

UNODC CHECKLIST

JUSTICE SYSTEM PROCESSING OF DRUG-RELATED CASEWORK

Investigations:

- Analysis by District of all investigation files opened on drug trafficking cases in the last 5 years
 - total number of case files opened
 - less case files closed after preliminary enquiry (reasons / time period?)
 - total number of case files continued for advanced investigation
 - less case files closed after advanced investigation (reasons/time period?)
 - average time from opening of file to submission for purposes of prosecution
- Case selection criteria and guidelines?
- Existing system of case flow management

Prosecutions:

- Competency and independence of existing prosecutors
- Existing system for recruitment, appointment, remuneration, training and career development of new prosecutors
- Existing system of prosecution case flow management
- Analysis by District of all prosecution files opened on drug trafficking cases in the last 5 years
 - total number of case files submitted for the purposes of prosecution
 - less number of case files closed on advice of prosecutor (reasons)
 - average time from receipt of case file for prosecution to court filing/ non filing.
- Case selection criteria and guidelines?

Prisons:

- Control/out of control in relation to ongoing drug trafficking operations conducted from prison
- Statistics
 - total number of non-convicted persons on remand in custody
 - total number of convicted persons on remand in custody
 - total number of convicted persons serving sentence in prison
 - total number of convicted persons released on parole or similar
- Ways of securing improper release (e.g. escape, identity substitution, corruption)

Diaspora:

- Estimated population numbers in major consuming countries

The Courts, Judicial Structure, Appointment Terms and Conditions

- Stakeholders
 - Ministry of Justice
 - Attorney-General
 - DPP
 - Police and other law enforcement agencies
 - private practitioners
 - community (individual criminal complainants, civil litigants, witnesses, victims)
 - criminal accused
 - chief justices (in their supervisory role over the whole system)
- Statistics
 - number of judicial districts
 - number, location and internal structure of criminal courts/ civil courts (to what extent do these impose administrative barriers to the conduct of court business and militate against efficiency)
 - number and location of court registries and registrars, by court
 - number, type and location of prosecutors and support staff, materials and equipment (qualified legal practitioners/ non legal practitioners)
 - number, type and location of judicial officers and support staff, materials and equipment (by court)
 - magistrates and support staff, materials and equipment
 - trial judges and support staff, materials and equipment
 - appeal court judges and support staff materials and equipment
- Jurisdiction, competency and independence of existing
 - magistrates
 - trial judges
 - appellate court judges
- Existing system for recruitment, appointment, remuneration, training and career development of new
 - magistrates
 - trial judges
 - appellate court judges
- Existing system of court operations management
- Existing system of case flow management
- Access to and utilization of technology
- Witness care
 - advance instructions given on how to get to court
 - advance information given on what to do on arrival at court
 - advance information given on waiting times at court

- average waiting time at court (hours)
- average number of witnesses who give evidence on the day called
- average number per witness of attendances on previous occasions before in fact giving evidence
- average number of attending witnesses who ultimately are NOT called to give evidence
- witness facilities at court (privacy, separated prosecution and defence witnesses and defendant, measures to prevent intimidation of witnesses in and around the courts (security personnel contracts to extend to dealing with intimidating behavior)
- witness worries about security and the court process
 - name being read aloud
 - seeing the defendant
 - being asked questions the witness could not answer
 - not understanding what was happening in court
- clear responsibility to be established in a single agency to coordinate policy and deal with funding
- possible court-based witness service for magistrates and youth court matters to
 - arrange pre-trial familiarization visits
 - act as a single contact point for witnesses
 - direct witnesses at court
 - provide information on case progress
 - explain basic court procedures
 - liaise with other criminal justice system personnel

Trials:

- Analysis (by District / class of case / procedure (summary, indictment, mixed) of all (all categories/ drug related categories) prosecution cases filed in the last 5 years
 - total number of cases filed (summary trial / indictment procedure / mixed)
 - less total number of cases not able to proceed (procedural reasons)
 - total number of cases pleaded (guilty plea / not guilty plea)
 - total number of cases heard (guilty plea / not guilty plea)
 - total number of cases determined (guilty/not guilty)
 - conviction rate of all prosecutions submitted to trial courts (by District / class of case / procedure (summary, indictment, mixed) of all (all categories/ drug related categories)
 - average time from court filing to disposal (guilty/not guilty)

Sentencing

- min / max possible sentences provided under the law (summary trial / indictment - by offence)
- average sentence handed down (summary trial / indictment - by offence)
- diversion options

