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**Swiss Agency for Development
and Cooperation SDC**

POLICY BRIEF
SDC'S JUSTICE SECTOR ENGAGEMENT

Based on the Capitalization of 2016–2017

Key Messages

› Justice sector reform will become **increasingly important** in international development cooperation and for SDC. This is due to the Agenda 2030 (SDG 16), the New Deal for Engagement in Fragile States, and SDC's shift towards fragile and conflictaffected countries – changes which are all reflected in the strategic orientation of the Dispatch 2017–2020.

› This does not mean that SDC should spend more in this sector. Its engagement is already significant. Instead, as the capitalization has shown, SDC needs to **improve** its **tools**, its **knowledge management**, and its **support to country offices** engaging in this sector.

› SDC is strongly engaged in the justice sector and spends **approximately CHF 35 million per** year by all four SDC domains combined (excluding GI contributions). SDC's earmarked and core contributions to multilateral agencies (UN, WB) have in addition shaped Switzerland's profile as a visible and influential donor on justice sector reform in multilateral fora[1].

› Engaging in the justice sector is a **deeply political** undertaking. Justice is about the rules how disputes are resolved, how power is distributed, and how states are held to account. International engagements in this sector are political endeavors that are likely to create winners and losers and therefore also generate resistance. Accordingly, there is increased attention on *how* development actors engage in this sector.

› SDC possesses **institutional strengths** and **comparative advantages** for engaging in the justice sector. These include a conducive policy framework, SDC's decentralized structure, a long-term approach in programming, the use of results-based instruments, the ability to tap into local knowledge, the role of national staff, and the perception of Switzerland as an actor or facilitator without a political agenda. These strengths are favorable for the design of context-specific, locally owned, and locally driven programs likely to produce sustainable results.

› SDC pursues **various strategies** (or a combination thereof) when engaging in this sector, i.e. (1) a niche approach targeting specific institutions, mechanisms, or judicial functions; (2) a mainstreaming approach with justice being one out of several components; or (3) an alliance approach with multilateral partners geared at reform efforts with high visibility and political exposure. SDC needs flexibility in its choice of intervention strategy, which is best based on context, the political economy reality, the potential for synergies with other programs and domains, and available opportunities for change.

› While SDC has a long-term experience of engaging in the justice sector, there has been a **gap in policy guidance**, operational support and knowledge management during the past ten years. Institutionally, there is no clearly attributed responsibility for justice sector reform and SCOs have voiced concern that they feel left alone with their engagement in this sector.

› SDC is not immune to justice sector reform approaches that tend to be **solutiondriven, predominantly top-down**, and that draw on a standard set of interventions. This is despite

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1 These include Switzerland's support to the UN Global Focal Point on Police, Justice, and Corrections, and its contribution to UNDP's global Rule of Law Program.

a record of successful programs that are context-tailored and the prominent use of bottom-up approaches (such as access to justice). Solution-driven approaches that fail to consider existing and locally-owned justice solutions have been a feature of international donor approaches and have been repeatedly criticized.

› Although SDC possesses several analytical tools (which include conflict, fragility, and political dimensions) it displays weaknesses in the use of these and the way they shape theories of change and program designs in the justice sector. Analyses in SDC justice program documents are often limited to description of contexts but lack a deeper analysis of the **political economy of the justice sector**, of the political space for programming, and of how change can be supported. As a result, SDC programming documents at times resort to standardized theories of change that pursue technical approaches for addressing political problems.

Institutional Implications and Way Forward

a. SDC will strategically position its justice sector engagement in **alignment with SDG 16** (peacebuilding/state building, human rights cluster, rule of law and governance) and the strategic objectives and themes of the Dispatch on international cooperation 2017–2020.

b. In light of the increasing relevance of justice sector reform for international develop-ment, SDC acknowledges the importance of the sector for SDC and is committed to ensure the provision of **adequate institutional and operational support** by headquarters to country presences.

c. The institutional responsibility for the theme within SDC will be attached to the **Focal Point Conflict & Human Rights** with a view of providing adequate policy guidance, demand-based operational support, knowledge management as well as synergies with SDC's security sector reform work. In consultation with the Quality Assurance network and other concerned stakeholders, the Focal Point will provide guidance on theories of change that better take into account the political dimension of the justice sector.

d. Exchange and consultation with the Thematic Unit and Focal Point **DDLG** will continue to be substantial. DDLG will complement existing analytical tools by elaborating a workable and flexible political economy analysis methodology that continuously informs program design, steering, and implementation.

