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STAFF GUIDANCE NOTE:

WORLD BANK SUPPORT FOR CRIMINAL JUSTICE ACTIVITIES

Justice Reform Unit
Legal Vice Presidency
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ABBREVIATIONS AND ACRONYMS

AAA	Analytic and Advisory Activities
AusAID	Australian Agency for International Development
CAS	Country Assistance Strategy
CIDA	Canadian International Development Agency
CJRG	Criminal Justice Resource Group
CPS	Country Partnership Strategy
DfID	Department for International Development (UK)
DoD	Department of Defense (U.S.)
DPL	Development Policy Loan
EBRD	European Bank for Reconstruction and Development
EC	European Commission
ECA	Europe and Central Asia Region
ESW	Economic and Sector Work
EU	European Union
FEU	Finance, Economics and Urban Department
FMI	Financial Market Integrity Service Line
FPD	Finance and Private Sector Development
GAC	Governance and Anticorruption
GSDRC	Governance and Social Development Resource Centre
GTI	Global Tiger Initiative
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
HD	Human Development Department
IBRD	International Bank for Reconstruction and Development IBRD
ICCWC	International Consortium on Combating Wildlife Crime
ICITAP	International Criminal Investigative Training Assistance Program
IDA	International Development Association
IDB	Inter-American Development Bank
INL	U.S. State Department's Bureau of International Narcotics and Law Enforcement Affairs
INT	Institutional Integrity Vice Presidency
LAC	Latin America & Caribbean Region
LAPOP	Latin American Public Opinion Project
LEGEN	Legal Department Environmental and International Law Practice Group
LEGVPU	Legal Vice Presidency
LEGJR	Justice Reform Practice Group
LEGOP	Legal Operations Policy Practice Group
MENA	Middle East and North Africa
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
OPCS	Operations Policy and Country Services
OPDAT	Office of Overseas Prosecutorial Development Assistance and Training

OPCFC	Fragile and Conflict Affected Countries Group
ORAF	Operational Risk Assessment Framework
OSCE	Organization for Security and Cooperation in Europe
PAD	Project Appraisal Document
PCN	Project Concept Note
PREM	Poverty Reduction and Economic Management Network Public Sector Group (PRMPS)
PSD	Private Sector Development
ROLI	American Bar Association Rule of Law Initiative
SDV	Sustainable Development Network
SDCCV	Social Development Conflict, Crime and Violence Thematic Group
SIDA	Swedish International Development Cooperation Agency
StAR	Stolen Asset Recovery Initiative
TTL	Task Team Leader
UN	United Nations
UNDP	United Nations Development Programme
USAID	U.S. Agency for International Development
USDOJ	United States Department of Justice
VPU	Vice Presidential Unit
WDR	World Development Report

Summary of Key Points

This Guidance Note forms an element of the Bank’s efforts to operationalize the *World Development Report 2011* (WDR 2011).¹ It supports the Bank’s goals of strengthening its approach to justice reform by emphasizing global partnerships and the comparative advantages of others, while building on areas of justice reform and related fields, such as public sector reform, in which the Bank has experience.²

Following the Legal Note³ on this subject, the Guidance Note is intended to cover Bank involvement in the criminal justice sector in the broadest sense. This includes all Bank activities and Bank-supported activities, including lending, grants, trust funds, donor and aid coordination, research, and economic and sector work, all of which are subject to the Bank’s Articles of Agreement.

This Note does not set out a prescriptive set of instructions but provides guidance for Bank staff on how to analyze whether an intervention is appropriate for the Bank to engage in, how to assess the risks involved, and how to develop a risk-taking and management strategy. This builds on the Bank’s existing risk assessment and management framework and approaches, including the Operational and Risk Assessment Framework (ORAF), the guidance provided by Operations Policy and Country Services (OPCS) for Development Policy Loans (DPLs), and other tools applied in Bank operations. As in other sectors, risks and related management approaches will vary from country to country and project to project.

The Guidance Note is intended to be part of an iterative process designed to benefit from the experiences and knowledge that will be generated by future engagement in the sector. It is framed around four areas, as follows:

- 1. *Grounding criminal justice work in a development context:*** Based on analysis in the Legal Note, in order for an activity to be appropriate for Bank support:
 - (i) The Bank should be satisfied that interventions in the sector, falling within the development purposes of the Bank, are grounded in an appropriate and objective economic rationale; and
 - (ii) Bank interventions should not involve the Bank in the political affairs of member countries.

Bank teams need to provide reasonable information to show that both elements are met. The Guidance Note provides suggestions for and examples of the application of both elements (paragraphs 17–20).

¹ World Bank, “Operationalizing the 2011 World Development Report: Conflict, Security and Development” (Washington, DC: World Bank, 2011).

² Ibid.

³ World Bank, “Legal Note on Bank Involvement in the Criminal Justice Sector,” Senior Vice President and General Counsel (Washington, DC: World Bank, 2012).

2. **Risk assessment:** The Legal Note further explains that even where these twin criteria are met, Bank involvement in the criminal justice sector raises a series of risks unique to the sector, for which special risk analysis and management measures are recommended. At paragraph 20, the Guidance Note provides the following proposed process to be followed for the categories of activities and risks established in the Legal Note:

Risk Level	Activity Issues	Activity Examples	Process
Low	Activities that pose no serious political issues and have a good economic development rationale.	Activities that are logical extensions of civil justice activities; public health or similar activities that target the general population and may include participants in the criminal justice sector; research on crime or criminal justice; support to help poor and vulnerable people to deal with the effects of crime, such as health campaigns, victim support and counseling, gender violence reduction, rehabilitation of offenders, training and technical assistance for public defenders, juvenile justice programs and crime prevention (other than policing); strategy development; and construction or rehabilitation of court buildings.	Generally such activities can be supported and do not require review beyond the standard Bank review processes established. Teams can consult the Criminal Justice Resource Group for input and advice if desired.
High	Activities where there is weak economic rationale, inherent risk of political interference, or high likelihood of failure/lack of sustainability beyond the period of direct program support.	Activities include requests for weapons and other lethal equipment; some antinarcotics law enforcement campaigns; support for pursuing a specific criminal case; political crimes or crimes against the state; prosecution and judgment of persons suspected of terrorist activities; support in countries in which human rights violations have reached pervasive proportions; or support for military or paramilitary police, intelligence services, or other services and institutions or programs that do not conform to international due process standards.	Generally these are areas the Bank should avoid. If, in exceptional cases, activities in this category are proposed, teams must seek advice of the CJRG regarding relevant risks and potential mitigating measures (paragraphs 23(5); 43).
Moderate to substantial	Activities that have a good economic development rationale but pose some risk of political interference or other implementation and	Activities that do not fall clearly into one of the above categories. Most assistance to police, prosecutors, and prisons “seem likely to fall under this category” ⁴ and require specialized expertise to weigh the relative levels of risk associated with specific requests for assistance.	Depending on the country context, these activities can be supported if a solid risk assessment and risk management strategy are developed. Seeking advice from CJRG early on (prior to the PCN review) is

⁴ Ibid.

	reputation risks specific to criminal justice work.		recommended (paragraph 43).
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- 3. Risk management strategies:** The levels of risk set out above serve to narrow the potential risks to the Bank of undertaking activities in the sector. A positive identification even of significant risks would not necessarily mean that the Bank cannot or should not support a specific criminal justice initiative; rather, these are baseline questions and issues to be addressed at the early stages of determining whether or not to engage with the criminal justice sector and whether a project request is in line with the Bank’s mandate and Articles. The Guidance Note provides task teams with various examples of management strategies (paragraphs 23ff and table 3) in order to assist them with project design, particularly for those projects that fall into the moderate to substantial risk categories. This includes general strategies (such as review of other donor work in this sector, ensuring country ownership, and adherence to international standards) and also some specific risk identification and management strategies in relation to types of potential interventions, such as civilian police support, legal assistance and drafting, access to justice, and so on.
- 4. Assistance and review process:** The Guidance Note sets out a pilot process to assist the Bank as a whole in analyzing and managing the risks associated with involvement in this sector (paragraphs 43–48). This includes the expansion of a Criminal Justice Resource Group (CJRG) beyond the Legal Vice Presidential Unit (VPU), comprised of experts from across the Bank in areas such as justice reform, crime and violence prevention, environmental crimes, urban planning, youth development, gender, stolen asset recovery, anti-money laundering, and fragile and conflict-affected states. This will allow for assistance to project teams regarding risk management strategies in relation to this new and potentially risky area, and facilitate development of a data base of lessons learned to inform programming in the criminal justice sector over time. The CJRG’s role will in all cases be solely advisory. It will function as a resource for teams that wish to consult it for low, moderate, and substantial risk projects, and it will fulfill the Legal Note’s requirement for a special review of any proposed activities in the high-risk category. The CJRG will include members from across the Bank and closely link with existing review and quality assurance structures, neither limiting their role nor replacing them. The CJRG has an advisory function only, limited to and informing existing processes, not duplicating or replacing them.

Overall this Guidance Note is intended to act as an enabling document, providing task teams and country management units with information to support them in managing risks in innovative projects in a sector where there is increasing demand from clients.

World Bank Support for Criminal Justice Activities

1. The justice sector may be defined as: “*The formal and informal institutions that perform a series of societal functions; namely, those of addressing breaches of law and facilitating peaceful contests over rights and obligations.*”⁵
2. The criminal justice sector is a specialized subsector of the broader justice sector. It is commonly understood by scholars and practitioners as encompassing all the institutions, processes, and services responsible for the prevention, investigation, adjudication, treatment, and response to illegal conduct.⁶ This includes those institutions listed in table 1 below and also “traditional” and “informal” systems that tend to be particularly prevalent in mediating lower-level criminal behavior, especially in the fragile state context. Institutions that have a purely preventive role may contribute to crime prevention activities but are not the focus of this note.

I. Objective

3. This Guidance Note forms an element of the Bank’s efforts to operationalize the *World Development Report 2011* (WDR 2011).⁷ As the WDR 2011 has highlighted, criminal violence undermines development outcomes. It also highlighted the need to build capable institutions to support citizen security. The Guidance Note therefore supports the Bank’s goal of strengthening its approach to justice reform to emphasize global partnerships and the comparative advantages of others, while building on areas of justice reform and related sectors, such as public sector reform, in which the Bank has experience.⁸
4. Building upon a Legal Note,⁹ the objective of this Guidance Note is to provide an overview of World Bank support to Criminal Justice Sector Programs (Sections I–IV), as well as

⁵ World Bank, “New Directions in Justice Reform – A Companion Piece to the Updated Strategy and Implementation Plan on Strengthening Governance, Tackling Corruption” (Washington, DC: World Bank, forthcoming).

⁶ The criminal justice sector includes police, prosecutors, defense attorneys, criminal courts and tribunals, victim services, and corrections services, among others. See table 1, p. 3, *infra*, for an overview of the scope of the criminal justice sector. Some of these institutions—or aspects of their functions—are also included in what is referred to as the “security sector,” which also comprises military, paramilitary, and intelligence services. These latter institutions are not addressed here, as they are not considered part of the regular criminal justice sector, are generally governed by very different rules of engagement, and present a different set of risks and risk mitigation strategies. Separate guidance on these areas is provided in A. Palacio, “Legal Opinion on Peace-Building, Security, and Relief Issues under the Bank’s Policy Framework for Rapid Responses to Crises and Emergencies,” World Bank General Counsel (Washington, DC: World Bank, 2007). It is possible, particularly in fragile and conflict-affected situations, that a country would engage in transitioning criminal justice functions from military to civilian institution. This could present opportunities for criminal justice reform assistance. In deliberating such types of transitional programs, Bank staff should bear in mind the roles and comparative experience of other agencies (e.g., United Nations Development Programme (UNDP), UK’s Department for International Development (DfID), the U.S. State Department’s Bureau of International Narcotics and Law Enforcement Affairs (INL)) that have already established considerable direct experience in implementing such programs.

⁷ World Bank, “Operationalizing the 2011 World Development Report.”

⁸ *Ibid.*

⁹ A. Palacio, “Legal Note on Bank Involvement in the Criminal Justice Sector.”

examples for assessing and managing the special risks of this sector. The Guidance Note is not intended to act as a prescriptive set of instructions but rather to highlight some potential risk-management strategies (section V) and provide information to guide teams in identifying potential opportunities for activities in this sector (Section VI). The risk management framework in this Guidance Note builds on the Bank’s Operational and Risk Assessment Framework (ORAF) and other risk assessment and management approaches and tools applied in Bank operations. The Note is framed around four areas, which set out the steps that task teams should take when considering an activity in the criminal justice sector. These are: (1) **Justification** for Criminal Justice Work; (2) **Risk Assessment**; (3) **Risk Management**; and (4) **Assistance** and **Review** Processes.

5. As with the Legal Note on this subject, the Guidance Note is intended to cover all Bank “involvement” and “intervention” in the broadest sense. This includes lending, grants, trust funds, donor and aid coordination research, and economic and sector work, all of which are subject to the Articles’ provisions. This guidance therefore applies equally to components within larger operations and to stand-alone activities, and to services of crime prevention and law enforcement. The Guidance Note is not intended to be effective retroactively or to reverse any earlier decisions to engage in the criminal justice sector.

