seems more helpful to programme planners to provide a list of factors which may be said collectively to define a sound and effective legal system. (See pp.11 to 13).

To promote the values and policies discussed in this report, diverse programming initiatives may be undertaken: (1) support for the reform of legal infrastructure (e.g. court systems, the police, or policy units within ministries of justice; (2) capacity-building within existing legal structures such as the courts, legislative drafting units, or the professional bar; (3) human resourcedevelopment through training(including attitudinal change) of legal personnel; (4) regulatory reform through the establishment of independent quasi-judicial tribunals and regulatory agencies; (5) assistance to constitutional reform processes through the creation of constitutional instruments and institutions; (6) democratic development

initiatives related to legal reform of the electoral systems: (7) support for legal initiatives, from the promotion of substantive equality in the law to legal aid or counselling, focussing around rights claims of dispossessed populations; and (8) assistance to NGOs (legal advocacy groups) seeking to deliver programmes to encourage substantive legal reform and rights claims.

The key issues relate to sequencing. A strong consensus has emerged in the literature on legal and judicial reform programming that the existence of "political will" and public leadership are essential if structural reform initiatives -- formal institutional approaches -- are to be effective. In addition, for legal reform initiatives to take root, there must be effective local demand. Such demand may in some circumstances be encouraged.

One of the central themes which emerged from national consultations on legal and judicial reform is that Canadians bring some unique insights and gifts to these processes. (See p.18). In choosing whether or not to engage in legal and judicial reform programming, one should ask if the particular activities envisaged can draw upon Canadian strengths.

Establishing appropriate partnerships is one of the greatest challenges in legal and judicial reform programming. In assessing partners, one must consider the values one seeks to promote through the programming, the technical needs of the programme, the capacity of the partners, and their compatibility of “culture”.

A second challenge for justice programming is sustainability. Legal and judicial reform programming is a long term investment. Sustainable programming is likely to demonstrate modesty in the identification of programme goals. Any needs assessment for justice reform must consider the legal system as a whole, and not merely individual institutions.

CIDA programmers will be called upon to monitor and justify justice reform initiatives. The clearer the programme goals and project purposes, the more likely it is that a project will produce results that can be identified (if not measured). It is also important not to make claims either to goal or purpose that are unrealistic. The central purpose of results-based management should be kept in mind, that is to encourage monitoring, not evaluation. Monitoring is iterative, and is designed to encourage critical reflection during a project or programme and to permit adjustments that can enhance impact.

INTRODUCTION

This proposed analytical framework for CIDA's engagement in justice programming results directly from the decision of Policy Branch (YHR) to convene a national Round Table on Legal and Judicial Reform in April 1996. The Round Table, which I was asked to chair, brought together a diverse group of Canadians, all of whom had been active in justice reform work in developing states or in countries in transition. The discussion was so useful that a decision was taken to follow up the Round Table with further consultations. I was asked, with Ms Veronique Lamontagne, to coordinate those consultations and then to prepare an "instrument or framework" that would encapsulate the lessons learned by Canadians and foreign partners through their justice initiatives, and would help decision-makers within CIDA to assess the utility and viability of legal and judicial reform programmes.

All people who attended the original Round Table were asked to complete a questionnaire (See Appendix I), which was also distributed to other organisations and, in an amended form, to various officers within CIDA and other government departments. Respondents often included lengthy responses that went beyond the specific questions asked, and included useful documents. Individual meetings were held with numerous CIDA officers, and members of the Departments of Justice and Foreign Affairs (See Appendix II). In November 1996, I undertook a mission to Malaysia, Thailand and Vietnam to speak with justice programme implementers and designers in those countries (See Appendix III). I had previously visited Kenya (October 1996) for similar purposes but under the auspices of the International Centre for Human Rights and Democratic Development, and have drawn upon my experience in that country as well. I have also reviewed studies on related topics undertaken by various governmental and non-governmental agencies over the last few years, and the literature on the "Rule of Law" (See Select Bibliography).

My work has been greatly facilitated by the strong organisational and analytical skills of Veronique Lamontagne, and I thank her. I would also like to acknowledge my debt to all the participants in the National Round Table, and particularly to the presenters Thérèse Bouchard, James Hathaway, Kathleen Mahoney, Pitman Potter, and William Schabas. The staff of Policy Branch (YHR) has been of great assistance throughout, but I want to emphasise the roles of Scott Wade, whose creative intelligence has shaped my own thinking in many ways, and Ellen Wright, whose wit and enthusiasm have made this project a pleasure.

I. POLICY FRAMEWORK AND PROGRAMMING PRIORITIES

In its 1995 response to the Special Joint Parliamentary Committee Reviewing Canadian Foreign Policy, the current Government reaffirmed a commitment to poverty reduction amongst the "poorest people" and to the provision of "basic human needs".**1** CIDA's mandate was set out succinctly in that Governmental response: "to support sustainable development in developing countries in order to reduce poverty and to contribute to a more secure, equitable and prosperous world."**2** The Government went on to identify six programme priorities for CIDA. First was the provision of basic human needs. Second was support for the full participation of women in sustainable development. Third was the promotion of increased respect for human rights, and the promotion of democracy and good governance, in part through the strengthening of civil society. Fourth was the promotion of private sector development. Fifth was assistance with environmental protection. Sixth was aid towards the provision of infrastructure services.**3**

How does legal and judicial reform fit within the mandate of CIDA, the principles set out in 1995 and the programming priorities? The brief answer is that stable, equitable and just legal systems support CIDA's mandate to promote security and prosperity, if security is broadly defined to include the protection and enhancement of the quality of life of citizens, and prosperity is seen to be rooted in part in institutions and processes that favour investment, private sector initiative and economic growth. Legal and judicial reform is also tied closely to the concepts of "capacity development" and "partnership", both of which underlie the principle of helping the poorest of the poor. Finally, in terms of the 1995 programming priorities, reform of legal institutions and processes is integral to the promotion of human rights and to democratic development and good governance. It facilitates private sector development by establishing a secure basis for contractual relations.**4** It can also assist in promoting the participation of women in sustainable development and in establishing a framework for environmental protection. In other words, legal and judicial reform is both a worthy end in itself anda means to facilitate other developmental objectives.

But these assertions require further justification if one is to argue the centrality of legal and judicial reform within the developmental nexus. Fortunately, over the last few years a number of major actors in international development have undertaken significant studies on the role of legal and judicial reform in supporting, even promoting, social and economic development. These studies have laid the groundwork for my analysis, and their varied understandings of the potential gains from investment in legal and judicial reform are therefore worth highlighting.

For the World Bank, legal and judicial reform seems to have been viewed in largely instrumental terms:

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1 Canada. DFAITC, *Government Response to the Recommendations of the Special Joint Parliamentary Committee Reviewing Canadian Foreign Policy* (1995), at p. 58-59.

2 *Ibid.*, at 58.

3 *Ibid.*, at 60.

4 See Bernard Rudden, *Civil Law, Civil Society, and the Russian Constitution* (1994) 110 LQR 59 (on the importance of private law in the process of legal change).