Background and Purpose of this Brief

From 2016 to mid–2017, SDC undertook a capitalization of its justice sector engagement.[2] The overall objective of the capitalization was to ensure effectiveness in SDC's justice sector engagement, and to increase staff understanding of challenges and good practices of engagement in this sector. The capitalization was undertaken with the understanding that justice sector engagement will become more

important as a development theme, that SDC is doing considerable work in the sector, but that there is limited visibility of and information about SDC's engagement.

The capitalization was based on **58 programs** identified as active during the period 20102015. It consisted of analytical documents (desk reviews; mapping; literature review; donor reviews), field visits and case studies (Pakistan, Bosnia and Herzegovina; land and justice) and continuous consultation within SDC and with partners (C&HR network, Justice Advisory Group, e-consultations)

This Policy brief summarizes the main findings from the capitalization and outlines SDC's strategic positioning and approach with regards to its justice sector engagement. This brief is complementary to a detailed guidance note that provides operational orientation for SDC staff engaging in or wishing to engage in the justice sector.

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2 The capitalization exercise included programs that covered legislative and policy development, institutional strengthening and reform, administration of justice, judicial training, infrastructure, legal empowerment, legal services, engaging with customary/community justice systems/providers, support for case litigation, criminal investigation and forensics, community policing, corrections, support to oversight mechanisms. The capitalization further covered support for the criminal justice system and corrections, justice programs in humanitarian contexts, quasi-judicial institutions such as complaints commissions, transitional justice, as well as justice programs related to natural resources (land tenure). The capitalization did not encompass rule of law initiatives in the field of anti-corruption, or initiatives involving the armed forces, the defense sector, intelligence agencies, border guards, customs and immigration agencies, or private security actors.

The Rationale for SDC's Justice Sector Engagement

Justice sector reform is becoming **more important** in international development and specifically for SDC. This is on the hand due to the greater prominence of justice, rule of law, peace, and human rights in the international development Agenda 2030 (SDG 16 in particular). On the other hand, it is due to the increased focus on development challenges in **fragile contexts**. The *New Deal for Engagement in Fragile States*, adopted in 2011, contributed to development agencies' shift towards fragile and conflict-affected contexts and put justice at the heart of its priorities (Peacebuilding and Statebuilding Goal 3). SDC followed that strategic shift through its *Peacebuilding and Statebuilding Strategy* and the Dispatch to Parliament 2017–2020.

The **domestic policy agenda** provides an additional rationale for SDC's justice sector engagement. Corruption and transnational crime as key impediments to development have gained importance in the domestic policy arena.[3] Curbing these requires functioning justice and accountability systems in partner countries, to which SDC makes an important contribution through this engagement.

SDC's Strengths and Comparative Advantages

The capitalization has shown that SDC possesses important strengths for engaging in the justice sector. First, the **long-term focus** of its engagement ensures the necessary breadth for achieving results. Second, its **decentralized structure and decision-making** processes enhance context-relevance and allow for the design of approaches that reflect country needs and socio-political realities, that are locally owned and driven, and that seek to resolve concrete problems.

SDC is well equipped to work on actual justice problems that should and can be solved on the basis of what already exists rather than presenting a solution up-front on what the sector, the type of justice, and what the laws should look like. Third, linked to above point, the important role given to national staff allows SDC to access local knowledge and acquire an indepth understanding of the political dynamics within the justice sector. Last, SDC has a long history of engaging in justice reform efforts as well as a consistent and conducive policy framework.[4]

SDC is a **comparatively small donor** engaged in this sector. This is not necessarily a disadvantage. SDC is commonly viewed as a donor that does not pursue a political agenda. And the size of its programs may act in its advantage as it is less likely to elicit political resistance. Its lower funding levels allow SDC to carefully design and test activities without spending pressures. SDC has shown its ability to successfully work on justice, including in restricted political environments.

SDC's engagement in this sector is **complementary to** that of the **Human Security Division** (which mainly works on transitional justice). All entities may work on a given theme, and a combination of approaches and instruments can enhance effectiveness.

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3 See for example the Federal Council's *Report on Illicit Financial Flows from Developing Countries,* October 2016.

4 Dispatch on international cooperation 2017–2020; Swiss Federal Constitution, art. 54; Swiss Foreign Policy Strategy 2016–2019.