What Does the Legal Note Say? Conditions for Bank Support for Criminal Justice Work

Broadly speaking, the Legal Note finds that criminal justice sector work is not precluded under the Bank’s Articles of Agreement and indeed, the Bank has already financed numerous interventions in the broader area of “governance.”¹⁰ The Legal Note cites the fact that crime and violence can represent significant developmental challenges inhibiting growth and development, as a basis for involvement in the sector. Additionally it states that the sector is now decisively seen as a provider of public services, thereby placing it well within other established areas of governance. The Legal Note concludes that criminal justice activities can be supported by the Bank, as long as they meet **two main requirements** under the Bank’s Articles of Agreement, which also serve to define the general scope for such support:

- **The Bank should be satisfied that interventions in the sector, falling within the development purposes of the Bank, are grounded in an appropriate and objective economic rationale; and**
- **Bank interventions should not involve the Bank in the political affairs of member countries.**

The first condition means that the case needs to be made for each proposed country strategy and individual intervention, both in terms of the significance of crime and violence as a development issue in the recipient country and in terms of the effectiveness of the proposed activities in reducing crime and violence.¹¹ The second condition means that the proposed activities must be structured in such a way as to avoid interference in the member country’s political affairs, most importantly by ensuring that Bank interventions in the sector are of a nonpolitical nature (“political” defined as involvement in partisan politics¹² or endorsement of a particular form of government or political ideology). The Legal Note sets out a **risk management strategy** for this purpose that is detailed later in this Guidance Note (see section V.A below). Principally because the Legal Note acknowledges that the criminal justice arena potentially carries higher risks of interference in the political affairs of a member country,¹³ the Bank Group General Counsel recommends a higher degree of scrutiny prior to engaging in criminal justice work, in particular by confirming that the intervention meets the two basic criteria mentioned above. The Legal Note also recognizes that support for criminal justice poses other special operational and reputational risks that need to be carefully assessed

¹⁰ Consistent with Article 1 of the IBRD’s Articles of Agreement.

¹¹ Ibid.

¹² The same requirements are identified in Inter-American Development Bank (IDB), “Guidelines for the Design of Violence Reduction Projects” (Washington, DC: IDB, 2003).

¹³ A. Palacio, “Legal Note on Bank Involvement in the Criminal Justice Sector.”

and managed.

To evaluate whether a given program represents a potential risk to the Bank, the Legal Note recommends the development of more detailed guidance for Bank staff contemplating engaging in work that involves criminal justice issues—hence the issuance of this Guidance Note.

In the event that the risk analysis identifies significant risks, the Legal Note recommends that the proposed intervention be subjected to a *special review* mechanism to identify appropriate risk mitigation strategies or, in the worst case, decide that the proposed intervention should not go forward. The Legal Note advises that the Bank should be prepared to monitor interventions and exercise legal remedies (suspension/cancellation of loans) if need be.¹⁴ Both the risk assessment and application of a special review process will enable the Bank to manage risks and build more extensive knowledge internally among program staff, based on actual experience from implementation. The Legal Note recognizes that a wide range of criminal justice programming can be envisioned, and that strategies and tools are available to the Bank to support these types of programs.

II. Scope of the Criminal Justice Sector

6. A country's criminal justice sector encompasses all the institutions, processes, and services responsible for the prevention, investigation, adjudication, and treatment of, as well as response to, illegal conduct. The institutions of the sector contribute to citizen security¹⁵ and safety, holding criminals accountable in a fair and equitable manner, protecting and restoring the rights of victims, and providing alternative solutions to reduce crime. They deliver legally appropriate resolutions to (allegations of) abuse or criminal conduct by government officials, and provide probation, parole, pretrial detention services, and victim service units. Among the range of institutions and services in the field of criminal justice are police, pretrial services, prosecutors, public and private defense attorneys, courts, prisons, victim services, human rights and ombudsman's offices, rehabilitation and reintegration programs, community service programs, think tanks, law schools, and universities. The following table provides a list of major institutions of the criminal justice sector.

¹⁴ Comparable recommendations are set out by the IDB, which addresses the need for adequate monitoring mechanisms in place to ensure that products or services from Bank-funded projects are not redirected into prohibited areas; that there are advisory councils or other types of checks and balances to foster transparency; and that activities comply with human rights standards. See IDB, "Guidelines for the Design of Violence Reduction Projects," p. 5.

¹⁵ Citizen security is a broad concept, and its successful implementation requires efforts of criminal justice institutions as well as institutions and organizations outside of the criminal justice sector. The WDR 2011 defines citizen security as "Both freedom from physical violence and freedom from fear of violence. Applied to the lives of *all* members of a society (whether nationals of the country or otherwise), it encompasses security at home, in the workplace, and in political, social, and economic interactions with the state and other members of society. Similar to human security, 'citizen security' places people at the center of efforts to prevent and recover from violence. Citizen security is distinct from national security issues that focus on military or intelligence operations." See World Bank, *World Development Report 2011: Conflict, Security, and Development* (Washington, DC: World Bank, 2011), p. xvi.

Table 1. Notional Listing of Major Institutions Involved in the Criminal Justice Sector¹⁶

- Police, including local government state and/or municipal police and special crime task forces, as well as nonstate policing or security mechanisms (e.g., community policing programs, neighborhood watch, etc.)
- Social service and community crime prevention initiatives
- Prosecution services
- Public defender services
- Legal profession including legal aid lawyers, public and private defense lawyers, bar associations, and legal professional associations
- Paralegal services and programs to provide aid in criminal cases
- Victim assistance services
- Pretrial services
- Forensic services
- Crime and offender registries and statistics agencies
- Criminal Justice Coordinating Councils and research institutions
- Juvenile justice/youth-at-risk programs
- Courts, including courts of first instance, appellate courts, magistrates, and special courts
- Judiciary, judicial councils, judicial schools, and training academies
- Anticorruption authorities
- Transitional justice institutions (in fragile and conflict-affected situations)
- Councils of Chiefs and other traditional rulers as well as customary or traditional courts; Shari'a courts
- Parliament, parliamentary budget and oversight committees, legislative committees for justice and law reform
- Ministry of Justice, Ministry of the Interior, Attorney General, and other government lawyers responsible for criminal investigations (to include investigative functions within other ministries, such as anticorruption or environmental protection agencies, etc.)
- Mediators involved in criminal matters
- Corrections system, including remand prisons, prisons for sentenced prisoners, probation services, police detention and holding cells, and alternatives to prison such as halfway houses, related drug and alcohol treatment programs, etc.
- Court enforcement agencies that collect criminal fines, serve summons, enforce warrants, and impound property (bailiffs, etc.)
- Offender reintegration agencies, social service agencies that assist in reintegration of offenders
- Bodies responsible for criminal policy and law reform, legal aid, and human rights
- Complaints bodies, ombudsman, the ministries in charge of criminal matters and their enforcement
- Civil society organizations concerned with the criminal justice sector, including law and bar associations, police and prosecutor associations, human rights groups, legal aid organizations, penal reform organizations, victim advocacy organizations, etc.

III. Why is Criminal Justice Sector Assistance Important for the World Bank?

7. High levels of crime and violence are increasingly recognized as fundamental challenges to economic growth, hampering investment and productivity as well as the basic stability of countries or the existence of regular state institutions.¹⁷ The absence of basic levels of

¹⁶ The legal framework for the criminal justice sector (including the constitution, statutes, regulations, criminal code, case law, organic laws, specialized laws, policies, and standard operating procedures) influences how the sector components function, and may itself be an area of focus for criminal justice reform.

¹⁷ See World Bank, "Crime and Violence in Central America: A Development Challenge," vols. 1–2, Report 56781 (Washington, DC: World Bank, 2011). See also A. Heinemann and D. Verner, "Crime and Violence in Development: A Literature Review of Latin America and the Caribbean," World Bank Policy Research Working Paper (Washington, DC: World Bank, 2006). This study estimated that the cost associated with high levels of crime

personal security and citizen confidence in the ability of a country's government to provide essential protections, hinder economic growth and development.¹⁸ The greater the level of insecurity, the higher the risks of destabilization and violent conflict, creating situations in which donor organizations cannot implement viable economic and social development programs.¹⁹ As the WDR 2011 has noted,²⁰ weak institutions are a common factor in explaining repeated cycles of violence, and the development of effective criminal justice procedures and systems bolsters trust in state institutions.

8. Concurrently, a number of the Bank's member countries have voiced increased interest in support for criminal justice reform programs. For example, in Bank surveys, problems of

and violence reaches 14.2 percent of the regional GDP. In Colombia the cumulative effect of "lost growth" as a result of crime and violence is such that the per capita income of today would be approximately 32 percent higher than it is at present. Another study in El Salvador estimated the total national cost of violence to be 11.5 percent of GDP. See United Nations, *Crime and Development in Central America: Caught in the Crossfire*, Office on Drugs and Crime (New York: United Nations, 2007), 18. See also R. L. Ayres, "Crime and Violence as Development Issues in Latin America and the Caribbean," World Bank Latin American and Caribbean Studies Viewpoints (Washington, DC: World Bank, 1997); UN and World Bank, "Crime, Violence, and Development: Trends, Costs, and Policy Options in the Caribbean," Report 37820 (Washington, DC: World Bank, 2007); C. Moser et al., "The Implications of Urban Violence for the Design of Social Investment Funds: A Case Study from the Jamaican SIF," Infrastructure Notes (Washington, DC: World Bank, 1996); World Bank, "Jamaica. Violence and Urban Poverty in Jamaica: Breaking the Cycle," Report 15895 (Washington, DC: World Bank, 1996); United Nations, "Crime and Development in Africa," Office on Drugs and Crime (New York: United Nations, 2005); C. Stone, "Crime, Justice, and Growth in South Africa: Toward a Plausible Contribution from Criminal Justice to Economic Growth," CID Working Paper 131 (Boston: Harvard University, 2006); and World Bank, "Brazil. Crime, Violence and Economic Development in Brazil: Elements for Effective Public Policy," Report 36525 (Washington, DC: World Bank, 2006).

¹⁸ World Bank, *World Development Report 1997: State in a Changing World* (Oxford: Oxford University Press, 1997); World Bank, "Proposal for a Comprehensive Development Framework: A Discussion Draft for the Board, Management, and Staff of the World Bank Group" (Washington, DC: World Bank, 1999); T. Carothers, ed., *Promoting the Rule of Law Abroad. In Search of Knowledge* (Washington, DC: Carnegie Endowment for International Peace, 2006); and D. North, *Institutions, Institutional Change and Economic Performance (Political Economy of Institutions and Decisions)* (Cambridge: Cambridge University Press, 1990).

¹⁹ A vivid example may be drawn from the Latin America and the Caribbean region (LAC). LAC comprises client countries with some of the highest levels of violence in the world—in some cases reaching levels on par with states in conflict. The social and economic costs of such violence have been estimated at between 1.2 and up to 7.7 percent of the region's GDP (see World Bank, "Crime and Violence in Central America" (Washington, DC: World Bank, forthcoming). Governments of the region have responded to public outcry by implementing a variety of *mano dura* (iron fist) policies that emphasized increased sentences, pretrial detention (sometimes longer than the applicable sentence in case of actual conviction), illegal searches and seizures, and lowering the age at which children can be tried as adults. The *mano dura* approach has been criticized on various practical, legal, and political grounds, however, and seems to have fallen out of favor in recent times. Research to address the balance between law enforcement, crime prevention, and development would add a great deal to the debate over the *mano dura* approach and any alternative approaches. A series of Bank ESW in LAC (two in Brazil and one each in the Caribbean and Central America) have examined the core issues related to crime and violence, and clients are increasingly looking to the Bank for assistance on these issues. Indeed, the Chief Economist's office in LAC is considering a programmatic approach to exploring the links between crime and violence and the Bank's work. The analyses to date have focused primarily on human, urban, and social development approaches, with an emphasis on prevention from early childhood, urban planning, community policing, citizen security, strengthening justice institutions, etc. Further Bank work could be enhanced by more attention to the role that key justice sector institutions (e.g. judiciaries, ministries of justice, prosecutors, and police) play in crime and violence prevention, how respect for and promotion of human rights standards are or should be taken into account, and access to justice institutions by vulnerable groups.

²⁰ See J. Fearon, "Homicide Data," Background note for *World Development Report 2011* (Washington, DC: World Bank, 2011); and B. Walter "Conflict Relapse and the Sustainability of Post-Conflict Peace," Background paper for *World Development Report 2011* (Washington, DC: World Bank, 2011).

crime and violence rank in equal importance to hunger, lack of water, and employment. Client demand in some regions is also growing as a result of criminal justice reform legislation, which is altering the framework from an outdated inquisitorial, often paper-based process to one that is a more litigant-driven and oral system. Such developments can be observed in Latin America and in the Europe and Central Asia (ECA) region, where a range of European Union (EU) requirements related to criminal justice sector operations are often prerequisites for EU accession.²¹ The Bank's limited but targeted prior experience demonstrates impact and cross-sectoral linkages with criminal justice issues across a broad array of programs, ranging from the health sector, youth, urban planning, governance, anticorruption, poverty reduction, environment and natural resource management, and education, as well as justice sector reform programs.

9. The Bank's Governance and Anticorruption (GAC) Strategy and progress reports recognize that an effective justice sector is critical to good governance and the establishment of rule of law,²² and that criminal justice institutions are particularly key in addressing corruption. This is because (i) corruption covers a range of criminal activities that undermine and derail economic development, and (ii) an effective, credible and reliable criminal justice system is indispensable to a country's ability to combat corruption. Bank work to enhance the criminal justice sector therefore forms an integral part of GAC work. In including the enforcement/criminal justice agencies in its institution-building efforts through GAC work underway in the regions and at the Institutional Integrity Vice Presidency (INT), the Bank has closed an important gap in the support it provides to client countries in addressing GAC impediments.
10. Other multilateral banks, bilateral development agencies, and organizations have supported significant criminal justice reform activities for many years. The mandate to assist states in building fair and effective criminal justice systems is contained in resolutions by the main policy-making organs of the United Nations (UN), the General Assembly, and the Economic and Social Council; in April 2008, the UN Secretary General issued a set of parameters for engaging in justice reform activities.²³

²¹ The Treaty on the European Union sets out the conditions for enlargement at Articles 6 and 49. The "Copenhagen Criteria" of 1993, set out by the European Council, require a candidate country to have, *inter alia*, "stable institutions that guarantee democracy, the rule of law, human rights and protection for minorities." In 1995 the Madrid European Council further clarified that a candidate country must also be able to put EU rules and procedures into effect. As such, what is required for each country to meet these criteria, in the area of criminal justice, will differ. The Treaty of Lisbon 2007 will have a further impact on the reforms required of accession countries, not least because it introduced the Charter of Fundamental Rights into European primary law.

