



EVALUATION OF THE EUROPEAN UNION EXTERNAL ACTION

STRATEGIC EVALUATION

**EVALUATION OF THE EUROPEAN UNION
SUPPORT TO RULE OF LAW AND
ANTICORRUPTION IN PARTNER COUNTRIES
(2010-2021)**

VOLUME II – CASE STUDY NOTES

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Particip, Ecorys, ECDPM, Mancala Consultores

Lead company: Particip GmbH | Merzhauser Straße 183 | D-79100 Freiburg

Contact person: michael.lieckefett@particip.de

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Authors

Jean Bossuyt (Team Leader)

Cécile Collin

Charlotte Vaillant

Nicole Ball

Landis MacKellar

Joseph Saba

Abigail Hansen

Alice Bonnet

Karen Hussmann

Michael Lieckefett

Contact information:

European Commission

Directorate-General for International Partnerships (DG INTPA)

Directorate D – Sustainable Development Policy and Coordination

Unit D.4 – Performance, Results and Evaluation; Internal Communication, Knowledge Management and Collaborative Methods

Email: INTPA-EVALUATIONS@ec.europa.eu

B-1049 Brussels, Belgium

EU International Partnerships:

https://ec.europa.eu/international-partnerships/our-impact/monitoring-and-evaluation_en

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Evaluation of the European Union support to Rule of Law and anticorruption in Partner Countries (2010-2021)

The report consists of three volumes:

Volume I – Main report

1. Introduction
2. Key methodological elements
3. Overview of EU support to Rule of Law and Anticorruption
4. Main findings
5. Overall assessment
6. Conclusions
7. Recommendations

Volume II – Case study notes

1. Democratic Republic of Congo
2. Guatemala
3. Jamaica
4. Kenya
5. Kyrgyzstan
6. Latin America and the Caribbean (regional case study)
7. Myanmar
8. Nigeria
9. Philippines
10. Sahel (regional case study)
11. Vietnam
12. West Africa (regional case study)

Volume III – Annexes

1. Annex 1 – Terms of Reference (ToR)
2. Annex 2 – Evidence matrix
3. Annex 3 – Overall EU external policy framework
4. Annex 4 – Detailed methodology including an intervention logic
5. Annex 5 – Mapping of EU support
6. Annex 6 – Survey report
7. Annex 7 – List of persons consulted
8. Annex 8 – List of documents consulted

Table of content

Case study note – Democratic Republic of Congo.....	1
Case study note – Guatemala	16
Case study note – Jamaica	38
Case study note – Kenya.....	57
Case study note – Kyrgyzstan	80
Case study note – Latin America & Caribbean (regional case study).....	97
Case study note – Myanmar.....	114
Case study note – Nigeria	130
Case study note – Philippines	148
Case study note – Sahel (regional case study).....	167
Case study note – Vietnam.....	186
Case study note – West Africa (regional case study).....	202

Case study note – Democratic Republic of Congo

Introduction	2
Context	2
Overview of the EU support to RoL&AC	3
Strategy and implementation of EU support to RoL&AC	4
EQ1: EU strategic framework/institutional environment.....	4
EQ2: Responsiveness, ownership and flexibility	5
EQ3: Partnerships and coherence	6
EQ4: Choice of modality	7
Effects of EU support to RoL & A	8
EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions	8
EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions	11
EQ7: Broader effects on RoL&AC culture, human rights and democracy.....	12
EQ8: Effects on wider EU external action goals	13
Overall assessment	14

Introduction

Remark: This case study note does not constitute a separate evaluation of EU support in the country or its situation with regard to RoL&AC. It presents country-related findings relevant to the overall assessed judgement criteria and indicators, and feeds into the main evaluation report of the Evaluation of the European Union support to Rule of Law and Anticorruption in Partner Countries to which it will be attached as an annex.

Context

The Democratic Republic of Congo (DRC) is, by area, the largest country in Sub-Saharan Africa and the 4th most populous country in Africa (92 million). Yet, it has a rather low demographic density, of 46 inhabitant/km²¹ and the population is mostly concentrated in urban centres. The main development challenges are the government's lack of capacity and the extreme fragility of the political environment and Congolese institutions.

The vast size of the country coupled with a lack of reliable communication (absence of road infrastructure, unreliable means of transport) makes access to most of the country extremely difficult and exacerbates challenges related to the administrative coverage and control of the territory. This is particularly different from the very small and highly populated neighbouring countries of Rwanda and Burundi, and to a lesser extent Uganda. Unity of the DRC has been challenged throughout its history in several conflicts, including two wars involving international stakeholders in 1996-1997 and 1998-2003. The independence movement is longstanding (though less active today), notably in the Eastern provinces and in Katanga which are rich in natural resources. Lately, the government has responded to these movements with an increased fragmentation of the provinces, whose numbers increased from 11 to 26.