"The Bank recognizes the significant role that law can play in fostering economic development...".**5** The focus has been upon the establishment of effective "legal frameworks" to facilitate investment and a stable economic environment.**6** These “frameworks” include corporate law reform, the creation of stock exchanges, the development of property law and of effective mechanisms of property registration. I agree that these initiatives are important, but they do not exhaust the justifications for justice reform. The OECD has adopted a more expansive view of legal and judicial reform, suggesting that "there is a vital connection between open, democratic and accountable systems of governance...and the ability to achieve sustained economic and social development.'**7** The linkage between democracy, human rights and legal reform was also advanced in the *Plan du Caire* of *La Francophonie*.**8** Similarly, the German Foundation for International Development has stated that reform in the justice sector is required "to strengthen the democratic and political culture and extend civil rights.'**9**

In my view, the most comprehensive justification for legal and judicial reform has been offered by the Overseas Development Administration of the United Kingdom:

> Law is a crucial element of both good government and the wider development agenda. A sound and well-enforced legal framework provides benefits which are often desirable ends in themselves but also help provide a framework within which economic and social development may be achieved. ...
>
> Law is more than lawyers -- to be of value in society it must provide guiding principles that allow for regularity and rationality in the way in which disputes are settled and the way in which relationships are governed.**10**

This approach recognizes both the intrinsic and instrumental value of a well-functioning legal system, and emphasizes its support for economic, social and political development. These values underscore the growing recognition of the importance of legal and judicial reform, and serve to justify programming in this area as part of CIDA's mandate "to support sustainable development in developing countries in

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5 World Bank. Legal Department, "The World Bank and Legal Technical Assistance: Initial Lessons" (Washington: World Bank Policy Research Working Paper 1414, 1995), at 1.

6 *Ibid.*, at 7-8.

7 OECD, "DAC Orientations on Participatory Development and Good Governance" (Paris:OECD, 1993), at 7.

8 Agence de la Francophonie. ACCT, “Plan d’action francophone en faveur de la Justice, de l’Etat de droit, des Droits de l’Homme et du Developpement (1996-2000)” (1996). See also Human Rights Council of Australia, “The Rights Way to Development: A Human Rights Approach to Development Assistance” (1995) (http://www.ozemail.com.au/-hrca).

9 German Foundation for International Development, *International Round Table: "Rule of Law, Legal Certainty and Judicial Reforms in Latin America"* (Berlin: German Federal Ministry for Economic Cooperation and Development, 1995), at 16.

10 United Kingdom. Overseas Development Administration, *Law, Good Government and Development: A Guidance Paper* (1996), at p. 1 and 12.

order to reduce poverty and to contribute to a more secure, equitable and prosperous world."

A. Canadian Values and Programming Priorities

CIDA's engagement with legal and judicial reform programming is necessarily based upon certain assumptions which relate to the values being promoted in such programming and the goals which are sought to be achieved. The foregoing justifications, and a review of the comments offered by participants in an extensive national consultation, help to reveal underlying values that I suggest are shared by most Canadians working in the area of legal and judicial reform. (See Appendix II). Those values can be stated simply, though their import is great. First is a commitment to the promotion and protection of equal human rights for all, including the rights of individuals and communities. It must be emphasised that Canadian values concerning human rights are rooted directly in inclusively supported international standards, articulated both in formal treaties and in various plans of action adopted to promotethe implementation of treaty rights.**11** But in addition, Canadians have taken a leadership role in the articulation of principles of substantive equality within the legal system.**12** Second is an attachment to democratic processes of government based upon such principles as transparency, accountability and public participation; these principles are viewed as central to the legitimacy of any governing regime. They include a strong reluctance to support governmental structures which are perceived to be corrupt. Third is a belief in the essential role played by organs of civil society in the furtherance of human rights and democracy. Fourth is a faith that legal institutions and processes can be employed in an equitable fashion to provide remedies for breaches of rights and to help organize effective governance structures. Fifth is an acknowledgement of the mutually supportive roles that can be played by public and private sector institutions in the promotion of the other values identified above; Canadians are loathe to demonize the state or private interests.

The choice of appropriate programming mechanisms will depend upon numerous factors relating to the context, the precise values that are to be promoted and the capacity of foreign agents to provide support to local actors. Before delving further into these issues of choice and constraint, it will be helpful to focus first upon the question of overall strategy: what might one seek to accomplish through legal and judicial reform programming? To answer that question, one must first assess the factors which

11 See, for example, the *United Nations Convention on the Rights of the Child*, UNGA Res. Of 20 November 1989, UN Doc. A/RES/44/25, entered into force on 2 September 1990; and the resulting "Plan of Action in Juvenile Justice and to Implement the Convention on the Rights of the Child".

12 The Supreme Court of Canada has decided that the equality guarantee contained in s. 15 of the *Canadian Charter of Rights and Freedoms* relates not only to "formal" or "procedural" equality, but also to "substantive" equality. This implies that an evaluation whether a given individual or group is being treated unequally requires a close analysis of context. Substantive equality demands the accommodation of differences within the legal system, not a static test of "equal treatment": ...for the accommodation of differences, which is the essence of true equality, it will be necessary to make distinctions." *Andrews* v. *Law Society of British Columbia* [1989]1 S.C.R. 143, at p. 169.

contribute to a sound legal system.

II. LEGAL SYSTEMS: AN ANALYTICAL FRAMEWORK

How does one "evaluate" a legal system? If legal and judicial reform buttresses -- even prompts -- economic and socialdevelopment, what are the indicators of a well-functioning system of justice? These seemingly simple questions mask a morass of conflicting legal and political theories. Very often the concept of a sound legal system, properly aligned with a democratic political system, is described through the shorthand of "The Rule of Law" (or "l'Etat de droit"). Unfortunately, that shorthand tends to mask more than it reveals. There is no simple, all-inclusive, definition of the rule of law any more than there is an inclusively supported definition of "law".

The rule of law concept is often associated with the nineteenth-century English legal historian, Dicey, though its pedigree is much older. In his *magnum opus*, Dicey argued for the supremacy of Parliament as the defining feature of a legal system, for it epitomized the ordered hierarchy of authority which, for him, characterized law.**13** Thus, the rule of law can be defined simply as the need to follow the law as set down by constituted authority. The essential questions, then, would be procedural and value-neutral: was the law validly enacted, internally consistent and equally applicable to all?**14**

It is this very neutrality that has caused many twentieth-century commentators to challenge Dicey's version of the rule of law, and to argue that the rule of law is only relevant if it possesses a substantive content, if it expresses certain values that a legal system should uphold. These values could include, depending upon the commentator, equality (especially substantive equality), fairness, transparency, accountability, consistency, and predictability.**15** It is commonly argued that, absent its capacity to promote substantive values, the rule of law becomes nothing more than a legitimation of raw power. On the other hand, given its potentially wide and varying substantive definition, the rule of law threatens to become so amorphous as to be without value as an analytical tool. Furthermore, there is no accepted manner in which the substantive content of the rule of law can be defined; it will inevitably depend upon cultural constructs and value preferences.

The predictable diversity of approach is apparent within thedevelopment community, where various attempts have been made to define the rule of law as part of the justificatory exercise for legal and

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13 A.V. Dicey, *The Law of the Constitution*, 10th ed (1960).

14 British Institute for International and Comparative Law, *Good Governance Project: "The Rule of Law"* (Discussion Summary, 27 February 1996) (Mimeograph), at p. 7.