Diversion

- Diversion options available (type)
- Who makes the formal diversion decision
- Statistics
 - number of cases after investigation or arrest, but before trial
 - number of cases during trial but before determination of plea
 - number of cases after determination of plea, but before sentence
 - number of cases after determination of both plea and sentence, but before commencement of sentence
 - number of cases after commencement of sentence
- Does treatment time count towards service of sentence

Asset forfeiture

- Restraint - analysis (by District / class of case / procedure (summary, indictment, mixed) of all (all categories/ drug related categories) prosecution cases filed in the last 5 years
 - total number of restraint cases filed
 - total number and value of restraint cases decided (granted / refused)
 - grant rate of all restraint applications made courts of first instance (by District / class of case / procedure (summary, indictment, mixed) of all (all categories/ drug related categories)
 - average time from court filing to restraint application disposal
- Confiscation - analysis (by District / class of case / procedure (summary, indictment, mixed) of all (all categories/ drug related categories) prosecution cases filed in the last 5 years
 - total number of domestic confiscation cases filed
 - total number and value of domestic confiscation cases decided (granted / refused)
 - grant rate of all confiscation applications made courts of first instance (by District / class of case / procedure (summary, indictment, mixed) of all (all categories/ drug related categories)
 - average time from court filing to confiscation cases application disposal

Appeals

- Analysis (by District / Court / class of case of all (all categories/ drug related categories) criminal appeal cases filed in the last 5 years
 - total number of appeals filed (conviction/sentence/restraint order/confiscation order)
 - total number and value of appeals decided (granted / refused)
 - average time from appeal court filing to disposal of the appeal by that court

Bail

- Analysis (by District / Court / class of case of all (all categories/ drug related categories) criminal bail applications filed in the last 5 years
 - authority to grant bail (police/magistrates/judges - monetary and penal limitations)
 - total number of persons on remand (for bailable / non-bailable offences)
 - total number of non-convicted persons on remand(in remand centre / in prison)
 - total number of bail applications filed
 - total number of bail applications determined (granted / refused)
 - total number of *habeas corpus* applications filed
 - total number of *habeas corpus* applications determined (granted / refused)
 - average time from arrest to disposal by that court (bail /habeas corpus)
- limitations on multiple applications?

International cooperation

- Extradition outbound (all crime / drug related crime)
 - total number of extradition requests made (all crime / drug crime)
 - total number of requests granted in whole or in part (all crime / drug crime)
 - total number of requests refused (all crime / drug crime)
 - major reasons for refusal (all crime / drug crime)
 - total number of requests outstanding (all crime / drug crime)
 - average time from date request made to date of formal decision to surrender or not surrender
- Extradition inbound (all crime / drug related crime)
 - total number of extradition requests made (all crime / drug crime)
 - total number of requests granted in whole or in part (all crime / drug crime)
 - total number of requests refused (all crime / drug crime)
 - major reasons for refusal (all crime / drug crime)
 - total number of requests outstanding (all crime / drug crime)
 - average time from date request received to date of formal decision to surrender or not surrender
- Mutual assistance to (outbound)
 - total number of mutual assistance requests made (all crime / drug crime) (prosecution / asset forfeiture)
 - total number of requests granted in whole or in part (prosecution / asset forfeiture)
 - total number of requests refused (prosecution / asset forfeiture)
 - major reasons for refusal (prosecution / asset forfeiture)
 - total number of requests outstanding (prosecution / asset forfeiture)

- average time from date request made to date of formal decision to grant or refuse assistance

➤ Mutual assistance to (inbound)

- total number of mutual assistance requests made (prosecution / asset forfeiture)
- total number of requests granted in whole or in part (prosecution / asset forfeiture)
- total number of requests refused (prosecution / asset forfeiture)
- major reasons for refusal (prosecution / asset forfeiture)
- total number of requests outstanding (prosecution / asset forfeiture)
- average time from date request made to date of formal decision to grant or refuse assistance

➤ System failure - indicators common to judicial systems under threat

- judicial administration unable to deal with its responsibilities
- outmoded and unsupported laws being administered
- caseloads too high
- unrealistic lists and listing methods
- tenacious retention of inefficient method
- disaffected judicial offices and resulting low morale
- practitioners failing in their duties to the courts
- manipulation of the rules and practices to gain inappropriate advantages
- inadequate assistance to court processes by prosecution and other State services
- corruption in the legal and police procedures either by money bribes or obtaining or presenting of proof in an extra-legal manner
- direct intervention of the Administration to influence the outcome of cases