The conflict dynamics are closely entrenched with geopolitics of the neighbouring countries and economic interests regarding the access to natural resources, first of all minerals, but also land. Among other precious earths and minerals, DRC is estimated to hold half of the world's Cobalt reserves.

As a result of the conflict, the rule of law institutions, notably the police, are under a strong influence of the army. Human resources management has been a significant challenge in the various entities, in different manners, from over numerous and overestimated police and army structures, ageing and with inflated command chains, to a lack of renewal of the ageing magistrates, whose last recruitment dates back to 2010. Three main phases of DDR (disarmament, demobilisation and reintegration) have already occurred, notably a first one managed at regional level with the reintegration of over 120 000 rebels of various origins, including whole battalions of some armed groups, such as CNDP. This had long term consequences on the structure of the defence forces.

The last presidential elections of 2018 brought the first democratic change of regime (President Tshisekedi won as an opposition candidate, even though his victory was contested and overshadowed by allegations of irregularities) and ended a period of political turmoil during which elections had been postponed multiple times by former incumbent Joseph Kabila. During that period, dialogue between the EU and DRC government was particularly challenging and, as a consequence, institutional support was hardly functional in the later part of Kabila's rule.

Political dynamics play a strong role in the significant turnover or lack of nomination of government officials in key positions. This limits the ability to anticipate and to ensure sustained support and ownership of reform processes and interventions in the top hierarchy. The decision making process is highly centralised and concentrated at the presidential level, including for sectoral dynamics (justice, security). Rivalries between politicians also affect the use of EU investments (for example with regards to facilities or infrastructural projects). The monitoring of those influences and interactions is not clearly formalized.

Nevertheless, volume of EU support to DRC has remained high throughout the evaluation period and rule of law has always had a place as a priority sector:

9th EDF EUR 545 million	10th EDF 2008-2013 EUR 514 million	11th EDF 2014-2020 EUR 620 million
Lutte contre la pauvreté (santé, infrastructures)	Gouvernance – EUR 130 million	Santé, LRRD – EUR 150 million
Appui macroéconomique – EUR 106 million	Infrastructure – EUR 251 million	Environment and sustainable agriculture – EUR 130 million
Appui transition démocratique et état de droit	Santé – EUR 51 million	Governance and rule of law EUR 160 million
	Hors concentration – EUR 82 million	Road rehabilitation EUR 150 million
		Civil society EUR 12 million
		Accompanying measures – EUR 18 million

¹ <https://worldpopulationreview.com/countries/dr-congo-population>

Overview of the EU support to RoL&AC

Table 1 Overview of EU-financed interventions to the support of RoL&AC in DR Congo selected for the case study

Domain	Contract year	Contract title	Contracting party	Planned amount	Dec. year
FED	2014	Assistance technique au PARP (Programme d'appui à la réforme de la police)	CROWN AGENTS LIMITED	3,292,104	2009
FED	2010	Support à la Réforme de la Gestion des ressources Humaines de la Police Nationale Congolaise. Phase III.	INTERNATIONAL ORGANIZATION FOR MIGRATION	5,500,000	2009
FED	2011	Assistance Technique au Projet d'appui à la réforme de la PNC	PRICEWATERHOUSECOOPERS BEDRIJFSREVISOREN CVBA PWC BEDRIJFSREVISOREN	1,154,803	2009
FED	2011	Assistance Technique au Projet d'appui à la réforme de la justice	GOPA-GESELLSCHAFT FUR ORGANISATIONPLANUNG UND AUSBILDUNG MBH	8,053,630	2009
FED	2014	Assistance technique au Secrétariat du Groupe Thématique Justice et Droits Humains	LOYS PARTNERS & CONSULTING GROUP	98,242	2009
FED	2012	Uhaki safi : Rapprocher la justice de justiciables à l'Est de la République démocratique du Congo	AVOCATS SANS FRONTIERES – BELGIQUEASBL	4,943,053	2012
FED	2012	Projet d'appui à la justice à l'Est de la République démocratique du Congo (PARJE) 'Uhaki Safi'	RCN JUSTICE & DEMOCRATIE ASBL	4,929,431	2012
EIDHR	2019	Soutenir les efforts de lutte contre l'impunité en République Démocratique du Congo	AVOCATS SANS FRONTIERES – BELGIQUEASBL	1,699,986	2018
IFS-RRM	2012	Phase IV – Modernisation de la Gestion des Ressources Humaines de la Police Nationale Congolaise	INTERNATIONAL ORGANIZATION FOR MIGRATION	2,125,000	2011
FED	2016	Conservation des ressources naturelles et développement durable du complexe d'aires protégées de la Garamba	AFRICAN PARKS NETWORK ASSOCIATION	25,500,000	2015
FED	2016	Restauration des écosystèmes du parc national des Virunga et valorisation durable de ses ressources naturelles	VIRUNGA FOUNDATION	15,400,000	2015
FED	2015	Assistance technique au Programme d'appui à la réforme du secteur de sécurité (PROGRESS) – volet défense	TRANSTEC	12,995,000	2014
ICSP	2019	Encourager le dialogue, faciliter la médiation et la réconciliation et renforcer la confiance entre les communautés, les autorités et les forces de sécurité.	INTERPEACE EUROPE AISBL	1,999,961	2018