15 See, *e.g.*, Lon L. Fuller, *The Morality of Law*, rev'd ed. (1969); John Finnis, *Natural Law and Natural Rights* (1980); Alasdair MacIntyre, *Whose Justice? Which Rationality?* (1988); Martha Minow, "Interpreting Rights: An Essay for Robert Cover" 96 Yale L.J. 1860 (1987); and Thomas M. Franck, *The Power of Legitimacy Among Nations* (1990).

judicial reform programming. For some development actors, the rule of law is best defined by reference to the existence of binding adjudicatory mechanisms, primarily national courts. For the World Bank, "[a]n essential element of the rule of law concept is the existence of an independent dispute resolution body that resolves conflicts in the application of the rules or addresses instances of non-compliance with the rules."**16** A similar approach is adopted by the USAID**17** and by the Council of Europe.**18**

The OECD also emphasises the importance of an independent judiciary to the rule of law, but adopts a wider analysis. On this view, the rule of law is fulfilled when human rights are protected by a legal system that controls the exercise of power by government through court supervision of executive and administrative powers. In addition, there must be equality of access to redress and equality of treatment, whatever one's social status.**19**

The ODA of the United Kingdom has adopted a "Guidance Paper" on law, good governance and development in which the rule of law is defined succinctly:

> The Rule of Law emphasises the fact that government should be conducted in accordance with known and objective legal principles, should be able to point to lawful authority when exercising power and, furthermore, that law exists to protect and guide all elements of society.**20**

Implicit in this definition is an undefined substantive content for the rule of law. Not only is "lawful authority" relevant, so to is the protection and guidance of "all elements of society". Onemight read in a notion of equality and either human rights or paternalistic protection.

Within the Canadian Government, the Department of Foreign Affairs and International Trade has offered a definition of the rule of law for the purposes of promoting democracy: "The law must be applied equally in a non-arbitrary fashion and be seen as an accurate reflection of a social consensus."**21** The element of "social consensus" also betrays an implicit substantive content for the rule of law, but the components remain undefined.

Finally, the rule of law, and the values it contains, can be viewed from a different instrumental

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16 World Bank. Legal Department, *supra*, note 5, at 15.

17 United States, USAID, Office of Evaluation, "Weighing in on the Scales of Justice: Strategic Approaches for Donor-Supported Rule of Law Programs" (February 1994) at p.6 (USAID Program and Operations Assessment Report No. 7, by H. Blair and G. Hansen).

18 Council of Europe. Committee of Ministers, *Recommendation No. R (94) 12 and Explanatory Memorandum* (on "Independence, Efficiency and Role of Judges) (13 October 1994, [s:\cdcj\recomexp.eju], Council of Europe Press, 1994), at p. 7 (describing the independence of the judiciary as a "central pillar" of the rule of law).

19 OECD, *supra*, note 7, at p. 14.

20 United Kingdom. ODA, *supra*, note 10, at p. 3.

21 Canada. DFAIT. Global Issues Bureau, *Towards a Canadian Framework for Promoting Democracy* (Ottawa: N.D.), at p. 3.

perspective. The "Good Governance Project" of the British Institute for International and Comparative Law has stressed the importance of the rule of law in strengthening "social peace and stability." On this view, "[r]ule of law mechanisms provide a stable and non-violent means of structuring individual and group relationships within society in which disputes are settled on the merits of the positions, rather than by force."**22** Although controlling resort to force is an important goal, the British Institute itself notes that an emphasis upon "stability" and "social peace" will not necessarily lead to the promotion of other equally important goals such as public participation and democratisation. Nonetheless, this definition is useful in highlighting the importance of legitimate force within legal systems. Nowhere is this more apparent than in the realm of criminal law where the "legal system" must be envisioned broadly to include the elements of law enforcement and corrections.

I have concluded that it is simply not possible to develop an inclusively supported definition of the rule of law. Instead, it seems more helpful to development programme planners to provide a list of factors which have been identified in debates concerning the rule of law, factors which may be said to collectively define a sound and effective legal system. Precise articulations of these factors are found in international treaties and plans of action which evidence broad support, thereby undercutting assertions of cultural hegemony. For ease of presentation, the relevant factors will be enumerated in point form:

Accountability; Subjection to External Evaluation and Criticism Including, most importantly, freedom of the media. As well, no judicial abuse of contempt of court or libel procedures. Toleration of legal advocacy groups. Excessive use of force by lawenforcement and corrections officials is subject to public scrutiny and sanction.

Anti-corruption Unwillingness to support regimes which thrive on or tolerate corrupt practices both in the public and private sectors. The legal system itself should be free from corruption and should be seen as an instrument to inhibit or control corruption in other institutions of government and the private sector. In particular, law enforcement agencies must be free to investigate and prosecute all elements of society, motivated by the public good, not by personal advantage.

Efficacy Including the wise use of resources; an ability to shape and re-make legal processes when necessary; the competence of key actors such as governmental justice officials, lawyers and members of the judiciary.

Equality Before and Under the Law The legal system treats various actors in a fair and substantively equal manner, applying standards of justification that are relevant to the context of diverse elements of society, especially the poor, women and civil society.

Equality of Access Comprehension of the legal system by citizens and access to basic advice. Should address specific concerns of "disenfranchised" groups such as women, the poor, rural communities, and

22 British Institute for International and Comparative Law, *supra*, note 14, at p.12.

indigenous peoples. Access should be viewed not only as a question of process, but of substantive legal reform; the content of law and how it is interpreted are often more important barriers to justice than are cumbersome and expensive procedures.
Independent Actors (Judiciary, Quasi-judiciary, the Legal Profession, and Law Enforcement Officials) Judges have the capacity to exercise truly independent judgment, as do members of administrative tribunals; they are protected from governmental or other pressures to conform. Members of the legal profession exercise "professional" judgment in giving advice; they are not merely instruments of a dominant elite. Law enforcement officials make decisions on investigation and prosecution free from the political interference of government.

Internal Value Preferences (openness and transparency, fairness, consistency, predictability) Within the legal system, and its decision-making processes, certain central "legal" values are upheld. These values shape rule-making, rule interpreting and rule enforcing.

Legitimacy; Indigenous Support Relates to respect for the legal system and perceived objectivity of key actors, as well as to an acceptance that the rules of the system are broadly fair, equally enforced and possible of individual compliance. Allows for the existence of legal pluralism where indigenous solutions areencouraged, not the mere importation of unmediated foreign models.

No Retroactive Rules It is possible for the citizen to know in advance what legal constraints affect his or her choices and preferences (especially in criminal law). Rules are applied retroactively only in extreme circumstances with public justification.

Stability yet Flexibility Relates to the internal value of predictability of rules, but here externalised. The system as a whole is stable, but with the possibility to accommodate changing situations and perceptions.

Timeliness Delays of process are reasonable; achieving remedies is possible.

Understandable and Reasonable Parameters for the Legal System A sense amongst the citizenry that the application of law is constrained, that not every policy preference becomes "law". Continued space for political debate and disagreement, and for the evolution of local solutions to political and legal challenges.