➤ Common approaches to improving systems

- changes to substantive law
 - repeal those laws which no longer serve a useful purpose
 - reduce the nature of the penalties which can be imposed for minor offences
 - where necessary, amend the laws of evidence to allow proof of **non-critical** questions in a simplified manner
 - improve the chain of administrative command and definition of various levels of responsibility
- prevention of unnecessary adjournments
 - recognize that adjournments without good cause bedevil and invalidate systems
 - train prosecutors (ff non-legal practitioner prosecutors) in a presentation of cases and in the collection of materials for presentation to courts
 - provide first instance judicial officers (ff magistrates) with the clerical and administrative assistance and back-up to optimize time spent hearing cases

- lawyers should be prevented from seeking tactical adjournments or arguing legal questions without notice and presentation of a written outline of argument
- costs penalties for adjournments
- judicial reorganization
 - set out realistic caseloads for judicial offices, (ff first instance magistrates)
 - supervise disposals of caseload
 - pay judicial officers salaries and allowances commensurate to their work
 - improvement in working conditions
 - democratic governance
 - enhance the independence and status of the judiciary
 - administrative improvements for case lists and post-hearing disposals
- increased efficiency and output in the first instance courts will have knock-on effects in the
 - appeal courts
 - prisons

Timeframes and other practical measures relating to recommendations

- Changes which appear to be necessary from a theoretical perspective cannot be all put in place in a short timeframe
- The primary enquiry must involve identification of the most urgent changes and the time taken for them
 - legislative amendments may be delayed by the democratic processes of Parliament
 - legislative changes require drafting capacity, techniques and staff which may not be readily available
 - all recommended changes must take into consideration the necessity to provide drafting assistance
 - the selection, appointment and training of judicial officers and court administrative staff will involve delay
 - funding of essential changes may be outside the immediate financial resources available to the client
 - funding sources for on-going and long term expenses must be continually explored

PROCEDURE AND CASE FLOW MANAGEMENT

Listing

- How do the first instance judicial officers deal with criminal prosecutions (daily lists?)
- Is there a call over process, and if so is its purpose:

- to dispose of cases; or
- a mere investigatory exercise (e.g. are the complainant (victim), the arresting officers, witnesses and defence counsel present and whether can proceed in the time available)
- Is there a separate list for criminal and civil matters - if not civil usually put over to meet the demands of the criminal list
- Does the listing process accept non-attendance, propagate a culture of delay and thus encourage contempt of the process of the court and call the administration of the law into disrepute
- What form do the daily lists take (get specimens)? Do they clearly differentiate between
 - criminal bail matters
 - pleas
 - mention matters (reduced to a minimum)
 - criminal matters set for hearing
 - civil matters set for hearing (if any)
- Only if the exigencies of the bail list demand it should hearing matters not be commenced or reach the markings allocated
- Police, witnesses, litigants and practitioners must by authority if the judicial officers expect that when a matter is listed for hearing it will proceed or sanctions will be applied

Service of process

- Critical forefront of the litigation process
- Importance of service must be clearly understood and enforced - requiring that clear appreciation of the importance of service of documents
- Who serves
 - criminal instruments (police?)
 - civil process (bailiffs, private process servers?)
- In a closed community, if avoidance of service demonstrated, substituted service should be possible
- Police should accept responsibility to ensure that criminal justice system documents are in a correct and serviceable form
- Precise records should be kept of service attempts. If say 3 attempts have been made at the given address, the documents should be returned. If returns of attempted service show inability to meet demand for service, staff must be increased

Filing systems and record keeping systems

- How are files classified, indexed and placed in the registry (date of lodgment, categorization of matter etc?)
- How easy under this system is it to list outstanding cases in relevant categories
- Does this system require that each time the file comes forward, it has to be dealt with by the clerks, police and more importantly the judicial officer
- If a computer based system is introduced, it should generally only capture files in futuro (because of cost

of transfer of historical data)