²² See World Bank, "Strengthening World Bank Group Engagement on Governance and Anticorruption (GAC Strategy)," (Washington, DC: World Bank, 2007).

²³ See J. Perlin and M. I. Baird, "Towards a New Consensus on Justice Reform: Mapping the Criminal Justice Sector" (New York: Open Society Institute, 2008), 16. See UN General Assembly, "Guidance Note of the Secretary-General: UN Approach to Rule of Law Assistance" Office of the Secretary-General (New York: United Nations, 2008), http://www.unrol.org/doc.aspx?doc_id=2124. See also UN General Assembly, "Vienna Declaration and Program of Action," UNGA A/CONF.157/23, July 12 (New York: United Nations, 1993), which highlights the importance of criminal justice reform; UN General Assembly, "Uniting our Strengths: Enhancing United Nations Support for the Rule of Law," Report of the Secretary-General, A/61/636-S/2006/980 and Corr.1 (New York: United Nations, 2006); and UN General Assembly, "Strengthening and Coordinating United Nations Rule of Law Activities," Report of the Secretary-General, A/63/226 (New York: United Nations, 2008). The General Assembly has expressed support for the Rule of Law Unit in the Executive Office of the UN Secretary General and the Rule of Law Coordination and Resource Group (A/RES/63/128, A/RES/64/116). United Nations "Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters," ECOSOC Res. 2000/14, U.N. Doc.

11. While considered increasingly important, Bank support for criminal justice programs also entails potential risks—legal, operational, and reputational. In particular, programs focusing on police/law enforcement and prisons entail special abuse of authority and due process concerns. Additionally, as the WDR 2011 has noted, in fragile and conflict-affected situations, there is an increased risk that police forces that have emerged from vigilante or paramilitary groups, or are largely comprised of members of such groups, can be a destabilizing factor in the country rather than the contrary.²⁴ These considerations require additional and more in-depth knowledge and understanding by the Bank about the *broader* impact and risks of criminal justice programming in different country environments.²⁵

IV. Bank Involvement in Criminal Justice Activities

12. The Bank, which has been supporting justice sector reform programming for more than two decades, has been cautious about promoting criminal justice reform work, largely due to its potential for being interpreted as political interference and a range of other risks (operational and reputational) that such programs pose.
13. This does not mean that the Bank is completely new to the criminal justice sector. Significant parts of the Bank’s anticorruption work engage with, and require the strengthening of, criminal justice agencies. Bank-financed projects have provided support for: health programs in prisons; developing capacities for conducting complex money laundering or financial investigations; tax/customs and environmental enforcement agencies; urban planning activities that focus on crime reduction; justice components in areas such as traffic management, port security, environmental management, financial police, social welfare, and disaster relief; and public and justice sector reform projects that include criminal justice institutions.²⁶ Ongoing anticorruption efforts involving national criminal justice institutions include contributions to the G-20 Anti-Corruption Action Plan and the Stolen Asset Recovery (StAR) Initiative, which aim to bolster the country-level

E/2000/INF/2/Add.2 at 35 (New York: United Nations, 2000). United Nations, “Report of the Meeting of Experts on the Application of UN Standards and Norms in Crime Prevention and Criminal Justice,” E/CN.15/2003/10/Add.1 (New York: United Nations, 2003).

²⁴ See World Bank, *World Development Report 2011*, 135, for an example.

²⁵ Furthermore, the need to engage with national security agencies in fragile and conflict-ridden states poses particular challenges for the design of assistance programs to address citizen security, if these agencies include military institutions, but should not bar Bank support where appropriate. If packaged within a single program, the activities for military, citizen security, and justice institutions may have some common aspects, but should account for the inherent differences as well.

²⁶ Further information about the scope of Bank activities in this sector follows in Attachment I. An example of this work is provided by the “Strengthening the Ministerio Publico in Minas Gerais” project in Brazil financed by an Institutional Development Fund grant. The project objective was to strengthen the institutional capacity of the Public Ministry of the State of Minas Gerais, and it focused particularly on the role of the Public Ministry in the environmental management system. Brazil’s Public Ministry combines the prosecutorial investigative functions with the role of a super-empowered ombudsman. Under the Brazilian Constitution, the Public Ministry has broad powers to investigate and take action against entities violating constitutionally guaranteed rights, in areas that include environmental rights, consumer relations, and public property. The Ministry has also played a significant role in fighting corruption. In essence, the Bank project therefore provided support to an institution that performs prosecutorial functions in the justice system.

capacity of accountability and enforcement agencies,²⁷ and INT's close work with national criminal justice institutions as part of its investigative and preventive work.²⁸

14. The exact number of activities that involved support for criminal justice reforms is difficult to identify or quantify since many are coded as components of larger projects not specifically related to justice reform activities. Attachment I presents an illustrative list of Bank-supported projects involving criminal justice institutions.
15. A number of organizational divisions of the Bank have been engaged to some degree in supporting criminal justice sector programs, and have different types and levels of expertise in criminal justice sector reform. These include: the VPU: the Justice Reform Practice Group (LEGJR), the Operations Policy Practice Group (LEGOP), and select advisory and country lawyers; the Poverty Reduction and Economic Management Network (PREM), which includes the Public Sector Group (PRMPS), PREM Network members in the regions, the StAR Initiative, and the Financial Market Integrity Service Line (FMI); the Sustainable Development Network (SDV) (including the Social Cohesion and Violence Prevention unit in the anchor, Urban Sector, and across the regions); INT; Private Sector Development (PSD); and Human Development Department (HD).
16. There are current efforts to build a more cohesive community of practice around justice sector issues across different VPUs, for example, in the social development and urban areas working on large violence prevention programs (e.g. development policy loans in Brazil and Honduras, programs in Jamaica, and the ongoing policy dialogue in South Africa).

V. Identification of Risks and Risk Management Strategies for Bank Activities

A. Identification and Classification of Potential Risks

17. The analysis and identification of risks in criminal justice activities should be conducted early on as part of the risk assessments that teams currently undertake for country partnership strategy (CPS) development and project preparation, using the ORAF tool where appropriate or applying the good practice guidance such as that issued by Operations Policy and Country Services (OPCS) for Development Policy Loans (DPLs).²⁹ Engagement in the criminal justice sector carries some risks that are similar to those that arise in other sectors, including lack of political will and corruption, undue executive influence/control, entrenched interests, institutional inefficiencies, lack of funding, and marginalization or abuse of certain population groups such as women, children, and minorities. Some risks, however, are more specific to the criminal justice sector. These

²⁷ This also includes work of the Corruption Hunters Alliance (ICHA), which aims to strengthen anticorruption agencies in client countries and illustrates the importance of the Bank's convening power in bringing together national and international criminal justice agencies to improve global anticrime and anticorruption efforts.

²⁸ INT works closely with national criminal justice institutions on a daily basis in the routine course of its work, to strengthen the capacity and improve the effectiveness of client criminal justice institutions in their fight against corruption, which also helps prevent and deter corruption in Bank-funded activities.

²⁹ See World Bank, "Good Practice Note For Development Policy Lending: Designing Development Policy Operations," Operations Policy and Country Services (Washington, DC: World Bank, 2011).

include risks inherent to the government's use of coercive force through the criminal justice system, involving activities such as the use of lethal weapons or undercover surveillance, the potential targeting of certain classes of people (such as political opponents) as objects of investigation and prosecution, and due process and other abuses during arrests and investigations, through court proceedings, and in prison.

18. As the discussion in Section III highlights, there is also potentially significant development risk in not engaging with the criminal justice system. Improving criminal justice systems can have a wider effect beyond the merely repressive, as law and order and, more generally, rule of law are vital to development as a whole. In some countries, the “do nothing” and risk-aversion approach to engaging in the criminal justice sector could also have a wider significance: a corrosive effect across the board in all sectors in which the Bank works. Criminal activities undermine and generally retard all other efforts to achieve broader development goals; it is therefore of vital importance that the Bank find effective ways to engage with this sector.
19. In recommending risk assessment analysis for potential criminal justice projects, the Legal Note identifies three levels of risk:³⁰

- I. ***Activities that pose no serious political issues and have a good economic rationale (risk level “low”)***: These include activities that are logical extensions of civil justice activities that fall within the ambit of permissible Bank activities (such as case management systems for courts of general jurisdiction; access to justice programs that include legal aid, legal advice, and public defense; court administration; and automation and computerization of court systems and judicial data collection in courts of general jurisdiction). They also include public health or similar activities that target the general population and may include participants in the criminal justice sector (e.g., the prison population or police as risk groups); research on crime or criminal justice; support to help poor and vulnerable people to deal with the effects of crime, such as health campaigns, victim support and counseling, gender violence reduction, rehabilitation of offenders, training and technical assistance for public defenders, juvenile justice programs, and crime prevention (other than policing); and infrastructure such as the construction or rehabilitation of court buildings.

Though not specifically listed in the Legal Note, assistance in developing strategic plans for justice sector reform, which often includes the criminal justice sector, would likely fall under logical extensions of civil justice activities.

- II. ***Activities where there is weak economic rationale, inherent risk of political interference, or high likelihood of failure/lack of sustainability beyond the period of direct program support***: Those activities that fail the test of political neutrality or linkage to economic interests are flagged by the Legal Note as activities the Bank should avoid. Examples provided in the Legal Note of activities that fall into this category include lethal weapons training or equipment,

³⁰ The risk levels set out are designed to be analogous to the risk levels in the Bank's Operational Risk Assessment Framework (ORAF).

some antinarcotics law enforcement campaigns, and support for pursuing a specific criminal case. (The recommendation that the Bank avoid supporting the pursuit of a specific case would mean that the Bank's support would be for the systemic strengthening of criminal justice functions rather than support for individual, targeted cases of investigation, prosecution, defense, or judgment in an ongoing criminal case or other matter in dispute between parties. Support for specific cases has been permitted when cases involve investigation into the use of Bank loans or other funds and related activities undertaken by INT,³¹ as well as some work conducted by the StAR Initiative.³²) The Note also discourages Bank support to areas of criminal justice that entail inherently high risks of political involvement, such as political crimes or crimes against the state, as well as the investigation, prosecution, and judgment of persons suspected of terrorist activities. Similarly, the Legal Note discourages Bank support to criminal justice institutions in countries in which human rights violations have reached pervasive proportions,³³ as well as support for military or paramilitary police, intelligence services, or services and institutions or programs that do not conform to international due process standards.

Other types of programs likely contraindicated include those in which there is lack of political will or country ownership, there exists high reputational risk to the Bank, or where there is inadequate means for perpetuating the assistance (i.e., sustainability is highly unrealistic/improbable). Contextual issues specific to the country in question must also be considered; for example, in countries where there is considerable unrest or open violent conflict, the risks may be higher that instruments and institutions of the criminal justice sector may be used for politically partisan ends and disputes. Determining the degree to which support for criminal justice programs makes "strategic sense"³⁴ for the Bank is also important, as is a weighing of the *risk of not acting* against the risk of undertaking action in the criminal justice system, and an analysis of the best methods for effecting support. For example, the Bank may consider factors that hamper the Bank's own ability to support the implementation of positive economic improvement programming. This may include the effects on Bank activities of insecurity and instability stemming from crime, violence, and the collective inability of a country's criminal justice institutions to provide for fair and equitable conflict resolution.

³¹ For example, referrals by INT of their investigative findings to governments and anticorruption agencies so that they can undertake corrective action, and their own criminal investigations to determine if the laws of the country have been violated.

³² As articulated in the General Counsel's 2004 Legal Note," the exclusion of specific case involvement requires that the Bank not "become involved in or judge the investigation, prosecution and judgments under criminal laws in specific cases." The exclusion would not apply in matters where the Bank itself is a party in interest (e.g., where the Bank supports the investigation or prosecution of parties believed to have engaged in fraud or corruption in relation to the Bank's own operations or Bank-financed activities). See World Bank, "Legal Note on Law Enforcement Elements of Anti-Money Laundering Assessments," General Counsel (Washington, DC: World Bank, 2004).

³³ The Legal Note on Bank Involvement in the Criminal Justice Sector cites I. Shihata, "Issues of 'Governance' in Borrowing Members - The Extent of Their Relevance Under the Bank's Articles of Agreement", December 21, 1990, SecM91-131, February 5, 1991 [the 1990 Governance Opinion], p. 16. The Bank's role is not to issue definitive opinions on alleged human rights violations, but in implementing Bank operational policies, Bank staff can rely on agencies with the expertise to assess these risks.

³⁴ Legal Note on Bank Involvement in the Criminal Justice Sector, paragraph 36.

Also included in this category of risks are activities that fail to achieve results, are not sustainable, are at counter-purposes with other donor programming, or could be damaging to the reputation of the Bank. As for all Bank activities, standard legal, reputational, operational, and financial risks need to be reviewed and management strategies developed.

III. *Activities in “grey areas,” or moderate to substantial risk:* To a greater or lesser degree, many requests for criminal justice assistance will not fall clearly into one of the above categories, and will require further evaluation to identify the likely risks and determine whether they can be adequately mitigated. Pursuant to the Legal Note, assistance to police, prosecutors, and prisons “seem likely to fall under this category,”³⁵ which, at the very least, would require specialized expertise to weigh the relative levels of risk associated with specific requests for assistance. The sections below provide examples for this analysis.

20. The table below sets out risk levels, related activity issues, and examples, as well as the review process suggested, based on the above categories.