Each of these desiderata is relevant, though to varying degrees, to the four distinct but interrelated institutional elements that make up a legal system: (1) the articulation, formulation and drafting of rules; (2) the application and interpretation of rules; (3) the provision of legal representation and advice; and (4) the promotion of public access and understanding.**23** Obviously, depending upon the circumstances

23 I am indebted here to the lucid work of the United Kingdom's ODA, *supra*, note 10, at p. 7. The articulation, formulation and drafting of rules encompasses such processes as public demands for legal reform, the work of lobbying groups

being analysed, the relevance of each of these factors will have to bedifferentially weighed. That is why the factors have been listed alphabetically to resist any temptation to infer an established hierarchy. If any hierarchy of factors is to be posited for the purposes of CIDA programming, it should be clearly related to the policy framework (including Canadian values) set out in the preceding section; even then, the hierarchy is likely to shift from one country situation to another as the promotion of values is itself amenable to some movement depending upon capacity and context.

III. POSSIBLE POINTS OF ENGAGEMENT WITHIN LEGAL SYSTEMS; SEQUENCING

To promote the values and policies discussed in Part One of this report, diverse programming goals**24** may be pursued, ranging from modest financing to support the stable provision of day-to-day legal services, to a broad programme designed to encourage and facilitate large-scale social, political and economic reform. In this latter goal, one would be looking to foster social change through which relations not only between the citizen and the state, but also between private citizens, would come to be seen as governed by predictable principles and norms that are externally validated through processes of dispute resolution. Between these two extremes lie other points of possible engagement including programming aimed at fostering the sustainability of existing levels of legal services (primarily training), or support for legal reform initiatives such as the creation of administrative tribunals, alternative dispute resolution systems, or programmes designed to facilitate equal access to justice (usually public legal education or legal aid initiatives).**25**

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and professional associations, Parliamentary Committees, Ministerial working groups, drafting committees, Parliaments, etc. The application and interpretation of rules is accomplished through public response to rules (eg. ignoring or abiding by the rules in most circumstances), decision-making in governmental bureaucracies, the work of law enforcement officials, writings of legal commentators, administrative agencies and tribunals, and courts, etc. Legal representation and advice may be offered by trade unions, women's organisations, community groups, legal aid clinics, law faculties, bureaucrats, members of professional organisations, etc. Public access and understanding may be promoted by many of the actors referred to above, including various organs of civil society, professional associations, courts, governmental agencies, etc. It must be emphasised that the elements of a legal system I have described are often overlapping, and various groups may be responsible for a variety of functions.

24 I am using the word "goal" in the sense adopted by CIDA's logical framework analysis: "a level of objective immediately above that of the project purpose which links the project to a wider set of strategies being undertaken to address a specific problem." See also the discussion in Barbara Brown, *Results-Based Management: Danger or Opportunity [Lessons from the CIDA Experience]* (Canada. CIDA, 15 August 1995), at p. 12-13.

25 In this listing of levels of engagement, I am tracking work already undertaken by the Overseas Development Administration. See United Kingdom. ODA, *supra*, note 10, at 6.

Another way of framing the options, focussing upon specific elements of the legal system, is as follows: (1) support for the reform of legal infrastructure, such as court systems, quasi-judicial tribunals, the public service administering justice, the police, or policy units within ministries of justice or other governmental departments; (2) capacity-building within existing legal structures such as the courts, legislative drafting units, or the professional bar to perform established functions moreeffectively; (3) human resource development through training(including attitudinal change) of personnel, including judges, members of the bar and public servants to promote change within the existing legal system; (4) regulatory reform through the establishment of independent quasi-judicial tribunals and regulatory agencies (especially in cases of widespread privatisation of previously governmental activity); (5) assistance to constitutional reform processes through the creation of constitutional instruments and institutions; (6) democratic development initiatives related to legal reform of the electoral systems: (7) support for legal initiatives, from the promotion of substantive equality in the law to legal aid or counselling, focussing around rights claims of dispossessed populations (including the poor, women, indigenous peoples); and (8) assistance to NGOs (legal advocacy groups) seeking to deliver programmes to encourage substantive legal reform and rights claims by dispossessed populations, or by the general public.

This listing moves from essentially formal reform processes, institutionally oriented, to processes which are more open and largely based upon attitudinal change. Each may overlap, and none are mutually exclusive. The key issues relate to sequencing.

A strong consensus has emerged in the literature on legal and judicial reform programming that the existence of "political will" and public leadership are essential if structural reform initiatives -- formal institutional approaches -- are to be effective.**26** In other words, although fundamental structural reform may ultimately be required to promote the factors associated with a sound legal system, it may not be possible to start with such reforms in the absence of strong public sector commitment. One important implication of this insight is that "institutional strengthening" will not be an appropriate *reform* strategy unless the institutions to be strengthened are to be tested against relevant criteria for sound legal systems apart from efficacy (or efficiency) alone.**27** For example, improving the administrative functioning of a court system working comfortably within the constraints of a repressive regime is not likely to prompt legal reform. Similarly, enhancing the administrative capacity of a justice ministry riddled with corruption may only lead to the more efficient exploitation of corrupt practices.

At the same time, one must be careful to avoid monolithic assessments of institutions and

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26 See, *e.g.*, United States, USAID, *supra*, note 17, at p. 28.

27 *Contra* Canada. DFAIT, *supra*, note 21, at p. 3.

groups. In some circumstances it may be possible to work with segments of governing structures, or with reform-minded individuals, in the hope of encouraging ferment within an otherwise stagnant and repressive system. Modestattempts at structural change may be possible even if the political will to change is highly localised. One must then caution realism: modest and localised attempts at structural change are likely to yield modest and localised results, at least over the short and medium terms.

A second finding common to most evaluations of legal and institutional reform programming is that "to be successful," reforms "must take root in the local legal community as well as the population at large."**28** This suggestion seems to leave open the possibility that reforms can be implanted to take local root through nurturing programming. But some influential actors in international development have adopted a contrary view, positing that "[l]egal systems may not improve without significant demand from within."**29** This approach could imply that there is no point in any programming in legal and judicial reform unless it is responsive to perceived local demands for change. I am inclined to believe that a balance can be struck between these two propositions: while there is probably little to be gained from extensive programming in the legal and judicial realm unless there is local demand, modest initiatives to encourage local critical reflection may be useful even in the absence of a public clamour for change. For example, programming which tries to encourage attitudinal change may be useful to prompt greater local demand for reforms.

USAID has suggested that "...in countries lying in the grey zone characterised by a mixed constellation of both favourable and unfavourable conditions for reform," the vast majority of cases, I would suggest, "an initial strategy of constituency and coalition building may be in order prior to engaging in significant institution building."**30** Related to this priority setting is USAID's conclusion that in any attempts to promote greater access to justice, support for legal advocacy groups in civil society represents the most "promising" strategy.**31** Legal advocacy groups typically employ legal tools to assist disadvantaged groups, but they also engage in advocacy and lobbying that helps to build a broader constituency for reform.

Once an indigenous constituency for legal and judicial reformhas been identified, that constituency can be nurtured through core support to civil society activities, and support for responsive governmental initiatives. Ultimately, institutional strengthening may become appropriate, but this will

28 World Bank, *supra*, note 5, at p. 25.
29 OECD, *supra* note 7, at p. 14.
30 United States, USAID, *supra*, note 17. at p. 51.
31 *Ibid.*, at p. 35. Legal advocacy groups are distinguished from legal aid providers and paralegal activists that tend to focus upon individual cases or issues, without a broader strategy for reform.

depend upon the underlying political will to change, the possibility of influence from external critics such as legal advocacy groups and the media, and a basic structural capacity to engage in reform. The later point relates principally to the human resources present within the system capable of guiding the institutional strengthening. It may be appropriate to engage in a parallel strategy to build capacity for reform within governmental justice systems (through human resource initiatives) while encouraging and supporting demands for change in civil society. The central point is to avoid premature engagement with the existing formal justice structures, if such engagement is likely to "strengthen" systems resistant to reform initiatives. (See the Programming Framework in Annex I).