SDC Intervention Strategy and Thematic Focus

Justice sector reform covers a **wide range of issues** (dispute resolution, due process, accountability issues, etc.) and thematic areas (human rights, conflict resolution, criminal justice, corrections, etc.). The capitalization has shown that SDC's thematic orientation, similar to that of other donors, varies considerably and addresses very different justice, rights and accountability issues. While the multi-dimensional nature of the justice sector is often perceived as a challenge to donors, embracing this breadth allows for interventions to be designed in a context-relevant and adaptive manner. Even though SDC's **thematic focus is broad**, it has a distinct profile with regards to a number of recurring themes: human rights, violence against women, criminal justice, and land/property systems.

The capitalization exercise has shown that SDC uses three main intervention strategies when engaging with the justice sector. In many contexts, SDC's justice sector engagement is **part of a broader thematic intervention**, with justice being one among several component of intervention (mainstreaming approach). This approach takes into account the multisectoral and systemic dimension of development challenges while keeping a focus on solving specific problems. This is for example the case with regards to SDC's engagement on land rights and access to natural resources or when combating sexual and gender-based violence (Niger, Bolivia, Mekong).

SDC has also proven itself as a **niche player** in the justice sector, working on reforms of specific institutions, mechanisms or judicial functions while keeping the perspective on the broader sector. This is for example the case in the Balkans (Bos nia, Kosovo), where SDC strengthens the role of prosecutors and notaries. Within the broader theme of the criminal justice system, SDC focuses often on the situation of juveniles (Bosnia, Rwanda). With regards to **high-profile reform processes** such as the redefinition of divisions of power and political settlements in transition countries, SDC tends to be engaged alongside other donors and typically with a multilateral organization in the lead (Serbia).

Orientation, Analytical Foundations and Theories of Change

SDC has a **strong normative policy commitment** to human rights and the rule of law, which dates back to the 1990s and its engagement is closely aligned with its policy orientation. The capitalization has shown that SDC as a result often justifies rule of law and justice strengthening as an end in itself and not only as a means to an end (economic growth, poverty reduction).

The capitalization has brought forward SDC examples of contextually appropriate programs that are maneuvered in a politically smart way, take into account power dynamics, and use windows of opportunity in a flexible and strategic manner (Tajikistan, Bolivia, and Niger). Such engagements are based on SDC's ability to tap into local knowledge and acquire an indepth local expertise. In practice, SDC is often very knowledgeable about the political economy in this sector and how to successfully maneuver, but it often uses implicit theories of change for programming. Program documents thus tend to be "sanitized" with regards to the reflection of political dynamics and space available for reform.

The capitalization has also shown that analytical underpinnings reflected in program documents are often limited. Analyses are often limited to summary descriptions of contexts but lack a deeper analysis of the political economy inherent in the sector. Or in other words, there is rarely a systematic assessment of the political space for programming and how change can be supported. Conflict-sensitivity is often mentioned in program documents, but it is not obvious how it informs programming choices, and conflict analyses are often not consistent. Similarly, although SDC's thematic engagement on **gender equality** is substantial, gender is too often dealt with as a box-ticking exercise in program documents and does not feature systematically in analytical reflections.

There is not always a clear link between analyses, program design, and the intervention logic. As a result, **theories of change** reflected in program documents rest on "leaps of faith" and use assumptions common to international rule of law agendas. These include hypotheses that purely technical assistance will result in better human rights protection or improved justice provision. Theories of change also vary widely in terms of levels of ambition and intended change among the different programs.

While the capitalization has shown that SDC like other donors have move beyond a narrow justice institution and state-focused approach in this sector, SDC is not immune to justice sector reform that is **solution-driven** (rather than problem-driven) and draws on a standard set of interventions. SDC also remains quite strongly state- and institution-centered, although bottom-up approaches (access to justice) are a strong feature of its engagement.

Annex : SDC's Justice Sector Engagement – Quantitative Findings

SDC's engagement in the justice sector is considerable. For the period of **2010–2015**, SDC has spent approximately **CHF 200 million** on **58 justice programs.** All four SDC domains engage in the sector. SDC has spent slightly more in fragile than in non-fragile states, but it is engaged with fewer programs in these contexts. **Expenses per domain** are as follows:

› South Cooperation[5]: 23 programs, CHF 117 million

› Cooperation with Eastern Europe: 18 programs, CHF 49 million

› Global Cooperation (without GI): 4 programs, CHF 26 million

› Humanitarian Aid and SHA: 13 programs, CHF 9 million

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5 The figures are valid for SDC's institutional set-up in 2016, i.e. prior to the split of the MENA division and the creation of SONAP.