Table 2. Risk Level Issues, Examples, and Processes

Risk level	Activity Issues	Activity Examples	Process
Low	Activities that pose no serious political issues and have a good economic development rationale.	Activities that are logical extensions of civil justice activities; public health or similar activities that target the general population and may include participants in the criminal justice sector; training for judges on best practice procedure, evidential standards, and case/court management; research on crime or criminal justice; support to help poor and vulnerable people to deal with the effects of crime, such as health campaigns, victim support and counseling, gender violence reduction, rehabilitation of offenders, training and technical assistance for public defenders, juvenile justice programs, and crime prevention (other than policing); strategy development; and construction or rehabilitation of court buildings.	Generally such activities can be supported and do not require review beyond the standard Bank review processes established. Teams can consult the CJRG for input and advice if desired.
High	Activities where there is weak economic rationale, inherent risk of political interference,	Activities include requests for weapons and other lethal equipment; some antinarcotics law enforcement campaigns; support for pursuing a specific criminal case; political crimes	Generally these are areas the Bank should avoid. If, in exceptional cases, activities in this category are proposed, teams must

³⁵ Ibid.

	or high likelihood of failure/lack of sustainability beyond the period of direct program support.	or crimes against the state; prosecution and judgment of persons suspected of terrorist activities; support in countries in which human rights violations have reached pervasive proportions; or support for military or paramilitary police, intelligence services, or services and institutions or programs that do not conform to international due process standards. ³⁶	seek advice of the CJRG regarding relevant risks and potential mitigating measures (paragraphs 23(5); 43).
Moderate to Substantial	Activities that have a good economic rational but pose some risk of political interference and other implementation and reputations risks specific to criminal justice work.	Activities that do not fall clearly into one of the above categories. Most assistance to police, prosecutors (including judicial), and prisons “seem likely to fall under this category” ³⁷ and require specialized expertise to weigh the relative levels of risk associated with specific requests for assistance	Depending on the country context, these activities can be supported if a solid risk assessment and risk management strategy are developed. Seeking advice from the CJRG early on (prior to the PCN meeting) is recommended (paragraph 43).

B. Risk Management Strategies

21. The levels of risk that the Legal Note states and that are set out above, serve to narrow the potential risks to the Bank of undertaking activities in the sector. It is important to note, however, that a positive identification even of substantial risks would not necessarily mean that the Bank cannot or should not support a specific criminal justice initiative; these are simply baseline questions and issues to be addressed at the early stages of determining whether or not to engage with the criminal justice sector, and if a specific project request is in line with the Bank’s mandate and Articles and therefore appropriate for Bank support. Since the criminal justice system represents a “chain” of agencies whose processes are interlinked, working with one part of the sector, i.e. police, has an immediate impact on other parts. An essential element of a risk assessment related to criminal justice sector engagement is also a review of how each critical part of the chain functions and how any intervention in one agency will impact the rest. Taking this perspective, the Bank can make an informed decision as to where and how best to target its support and how to address cross-agency impacts. A good risk management framework will lead to better results from the Bank’s engagement in this sector.

³⁶ International Due Process standards refer to the principle that governments are required to respect all of the legal rights that are owed a person according to the law. Certain of these rights have been considered of a fundamental nature and have been agreed upon at the international level, for example the United Nations *International Covenant on Civil and Political Rights* 1966 (ICCPR), available at <http://www2.ohchr.org/english/law/ccpr.htm>. Where such treaties exist, information will also be available with regard to which countries have signed and ratified the treaties, for example, here in relation to the ICCPR http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

³⁷ Ibid.

22. The Legal Note requires the Bank to further manage risks arising in the criminal justice sector by applying “special scrutiny” to proposed Bank operations in this sector. The scope of such analysis will depend on the nature of the proposed intervention. As the Legal Note advises, broad or likely high-risk interventions ideally merit a holistic analysis of the country’s institutions and legal system. Narrower or likely lower-risk interventions may require a lesser review, limited to the particular actors or activities at issue. The analysis should examine the risk of political interference posed by the proposed intervention, taking into account country context, the project participants (implementers and/or beneficiaries), and the nature of the proposed activities. Specific questions for analysis would include:

- Is the country one in which the criminal justice system generally is or has been misused for partisan political ends? Is this likely to change or continue during the course of the proposed intervention?
- Has the proposed project participant (if a state actor) a history of past or present misuse of the agency and/or its staff for partisan political ends? Is this likely to change or continue?
- Does the project participant (if a nonstate actor) have past or present involvement in partisan politics? Is this likely to change or continue?
- Do the proposed project activities entail a high potential of misuse for partisan political ends?
- Do civilian oversight and/or other accountability mechanisms exist for the police and other criminal justice institutions involved in the requested activity? How effective are they?

23. The following are illustrative examples of risk management strategies that may be considered in designing criminal justice activities.

1. *Country Ownership*: As in other Bank work, clear country support for and ownership of the proposed activities is essential and is a fundamental mitigating element to protect the Bank against involvement in partisan political affairs (or the appearance thereof). Country ownership should be evidenced by a specific request or consent from the relevant government authorities and especially through appropriate consultation with other, nonstate stakeholders such as civil society organizations. Where reasonable consensus on the type and manner of criminal justice interventions is not achievable, the Bank should seek to ensure the maximum degree of consensus practicable and weigh the level of consensus in its risk assessment. Ensuring a sufficient level of broader country ownership in an intervention can reduce the potential for the Bank to become entangled in a partisan or ideological controversy. Of equal importance is the linkage of proposed activities to a clearly articulated, detailed reform strategy and action plan. Another supporting factor may be the existence of an overarching formal agreement covering such activities (e.g., the 1992 Peace Accords in the case of El Salvador or the Afghan National Development Strategy). The effectiveness of any relevant accountability mechanisms already in place in the country should also be considered.

2. *Exclusion of Specific Case Enforcement*: Another threshold factor to protect the Bank against the appearance of involvement in partisan political affairs is the avoidance of support for investigations, prosecutions, and judgments with regard to individual criminal cases³⁸ in order to help insulate the Bank from support for, or association with, activities that may be tainted by partisan or ideological considerations. Politically motivated and/or selective prosecutions are not uncommon phenomena in many of the Bank’s member countries, and it can be difficult, if not impossible, for the Bank to assess, *a priori*, the true motivations behind particular cases or the potential public perceptions of such motivations. Cases related to stolen asset recovery, for example, may be set against a background of partisan politics, forming part of a larger struggle between rival political forces. Direct support for such specific cases could constitute the sort of interference in the internal political affairs of a member country that the political prohibition, even under the narrow reading that has been adopted since 1990, is meant to proscribe. There are also activities ancillary or preparatory to potential specific cases that the Bank may support without incurring undue political interference risk, for example, forensic audits, financial analysis, and other forms of fact-finding, as well as briefings on relevant legal requirements that would inform a decision whether or not to pursue a case. Any proposal along these lines should, however, be subject to heightened scrutiny and closely monitored, to assess both the potential risks and the development purpose of the Bank’s intervention (see discussion of the “Special Review Mechanism” below).³⁹ As noted above, the recommendation that the Bank avoid supporting the pursuit of a specific case would mean that the Bank’s support would be for systemic strengthening of criminal justice functions rather than support for individual, targeted cases of investigation, prosecution, defense, or judgment in an ongoing criminal case or other matter in dispute between parties. Support for specific cases has been permitted when cases involve investigation into the use of Bank loans or other funds and related activities undertaken by INT, as well as some work conducted by the StAR Initiative. Although it is important to note that the forensic audits conducted by INT are allowed under the rationale of the Bank acting effectively in relation to its fiduciary duties, support for creating such capacities *outside* of INT’s support requires additional scrutiny and monitoring.
3. *Maintaining Flexibility*: Even if significant and high risks are identified, this does not mean that the Bank may not consider the needs of the member country in designing its overall support to it or to a particular intervention in the member’s criminal justice sector. Nor does it mean that the Bank may never support specific cases, as has been noted previously. There may be cases, for example, where it is beyond doubt that there are few or no potential political implications to a particular case, and there may also be cases where counter-considerations weigh in favor of support. In cases involving the

³⁸ As articulated in the General Counsel’s 2004 “Legal Note on Law Enforcement Elements of Anti-Money Laundering, Assessments” the exclusion of specific case involvement requires that the Bank not “become involved in or judge the investigation, prosecution and judgments under criminal laws in specific cases.” The exclusion would not apply in matters where the Bank itself is a party in interest (e.g., where the Bank supports investigation or prosecution of parties believed to have engaged in fraud or corruption in relation to the Bank’s own operations or Bank-financed activities).

³⁹ The Legal Vice Presidency has also issued additional guidance for cases involving environmental enforcement, which should be read within the framework of this Guidance Note. See World Bank, “Guidance Note on IBRD/IDA Support for Fisheries Enforcement Activities” (Washington, DC: World Bank, 2011).

diversion of Bank loan proceeds, for example, consideration of the political prohibition must be weighed against the Bank's fiduciary duty under the Articles to ensure the proper use of loan proceeds.⁴⁰ An example of such flexibility could be that technical assistance and training for investigators may be targeted specifically to the types of skills needed to enable the successful investigation of a particular type of case (e.g., training in how to conduct financial investigations in support of money laundering cases), as long as such support is not limited to use in any actual ongoing case. For avoidance of doubt, financial and other forms of support for individual cases should not be confused with the Bank's practice of referring investigative findings to national authorities. The mere conveyance of information in the Bank's possession with respect to possible criminal activity by a member country's nationals or on its territory does not normally pose particular political interference risks and, in any event, is often undertaken in pursuance of the Bank's obligation under the General Conditions to inform borrowers of matters that may negatively impact on project implementation.

4. *Institutional Reviews, Political Economy, and Broader Capacity Assessments:* The Bank should generally focus its support in the criminal justice sector on institutional capacity building,⁴¹ legal empowerment, technical assistance, and other activities that address sector or subsector-wide issues. Prior to undertaking such activities there is generally a need for an in-depth understanding of the agencies and other stakeholders involved and targeted, who the beneficiaries of the intervention will be (and how the activities are expected to impact them), and the broader context. A solid analytical basis is essential for any engagement; where such basis does not exist, the first step may be funding for analytic and advisory activities (AAA) or other analytical work.
5. *Special Review Mechanism:* The Legal Note recommends that where the risk analysis finds a likelihood that the Bank may face high reputational risks and/or become involved in a member's political affairs or ideological dispute, the proposed intervention be subjected to a special review mechanism whereby:
 - all relevant risks are carefully analyzed;
 - a considered decision is taken whether to proceed with the intervention; and
 - if the Bank proceeds, appropriate safeguards and assurances are identified to avoid Bank involvement in the political affairs of concerned member countries. For example, where the country context or project participants are found to create significant risks of political interference, the Bank would need to limit its interventions to activities aimed at addressing the risk factors or those that, by their nature, will entail low political risks (e.g., working on the root causes of violence, working on specific issues with little potential for political misuse, or working with nonpartisan, nonstate actors).

The CJRG described in Section VII below can provide advice for those instances in

⁴⁰ See IBRD Articles of Agreement, Article III, Section 5(b) and IDA Articles of Agreement, Article V, Section 1(g).

⁴¹ "Institutions" here is understood broadly to include not only formal governments but other entities, such as tribal councils, responsible for responding to crime.

which the Bank proceeds with a high-risk project.

6. *Adherence to International Standards and Principles:* A number of internationally recognized standards exist in the area of criminal justice, particularly as they relate to police conduct, treatment of prisoners, investigation of torture and abuse, etc. Such standards may be part of international treaty instruments; in other cases, standards may be issued by the UN or other multinational or regional bodies⁴² or by international professional associations (such as correctional procedure guidelines). In some regions, such as much of ECA, EU standards and requirements for justice sector agencies need to be considered. (See Attachment III for a more detailed illustrative list of the relevant instruments.) To the extent that involvement within the criminal justice sector provides technical support to a member country in realizing its treaty obligations or following internationally recognized best practices, the Bank's potential risk is minimized.
7. *Sector-Wide Perspective:* Programs that focus on a single aspect of the criminal justice system may yield contradictory results, undermining one rationale for justice development while supporting another. For example, more effective policing can appropriately lead to increased arrests, but when carried out separately from efforts to support prosecutors, courts, and public defenders, the unintended result may be increased delays and overcrowding in courts and prisons. Similarly, construction of new prisons without penal reform may simply lead to an increase in the prison population, and a focus on prosecutorial reform has sometimes neglected indigent legal aid.⁴³ Some donors report that formal justice systems are overemphasized, while the informal, community, and traditional systems upon which many people rely to resolve disputes are neglected.⁴⁴ Restorative justice, alternative sentencing, and diversion programs may have been developed, but may lack the necessary human capacities and infrastructure to permit them to operate effectively.⁴⁵ While addressing all areas of need at the same time is often not practicable (but may be achieved in combination with other donors), maintaining a sector-wide perspective in designing, prioritizing, and coordinating involvement is essential to identifying risks, finding management strategies, maximizing positive change in the criminal justice sector as a whole, and increasing project outcome.
8. *Monitoring Results and Evaluations:* Tracking results from criminal justice programs supported by the Bank will be a crucial element in determining whether and how a specific type of project or involvement is apt for Bank support. Relative to many other donors, the Bank has built in greater degrees of review and evaluation procedures for

⁴² A "Compendium of UN Standards and Norms in Crime Prevention and Criminal Justice" (2006) is available at <http://www.unodc.org/unodc/en/justice-and-prison-reform/compendium.html>. See also International Network to Promote the Rule of Law, "International Standards that Relate to Detentions, Corrections, and Prisons" (INPROL, 2010), <http://inprol.org/files/CR10002.pdf>; United Nations, "Criminal Justice Standards for United Nations Police" (New York: United Nations, 2009), 100–105, http://www.unodc.org/documents/justice-and-prison-reform/08-58900_Ebook.pdf, which contains a list of referenced international law standards and guidelines applicable in the area of policing; and the Juvenile Justice Panel's collection of international human rights standards and norms applicable in the area of juvenile justice (i.e., children in conflict with the law or children as victims or witnesses) at <http://www.juvenilejusticepanel.org/en/ihrs.html>.