Strategy and implementation of EU support to RoL&AC

EQ1: EU strategic framework/institutional environment

JC1.1 Clear, context sensitive and realistic

Governance has been at the core of EU programming for a long time, but there were gaps of a few years because of the political/electoral context within the country. Governance was one of the three concentration sectors of the 11th EDF, with the highest budget allocated (160 million Euros), supporting justice, police, decentralization and public finance and with a cross cutting integration of civil society. Governance and rule of law also appear in a cross-cutting manner in the three main objectives of the 11th EDF :

1. Fight against poverty through an inclusive and sustainable growth benefiting to the population and preserving natural resources
2. Root democracy and human rights
3. Contribute to peace and stability in the region

Indeed, support to institutions was largely stopped from 2016 until the 2018 elections because of political dynamics and the postponement of the elections. Funding decisions in the justice sector were suspended in the rule of law sector during 4-5 years (notably concerning the project of support to the police, PARP). Justice remained the only sector which conserved a certain dynamic – albeit limited – during this period but is also faced with the incapacity of the State to sustain the results. Decisions on the modalities of this suspension were mostly taken in Brussels.

Corruption has been targeted mainly indirectly, but political changes have opened opportunities to tackle this issue in more direct ways. The NIP does not explicitly refer to corruption but a number of interventions oriented to institutional support, including capacity building, as well as financial and human resources management, contribute to the fight against corruption, mostly in terms of prevention. The results framework of the NIP includes one indicator related to corruption for prosecution of Gender Based Violence but the linkage with the strategy is not very clear, nor with the actual content of the interventions. The political aspects of anticorruption have made its inclusion in interventions challenging. Even more so, the topic could not even be raised under Kabila's regime. The justice sector policy contains now a small component on anticorruption.

Overall, EU support is largely oriented to institutional support through ministries at national level. At times, this focus constitutes a limitation in view of the institutions' weak capacities and with regards to the challenges related to political dynamics.

The regional perspective was only considered to a limited extent at the strategic and operational levels. In contrary to the Sahel, there was no regional strategy despite the protracted regional nature of the conflict with persistent presence of non-State armed groups from Uganda (LRA, ADF) or Rwanda (FDLR and the remains of CNDP / M23 and subsequent affiliations etc...). The EU is currently discussing the development of a regional strategy together with its Member States. In addition to the security dimension, economy and trade also have a particular regional significance. Rwanda, which is a member of the Eastern African Community (EAC), has more restricted norms and importing goods to DR Congo is easier than exporting them to Rwanda. DR Congo is considering joining the EAC as well which would affect its economy given the limited competitiveness of Congolese companies mostly relying on the local market. Mineral smuggling is still an important issue in particular for gold which represents a key economic sector both for Rwanda and DR Congo.

Target areas for future support have been selected based on a variety of context-sensitive information. In the new programming cycle, the selection of the three focus provinces has been made based on complementary criteria, including vulnerability and political context, which led to focus on Kasai, Ituri, and Equateur. This selection adds an important political dimension – President Tshisekedi is from Equateur.

JC1.2 Coherence with nature and goals of EU external action

For DR Congo, it is unclear to what extent EU support has followed the evolutions of EU external action goals, in some cases (extractive sector) even showing inconsistencies. Rather, the strategic framework and portfolio of interventions seems to have adjusted to the constraints and evolutions of the context.

The NIP does not make any direct reference to EU global policies. There is also no visible linkage between the EU regulation on due diligence and interventions carried out in DR Congo or in the region. The extractive sector has repeatedly been identified as an area of concern in the wider setting of EU external action. For example, in May 2017 a new EU regulation on due diligence for 3Ts and Gold exploitation was endorsed by the EU Parliament as a response to the US Dodd Frank Act of 2008 and related OECD Guidance on due diligence for supply chain from conflict and high risk areas. Yet only a few interventions in DR Congo are targeting this issue. The corporate sector plays a key role in these dynamics and is only involved to a limited

extent, and there are no specific justice or security interventions, nor support to institutions in charge of the mining exploitation and export (SAEMAP, Mines, CEEC).