It may seem that the sequencing I have described is overly rationalistic, and that complex political and social settings will often preclude adopting any systematised approach to programming in the justice sector. I acknowledge that one must sometimes exploit entry points where they become available, and work with reform-minded individuals where one finds them. Moreover, within the various groups and institutions that constitute the justice sector, one may find that sequencing will have to start at different places and move at different speeds. But these caveats do not negate the central point: where possible, one should seek to engage where the engagement is most likely to be effective. If the best approach is not possible, one may still want to act, but in full knowledge that the actions may not produce the desired results. One may also try to enter the fray where possible, but attempt to jump-start earlier stages of a more logical sequencing. The key will be to refer back to programme goals and to assess the available points of engagement realistically. Risks are often worth taking, but they should be acknowledged as risks.

Programming in the field of justice need not take place at the bilateral level. Indeed, there are strong arguments to support a regional approach. First, given the posited connection between legal reform and the promotion of human rights and good governance, regional programming may be viewed with less suspicion by target governments, allowing for more forceful initiatives, particularly those targeted to attitudinal change. Secondly, regional programming can take advantage of regional resources. In Southeast Asia, for example, the Philippine NGO experience could prove most helpful in suggesting strategies for the development of civil society within neighbouring countries. Thirdly, regional justice programming could allow for the more efficient sharing of Canadian resources. Some of the problems faced within the legal systems ofUganda, Tanzania and Kenya are common, for example.**32** Common challenges are also presented in many states of Central and Eastern Europe. Canadian expertise could be relevant regionally, and a common strategy for engagement might usefully evolve.

The principal risk with a regional approach is the effacing of national distinctiveness, and an erasure of context. For that reason, any regional justice programmes should include mechanisms and incentives for close collaboration with CIDA country programme staff both in Ottawa-Hull and at the

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32 Consider the potential role of multi-partyism in promoting legal pluralism (customary law within national systems), or the independence of the judiciary.

post.

Justice programming may best eschew bilateralism in another sense as well. An absolutely consistent criticism of legal and judicial reform initiatives is their tendency to isolation, marked by a lack of coordination amongst members of the donor community. The Legal Department of the World Bank has argued:

> Legal reforms in developing countries are often supported in a piecemeal approach consisting of isolated interventions in a particular area of law. The result is a lack of focus by donors and a lack of strategic thinking in financing and providing legal technical assistance.**33**

For a donor of modest means, such as Canada, collaboration and joint planning with other donors would seem an attractive option, and one likely to boost the impact of legal and judicial reform programming. Moreover, collaborative approaches may prove to be more financially sustainable over a number of years. Such cooperation would have to be undertaken within a framework sensitive to the Canadian values and CIDA priorities set out in Part I(A) of this paper. Multilateral coordination underscores, of course, that Canadian values, especially concerning human rights, are rooted in international standards that can be invoked more forcefully by a group of donors than by any single country or institution.

IV. OPPORTUNITIES AND RISKS

One of the central themes which emerged from national consultations on legal and judicial reform is that Canadians bring some unique insights and gifts to these processes. Identified strengths include: (1) national experience with legal pluralism (functioning with overlapping systems of common law, civil law andaboriginal law); (2) related substantive knowledge of a diversity of legal systems; (3) an ability to work in French and English; (4) a sensitivity to cultural difference that is more refined than that of many other donors; (5) a rich experience in basic legal training and judicial training, not only in substantive areas of law but in "values education" or “social context education” (eg. the promotion of substantive equality); and (6) a demonstrated ability to form partnerships between government, civil society and the private sector.

In choosing whether or not to engage in legal and judicial reform programming, one should ask whether the particular activities envisaged can draw upon these perceived Canadian strengths. This

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33 World Bank. Legal Department, *supra*, note 5, at p. 21.

question is relevant first to the elaboration of a programme; should CIDA be working on these issues in a particular country or region? But it is also useful to ask, secondly, whether particular project activities within a programme make sense given Canadian expertise. To help answer these questions, CIDA should consider the establishment of a Canadian Legal and Judicial Reform Resource Inventory that would be available both to CIDA officers and to outside groups engaged in programme and project design. Even when programming is largely responsive, such an Inventory could help in the assessment of proposals by providing names (matched with experience) for informal referencing and formal evaluation. In addition, when joint programming opportunities arise with other donors, such an Inventory could ensure the possibility of useful Canadian participation.**34**

Establishing appropriate partnerships is one of the greatest challenges in legal and judicial reform programming. The difficulties can arise at both ends of the relationship, Canadian and focus country or region. The first issue relates, of course, to programming goals. One must identify clearly the useful points of engagement (see Part III) and establish a sensible sequencing if one is to evaluate the appropriate partners here and abroad. Judicial councils or professional associations in Canada are unlikely to possess the expertise required to assist in the delivery of popular legal education campaigns or in the bolstering of indigenous legal advocacy NGOs. Supernumerary judges are not likely, in most cases, to be vigorous proponents of attitudinal change within legal systems. Similarly, law professors may not be the most effective judicial trainers, for they may be viewed as out of touch with the preoccupations of an embattled judiciary. Outside Canada, supreme courts operating without judicialindependence may not be sensible targets for training in the administration and processing of case loads. Loosely organized NGOs will not be able to deliver structural legal reform.

In assessing partners, one must consider the values one seeks to promote through the proposed programming, the technical needs of the programme, the capacity of the partners both in terms of analysis and implementation (including an assessment of influence), and the compatibility of "cultures" of Canadian and foreign partners.

A review of the literature and comments by active participants in justice reform initiatives reveal more specific issues concerning partnerships that are also worthy of note. The cost of legal and judicial reform initiatives can vary enormously depending upon the chosen implementers. Many private sector law firms in Canada are interested in expanding their client base overseas, and engagement in publicly funded reform initiatives is one of the obvious strategies to develop contacts. Even if these firms are willing -- and they generally are -- to charge out their services at a "development rate", they will typically be more expensive to support than public sector actors such as ministries of justice or organisations in civil society. On the other hand, for certain types of programming -- particularly where substantive

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34 The Inventory could also usefully include information concerning organisations and their capacity to manage and implement programming. Two distinct needs must be assessed: (1) analytical and programme design capabilities, matched with experience; and (2) technical capacity (including infrastructure) to deliver programmes.

areas of law are to be reformed -- private firms may be a source of great expertise. For example, some of the most qualified Canadians who deal with corporate structures, the creation of stock exchanges, property law, and registration systems are members of private law firms.