⁴³ See Perlin and Baird, "Towards a New Consensus on Justice Reform" (see n. 23).

⁴⁴ *Ibid.*, 3.

⁴⁵ *Ibid.*

all projects to monitor the appropriate expenditure of funds. In addition, the Bank could consider regular mid-term programmatic/results evaluations to provide for rapid problem identification and correction. This requires that a solid monitoring and evaluation framework be developed to monitor results.⁴⁶ In DPLs the policy matrices recommended by OPCS, together with a review of the line ministries' capacities to monitor progress, provide a way to track progress and manage risks.

9. *Country Oversight Mechanisms*: Inclusion of activities to support in-country oversight and accountability mechanisms that are part of the state's system can also serve to mitigate risk. For example, support to an Office of Inspector General, Office of Professional Responsibility, User/Client Ombudsperson, civilian review boards for law enforcement, anticorruption agency, or review/accountability panels within a criminal justice institution can build institutional and community capacity to identify problems or potential abuses before they become serious risks. In supporting such mechanisms, it is important to consider developing both the compliance as well as the investigative roles of these institutions. Here other governance tools, such the introduction of citizen report cards, community councils, or criminal justice coordinating committees to advise on and monitor reform progress, are important mitigation approaches that at the same time achieve other goals, such as greater inclusiveness and greater citizen awareness and engagement in criminal justice issues.
10. *Development of Uniform Policies and Standard Operating Procedures*: Assistance in developing policies and procedures to improve operations and coordination, and adhere to international standards across agencies, can mitigate risks to criminal justice programming. First, lack of uniformity—or harmonization—between criminal justice institutions can contribute to inefficiencies and other dysfunctionalities. A simple transfer of information from one agency to another may take months in the absence of shared data standards and an integrated information management system, thereby leading to costly delays (and often extended detention periods). It also undermines effective performance measurement and monitoring of sector agencies. Second, a lack of standard procedures may enable or even encourage improper practices on a systemic basis. Without a uniform chain-of-custody protocol for evidence, for example, there may be a tendency to rely too much on confessions (which may legitimately be a primary form of evidence in some cases, but may also raise concerns of possible coercion), rather than on physical evidence. Third, in the absence of documented operating procedures, it is difficult to hold agency staff accountable for their actions.
11. *Collaboration with Other Bilateral and International Donors*: Support for a particular aspect of ongoing programs by other donors, especially in cases where it is possible to evaluate reform progress to date, lowers the potential risk to the Bank. Coordinating with other donors that have significant expertise in aspects of criminal justice reform is especially advised in areas where the Bank currently lacks a competitive advantage, such as police and prison reform. Again, this does not mean the Bank should not engage in such work if the country requests such assistance and no other donors are

⁴⁶ For example, the World Bank's Worldwide Governance Indicators project gathers data on more than 60 indicators, including crime levels, quality of police, and judicial independence. The U.N. ROLIX project has as its goal the creation of common indicators on policing practices and institutional development. (Ibid., 35).

currently operating there or it may not be a preferred choice. Part of the risk management assessment here is to review if and how other donors can assist and in which manner. While coordination requires more in-depth and interdisciplinary efforts among donors, a coordinated approach, with regular and systematic communication within and among donor organizations, can be essential to the long-term sustainability of reforms.⁴⁷

C. Examples of Types of Criminal Justice Interventions, Related Potential Risks, and Mitigating Strategies

24. The table below provides examples of potential risks and possible risk management strategies (to be applied by the Bank or by the client if a DPL is involved) for select criminal justice reform involvement. The table is illustrative rather than comprehensive, but provides basic guidance to staff when considering criminal justice programming. The actual risk level and feasibility of mitigation management strategies will vary, depending on the country context, scope and type of work, and assistance instrument.

Table 3. Examples of Criminal Justice Involvement, Potential Risks, and Mitigating Strategies

Examples of Types of Criminal Justice Interventions	Potential Risks	Possible Mitigating Strategies
<p><i>Civilian Police Support:</i></p> <ul style="list-style-type: none"> • Police Academy (instruct/curricula) • Police administration and management • Police standards/vetting/recruit • Investigative capabilities • Draft policies and procedures • Forensics/evidence handling • Community policing/relations • Oversight mechanisms/citizen review boards • Investigative task forces • Police/prosecutor cooperation • Information sharing/automation 	<ul style="list-style-type: none"> • Misuse of power of police, overly repressive or coercive tactics, particularly prevalent in fragile and conflict-affected situations where police/security forces have grown out of or may consist of former paramilitary or vigilante groups • Risk of abuse of authority in utilizing equipment and tools provided under World Bank (WB) programs/use of equipment to abuse or repress citizens or political opponents 	<ul style="list-style-type: none"> • CJRG available for review of and advice on projects • Support only to police units under civilian government control • Build concurrent internal and external oversight and accountability systems • Support for government’s implementation of “UN Standards for Law Enforcement Conduct.” Exclusion of areas related to specific prohibitions in Legal Note (lethal equipment, military policing, support for specific investigations) • Support for developing standard operating procedures, uniform administrative criteria, transparent decision-making processes • Institutional capacity building

⁴⁷ Ibid., 3.

Examples of Types of Criminal Justice Interventions	Potential Risks	Possible Mitigating Strategies
		for management and administrative functions
<p>Legal Assistance & Drafting:</p> <ul style="list-style-type: none"> • Criminal code reform • Criminal procedures reform • Specialized laws (e.g., anticorruption, money laundering, environmental crime, victim assistance, etc.) • Institutional laws (e.g., police, prosecutors, etc.) • Strengthening legislative drafting units/personnel • Strengthening laws on legal education and professional training 	<ul style="list-style-type: none"> • Perception of WB bias against a particular group or business • Misuse of laws for political or economic gain • Inability to enact, enforce, or finance • Conflict with other laws if no harmonization 	<ul style="list-style-type: none"> • Transparent drafting process that provides for citizen, civil society, and business community input • Legislative impact assessments • National legislative oversight to assure adherence to international standards • Establishment of interagency working groups to assure harmonization • Support enactment and enforcement strategies, e.g. through assistance for public consultations, information dissemination, and public education, and support for development of impact assessments for draft laws.
<p>Access to Justice:</p> <ul style="list-style-type: none"> • Public education/information material and campaigns • Strengthening public defenders and legal aid alternatives • Paralegal programs • Pretrial detention policies and procedures • Pretrial diversion strategies for youthful offenders/substance abusers • Restorative justice, alternative dispute resolution, and other mediation strategies • Traditional justice/customary law and systems 	<ul style="list-style-type: none"> • Perception that WB support is resulting in “soft justice” and release of criminals • Entrenchment of local level power inequalities in traditional/customary systems. Insufficient understanding of core access to justice issues and significant cultural resistance to providing access to certain groups (i.e., domestic violence victims, differing community values, etc.) • Local bar association opposes legal aid by nongovernmental organizations (NGOs) • Lack of sustainability 	<ul style="list-style-type: none"> • Focus on at-risk and traditionally disadvantaged populations • Focus on education and information activities based on solid analytical work • Focus on improving user experiences of the system rather than supporting the traditional/customary system as such • Support oversight by and engage civil society • Ensure community support and funding for alternative mechanisms • Outreach to bar associations • Strengthen role of public defenders in pretrial processes
<p>Prosecution Services:</p> <ul style="list-style-type: none"> • Prosecutor training, technical assistance 	<ul style="list-style-type: none"> • Perception of creating an “unlevel” playing field by 	<ul style="list-style-type: none"> • CJRG available for review of and advice on projects

Examples of Types of Criminal Justice Interventions	Potential Risks	Possible Mitigating Strategies
<ul style="list-style-type: none"> • Organizational assessments • Administrative, operational, and management enhancement processes • Community-oriented operations and outreach • Victim and witness assistance services • Drafting prosecutorial manuals and guidelines • Case management systems • Establishing merit-based personnel systems • Code of conduct and accountability mechanisms 	<p style="padding-left: 20px;">strengthening prosecution if legal aid is lacking</p> <ul style="list-style-type: none"> • Potential for prosecutorial misconduct and corruption • Abuse of authority • Politicization • Lack of sustainability 	<ul style="list-style-type: none"> • Concurrent development of criminal defense infrastructure and capacity • Strengthen control and transparency systems to reduce opportunities for corrupt practices • Support internal regulations and oversight • Strengthen internal data capacities to monitor operations • Harmonization within the criminal justice chain • Support for community outreach and engagement • Support for coordination with potential victim service providers (i.e., health, community resource groups, etc.)
<p><i>Criminal Courts and Tribunals:</i></p> <ul style="list-style-type: none"> • Judicial independence mechanisms • Judicial system assessments, including expenditure reviews • Judicial oversight/accountability systems • Operational policies, merit- and needs-based personnel systems • Judicial training/legal training • Case tracking and management systems • Drafting of procedural manuals • Publication of decisions • Enforcement of decisions • Physical rehabilitation of courts, including IT infrastructure • Court security • Community court and outreach initiatives 	<ul style="list-style-type: none"> • Perception of WB interference in judicial selection process or interference with judicial independence • Court practices are perceived as biased and favoring elites or following party lines • Enforcement of decision efforts may be perceived as adversely affecting oppressed minorities • Physical rehabilitation projects may be subject to corrupt procurement practices • Human capacities to maintain reforms and new systems are insufficient 	<ul style="list-style-type: none"> • Implement concurrent internal and external judicial accountability mechanisms • Requirement for transparent system for issuing decisions • Broad stakeholder participation in developing policies and procedures • Support for development and adherence to transparent procurement practices

Examples of Types of Criminal Justice Interventions	Potential Risks	Possible Mitigating Strategies
<p>Legal and other Training:</p> <ul style="list-style-type: none"> • Targeted training courses and curricula • Capacity building for law schools and professional legal training • Support for creation of sustainable continuing legal education systems • Support for training institutions and law schools • Public education 	<ul style="list-style-type: none"> • Perception of Bank favoring certain legal systems (i.e. adversarial) • Perception that training is in conflict with local cultures, does not address true local needs • Insufficient quality control leads to subpar training • Select groups are marginalized by training • Training centers cannot be sustained 	<ul style="list-style-type: none"> • Multistakeholder working groups to develop and implement courses and curricula • Training based on solid needs assessments, customized to local conditions • Sustainability and capacity assessments
<p>Victim Services:</p> <ul style="list-style-type: none"> • Victim assistance programs • Victim restitution mechanisms • Victim protection • Services for special populations (youth, victims of sexual crimes, etc.) • Access to legal counsel/aid 	<ul style="list-style-type: none"> • Potential cultural risks related to treatment of victims (particularly women and domestic violence) • Victim focus may impact offender rights 	<ul style="list-style-type: none"> • Projects must be designed to be culturally sensitive • Assess impact of victim rights on offender rights and system capacities
<p>Crime Prevention Initiatives:</p> <ul style="list-style-type: none"> • Community engagement and awareness • Support for criminological studies to assess crime prevention options • Community policing • Prevention programs in schools • Neighborhood watch programs • Job training and referrals for at-risk populations • After school programs for youth • Urban design options 	<ul style="list-style-type: none"> • Abuse of authority by empowered community leaders • Potential for vigilantism in neighborhood programs • Urban design may marginalize poor and minority groups 	<ul style="list-style-type: none"> • Establish standards and guidelines for community engagement and introduce international best practice examples • Solid assessments of crime situations and capacities to address them • Linkages to other sector programs, i.e., youth, health, community development, urban, etc.
<p>Corrections Services:</p> <ul style="list-style-type: none"> • Training for prison officials • Prison laws, policies and procedures (e.g. classification of prisoners, segregation of populations—youth, women, etc.) • Recruitment, selection, and 	<ul style="list-style-type: none"> • Perception of assistance to prisons as being “soft” on criminals • Prisons are high risk for human and political rights abuse • Prisons may be used 	<ul style="list-style-type: none"> • CJRG available for review of and advice on projects • Support for external oversight mechanisms and transparent reporting structures • Focus on programs addressing humane treatment of prisoners,

Examples of Types of Criminal Justice Interventions	Potential Risks	Possible Mitigating Strategies
<ul style="list-style-type: none"> vetting of prison officials • Health and nutrition services • Rehabilitative and reentry services • Prison alternatives • Rehabilitation/infrastructure to reflect international standards • Systems to report/investigate abuse • Internal/external monitoring and controls • Independent prison inspections 	<ul style="list-style-type: none"> disproportionally for marginalized groups or for threatening political dissidents/opponents • Programs focusing on physical refurbishment may appear to neglect root causes of abuse and mistreatment of detainees • Creating more prison space may lead to higher incarceration rates 	<ul style="list-style-type: none"> treatment options, rehabilitation • Programs that adhere to internationally accepted standards and procedures • Support procedures that involve nonviolent, nonlethal restraints • Focus on improved recordkeeping • Programs that reduce pretrial population and overcrowding • Support access by detained population to Bar and public defenders

25. One important way to manage the risks of any major intervention on criminal justice issues would potentially be for the Bank and other donors to sponsor “national dialogues on criminal justice and/or citizen security” that lead to agreements on the fundamentals of a state policy that can be supported by the international community. The methodology tested under the Action Learning Plan (ALP) for Transparency and Accountability of the Latin American Judiciaries (finalized in August 2010), for example, could assist in the development of state policies on citizen security and criminal justice by facilitating consensus around empirical evidence, strengthening national capacity for formulating and implementing policy reforms, and generating a demonstration effect among participating institutions.