JC1.3 Conducive institutional environment

The creation of a conducive institutional environment for work on RoL&AC in DR Congo has been actively supported by HQ. According to interviewees, mostly ad hoc support for human resources was provided through the pool of expertise/facilities relating to specific services, for example for the study on SSR, or the assistance of experts on anticorruption.

On the other hand, the institutional environment is weakened by an observed disconnect between the expectations of HQ (regarding numerous concepts and the multiplication of criteria) that do not match the reality on the ground. Interviewees stressed that there is a need to fulfil expectations of the HQ, rather than focusing on macro level analysis in the sectors to identify priorities. Some indicators are simply filled in to tick the box, notably regarding questions on gender, environmental norms, innovation, digitalization or youth, given the challenges of the context in the country. At HQ level, stakeholders are also highly specialized on a topic, but lack insights and knowledge of the reality on the ground. A lot of inputs are provided by HQ on a weekly basis but are not always easy to exploit or it's not very clear how to use them, especially since there is no induction training at the HQ level, nor any type of mentorship for newcomers.

Reporting tools hardly allow to identify progresses at strategic level and are more seen as accountability tools for the implementation of the planned results framework. Narrative reports on the interventions generally remain quite activity oriented in a very detailed manner, but lack reporting on actual or potential results (in particular at outcome and impact level). More generally speaking, there has not been a sectoral review in the country for a while now, which would constitute a key monitoring and reporting tool to follow up on the institutional evolutions for which the EU is a key partner.

There is no EU Special Envoy for the Great Lakes, in contrary to other regions, such as Sahel, which limits regional political dialogue dynamics and convergence across the countries.

EQ2: Responsiveness, ownership and flexibility

JC2.1 Context, political economy and/or conflict analysis

There are several tools and mechanisms in place to contribute to the monitoring of the context and the adjustment of EU support. A participatory conflict analysis exercise has been conducted in 2019 and 2021. It involved various Member States in addition to the EUD, and was facilitated by an experienced international consultant working in a research institute. The EU financed additional specific conflict analyses in some regions such as "Kwetu kundela: Conflict analysis and research for increasing resilience and building peace in Kasaï (DRC)" in 2019. EAMR also provide some analysis on the political challenges and evolutions as well as overall context better explaining the results of various interventions. MONUSCO reports, notably the UN Group of Expert reports are accessible to Member States, and include a detailed identification of peace and security issues and individuals or entities involved in the conflict dynamics. This can be considered as baseline data to orient the EU interventions.

The implementation and use of these tools mentioned above is noticeable and as a result, the EU has implemented different sanctions over the course of the evaluation period, in relations with the US, and consequently adapted its interventions to better consider the political dynamics.

Yet, the EU did not identify clear baseline data from capacity assessments nor a general public administration reform plan that would define priority objectives for rule of law and clear secondary objectives for sectoral interventions. In particular, some of the key challenges related to the institutions' weak performance and the widespread culture of corruption do not appear clearly in these general analyses (but are partially better presented in specific sectoral assessments).

Overall, no specific political economy analysis or stakeholder mapping from the EU has been carried out. Institutional dynamics are quite volatile in some cases, which makes it difficult to identify key political stakeholders or dynamics to plan with and anticipate at the time of the project formulation, according to the interviewees.

JC2.2 Engagement with actors at different levels

The EU plays a lead role in the core coordination groups on governance: Police/Justice, Public Finance Management and Civil Society (see also in JC 3.1 below).

Despite some involvement from national institutions, the ownership of the interventions remains limited. State institutions are involved at all stages of the project, notably with the support to reforms targeting dedicated committees. However, some interlocutors have voiced complains for not being sufficiently involved in the design and drafting of the projects, in particular with regards to the definition of the priorities. As one

interviewee highlighted for the justice sector: “For 60%, projects are more informative than participatory.” For the next Team Europe Initiative, the selection of the three focus provinces on rule of law / peace and security was done mostly at the EU level.

JC2.3 Adjustment to changing conditions and new opportunities

The evaluation has only identified limited evidence for support being adjusted to changing conditions. Notably, there was no mid-term review of the NIP nor an implementation of specific alternative measures during the suspension of institutional support because of the political context.

The EU has adapted to the fact that MONUSCO is progressively withdrawing by changing its approach and increasing its efforts for a more integrated support to rule of law in key territories. The diversity of the EU financial instruments has also allowed for some level of adjustments to specific challenges, notably with the use of IcSP for peacebuilding interventions.