With increasing constraints upon resources, NGOs and some public sector actors such as universities and ministries of justice face great difficulties in supporting core operations. Infrastructure support is often weak and the addition of CIDA-funded programming may not be sustainable unless arrangements are made to cover all flow-through costs and overhead. If this support is not available, programme delivery may not be possible, and alternative Canadian partners may have to be sought out. This issue underscores a broader problem. While many potential Canadian partners are endowed with strong analytical skills in the area of justice reform, matched with relevant experience, the organisational structures available to deliver programming are neither numerous nor, generally speaking, strong. This factor may also impel CIDA to seek out multilateral partnerships.

Given the potentially politicised nature of justice reform, there may emerge an institutional tendency within CIDA (and within Canadian partner organisations) to choose seemingly "safe" partners. It is interesting to note, for example, the large number of justice initiatives focussing upon judicial training. Improving the capacity of judges to undertake their important role is hard to criticise. Nonetheless, for reasons relating to: (i) lack ofindependence, (ii) the actual role judges play within different legal systems, and (iii) the need for sequencing of engagement in reform (see Part III), judicial training should not become a "fall back" activity. Judicial training should usually be pursued in conjunction with more creative -- and potentially more effective -- programming.

The extensive review of its own justice programming undertaken by USAID reveals a final, and no doubt controversial, caution concerning potential partners. The USAID Office for Evaluation argues forcefully that indigenous bar associations are unlikely to serve as "major sources for reform initiatives".**35** The Office points to three factors in support of this contention. The membership in bar associations is so diverse that consensus on reform is difficult to achieve. More pointedly, many members of these associations have vested interests in the continuity of the existing systems and structures. Finally, if the associations become engaged in reform advocacy, it is generally from the perspective of party-political opposition.**36** The USAID study is admittedly limited, and the conclusions must be treated with caution. One might indeed imagine circumstances where an indigenous bar association is a leading proponent of change; the caution is merely to ask the question of appropriateness in relation to *all* potential partners.

A second central challenge for legal and judicial reform programming is sustainability. It is

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35 United States. USAID, *supra*, note 17, at p. 22.

36 The experience of the Law Society of Kenya seems to support these observations. On the other hand, the Bar Council of Malaysia, despite some internal dissention, appears to have been able to adopt a frankly oppositional stance *vis-à-vis* the government on some issues without engaging in party politics.

acknowledged with absolute unanimity that justice reform is a long-term process.**37** This is not an area where quick fixes can work, nor is it likely that programming can be effective unless there is consistent engagement over a number of years, usually extending beyond standard CIDA programme cycles. Implications are numerous, including the need for longer-term financial planning to support continuity of programming, careful iteration of programme (see Part III), the usefulness of joint planning with other donors, and the need to evaluate the long-term interest and commitment of Canadian and foreign partners. Sustainability also relates to the problem ofunrealistic expectations. Sustainable programming is likely to demonstrate some modesty in the identification of programme goals. Unless a massive and long-term campaign is being launched, it is best to avoid claims that particular initiatives will cause fundamental societal change.

A third challenge that has already been adverted to in the discussion of priorities and sequencing is consistency, which is closely related to overall effectiveness of programming.**38** Legal and judicial reform initiatives should be undertaken within a strategic framework linked to the pursuit of programme goals. Too often they are conceived rather as *ad hoc* responses to specific problems. The Overseas Development Administration of the UK has emphasized that any needs assessment for justice reform must look at the legal system as a whole, and not only at individual institutions. It is likely to be the case that several institutions or groups contribute to a particular legal process or service, and that assistance may have to be directed to a number of these institutions or groups.**39**

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37 See, *e.g.*, World Bank. Legal Department, *supra*, note 5, at p. 17; and OECD, Development Assistance Committee (DAC), "Draft Final Report of the Working Group on Participatory Development and Good Governance to the DAC", DCD/DAC/PDGG (96)4 (October 1996), at p. 5 (Note by the Secretariat).

38 This linkage was also posited in the case of programming in human rights and democratic development by Phillip Rawkins & Monique Bergeron, *Lessons Learned in Human Rights and Democratic Development Programming: A Study of CIDA's Bilateral Programming Experience* (CIDA Policy Branch, December 1994), recommendation A.4.1.a.

39 United Kingdom. ODA, *supra*, note 10, at p. 9. A good example is the process of legislative reform in Vietnam. In that process key players include the Law Department of the National Assembly, the Ministry of Justice, the Prime Minister's Research Group, the particular ministry with oversight of the issue-area, and if the issue is politically sensitive, Party authorities directly. Other institutions of legal analysis are also potentially involved, including the Institute of Law Research (Ministry of Justice), the Institute of State and Law (Hanoi University), and the Vietnamese Lawyers Association.

V. MONITORING LEGAL AND JUDICIAL REFORM PROGRAMMING

For a number of years now, CIDA has emphasized "results-based management" as a means of encouraging effective programming, and providing justification for the allocation of scarce governmental budget resources. In this context, CIDA officers have been asked to clarify project purposes and programme goals**40** with a view to assessing concrete results. A result is defined "to mean the final achievement of funding, in particular the benefit of the fundedactivity to clients, at the level of purpose or goal."**41** This definition does not eliminate the challenge to factor out short-term and generally modest goals, largely within the control of a project team, and long-term and generally more ambitious goals which depend upon many factors outside the control of the project team.

Not surprisingly, the emphasis on results has been subjected to a number of cautionary observations. In the words of Morgan and Qualman:

> ...the usefulness of [results-based management] depends on how it is applied. If it emphasizes performance measurement and donor control (management by results), it risks undermining institutional and capacity development. On the other hand, if it is used strategically, is indigenized and is supplemented by other techniques, it can be a useful part of performance management (management for results).**42**

Another way of phrasing the same concern was suggested by Brown:

> As with any management approach, nothing can replace clear values, good judgement and common sense. Without these, results management risks becoming just another straightjacket to stifle creativity and work against results.**43**

These words of restraint and warning are particularly apt when addressing the monitoring of justice

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40 See *supra*, note 24 and accompanying text.

41 Brown, *supra*, note 24, at p. 12.

42 Peter Morgan & Ann Qualman, *Institutional and Capacity Development, Results-Based Management and Organizational Performance* (CIDA Policy Branch, February 1996), at p. i (Executive Summary).

43 Brown, *supra*, note 24, at p. 7.

initiatives.

At the national round table on legal and judicial reform hosted by CIDA, one of the clearest messages sent by Canadian actors was rejection of most quantitative measures of results. In a sense, this rejection is consistent with results-based management, for in the area of legal and judicial reform, quantitative measures are likely to relate purely to outputs (number of judges trained; number of cases processed), rather than to results as defined above. A rejection of quantitative measures does not necessarily imply a rejection of monitoring on the basis of results.

But at the round table, scepticism ran deep. There was obvious concern that the need to demonstrate results would prompt short-term approaches and cautious projects actually inimical to any significant reform. Such scepticism is entirely predictable given the nature of much justice programming. From the perspective of the values being promoted, legal and judicial reform programmes are often linked to support for human rights and democratic development. It is precisely this type of political and social development programming that is notoriously hard to assess: "the principally qualitative nature of political change has tended to make analysts shy away from attempts to measure or quantify it."**44**

Similarly, when one considers the possible points of engagement for justice programming, one recognizes the preponderance of capacity development initiatives, and the ultimate need -- in almost all situations -- for institutional and structural reform.**45** It is in exactly these two areas, capacity development and institutional reform, that assessment of results is most difficult: "donors are now intervening in complex organisational systems that do not lend themselves to conventional analysis and management."**46** Morgan and Qualman warn against a "technocratic" approach to institutional and capacity development, suggesting that these types of initiative "are, in the final analysis, political as much as technical or organizational...". **47**

Do these concerns imply that assessment is impossible, that one must simply operate on faith? That conclusion is unlikely to satisfy senior managers being called upon to justify programmes in times of

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44 Ilan Kapoor, *Indicators for Programming in Human Rights and Democratic Development: A Preliminary Study* (CIDA Policy Branch, July 1996), at p. 1.