26. The type of instrument chosen can also have a bearing on the level of risk that an intervention may carry. Due to the lesser level of risk management possible during implementation of DPLs, this is not the instrument of choice for criminal justice reform as compared to investment lending or results-based lending. Should a project team determine to go forward with a DPL that includes policy action regarding criminal justice reform:

- a. any policy included as a prior action or conditionality should fall within the Bank's mandate as described in the Legal Note (including a review of the country, institutional context, and likelihood of risk of political interference as required in that Note); and
- b. the risk management process for the DPL as set out in the *Good Practice Note For Development Policy Lending: Designing Development Policy Operations* of January 2011 published by OPCS, should include a review of prior policy actions in the criminal justice arena with respect to their policy soundness; risk management, accountability, transparency, monitoring, and grievance-mechanism aspects as discussed in this Guidance Note; and the likelihood of the policy being carried out as written.

D. Lessons Learned from Other Donor Risk Management Strategies

27. Although many donors have documented general best practices and lessons learned from criminal justice programs,⁴⁸ few have specifically addressed risks and possible risk management strategies. This section provides an illustrative list and guidance on how other donors have responded to the risks inherent in engaging in the criminal justice sector.
28. The importance of establishing proper safeguards prior to beginning criminal justice reform work is a lesson that has emerged from the experience of the U.S. Agency for International Development (USAID). Its ability to engage in police reform was drastically limited in 1973, following a series of allegations of abuses by police in Uruguay and Brazil that had been trained by USAID and concern that the agency had not sufficiently assessed the risk of such an outcome. In response, the U.S. Congress declared that no funds “shall be used to provide training or advice for police, prisons, or other law enforcement forces for any foreign government.” Congress has since amended that provision such that today, the guiding principles for USAID and other U.S. Government agencies involved in such operations are: Support Host Nation Ownership, Incorporate Principles of Good Governance and Respect for Human Rights, Balance Operational Support with Institutional Reform, Link Security and Justice, Foster Transparency, and “Do No Harm.”⁴⁹ A wide range of agencies provide U.S. Government assistance to police and other justice system agencies, and observers cite a need for greater coordination and overall quality control. Considering that justice sector assistance is provided by a range of VPUs and groups within the Bank, the need for good coordination and guiding principles for engagement are important lessons.⁵⁰
29. The Inter-American Development Bank’s (IDB) “Guidelines for the Design of Violence Reduction Projects” present criteria relative to economic linkage and the nonpolitical nature of projects similar to those in the Legal Note, and include several additional concrete and pragmatic requirements:⁵¹
- Adequate monitoring mechanisms to assure that products or services are not redirected to questionable areas in terms of political interference or human rights concerns
 - Local advisory councils or systems of checks and balances to foster transparency, and civil society participation
 - Compliance with human rights standards
 - Feasibility of interventions to build sustainability
30. A recent review of the IDB experience suggests that while the infrastructure dimension could be closely tracked, the institutional and community aspects of criminal justice reform were more difficult to implement and supervise, and the results were unclear. Moreover, the challenges of working with subnationals on crime and violence issues were also typically bigger than those associated with national institutions.

⁴⁸ See, for example, Department for International Development (DfID), “Safety, Security and Accessible Justice. Putting Policy into Practice” (London: DfID, 2002).

⁴⁹ See United States Agency for International Development (USAID), Department of State, and Department of Defense (DoD), “Security Sector Reform” (Washington, DC: USAID, 2009).

⁵⁰ See D.H. Bayley, “U.S. Aid for Foreign Justice and Police,” *Orbis* 50, no. 3 (2006): 469–76.

⁵¹ Summarized from IDB, “Guidelines for the Design of Violence Reduction Projects,” 4–6.

31. Further information about other donor engagement policies and risk management strategies in a bilateral context is set out in Attachment II.

VI. Identifying Future Opportunities for Bank Criminal Justice Activities

32. While the seemingly crowded field of donor assistance in this sector makes for greater challenges in coordination and integration efforts, it also offers opportunities for entry points for the World Bank's justice sector development programs where critical gaps exist and for partnerships with those who have a good track record of reform support. The experience and leadership of some of these agencies in the higher-risk areas of specialized police training (e.g., crowd control, police SWAT-team development, weapons training, undercover surveillance, criminal intelligence) reduces the need for Bank support for programs in these areas, where the Bank in any case currently lacks a comparative advantage or institutional mandate to support such involvement.
33. Despite the relatively recent nature of its experience in the sector, the Bank can apply strengths gained through its development work more generally to criminal justice, such as: (i) supporting multidonor coordination of activities, (ii) supporting research and evaluation of programs, (iii) using the broad purview of Bank-financed projects across disparate sectors to support more comprehensive approaches, and (iv) supporting broad interaction with citizens and other stakeholder groups, thus enabling rapid communication of information relative to legal rights, legal support programs, access to justice reforms, and a broad range of prevention activities.
34. Other donors have filled specific niches in the justice sector development universe (see Annex II), but there remain a number of programming gaps in criminal justice sector development. This is so particularly in areas related to economic crimes and economic development (including the transnational activities of organized crime), where, due to the highly complex nature of these crimes, the investigative authorities of many developing nations are inadequately trained to effectively detect, investigate, prosecute, and adjudicate economic crimes, and support for establishing effective organizational and management structures is lacking. Similarly, support for developing capacities to enforce and adjudicate environmental crimes is underdeveloped. Among other "underfunded" types of assistance is the area of pretrial detention. A few donors, such as the Ford Foundation, the Open Society Institute, the U.K. Government's Department for International Development, the Asia Foundation, the UN's Office of the High Commissioner for Human Rights (ONCHR), and the UN Development Programme (UNDP), have supported work in this area but few systemic approaches to developing appropriate pretrial functions have evolved.⁵² It is also important to recognize that assistance for prosecution services has mostly involved training

⁵² Ibid., 28. For summary information about the justice sector reform approaches supported by various donors, see the website of the Governance and Social Development Resource Centre (GSDRC) <http://www.gsdr.org/go/topic-guides/justice/donor-approaches-to-justice>. Another source of information about justice reform programs supported by various donors is the website of the International Development Law Organization (IDLO), which provides a searchable index of donor-funded programs <http://www.idlo.int/english/Resources/ROL/projectandiniziatives/Pages/home.aspx>.

but rarely focused on developing well-functioning management and organizational structures; furthermore, little focus has been on the development of sustainable public defender systems and victim service agencies. Institutional development (including human resources, budgeting, monitoring and evaluation, funding for capital investments in information technology and infrastructure, etc.) is another area meriting further attention—and an area of relative Bank expertise. Other areas in which there is a clear need but relatively little interest on the part of other donors include regulatory aspects of criminal justice such as customs and excise authorities. The Bank’s choice of interventions may also be determined by the expertise it develops and on the human and other technical resources available.

35. The Bank has established a comparative advantage in several areas relevant to engagement in the criminal justice sector: court reform, public financial management, public sector management, work with supreme audit institutions, anticorruption strategies and commissions, and asset recovery. Other areas where the Bank does not have such a clear advantage but where there is still strong demand for engagement include assistance to the police and other law enforcement agencies, support for prosecution agencies, combating drug trafficking, and promoting crime prevention. These would be areas where the Bank could seek to strengthen existing and/or build new partnerships, for example, by expanding current work with the UN Office on Drugs and Crime (UNODC), EUPOL, INTERPOL, and the Organization for Security and Cooperation in Europe (OSCE), other relevant international organizations, and interested bilateral donors.
36. The Bank can play a useful and expanded role in environment and natural resource law enforcement, including crimes such as illegal logging, fishing, and poaching; illegal trade in endangered animals, plants, and related products; wildlife licensing; illegal disposal of hazardous waste and water pollution; and corruption related to these kinds of activities. Integrating crime prevention measures into urban planning can increase citizen safety and reduce cost for businesses operating in urban centers. The inclusion of crime prevention in youth development programs can make a difference in the lives of young people who may either become victims or perpetrators of crimes, with significant consequences for their later employment prospects,⁵³ and a focus on domestic violence prevention and enforcement even through education and health programs will not only create safety for women and other family members, but also reduce sick time in business and schools.⁵⁴
37. The Bank has accrued global experience working with different legal systems and public sectors around the world that provides a knowledge base from which to advise on international good practices and how to adjust them to a particular criminal justice system and country context. Based on its general institutional reform work, the following areas can

⁵³ See for example H. Urdal and K. Hoelscher, “Youth Exclusion and Political Violence: Urban Youth Bulges and Social Disorder: An Empirical Study and Sub-Saharan African Cities” (Washington, DC: World Bank, 2008).

⁵⁴ See, for example, World Bank, *World Development Report 2012: Gender Equality and Development* (Washington, DC: World Bank, 2012); S. Walby, “The Cost of Domestic Violence,” Women and Equality Unit (London: Department of Trade and Industry, 2004), <http://www.lancs.ac.uk/fass/sociology/papers/walby-costdomesticviolence.pdf>; and United Nations Economic Commission for Europe, “The Economic and Social Costs of Domestic Violence Against Women in Andalusia,” Conference of European Statisticians, UNECE Work Session on Gender Statistics, Working paper 8 (Geneva: UNECE, 2010).

be identified as core areas of Bank expertise and comparative advantage, upon which to design more tailor-made products for criminal justice sector institutions:

38. **Governance Assessments:** Although the criminal justice system is comprised of various agencies that are often the responsibility of more than one ministry and representing at least two branches of government (executive and judicial), effective governance across agencies is important but difficult to achieve. In many countries, criminal justice agencies coexist at different levels (federal, state, and local/municipal levels, etc.), which do not always operate in a coherent and effective manner. Institutional/governance assessments of more than one agency are often imperative to understand the political economies and to chart reforms across the sector. The most ambitious alternatives (suppression or merger of some agencies) may not be politically feasible, but a high-level, inter-institutional coordination mechanism, supported by solid integrated management systems, may help strengthen current structures.
39. **Capacity Building Action Plans:** As the human capital of justice sector agencies is critical for any reform effort to be successful, human resources reform will have to be restructured through the effective identification of staffing needs, training, merit-based selection, and evaluation and promotion processes along the lines of standard civil service reform, though adapted to the particulars of criminal justice agencies.
40. **Resource management improvement plans:** Along with building institutional and human capacities, the Bank has extensive experience in agency expenditure reviews and advising on effective budget allocation within agencies. Using this experience as a base to develop expertise and tools specific to criminal justice provides a significant advantage for the Bank—as long as the needed specialized expertise is recognized and considered. For example, several countries have increased the public resources dedicated to crime prevention/citizen security with mixed results.
41. **Public accountability systems:** Public accountability agencies and mechanisms, as well as civil society and private sector scrutiny, are critical to address the very low public trust in the various justice agencies. Dialogue, consultation, and participation activities may be useful to start a process to restore institutional legitimacy. Transparency and accountability can support internal governance improvements from the outside.
42. **Service delivery enhancements:** Many traditional Bank-financed investment projects in the justice sector to date have dealt with the “supply” side of justice institutions (i.e. increasing their capabilities to provide better services through refurbished infrastructure, modern ICT technology, and human capital upgrading) and less with the “demand” side (access to justice institutions by vulnerable groups). The demand side, however, would be particularly relevant to the Bank’s assistance in the criminal justice sector. The effectiveness of the criminal justice sector to address crime and violence, citizen safety, and victim and offender needs is critical to actually reducing crime and increasing public trust in the related institutions. The Bank’s approaches to mapping current service delivery and identifying service gaps or shortcomings are helpful if properly adjusted to the criminal justice system.

VII. Process for Assistance to Bank Teams and Review of High-Risk Projects

43. The Legal Note recommends that those involvements deemed “high risk”—that is, those considered politically sensitive, or having insufficient linkage to economic interests—be submitted to a special review process to ensure that all relevant risks are carefully analyzed and appropriate safeguards and risk management measures identified. Lessons learned from other donors that have worked in criminal justice reform indicate that some have encountered serious reputational risks in their early projects that set back work in this area; thus some mechanism to provide task teams with expert guidance in this new and risky area for the Bank, and some form of review of projects that are clearly in the Legal Note’s high risk category, appear warranted.
44. To date guidance and review has been provided by a small number of staff in the Legal Vice Presidency. To make the process more transparent and also more participatory, a Criminal Justice Resource Group will be expanded to include experts from across the Bank in areas such as justice reform, crime and violence prevention, environmental crimes, risk management, urban planning, youth development, gender, stolen asset recovery, anti-money laundering, and assistance to fragile and conflict-affected states, as well as the relevant Regional staff and OPCS.
45. Bank staff can seek advice from the CJRG at a range of times including:
 - a. *Participation in the CAS/CPS process:* Where criminal justice issues are identified as priorities to be included in the CAS/CPS, CMUs or project teams can seek guidance from or consultation with the CJRG staff.
 - b. *Participation in the development of PCNs and Project Appraisal Departments (PADs):* Bank staff are encouraged to involve the CJRG from inception and through stages of the program cycle to provide advice and examples of best practice.
 - c. *Economic and Sector Work (ESW) and Technical Assistance (TA) proposals and products:* The CJRG can review ESW and provide guidance to task teams on formulating approaches and identifying key questions and hypotheses to advance as part of the work. Additionally, the CJRG can provide guidance on external experts who could assist in delivering and developing this work.
 - d. *Documenting and evaluating progress:* The CJRG intends to carry out periodic evaluations of program elements to be compiled into progress reports to inform guidelines that can be developed for criminal justice reform. It is important that the Bank’s experience in this field be documented to gauge results from programs, develop a process to track progress, and develop a data base of lessons learned that will inform programming in the criminal justice sector over time.
46. In the exceptional cases wherein the Bank decides to undertake activities that are high risk, teams must seek the advice of the CJRG to review the proposed activities in order to provide teams and Bank decision makers with expert analysis of risks and the identification

of potential safeguards and risk management measures. It is recommended that this review take place prior to finalization of the PCN, so that guidance from the Resource Group can be taken into account by the team to develop risk management measures early on in project preparation.