The EDF framework allows for limited flexibility, since significant time occurs normally between the formulation of an intervention and its implementation, up to two years in some cases. This does not really allow to ensure political and leadership buy in given the turn over. In some Congolese institutions, leadership is also not necessarily related to the hierarchical chain of command reflected in an organigram. In addition, the governance component faced challenges related to the lack of a democratically elected government as of 2016 (not to mention other representative entities with several years of delay in the electoral process). This clearly limited the ability to interact through the institutions and lead to a limited political commitment on governance reforms.

EQ3: Partnerships and coherence

JC3.1 Partnerships based on comparative advantages

The EU is making good progress towards developing a Joint Programming Strategy for DR Congo, with a Joint Analysis having been endorsed in early 2020. Germany, France, Sweden, Belgium and the Netherlands are the core contributors. As a group, the EU and its Member States are the largest donors to the country, before the US². A Team Europe Initiative focusing on peace and security links together several activities, including policy dialogue with relevant sector ministers, support for justice reform and to police as well as direct support to the Congolese civil society. This initiative ensured a strong level of coordination among Member States and allowed a joint mapping exercise involving all the Member States, in particular the core contributors mentioned above. While the joint programming was not really formalized before that, this effort led to a joint logical framework. Challenges remain, given the specificities of the linkages between the capitals of the different EU countries and Kinshasa. Besides, some MS still have difficulties to share the logical framework of their programming in a secure manner. Objectives are to lead to a common monitoring and evaluation framework, including indicators, communication strategy and system to sustain it.

Regarding partnerships with other donors, the EU plays a lead role in the core coordination groups on governance : Police / Justice, Public Finance Management and Civil Society, as mentioned in JC 2.2.

EU support takes place in a context where MONUSCO is progressively withdrawing, which implies also a transfer of competencies from the mission to the UN Country Team and increased direct responsibility of all donors in general. For the EU, this evolution also means having a more general approach to supporting different institutions with a responsibility in the rule of law, including justice / police / defence but also migration (DGM) and intelligence (ANR). MONUSCO now focuses mainly on the Eastern provinces and started closing some of its bases, for example in Kasaï³, Tshopo, including Kisangani, and Haut Uele. This has effectively reduced the dissuasion power in some strategic or remote places of the country. As a consequence, the choice of Kasaï as one of the three provinces of convergence for the EU support is particularly significant and has been done taking into account this withdrawal.

JC3.2 EU support to RoL&AC has been delivered in a coherent manner

The structure of EU support to RoL&AC in DR Congo has reinforced coherence between individual interventions. Support has effectively been streamlined around key sectors to provide a long-term support to key institutions, police, justice and public finance management through EDF. Interventions related to stabilisation efforts are more scattered across different types of smaller projects, in some cases specifically tailored to the targeted geographical areas. The EU also supported the creation of specific coordination committees to pilot some sectoral reforms (police, justice). In some cases, these were directly funding permanent national staff, but they remained active only to a limited extent – in relation to the suspension of activities.

² <https://europa.eu/capacity4dev/tei-jp-tracker/congo-kinshasa?tab=jpt>

³ <https://monusco.unmissions.org/la-monusco-annonce-son-retrait-de-la-r%C3%A9gion-du-kasa%C3%AF>

Regarding anti-fraud policies, interviews indicate that there has never been a PEFA case recently in the country. There is no formal whistleblowing mechanism related to potential fraud. Briberies are a widespread practice in the country and cases cannot be excluded, in relations to project and procurement practices. However, collecting testimonies and actual evidence would be a significant challenge and the evaluation has found no indication that EU anti-fraud policies have been violated in the context of EU support to the country.

The EU is moving towards a more integrated approach on Rule of Law and security sector reforms, coming from a stage where the different institutions faced significant internal challenges, historically and with the integration of demobilized members of non-State armed groups.

Direct interests of the member States in the country remain actually quite limited and did not influence the EU cooperation strategy. Nonetheless, access to mineral resources such as cobalt and lithium remains key for the European industry and raises attention in Brussels. However, no European company is directly involved in the mining sector in DR Congo and the activities and influence of the EU corporate sector remain quite reduced (with the exception of some concessions in Lake Albert hold by French oil company TotalEnergies, some mineral traders in Europe and gold refineries in Uganda and Rwanda in Belgian possession).

EQ4: Choice of modality

JC4.1 Mix of modalities

EUR 40 million were allocated to budget support in 2010 but there are no State building contracts **but there was no budget support provided by the EU during the evaluation period**, because of institutional weaknesses and the political challenges related to the elections.. Other stakeholders have used budget support though. The World Bank conducted PEFA analyses in 2011 and 2020 and a pooled fund was created for PFM support.