- Career opportunities and training of court staff

Use of clerk/interpreters to assist the judicial officers in the sittings

- Is it available
- Is it working well

LEGAL PROFESSION

- UN Instruments
 - Basic Principles on the Independence of the Judiciary
 - Basic Principles on the Role of Lawyers
 - Guidelines on the Role of Prosecutors
 - Juvenile justice
 - Beijing Rules
 - Riyadh Guidelines
 - UN Rules for Protection of Juveniles Deprived of their Liberty
 - Capital Punishment
- Barristers
 - total number (Federal / State (by State))
 - Bar association objects
 - uphold the honour and promote the interests of the Bar
 - promote fair and honourable practice among barristers, and suppress, discourage and prevent malpractice and professional misconduct
 - enquire into and decide questions of professional misconduct and etiquette and make rules with respect thereto
- Solicitors
 - total number (Federal / State (by State))
 - Law Society objects
 - keep a roll of practicing solicitors
 - issue annual practicing certificates
 - supervise the conduct of solicitors on reference from the courts
 - keep accounts of all moneys received in such a manner as to disclose the true position in regard thereto and enable the accounts to be conveniently and properly audited

Duties of the legal profession

- Duty to the law implied by acceptance of a semi-public office, to faithfully to maintain the existing law and to assist in its enforcement
 - distinguish between assisting in a breach of the law and legal ingenuity (finding loopholes in the law)
 - individual matter as to whether to act within the strict letter of the law to defeat the policy of the legislature reflected in the law
 -
- Duty to the Court
 - duty to perform properly his or her function as a an agent in the administration of justice and as an officer of the court
 - except as required (e.g. discovery, interrogatories), no positive overriding duty to assist the court adversely to the interests of the client
 - not improper to deny allegations in pleadings if denials believed to be false (UNLESS ON OATH OR A DEFENCE CONSISTING OF POSITIVE STATEMENTS OF FACT), since the denial merely puts the other side to proof
 - strict duty not to obstruct the administration of justice by deceiving the court, or abusing its process, or do injustice to an opponent by dishonestly hampering an adversary in the conduct of his or her case - ff fabricating evidence, or showing the client the way towards " helpful" perjury (e.g. by not interviewing witnesses alone)
 - misconduct includes gross neglect or inaccuracy in a matter it is the *solicitors duty* to ascertain with accuracy (e.g. affidavit accuracy; duty to insist on full disclosure where the law requires it (e.g. on orders for discovery, there is a duty as an officer of the court to carefully investigate the position and as far as is possible see that the order is fully complied with - this includes responsibility for employees to whom the work is entrusted extends to employees) - same duty does not necessarily extend to barristers, since they are entitled to rely on their brief
 - subject to exceptions, no duty to disclose facts that may assist the defence - but duty to disclose law or cases if the defence has not mentioned them and of which the Court may not be aware making it clear that here is a matter that needs to be looked into
 - duty to maintain respect for the Court
- Duty to the public and to the profession
 - barristers general duty to act (barrister exceptions - no suitable fee, if may be called as a witness, against an intimate friend, family member or previously engaged party, if ones personal opinions or feelings render him or her incapable of doing justice to the client' s case
 - duty to maintain professional interests and standards

➤ Duty to the client

- not absolute, but qualified by duty to the State, the Court, others including opponent and self
- it is not to support the client' s cause as a just cause, but to make available to the client all the skill, knowledge and courage needed to present the client' s case as it can best be presented
- barrister is a representative, not a delegate - a warrior not an assassin
- where a conflict of interest, general primacy of client' s interest,
- duty to take technical points if client can succeed, if client insists on not waiving it, after urging on moral and other grounds not to take it
- defence of guilty clients e.g. (irresponsibility (lack of legal capacity), evidence unworthy of credence or if believed is insufficient, setting up an affirmative defence or counter-claim (limits!!!)

➤ Duty to the opponent

- not to use unfair tactics, or be used as an instrument of malice
- not to abuse the rules of evidence (e.g. by putting statements to a prisoner or other party in order to make it admissible under the rule that a statement made in the presence of a prisoner or other party is in general admissible; or by suggesting to a jury the existence of facts if the law excludes evidence of them)
- not to refer to certain matters in the presence of a jury (e.g. that a party is or may be insured, amount of general damages claimed, that money has been paid into court, that an offer of compromise has been made)
- not to make needless attacks on reputation of an opponent or witness
- in cross examination as to a matter in issue, may suggest fraud, misconduct or the commission of a criminal offence without having affirmative evidence or intending to call it if the matters suggested are part of the clients case and not merely to impugn the witness' s character
- in cross examination as to credit only, in general affirmative evidence cannot in general be brought to contradict, and an imputation should not be put without ascertaining from the person asserting that the imputation is well founded or true, without first ascertaining the reasons (unless the assertion is made by the instructing solicitor)
- proper to suggest to a witness that he is in error, invite him or her in view of somebody else' s testimony to modify his story or admit the possibility of error, but not " then if X says so and so. he is not telling the truth.