47. In all cases, the role of the CJRG will be solely advisory, providing input to team members and decision makers. The Legal VPU will continue to provide clearance regarding compliance with the Bank's legal framework as in all Bank operations.
48. Currently LEGJR performs the secretariat functions for the CJRG and initial queries should be directed to that group.
49. The processes proposed here will be piloted for a period of three years. This interim period will allow Bank staff to evaluate the processes, potential risks, and mitigating strategies set out in this Guidance Note, and to monitor and collect the lessons from criminal justice projects and use them as the basis for preparing more detailed operational guidelines following completion of the pilot period.

Attachment I

Examples of Bank-Implemented Projects Involving Criminal Justice Institutions

Court infrastructure, including criminal courts and public defender offices:

- Armenia Judicial Reform Project (2000), in which, under the Project Component 1 (Strengthening the Institutional Capacity of the Judiciary), subcomponent C (Case Management), the Bank financed training of judges and other court personnel in case management, the designing of special systems and procedures for criminal cases (e.g. case numbering system, expedited issuing arrest and search warrant, issuing sentencing orders, pre-sentencing reports, information on pre-trial detention, bail policies, etc.) and the publishing of case processing manuals; under Project Component 2 (Infrastructure Rehabilitation), to meet enhanced standards of security, fire-life safety, accessibility and efficiency, the Bank financed the rehabilitation of six pilot courts and construction of one new pilot court building, which included the Appellate Court on Criminal and Military Cases in Yerevan.
- Venezuela Judicial Infrastructure Project (1992), in which the Bank financed improvements to court buildings, including the upgrading of pilot courts and public defender offices.

Prosecution:

- Argentina Support to the Anticorruption Office (2004)
- Serbia Justice Sector Support Project (2008) in which the Bank is providing support and advisory services to support the prosecutorial reform process in light of the adoption of a new Criminal Code. This includes a review of Serbia's criminal justice process and provision of recommendations for improvements to allow for efficient coordination and smooth handling of criminal cases.
- Bulgaria Combating Corruption: Strengthening Anticorruption Capacity in the Office of the Prosecutor General (2007) in which the Bank financed activities to support the Office of the Prosecutor-General of Bulgaria in tracking and combating corruption, especially among prosecutors.
- Sierra Leone Institutional Capacity Building for Combating Corruption in Sierra Leone (2010) in which the Bank has provided a grant to the Anti-Corruption Commission that will help build its operational and human resource capacity to analyze, investigate and prosecute corruption. This includes the development of training modules, plan and materials and provisions of training equipment.

Institutional Capacity Building:

- Brazil Strengthening the Ministerio Publico in Minas Gerais project in which the Bank financed capacity building activities to strengthen the Public Ministry of the State of Minas Gerais', and focused particularly on the role of the Public Ministry in the environmental management system. Brazil's Public Ministry combines the prosecutorial

investigative functions with the role of an ombudsman, and has broad powers to investigate and take action against entities violating constitutionally guaranteed rights, in areas that include environmental rights. The Ministry has also played a significant role in fighting corruption.

Traffic police:

In these projects, the Bank financed such police-related activities as training and equipment for traffic police in the enforcement of traffic regulations and strengthening government traffic police training agencies:

- Bangladesh Dhaka Urban Transport Project (1996)
- Bangladesh Third Road Rehabilitation and Maintenance Project (1998)
- Bolivia Road Rehabilitation and Maintenance Project (2002)
- Central African Republic Transport Sector Project (1990)
- Chile Third Road Sector Project (1995)
- China Tri-Provincial Highway Project (1998)
- China Xinjiang Provincial Highway Project (1994)
- Indonesia Northern Sumatra Region Road Project (1998)
- Poland Roads II Project (1997)
- Senegal Urban Mobility Improvement Project (2000)
- Sudan Khartoum-Port Road Rehabilitation Project (1989)

Port security:

- Central African Republic Transport Sector Project (1990) – Bank financed the strengthening of airport security conditions

Environmental management:

- Brazil Rondonia Natural Resources Management Project (1992) - Bank financed the construction of outposts for the State Forestry Police, as well as equipment, materials, salaries and other incremental operating costs
- Indonesia Coral Reef Rehabilitation and Management Project (1998) – In this project, the police were a principal implementing entity. The Bank financed new institutions, provincial coral reef S&E units for surveillance patrols in coordination with police. The Bank and Global Environment Facility (GEF) also financed the incremental costs of surveillance maintenance and operations, including vessel fuel, equipment maintenance, and minor equipment replacement; and allowances and local patrol costs for community reef watchers.
- Lao PDR Sustainable Forestry for Rural Development Project (2004) – In this project the Bank supports policy and capacity development of the national and provincial structures

for forest law enforcement (inspection), including training, development of strategy and procedures, information and intelligence systems and facilities and equipment.

Financial police:

- Albania Tax Administration Modernization Project (1994) – Bank financed institutional strengthening activities, such as defining the roles and responsibilities of financial police and training for financial police in enforcement activities including techniques for physical inspection, surveillance and escorting, as well as intelligence and investigation. The Borrower also received technical assistance from the IMF in the training of financial police under the Ministry of Finance.

Health and police/uniformed services:

- Bangladesh HIV/AIDS Prevention Project (2000) – IDA financed delivery of HIV intervention programs for “high risk groups,” which included police as clients of sex workers
- Kenya Sexually Transmitted Infections Project (1995) – IDA financed the provision of condoms and other care to the Uniformed Services, including military, police and security forces, which had independent health systems through Ministries of Defense and Police Headquarters.

Health and prisons:

The Bank has also financed technical advisory services and equipment for targeted interventions in prisons against HIV/AIDS and tuberculosis, where prisoners have been identified as one of the vulnerable population sub-groups for such diseases.

- Burkina Faso HIV/AIDS Disaster Response Project (2001)
- Pakistan HIV/AIDS Prevention Project (2003)
- Ukraine Tuberculosis and HIV/AIDS Control Project (2002)

Data collection systems for government departments including prisons, police, probation:

- Kenya Development of National Statistical System Project (2004) – Under Project Component D (Data Development), the Bank financed the strengthening of routine data systems in the departments of judiciary, police, prisons and probation (along with other ministries) to conform with internationally accepted standards and methodologies.

Social welfare/juvenile justice:

- Bulgaria Child Welfare Reform Project (2001) – Bank financed works, equipment, vehicles, supplies and training for National Police Department (NPD) to implement a child protection component, including (1) works: refurbishment of national training center within NPD; juvenile temporary placement homes and 24-hour detention rooms in district police stations, and child pedagogic unit; (2) training: the expansion of a police

community outreach program; (3) equipment and supplies: a vehicle, outreach materials and allowances, furniture and a computer.

- The Institutional Strengthening for Juvenile Justice in Chile (2005), in which the Bank aimed at strengthening the institutional capacity of the Ministry of Justice for monitoring and evaluation of the implementation of the country's new Juvenile Justice Law and at enhancing access to justice for Chile's youth.

Disaster relief projects:

In the wake of the 2001 Gujarat earthquake, the legal agreements for the following projects were amended to provide for community reconstruction including the repair and reconstruction of public administrative buildings, police department facilities, and residential quarters provided by the government to its employees and their families:

- Gujarat State Highway Project (Ln. 4577-IN)
- Women and Child Development Project (Cr. N042-IN)
- National Agricultural Technology Project (Cr. 3048-IN)
- Reproductive and Child Health Project (Cr. N018-IN)
- Environmental Management Capacity Building Technical Assistance Project (Cr. 2930-IN)
- Second District Primary Education Project (Cr. 2876-LN)
- Assam Rural Infrastructure and Agricultural Services Project (Cr. 2733-IN)
- Cataract Blindness Control Project (Cr. 261 I-IN)
- Andhra Pradesh First Referral Health System Project (Cr. 2663-IN)
- Population IX Project (Cr. 2630-IN), Haryana Water Resources Consolidation Project (Cr. 2592-IN)
- Second Integrated Child Development Services Project (ICDS II) (Cr. 2470-IN).

Improved Justice Services Delivery, Transparency and Access to Justice:

- Peru Justice Services Improvement Project II (2010) in which the Bank will finance the provision of technical assistance for improvements of the justice sector, and particularly the (1) reduction the duration of judicial processing time in criminal cases, (2) the strengthening oversight capacity of the organs charged with controlling corruption, and (3) the expansion of justice services to Peru's poorest communities, including legal aid.
- Mozambique Public Sector Reform Project (2003) in which the Bank provided financing to assist in the reduction in the number of days between the intake of a new case in the justice system (provincial courts/prosecutor's office) and its sentence in selected provincial courts.

Other:

- The Bank has played a limited role as fiscal agent for police-related expenditures under the Afghanistan Reconstruction Trust Fund.⁵⁵
- The Bank has financed assessments of law enforcement institutions (i.e., police, prosecutors and courts) in dealing with money laundering and the financing of terrorism.⁵⁶

⁵⁵ See Ko-Yung Tung, “Police-Related Activities under the Afghanistan Reconstruction Trust Fund” (Washington, DC: World Bank, 2002).

⁵⁶ See “Legal Note on Law Enforcement Elements of Anti-Money Laundering Assessments” (Washington, DC: World Bank, 2004). This opinion also contemplated the possible financing by the Bank of technical assistance for those institutions.

Attachment II

Examples of Donor Involvement and Lessons Learned

Current Donor Environment

Other multilateral banks, bilateral development agencies and organizations have supported significant criminal justice reform activities for many years - for the last two decades, multi-national organizations (such as the UN, OAS, OSCE, and the EU/EC) and individual nations (US, Canada, France, Germany, UK, etc.) have been active in criminal justice sector development.⁵⁷ Over time, these organizations have developed approaches and products that hold potential for application to and tailored replication in subsequent Bank development efforts. In particular:

- The *UN's* mandate required involvement of several of its entities in strengthening criminal justice sector agencies, especially law enforcement agencies.
- The *OECD (Organisation for Economic Co-operation and Development)* has supported police and prosecutor agencies in a range of countries.
- The *Inter-American Development Bank (IDB)* has supported criminal justice sector reform projects throughout Latin America, focusing on strengthening justice sector institutions, as well as on citizen safety.⁵⁸
- The *Australian Agency for International Development (AusAID)* has a significant portfolio of justice sector-wide programs many with a heavy emphasis on developing accountable and effective police organizations.
- The *Canadian International Development Agency (CIDA)* has supported police professionalization and the refurbishing of judicial infrastructure.
- Germany's *Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)* has actively supported both rule of law and police professionalization efforts.

⁵⁷ According to Perlin and Baird, "Towards a New Consensus on Justice Reform," 11 (see n. 23), the top five bilateral donors, for the years 2002 to 2006 (measured according to the Organisation for Economic Co-operation and Development (OECD) CRS database) are: (i) Legal and Judicial Development: United States, Australia, Sweden, Germany, and the United Kingdom; and (ii) Human Rights: Sweden, United States, Norway, United Kingdom, and Germany. The only multilateral donors registered with the OECD database worldwide for these two purpose codes are, first, the European Commission, and second, UNICEF.

⁵⁸ Up to 2006, the IDB had already approved approximately \$274 million for the implementation of criminal justice reforms in Latin America. See C. Biebesheimer and J. Payne, "IDB Experience in Justice Reform: Lessons Learned and Elements for Policy Formulation" (Washington, DC: Inter-American Development Bank, 2001). More recent IDB projects include, for example, a regional project that provides Technical Support for Anticorruption Capacity for prosecutors, investigators, and judges.

- The UK’s *Department for International Development (DfID)* has been at the forefront of the debate about the importance of criminal justice reform to the lives of poor people and to poverty reduction more generally.⁵⁹ DfID has special expertise focused on police-community relations and has incorporated seconded members from law enforcement agencies to support policing programs.
- The *U.S. Department of State/Bureau of International Narcotics and Law Enforcement Affairs (INL)* has supported large basic police training and specialized police tactical training, particularly in fragile and conflict affected situations (to include programs carried out by two U.S. Department of Justice⁶⁰ entities, the International Criminal Investigative Training Assistance Program (ICITAP) and the Office of Overseas Prosecutorial Development Assistance and Training (OPDAT).⁶¹
- The *U.S. Agency for International Development (USAID)* has an active portfolio of rule of law programs, and while predominantly focused on judicial reform, USAID is increasingly recognizing the importance of sector-wide approaches that incorporate all elements of the criminal justice sector.⁶²
- *Swedish International Development Cooperation Agency (SIDA)* has a special focus on supporting activities that enhance access to justice, which includes work with police and strengthening capacities to provide effective legal aid.
- A small number of private organizations support criminal justice reform projects, principally the *Ford* and *MacArthur Foundations*, and the *Open Society Institute*. Another important actor is the *American Bar Association Rule of Law Initiative (ROLI)* which implements legal reform programs in more than 40 countries. Its assistance related to the criminal justice sector largely focuses on support for drafting or adjusting criminal codes and criminal procedures codes as well as assistance to the private Bar for developing criminal defense capacities.⁶³

⁵⁹ Perlin and Baird, “Towards a New Consensus on Justice Reform,” 20.

⁶⁰ The U.S. Department of Justice’s Environmental Division, through its Environmental Crimes and Wildlife Crimes unit, has undertaken criminal enforcement efforts in the United States in order to implement various international treaties such as the “Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal,” the “United Nations Convention on the Law of the Sea,” and the “Convention on International Trade in Endangered Species.”

⁶¹ ICITAP focuses on police development and training programs, and OPDAT addresses prosecutor programs.