The EU has relied on various financing instruments to provide support to DR Congo⁴. The type of support varied by instrument, mostly at sectoral level, or by type of implementing partners. IcSP was used only for stabilisation purposes and proved to be quite flexible in adjusting to a changing context, even when EDF institutional support was suspended for political decisions at EEAS Brussels level. Technical assistance was planned in the Justice sector aside from specific projects, which allowed for some continuity despite the suspension of the largest cooperation framework with the State. In general, state counterparts remained quite inexistant, except on very rare cases (detention camp rehabilitation for example), mainly because the State budget remained quite weak. This raises questions regarding the overall sustainability of support.

There was no regional strategy for the interventions in the Great Lakes region. At operational level, linkages with the portfolio of interventions in neighbouring countries, such as Rwanda and Uganda could not be observed. There were also no regional projects on security issues, since in general EU support was largely focused on building the national institutions which faced significant internal challenges. At operational level, support is provided mostly through ICGLR, managed from Burundi where the headquarter is located.

Synergies between the different projects have been limited, partly because of challenges related to different types of interventions and a lack of a strategy outlining potential synergies. This is likely to change with the new approach of concentration on three provinces for integrated cross-sectoral interventions and with the start of NDICI.

JC4.2 Mutually reinforcing dialogue and programming

The formal political dialogue was suspended during most of the evaluation scope, with limited articulation from the technical support provided through the interventions. Formal political dialogues from the EU and Member States Ambassadors with the government, as defined in the Cotonou agreement, restarted in 2020 and 2021 after a ten years' break. However, there were dialogues and exchanges at the dialogue level in the different sectors, health, notably fight against Ebola or Kasai crisis, elections, environment, like the Forest Law Enforcement Governance and Trade implementation, joint programming for example or with the civil society but no sectoral review has been carried out for a long time.

The regional perspective is not present in the RoL&AC portfolio of interventions, and the NIP does not refer to any potential synergies with interventions at the regional level.

⁴ The portfolio of 260 contracts covers various types of instruments, mostly EDF, 166 contracts, 49 EIDHR contracts, 13 ICSP since 2015, 19 grants to CSO through CSO-LA mostly between 2010 and 2014.

Effects of EU support to RoL & A

EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions

JC5.1: Core legal and administrative reforms

The EU played a lead role in supporting strong structural reforms in key institutions for the rule of law, considering also the conflict legacy and constant instability of the country. The four main areas of support concern indeed Police, Justice, Public Finance Management and the Ministry of Defence with long-term commitment for in depth review of the structures and functioning. The EU is the largest donor and considered most important partner in the country. It has played a key role in the organisation of a large conference to evaluate justice sector reform (“Etats Généraux”) which led to the drafting of a national sectoral policy on justice reform and a related action plan in May 2017. This exercise resulted in a roadmap to support the justice sector. In related sectors, progresses have been achieved with the Army Reform Plan (2009-2025) and the Five years Police Reform Plan (2020-2024). These reforms were planned while there were still 11 provinces, but administrative reforms since then have led to a re-organisation to the territory in 26 provinces. This complexifies the Rule of Law tissue with specific legal provisions for police commissioners and courts at the provincial level. There have been several bottlenecks to the reforms of the mining code, public finances, the authorizing officer and a sectoral approach.

Anticorruption was targeted more from a prevention angle than directly in terms of support to AC institutions, largely because of a reduced political space to even speak about this issue. The change of government provides more space to raise this. There is a small component on anticorruption in the sectoral policy and the topic has been more directly integrated in recent interventions. Projects are still hindered in addressing this by the political nature of the topic in the DRC context. Some results appear nonetheless, with cases of conviction of high officials for corruption cases, and with the “Congo Papers” in 2021 involving former President Kabila.

EU’s efforts in promoting legal and administrative reforms where nonetheless challenged by the sensitive nature of support to RoL&AC, the legacy (of weak capacities) of the institutions and the political dynamics that eventually led to a suspension of institutional support altogether.

The suspension of the institutional support because of the elections (see context section) highlights the need to plan for support at various levels, strategic and reform, political and organizational with the idea to be able to sustain results even in case of political bottlenecks and where one component can still be pursued even if political dynamics constrain it.

the need for long term commitment, in particular concerning institutional reforms of extremely fragile institutions. This also shows the need to conceive interventions at various levels: political and strategic, in addition to support to the functioning of the institutions, with the perspective to ensure results even if there are political bottlenecks. In addition, interventions at various levels should also address different stakeholders to diversify the entry points and ensure an integrated approach.

Overall, the EU’s strategy evolved over time, from a nation-wide approach to more targeted and integrated approaches with a view to support the continuum of reforms. It appears still essential to maintain efforts for long term / structural reforms, while the impact is possibly dubious. The approach was also to have a strong decentralized targeted approach in order to maximize the impact on the population. The objective is also to work on a more inclusive approach between the sectors to ensure the continuum defence / police/ justice, while a number of inconsistencies remain. In DR Congo, police is civil but under military jurisdiction. This approach also aims to possibly include the Direction Générale de Migration (DGM) and the Agence nationale de Renseignements (ANR).