SDC's justice sector engagement can be divided into **four main approaches**:

| Approach	Definition
Legal change	Supporting development of new legislation or reform of existing legislation at the national level. Includes constitutional reform as an area of legal change.
Judicial reform	Programming that focuses on reform of the judiciary. It includes training of judges and judicial staff, strengthening of judicial independence, and improving court infrastructure.
Access to justice	Programming using bottom-up approaches with a greater focus on endusers of justice systems. Relates to improving access to lawyers and courts. It primarily includes work around legal aid, but has access to services and awareness-raising among the general public on a particular issue (e.g. VAW). Also includes programs that deal with customary/informal justice processes.
Organisational support	Programming involving support to non-judicial, but justice-related bodies (e.g. prosecution services and police, prison reform, and regulatory bodies for land and property). Includes work with local and national governments, such as capacity-building and reform of government bodies, and training of parliamentarians. It also incorporates support for civil society.

The frequency of approaches among the 58 programs is as follows (programs may include more than one approach)

- Access to justice
- Judicial reform
- Legal change
- Organisational support
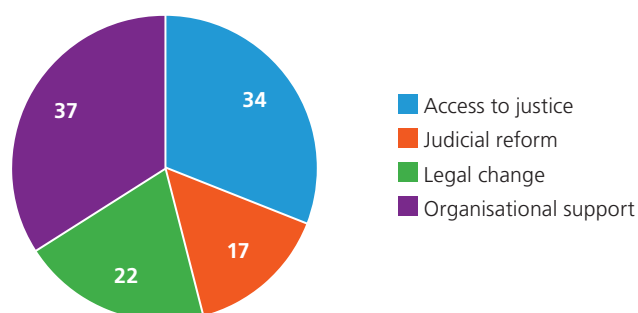
The approach chosen difference among fragile and non-fragile contexts as follows: Nonfragile states have a higher proportion of programs focusing on access to justice and judicial reform, while in fragile contexts legal change and organizational support are more prevalent.

Fragile states

Non-fragile states

- Organisational support
- Legal change
- Judicial reform
- Access to justice
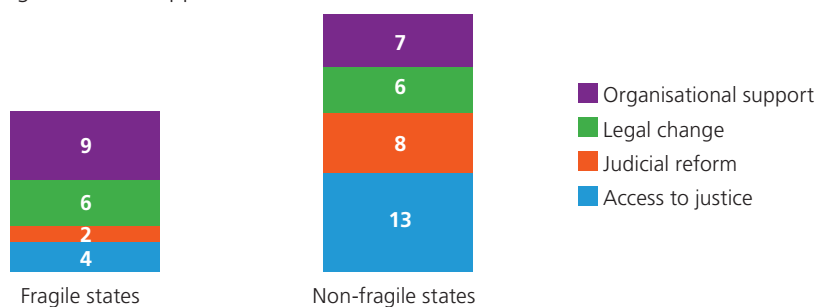
SDC's thematic engagement is broad and reflects the wide variation common for this sector. The most common recurring themes of SDC's engagement are: human rights, violence against women, criminal justice, and land/property rights.

- Criminal justice
- Migration
- Human Rights
- IHL/IDPs
- Land/Property Rights
- Violence against Women
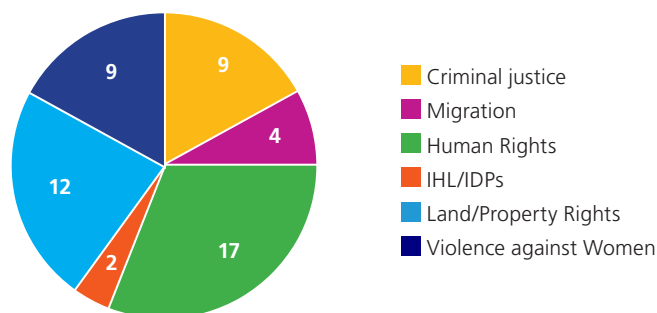
An analysis of the justice engagement across the four SDC domains revealed no disparities in approaches. It was noted, though, that the Global Cooperation Department is more consistent in integrating research and analysis to inform and guide its programs.