45 See United States. USAID, *supra*, note 17, at p. 29 ("[V]irtually all legal systems stand in need of structural change.") It was emphasised above, however, that appropriate sequencing would generally place fundamental institutional reform near the end of a long-term justice reform agenda.

46 Morgan & Qualman, *supra*, note 42, at p. 15.

47 *Ibid.*

budgetary constriction. Instead, it seems appropriate to emphasize some of the insights derived from existing studies of results-based management and potential indicators. First, the clearer the programme goals and project purposes, the more likely it is that a project will produce results that can be identified (if not measured).**48** Second, it is important not to make claims either to goal or purpose that are unrealistic. The temptation toover-reach in order to "sell" a programme or project must be resisted.**49** Third, the development of base-line studies could be helpful in identifying appropriate programme goals and project purposes.**50** Fourth, although requiring regular monitoring may be a strength of results-based management, reporting requirements must be kept reasonable, or reporting will end up dominating over the very results sought to be achieved. This issue is of particular relevance *vis-à-vis* civil society organisations with limited managerial capacity. Fifth, the central purpose of results-based management should be kept in mind, that is to encourage monitoring, not evaluation. Monitoring is iterative, and is designed to encourage critical reflection during a project or programme and to permit adjustments that can enhance impact.**51** Finally, it is worth investigating the possibilities of qualitative indicators such as opinion polls, attitude surveys and participatory evaluations that might provide information helpful in the assessment of project and programme impact, at least in relation to justice initiatives that are focussed upon attitudinal change.**52**

CONCLUSION

Demands for legal and judicial reform programming are likely to grow. Although impact is hard to measure, as is the case in any essentially "political" programming, CIDA will be called upon to provide continued support for initiatives designed to bolster legal systems as a prerequisite to economic, social and political development. Rather than relying on the tired terminology of the "rule of law" to identify programming potential, analysts would be well advised to focus upon concrete indicators of a well-functioning legal system. These indicators should in turn be related to the values Canadians seek to uphold through justice programming and to the particular capacities of Canadian actors. The "Programming Framework" included as Annex I is an attempt to guide CIDA decision-makers through stages of analysis that are helpful in identifying the utility of legal and judicial reform programmes in specific contexts.

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48 Kapoor, *supra*, note 44, at p. 13.
49 Brown, *supra*, note 24, at p. 13-14.
50 Rawkins & Bergeron, *supra*, note 38, recommendation A.4.3.a.
51 Kapoor, *supra*, note 44, at p. 5.
52 *Ibid.*, at pp. 7-8.

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Appendix I

Questionnaire - Legal and Judicial Reform

Name: _____

Organization/Institution: _____

1.Do you believe that the type of analytical tool or framework described above could be useful in implementing Canadian activities in support of legal and judicial reform in developing countries and countries in transition?

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2.Do you, or your organization, need such analytical tools for the programming of activities related to legal and judicial technical assistance?

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3.How do you currently analyse the legal and judicial situation of potential recipient countries? Have you, or your organization/institution, developed analytical instruments in order to facilitate assessment and understanding of local conditions as well as programming in the justice sector?

If yes, please describe the main characteristics of such instruments.

_____
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4.Are you aware of the existence of analytical tools that have been developed by other organizations, international institutions, NGO's or other international agencies?

5.What are the main substantive elements and characteristics of format that such an instrument or framework should contain?

6.What are the main difficulties you face in assessing the legal and judicial situation prevailing in a potential recipient country or in trying to program activities in such a country?

_____
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7.Further comments and suggestions:

_____
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Thank you for your cooperation.

We would be grateful if you could return your completed questionnaire before **September 22** at the following address:

Véronique Lamontagne, CIDA Consultant
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Appendix II

LIST OF PERSONS CONSULTED

(This list includes names of persons who attended the National Roundtable, persons who received the questionnaire, and persons who met with the consultants, either individually or at presentations of the Draft Report)

CANADIAN LEGAL AND JUDICIAL COMMUNITY:

Judiciary:

The Right Honourable A. Lamer	Chief Justice, Supreme Court of Canada.
The Honourable C. Fraser	Chief Justice of Alberta, Alberta Court of Appeal
The Honourable D. Hansen	Executive Director, National Judicial Institute
The Honourable B. Lennox	Associate Chief Justice, Ontario Court of Justice
The Honourable S. Oxner	President, Commonwealth Judicial Education Institute
The Honourable J.Deschênes	Judge, International Criminal Tribunal for the Former Yugoslavia and International Criminal Tribunal for Rwanda

Universities:

David Beatty	Professor, Faculty of Law, University of Toronto
Ivan Bernier	Professeur, Faculté de droit, Université Laval
Donna Greshner	Professor, Faculty of Law, University of Saskatchewan
James Hathaway	Professor, Faculty of Law, Osgoode Hall, York University
Kathleen Mahoney	Professor, Faculty of Law, University of Calgary
Pitman Potter	Professor, Faculty of Law, University of British Columbia
Ed Ratushny	Professor, Faculty of Law, University of Ottawa
William Schabas	Directeur, Département des sciences juridiques, Université du Québec à Montréal

Government Departments:

Irène Arseneault	Coordinator, Haiti Project, Department of Justice- Canada
Ruth Barr	Director, Constitutional and International Law Section, Department of Justice - Canada
John Dwyer	Senior Advisor, Canadian Human Rights Commission
Réjean Gauthier	Advisor to the Deputy Minister, Department of Justice - Quebec
Guy Goulard	Commissioner, Office of the Commissioner for Federal/Judicial Affairs
Carole Johnson	Coordinator Francophonie, Department of Justice - Canada
Serge Lortie	Counsel, International Issues and Activities, Constitutional and International Law, Section, Department of Justice - Canada
Vello Mijal	General Counsel, Legal Services, Natural Resources - Canada
Stephen Owen	Deputy Attorney General of British Columbia
Margaux Polanski	Counsel, International Issues and Activities, Constitutional and International Law Section, Department of Justice
Robert Rochon	Director General, Legal Bureau, DFAIT
Johanne Senécal	Judicial Affairs Advisor, Office of the Minister of Justice - Canada
Carmen Sorger	Project Officer, Global Issues Bureau, Peace-Building and Democratic Development Division, DFAIT
George Thomson	Deputy Minister, Department of Justice - Canada

PROFESSIONAL ASSOCIATIONS, NGOs/ONG, ORGANIZATIONS AND CONSULTANTS:

Alain Bissonette	Director of Policy and Research, International Centre for Human Rights and Democratic Development (ICHRDD)
Thérèse Bouchard	Chargée de programme, centre d'études et de coopération internationale (CECI)
Al Cook	Co-ordinator, Canadian Lawyers for International Human Rights
Yvon Dandurand	Director, Policy Development and Human Rights, International Centre for Criminal Law Reform and Criminal Justice
James M. Klotz	Chair, Development Committee, Canadian Bar Association
René J.Marin	Conseiller principal, Projet d'appui à la Justice en Haïti
Claude Masse	Bâtonnier, Barreau du Québec
Errol Mendes	Director, Human Rights Research & Education Center, University of Ottawa
Bob Miller	Deputy Director, Parliamentary Center
Jocelyne Olivier	Ex-Bâtonnière, Barreau du Québec
Daniel Préfontaine	Director, International Centre for Criminal Law Reform and Criminal Justice
Fred Schultz	Executive Director, Canadian Association of Chiefs of Police
Arn Snyder	Volunteer, Canadian Criminal Justice Association
Joe Stern	Consultant and Advisor to Minister Axworthy, DFAITC
Gaston St-Jean	Executive Director, Canadian Criminal Justice Association
Nicole Trudeau-Bérard	Présidente, Comité des droits de la personne, Barreau du Québec
Robin Sully	Director, International Development, Canadian Bar Association
Jeffrey Talpis	Notaire, Chambre des notaires du Québec

CIDA OFFICERS

Denis Beaudoin	Chief of Operations, Haïti
Sarah Camblin-Breault	Project Officer, Ukraine
Suzanne Davies	Director, ASEAN and Programming Division, Asia Branch
Sarah Dowdeswell	Senior Program Manager, Basic Human Needs Team, Africa
Claude Francoeur	Director General, ICD, Partnership Branch
Francine GagnÉ	Development Counsellor in Kigali
Frank Gillis	Senior Development Officer, Ethiopia
Steve Hallihan	Team Leader, South Africa Team
Ingrid Hansen-Bates	Senior Project Officer, Southern Europe
Marc Lalonde	Senior Development Officer, Haïti
Louise Lavigne	Senior Policy Advisor, Americas Branch
Don McMaster	Director General, Eastern Africa
Werner Meier	Manager, Results-based Management, Performance Review Division, Corporate Managment Branch
Maury Miloff	Project Officer, Former Soviet Union Division
Julian Murray	Program Manager, Burundi-Rwanda
Henri-Paul Normandin	Senior Good Governance Specialist, Asia Branch
Leslie Norton	Development Officer, Africa-Middle East
Roger Roome	Second Secretary Development, Harare
Dave Rushton	Program Manager, Partnership
Valérie Sirois	Senior Program Analyst, Central-Eastern Europe

Murray Town	Project Officer, Hungary
Christiane Verdon	Senior General Council, Legal Services
Anne Woodbridge	Senior Development Officer, Pakistan-Sri Lanka

INTERNATIONAL ORGANIZATIONS

R.H.F. Austin	Director, Legal and Constitutional Affairs Division, Commonwealth Secretariat
Jean François Bonin	Responsable de Progamme, Agence de la Francophonie (ACCT)
Robert Buergenthal	Rule of Law Advisor, OSCE/ODHIR
Charles Costello	Deputy Assistant Administrator, USAID, Center for Democracy and Governance
M. Gomez Del Prado	Chef adjoint, Procédures spéciales, Centre for Human Rights, Geneva
Evelyne N. Fischer	Office of the General Counsel, Asian Development Bank (ADB)
Jeremy H. Hovland	Assistant, General Counsel, Asian Development Bank (ABD)
Mrs. Jarnouin	Ministère de la Coopération française
Edmundo Jarquin	Director, State and Civil Society Unit, Strategic Planning and Operational Policy Department, International Development Bank
Enrique Lagos	Assistant Secretary for Legal Affairs, Organization of American States (OAS)
Kim Mahling-Clark	Senior Research Analyst, USAID
Katarina Mathernova	Counsel, Legal Reform and Advisory Services, Legal Department, World Bank
Ann Melin-Wenström	Programme officer, Swedish International Development Cooperation Agency (SIDA)
Rosemary Minto	Chief Project Officer, Economic and legal Advisory Services (ELAS), Commonwealth Secretariat
Pamela Day Pelletreau	Consultant, USAID, Center for Democracy and Governance
Marie-Odile Wiederkehr	Department Director, Legal Affairs, Council of Europe
Roger Wilson	Head, Governement and Institutions Department, Overseas Development Adminstration (ODA)

Appendix III

PERSONS MET IN THAILAND, VIETNAM, AND MALAYSIA:

Thailand:

Manfred G. Von Nostitz	Canadian Ambassador
Brodie Anderson	CIDA officer at Canadian Embassy
Thongkorn Hiranraks	CIDA officer at Canadian Embassy
Robert Desjardins	Political Section, Canadian Embassy
Trakul Winitnaiyapak	Executive Director of Foreign Affairs Office
Wanchai Roujanavong	Chairperson of Coalition to Fight against Child Exploitation
Opat Varophat	Senior State Attorney, Child Rights Protection Office
Pongpat Riangkruar	Provincial Chief State Attorney, Child Right Protection Office
James Cook	Assistant Director of the Mekong Region Law Centre
Somchai Homlaor	Secretary General of Asian Forum for HR and Development
Professor Vitit Muntarbhorn	Child Rights AsiaNet
Charn Kaewchoosai	President of Legal Aid Centre
Phairoj Pholphet	Manager, Union for Civil Liberty
Songphorn Tajaroensuk	Associate Secretary General, Forum-Asia

Malaysia:

André S. Simard	Ambassador of Canada
Ann Pollack	Counsellor (Political & Economic), Canadian Embassy
Adrian Norfolk	Secretary, Canadian Embassy
Hendon Mohammed	President, Malaysian Bar Council
Aziah Ali	Director of Training, Judicial & Legal Training Division, Prime Minister's Department
Rohana Ramli	Principal Assistant Secretary, UN & Human Rights Branch, Ministry of Foreign Affairs
Sivarasa Rasiah	Advocate and Solicitor, SUARAM (NGO)
Bahma Subramaniam	Advocate and Solicitor, HAKAM (NGO)
Aegile Fernandes	Director, Tenaganita

Members of the Federal Court and Court of Appeal, Malaysia hosted by the Rt. Hon. Tan Sri Dato Seri Mohd Eusoff bin Chin, Chief Justice of Malaysia.

Vietnam:

Bruce Levy	Counsellor (Political), Canadian Embassy
Peter Hoffman	Counsellor (Development), Canadian Embassy
John Langevin	First Secretary, Canadian Embassy
Dr. Le Hong Hanh	Vice-Rector, Hanoi Law University
Dr. Tran Ngoc Duong	Head, State and Law Department, Ho Chi Minh National Political Academy
Dr. Hoang The Lien	Vice Director, Institute of Legal Research, Ministry of Justice
Luu Van Dat	Vice President, Vietnam Lawyers Association
Le Phong	Director, Vietnam Lawyers Association
Minister Nguyen Dinh Loc	Minister of Justice
Nguyen Van Yeu	Vice Chairman, Law Committee National Assembly
Nguyen Van Thao	Prime Minister's Consultative Group
John Bentley	Resident Legal Advisor, UNDP
Daniel Benet	McCarthy, Tétrault (Montreal)
Prof. Dao Tri Uc	Director, Institute of State and Law

ANNEX I

Legal and Judicial Reform Programming Framework