JC5.2: Strengthening of institutional architecture

The DRC case illustrates well the institutional focus of the EU and its involvement in capacity building of the institutions. So far inputs have been mostly sector-wide through the specific institutions, and less aimed at strengthening the judicial processes, case management and interactions between justice / police / prisons. The potential for actual impact at operational level remains “quite utopic” according to a key informant, illustrating the need for strong decentralized and targeted approaches to have actual effects, and to push forward the continuum across RoL agencies.

Capacity limits of the institutional architecture for RoL&AC are mostly related to the lack of adequate human resources, as well as the lack of financial autonomy and independence. Several projects aimed at strengthening national institutions, through various angles of capacity building, including the core issue of human resources management in the police and army in particular. Indeed, in the DRC, a significant share of workers affiliated to State institutions are not listed and do not receive a salary. This includes in the most strategic ministries, which have not been directly tackled by projects, such as the Ministry of Mines and mine division in the key provinces of origin for mineral resources. In addition, there is no real independence of the

magistrates. Judiciaries do not have financial autonomy. The budget of the different courts follows the different justice system / courts levels in principle but the actual application of this principle is unclear. Some key ministries have not been tackled though.

The overall evolution of the country raises further challenges for the institutional framework. Newly created provinces will require new institutions, while both infrastructures and human resources remain weak in the country overall, and while the potential caseload is not significant enough for such an investment. In addition, there has been no recruitment of magistrates for years. In some provinces of Eastern DRC there is also still an “Etat de Siège” because of the conflict, but there is no real strategy at technical / operational level to ensure that State services continue.

Some data is available but there is no consolidated functioning statistic system despite the support provided. Data on the justice and police statistics is found in open sources and available until 2015 in the statistics yearbook published in 2017. The committee in charge of the monitoring of the justice reform was tasked with increased data collection and with monitoring progress against the objectives of the reform action plan.

Stakeholders mention challenges in the sustainability and continuity of the interventions, highlighting also limitations in the strategic vision of the support to the different sectors. In some cases, projects on judicial exercise / exercice judiciaire were started in Matadi and Kolwezi during the justice technical assistance mission but there has been no follow-up or extension afterwards.

Some infrastructures have been built to strengthen the overall capacity of the judicial system with very little results. For example, the building for the INAFORJ, national institutes for judicial training, is not used because of leadership / interpersonal conflict and a functioning budget has not been voted. The ACAPOL Police Academy construction was initiated in 2014 and is still not finalized and used. In Kananga, the tribunal is not used and in Tshikapa the building of the tribunal faced significant challenges. The limited effectiveness of the control office for public facilities building is one of the bottlenecks, as well as insecurity, logistics and weak local capacities. Only Uzumu, a modern prison, can be viewed as an example of success. Those infrastructures represents in most cases the main share of the interventions’ budgets.

At this stage, even at organizational level, it seems difficult to observe progress on the case management system, which contributes to perpetuate the instability cycle. Basic things, such as raising public awareness of justice fees by putting them on the walls of judicial institutions and courts remains highly contentious and faced significant blockages from judges and lawyers. This also serves to illustrate the extent to which hazardous financial gains, bribery and corruption still prevail in the system.

In a context of protracted conflict, the police remains particularly weak and has not been a priority of the government, which limits the ability to address the underlying conflict drivers and criminal networks that fuel the insecurity. To some extent, this could be considered a specificity of the conflict affected context and persistent challenges in conflict management. The specificity of the DRC is to have the army playing a key role in Rule of Law institutions. Police capacities remain weak. Two laws have been voted for the reform of the police but no application decree has been passed. There is no real capacity building plans by the government for this institution. The number of policemen / inhabitant remains quite low (there around 150 000 policemen for a population of around 90 million inhabitants) with 1 policeman per 600 inhabitants. This lack of governmental interest also contributes to challenges regarding the sustainability of interventions (lack of maintenance of the infrastructures, initiatives launched by the project that are not relayed). Similar than for the justice sector, there is hardly any recruitment of staff, while the average age of existing staff is continuously rising. There was one recruitment cycle in 2018 but new recruits have not been sufficiently trained up until this evaluation and mostly benefitted from military training. The problem of indifference by the government or lack of political will is not only limited to EU-funded interventions. A large DfID project on security sector reform (SSR) which had planned to promote a “police de proximité” in order to better prevent police harassment of the population was eventually suspended by the UK Parliament in 2014 after it became apparent that the DRC government was not invested sufficiently to sustain results.