⁶² USAID has targeted criminal justice reform as its main Rule of Law initiative in Latin America, including police reform. U.S. Agency for International Development (USAID), “USAID’s Franco Advocates Community Policing as a Growing Component of Development,” Press release (Washington, DC: USAID, 2005). USAID sponsored reforms of criminal procedure in Guatemala, Bolivia, Honduras, El Salvador, Peru, Ecuador, Colombia, Nicaragua, Venezuela, Costa Rica, and Mexico. USAID, “USAID Promotes the Rule of Law in Latin America and the Caribbean Democracies” (Washington, DC: USAID, 2004). See also M. J. Trebilcock and R.J. Daniels, *Rule of Law Reform and Development: Charting the Fragile Path of Progress* (Cheltenham: Edward Elgar, 2008); P. Domingo and R. Sieder, eds., *Rule of Law in Latin America: The International Promotion of Judicial Reform* (London: Institute of Latin American Studies, 2001); and L. Bhansali and C. Biebesheimer, “Measuring the Impact of Criminal Justice Reform in Latin America,” in *Promoting the Rule of Law Abroad: In Search of Knowledge*, ed. T. Carothers (Washington, DC: Carnegie Endowment for International Peace, 2006).

⁶³ A compendium of basic information about areas of justice sector engagement—including, but not limited to, criminal justice sector support—by international foundations, bilateral and multilateral donors, international financial institutions, and UN agencies was commissioned by the Open Society Justice Initiative as part of a DfID-

While taken from the bilateral rather than multilateral context, lessons drawn from UK and US Government experiences in the criminal justice sector are illuminating.

UK experience re: Security and Development

DfID's 2005 strategy for security and development sets out the principles for engagement in this sector. Of particular interest are the conditions which DfID considers for not engaging or suspending support. These include

- a) if a country moved significantly away from poverty reduction objectives or outcomes, or the agreed objectives of a particular aid commitment – for example through an unjustifiable rise in military spending, or a substantial deviation from the agreed poverty reduction program,
- b) when a country is in significant violation of human rights or other international obligations, or
- c) when there is a significant breakdown in partner government financial management and accountability, leading to the risk of funds being misused through weak administration or corruption.⁶⁴

U.S. experience re: policing programs

U.S. Government experiences with supporting policing programs internationally serve to illustrate another approach to identifying and mitigating potential risks. Police assistance programs were prohibited by U.S. law in 1974 due to concerns over possible abuses and human rights violations, but section 660 of the Foreign Assistance Act was subsequently amended in 2005 to again permit certain types of police assistance programs. The initial waivers allowing assistance to policy pertained to several major categories of assistance, including:

- Programs to enhance professional capabilities to carry out general investigative functions.
- Programs to enhance forensic functions conducted under judicial or prosecutorial control.
- Programs to assist in the development of academic instruction and curricula for training law enforcement personnel.
- Programs to improve the administrative and management capabilities of law enforcement agencies, especially their capabilities relating to career development, personnel evaluation, and internal discipline procedures.
- Programs for rehabilitation of offenders.⁶⁵

funded project. See Perlin and Baird, "Towards a New Consensus on Justice Reform," Annexure B. While presented as a work in progress, this document conveniently collects in one place some basic information about the various areas of criminal justice engagement, regional focus, and modes of implementation for different donor agencies, foundations, etc.

⁶⁴ See Department for International Development (DfID), "Fighting Poverty to Build a Safer World. A Strategy for Security and Development" (London: DfID, 2005).

⁶⁵ Taken from Section 660 and 534 (b3) of the U.S. Foreign Assistance Act.

Subsequent to the initial waivers, additional categories of assistance were added, including to improve the relationship between the police and the community, among other categories.

Based on the above waivers, the USDOJ's International Criminal Investigative Training Assistance Program (ICITAP) was initially charged with implementing the U.S. Government's police development program, principally focused in the Latin American region. To the above-listed restrictions, ICITAP added general restrictions over involvement in lethal weapons, or types of activities that might be used against or to repress citizens. Thus, for example, emphasis was placed on enhanced use of physical evidence (rather than coerced confessions); the program provided technical assistance in building police capacity to interview witnesses (as opposed to techniques of interrogating suspects); developing use of force policies and guidelines (rather than supporting firearms training); and supporting records-keeping and police information systems (as opposed to support for intelligence networks). Development of oversight and accountability mechanisms, both within and external to the specific law enforcement entity, was an integral aspect of most assistance programs and is a factor in mitigating the risk inherent in strengthening the power and capacity of the state. An early lesson from ICITAP pertains to the need to balance assistance across the criminal justice sector. For example, concentration of developing police capacity to apprehend and arrest suspects will quickly result in prison overcrowding and increased delays in courts and prosecutors offices – underscoring the need to ground specific interventions in sector-wide analysis that clearly considers downstream effects.

DfID policy is to decide about engagement in criminal justice sector reform on a country-by-country basis depending on the local commitment to “take effective action and to pursue reform in the context of poverty eradication objectives”.⁶⁶ It has also outlined several conditionalities for ending support for this sector.⁶⁷

AusAID is in the process of developing more detailed engagement policies and risk management strategies for its entire development portfolio.⁶⁸

OECD's principles for good international engagement in fragile states and situations provide another guiding post for engagement with criminal justice agencies in fragile states.⁶⁹

The European Bank for Reconstruction and Development (EBRD), which has a legal framework different from that of the Bank and an explicit political mandate, does not currently have specific policies or risk assessment approaches for criminal justice programs beyond the standard assessment and review processes in place for its development assistance.

The United Nations (UN) has issued guidance by the Secretary General setting out the guiding principles for UN rule of law activities at the national level to be applied in all country circumstances.⁷⁰

⁶⁶ See Department for International Development (DfID), “Safety, Security and Accessible Justice. Putting Policy into Practice” (London: DfID, 2002), 61.

⁶⁷ See Dfid, “Fighting Poverty to Build a Safer World.”

⁶⁸ See Australian Agency for International Development (AusAID), “Building on the 2010 Blueprint. A Reform Agenda for 2015” (Canberra: AusAID, 2010), <http://www.ausaid.gov.au/publications/pdf/reform-agenda-2015.pdf>.

⁶⁹ See Organisation for Economic Co-operation and Development (OECD), “Principles for Good International Engagement in Fragile States and Situations” (Paris: OECD, 2007), <http://www.oecd.org/dataoecd/61/45/38368714.pdf>.

Attachment III

Illustrative (Nonexhaustive) List of Key Legal Instruments Setting Out Internationally Recognized Standards Relevant to the Criminal Justice Sector

Major declarations, covenants and conventions:

- Universal Declaration of Human Rights (1948)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- Convention on the Elimination of All Forms of Racial Discrimination (1966)
- Convention on the Elimination of All Forms of Discrimination Against Women (1979)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Rights of the Child (1989)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)
- Convention Against Transnational Organized Crime (2000) and its protocols
 - Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
 - Protocol against the Smuggling of Migrants by Land, Sea and Air
 - Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition
- Convention Against Corruption (2003)
- Convention on the Rights of Persons with Disabilities (2006)
- International Convention for the Protection of All Persons from Enforced Disappearance (2006)

Treatment of prisoners:

⁷⁰ See UN General Assembly, “UN Approach to Rule of Law Assistance” (see n. 23). See also the review by Jamal Benomar (formerly with the Office of the UN Secretary General), J. Benomar, “Rule of Law Assistance: Lessons Learned from International Experience” (New York: Institute for Global Policy, 2006), http://www.betterpeace.org/files/Benomar_ruleoflaw_assistance_lessonslearned_20oct2008.pdf.

- UN Standard Minimum Rules for the Treatment of Prisoners (the “Standard Minimum Rules”) (1955), adopted by the First United Nations Congress on the Prevention of Crime and Treatment of Offenders, held at Geneva in 1955, and approved by ECOSOC Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977
- Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners, ECOSOC Resolution 1984/477, annex (1984)
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN General Assembly Resolution 43/173, annex (1988)
- Basic Principles for the Treatment of Prisoners, UN General Assembly Resolution 45/111, annex (1990)
- Kampala Declaration on Prison Conditions in Africa, ECOSOC Resolution 1997/36, annex (1997)
- Status of foreign citizens in criminal proceedings, ECOSOC Resolution 1998/22 (1998)
- Arusha Declaration on Good Prison Practice, ECOSOC Resolution 1999/27, annex (1999)

Children/juvenile justice:

- UN Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”), UN General Assembly Resolution 40/33, annex (1985)
- UN Guidelines for the Prevention of Juvenile Delinquency (the “Riyadh Guidelines”), UN General Assembly Resolution 45/112, annex (1990)
- UN Rules for the Protection of Juveniles Deprived of Their Liberty (the “Havana Rules” or “JDLs”), UN General Assembly Resolution 45/113, annex (1990)
- UN Guidelines on the Administration of Juvenile Justice (the “Vienna Guidelines”), ECOSOC Resolution 1997/30, annex (1997)
- UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crimes, ECOSOC Resolution 2005/20 (2005)
- UN Committee on the Rights of the Child, General Comment No. 10 (2007) on “Children’s rights in juvenile justice”
- ECOSOC Resolution 2007/23, “Supporting national efforts for child justice reform, in particular through technical assistance and improved United Nations system-wide coordination” (2007)
- UN Human Rights Council Resolution (A/HRC/10/L.15) on human rights in the administration of justice, in particular juvenile justice (20 March 2009)

Alternatives to imprisonment and restorative justice:

- UN Standard Minimum Rules for Non-Custodial Measures (the “Tokyo Rules”), UN General Assembly Resolution 45/110, annex (1990)

- Kadoma Declaration on Community Service and recommendations of the seminar entitled “Criminal justice: the challenge of prison overcrowding,” held in San Jose from 3 to 7 February 1997, ECOSOC Resolution 1998/23, annexes I and II, respectively (1998)
- Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, ECOSOC Resolution 2002/12, annex (2002)

Torture and other cruel, inhuman or degrading treatment or punishment:

- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN General Assembly Resolution 3452 (XXX), annex (1975)
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman and Degrading Treatment, UN General Assembly Resolution 37/194, annex (1982)
- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN General Assembly Resolution 55/89, annex (2000)

Capital punishment:

- Capital Punishment, UN General Assembly Resolution 2857 (XXVI) (1971)
- Safeguards guaranteeing protection of the rights of those facing the death penalty, ECOSOC Resolution 1984/50, annex (1984)
- Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, ECOSOC Resolution 1989/64 (1989)
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, set forth in ECOSOC Resolution 1989/65, annex (1989) and endorsed by the UN General Assembly in Resolution 44/162 (1989)
- Safeguards guaranteeing protection of the rights of those facing the death penalty, ECOSOC Resolution 1996/15 (1996)
- The question of the death penalty, UN Commission on Human Rights resolution 2003/67 (2003)

Crime prevention:

- Guidelines for cooperation and technical assistance in the field of urban crime prevention, ECOSOC resolution 1995/9, annex (1995)
- United Nations Declaration on Crime and Public Security, General Assembly resolution 51/60, annex (1997)
- Firearm regulation for purposes of crime prevention and public health and safety, ECOSOC resolution 1997/28 (1997)

- UN Guidelines for the Prevention of Crime, ECOSOC Resolution 2002/13, annex (2002)

Victims:

- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN General Assembly Resolution 40/34, annex (1985)
- Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, ECOSOC Resolution 1989/57 (1989)
- Plan of action for the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, ECOSOC Resolution 1998/21, annex (1998)
- UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crimes, ECOSOC Resolution 2005/20 (2005)

Violence against women:

- Declaration on the Elimination of Violence Against Women, UN General Assembly Resolution 48/104 (1993)
- Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, UN General Assembly Resolution 52/86, annex (1998)

Mental health:

- Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, UN General Assembly Resolution 46/119, annex (1991)

Law enforcement officials:

- Code of Conduct for Law Enforcement Officials, UN General Assembly Resolution 34/169, annex (1979)
- Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials, ECOSOC Resolution 1989/61, annex (1989)
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

Judiciary:

- Basic Principles on the Independence of the Judiciary, endorsed by UN General Assembly Resolution 40/32 (1985)
- Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary, ECOSOC Resolution 1989/60, annex (1989)

- Bangalore Principles of Judicial Conduct (2002)

Prosecutors:

- Guidelines on the Role of Prosecutors (1990), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

Lawyers:

- UN Basic Principles on the Role of Lawyers (1990), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

Public officials:

- International Code of Conduct for Public Officials, UN General Assembly Resolution 51/59, annex (1996)
- UN Declaration against Corruption and Bribery in International Commercial Transactions, UN General Assembly Resolution 51/191 (1996)

Declarations and plans of action:

- Statement of principles and programme of action of the United Nations crime prevention and criminal justice programme, UN General Assembly resolution 46/152, annex (1991)
- Naples Political Declaration and Global Action Plan against Organized Transnational Crime, A/49/748, annex, sect. I.A (1994)
- Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, UN General Assembly Resolution 55/59 (2000)
- UN General Assembly Resolution 56/261 (2002), “Plans of action for the implementation of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century”
- Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice, UN General Assembly resolution 60/177 (2005)

Sample regional instruments:

Africa:

- African Charter on Human and Peoples’ Rights (1981)
- African Charter on the Rights and Welfare of the Child (1990)
- Kampala Declaration on Prison Conditions in Africa, ECOSOC Resolution 1997/36, annex (1997)

- Arusha Declaration on Good Prison Practice, ECOSOC Resolution 1999/27, annex (1999)

Americas:

- American Convention on Human Rights (1969) and its Protocols
- Inter-American Convention to Prevent and Punish Torture (1985)
- Inter-American Convention on Forced Disappearance of Persons (1994)
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, also called “Convention of Belém do Pará” (1994)

Europe:

- European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its Protocols
- European Social Charter (1961 and revised 1996) and its Protocols
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)
- Framework Convention for the Protection of National Minorities (1995)
- European Prison Rules, Committee of Ministers of the Council of Europe Recommendation Rec (2006) 2, Appendix (2006)

Model treaties:

- A quite comprehensive list of model treaties is available at the UNODC’s website which has a compendium list of model treaties in key issues such as extradition, mutual assistance in criminal matters, etc. See <http://www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html>