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EU support to justice, including access to justice

Key points following on the previous speaker's intervention (summary):

- There is a strong link between access to justice and the fight against impunity. The objective is to improve legal systems as a whole and to ensure equal access to these systems for all.
- The EU Post 2015 agenda covers five areas: Decent life for all, Sustainable drivers for growth, Natural Resources, Equity, equality, rights and democracy, and Peace and security. The question today is how to reflect these different issues in the post 2015 development goals. The overall objective of the MDGs should be to empower all to play a role at both economic and political levels.
- The European Commission is shifting from a human rights mainstreaming towards embracing a human rights based approach in development cooperation. In this context, The EU is currently working on a toolkit on a right-based approach to development cooperation actions. This approach should be considered across all sectors of development aid, and not only on the justice sector.
- Stakeholders and partners are also invited to make proposals on the formulation of the post 2015 MDGs. For information, the UNODC is working on the formulation of an indicator related to Rule of Law to be included in the post 2015 goals.

Ladies and gentlemen,

It is a great pleasure to participate today to the conference on access to justice and poverty reduction, as it touches upon one key area where the European Union in its development cooperation has been providing continuous support for many decades.

Access to justice is one of the key drivers for tackling poverty and protecting the human rights of persons living in poverty. States have a legal obligation to ensure that all individuals are able to access competent, impartial judicial and adjudicatory mechanisms equally and without discrimination. Access to justice is not only a fundamental right in itself, but it is an essential prerequisite for the protection and promotion of all other civil, cultural, economic, political and social rights.

The reality in many parts of the world is that vulnerable people in particular (poor, disabled, women and children, minorities or indigenous people) continue to face many

challenges and obstacles to access to justice: discrimination, insufficient legal awareness, legal disempowerment, unavailability of legal aid, unaffordability of accessing formal justice or structural deficiencies of the justice system (uneven distribution of courts; corruption; lengthy and sometimes unfair proceedings; poor enforcement of Court decisions, etc).

The reality at country level also shows that informal justice systems in legal pluralistic societies are often preferred by vulnerable people in their attempt of seeking justice, especially for people living in smaller communities, or those sharing common customs, languages, and beliefs. They provide streamlined procedures, familiarity, proximity, low cost, speed, common language, community involvement, and the likelihood that decisions are based on community values. Nevertheless, informal justice mechanisms can also act as a barrier to meaningful justice, particularly for the poorest and most disadvantaged community members, often reinforcing existing power structures and promoting elite domination and influence. In some cases, non-State justice mechanisms prioritize the interests of the community over the interests of the individual, which may have the effect of exacerbating the situation of the worst off in the community. Rarely do informal mechanisms take into account the legal rights of the individuals involved or consider international human rights standards.

What has been the EU response so far?

Traditionally, the EU has been supporting access to justice via bilateral cooperation by providing technical and financial assistance to accompany justice reforms, mainly focusing on the formal justice system, in building its institutional capacity to provide effective services to the public. Irrespective of the chosen aid modality and scope of intervention, access of justice has received primary attention in most of EU funded justice projects, as well as in policy dialogue and consultations with civil society organisations and other donors. Under the thematic instrument on human rights ('The European Instrument for Democracy and Human Rights'), access to justice has been addressed through engaging local civil society in advocating for the improving of the legal frameworks giving wider access to legal aid and providing paralegal assistance to the poor, in recognizing fundamental rights in law and practice for the most vulnerable groups (e.g. collective rights of indigenous peoples; land rights and inheritance rights for women and children etc), or in providing legal assistance for people in custody.

In recent years, based on several evaluations and studies on EU support to justice sector¹, and given the policy advancement regarding the primary importance of human rights in EU external action², we are shifting from a human rights mainstreaming towards embracing a human rights based approach in development cooperation. This means that the individual is the subject of rights and has claims on the state and its institutions, which have duties and obligations. The human rights based approach makes the accountability clear, since it identifies the rights holders and the duty-bearers, and enables support of the capacities of duty-bearers to meet their obligations, and/or of rights-holders to claim their rights. It also emphasises the importance of the governance principles of inclusion, participation, transparency and accountability.

For the justice sector, a human rights-based approach translates in assessing the adequacy of laws, policies and strategies addressing human rights, identifying the main human rights problems in general and in the justice area, fixing specific human rights objectives, and identifying services and service providers that can promote and protect human rights. The approach then focuses on reinforcing the prime actors, so that they

¹ Evaluation of EU support to justice and security sector reform, EuropeAid, 2012;
EuropeAid Reference document no. 9 – Support for judicial reform in ACP countries, 2010;
EuropeAid Reference document no.15: Support to justice and the rule of law: Review of past experience and guidance for future EU development cooperation programmes, 2012

² EU Strategic Framework and Action Plan on Human Rights and Democracy, 2012

can engage in dialogue, meet their responsibilities, and hold justice delivery mechanisms and state institutions accountable for their shortcomings with respect to human rights. These may include legal and institutional reforms, capacity building and awareness-raising regarding human rights within legal institutions, advocacy activities, education and empowerment of vulnerable groups, and developing services and legal assistance.

As far as support to informal justice system is concerned, different options can be explored. The first is to support the reform of customary systems from the inside, with the aim of increasing procedural and substantive protections. The second option is to explore the creation of new institutions that offer alternative forms of dispute resolution. The third is to consider the interface between the customary and formal legal systems, and how states can modify, regulate or use this interface to influence the manner by which justice is dispensed at the customary/traditional level. A key message is that approaches need to be grounded on a broad and deep understanding of the customary system, to be adapted to the goal of improved access to justice. In recent years, the European Union has started to engage in supporting informal/traditional justice mechanisms for example in Gambia, in the Philippines, in Bangladesh or in Mauritania.

Ladies and gentlemen, I believe we all share the view that access to justice, as any other justice intervention, is most effective in countries that show political will, commitment and steady engagement for reforms. I am convinced that working with and through the country's systems and under the national leadership, the protection and realization of poor people's rights is more likely to be achieved in a sustainable way.

Thank you for your attention!