Linkages between the justice and security sector have been limited to this date. This is related to the continued weaknesses of the institutions and the suspension of cooperation with state institutions between 2016 and 2018 The new approach included in the Teams Europe Initiative aims to change this, with a focus for an integrated approach in a few key provinces with the idea of further integration of rule of law stakeholders.

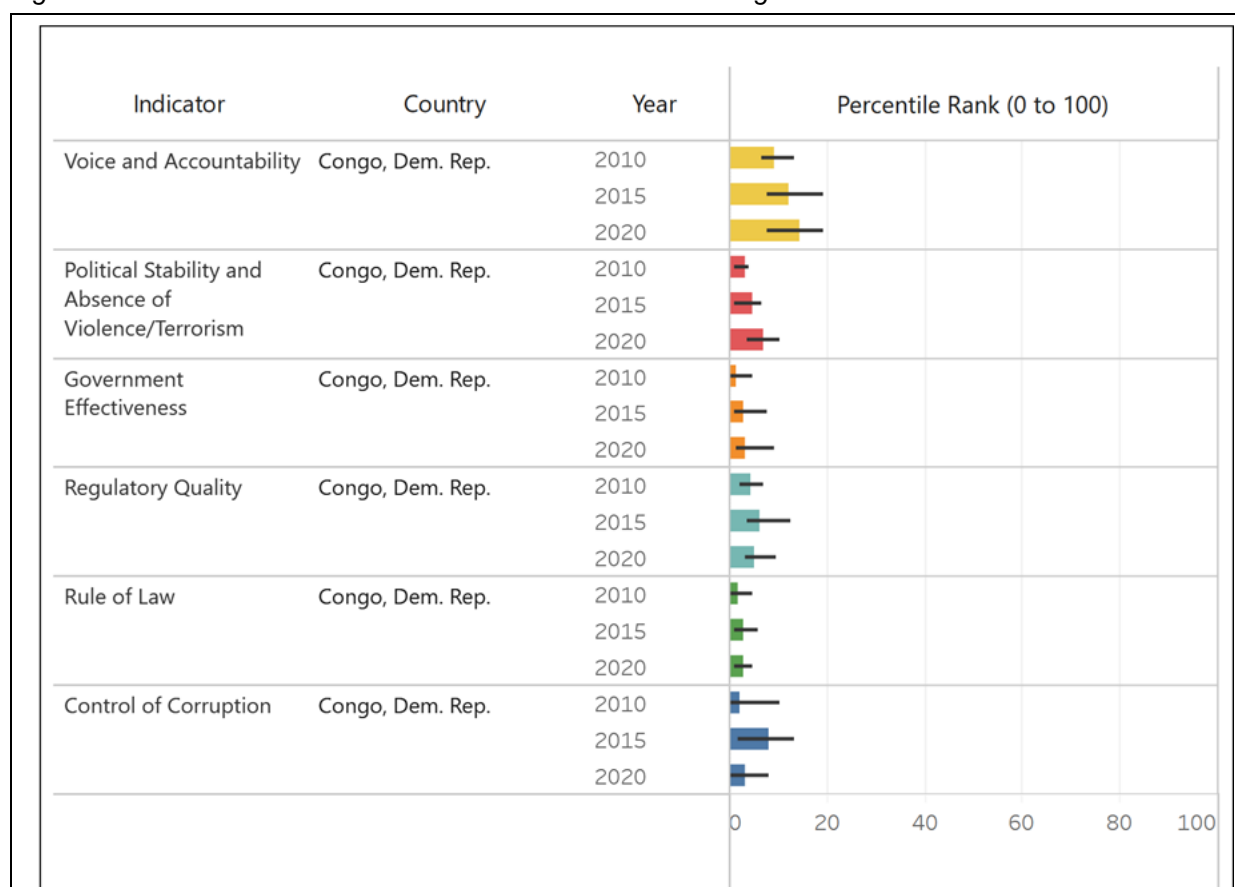
Some results are visible in terms of increased commitment and coordination between the different stakeholders at national level, with variations depending on the sector. In the justice sector, a dedicated “Thematic Group on Justice and Human Rights” / “Groupe Thématique Droits Humains / Justice” has been supported by the EU to oversee the implementation of the sectoral policy and to monitor the progress. Four sub-groups cover access to justice, judicial independence, performance of the Ministry of Justice and human rights and fight against impunity. In the police sector however, since support had been interrupted, the reform committee mentioned that the Cellule d’Appropriation et de Mise en œuvre de la Formation (CAMO) with a dedicated building built in 2013, is not active anymore.

Some limitations remain nonetheless, in addressing instability drivers from a judicial perspective, notably the regional dynamics of conflict and smuggling of minerals.. At the international level, some cases have been addressed by the International Criminal Court⁵, but this does not really contribute to building the national system.

JC5.3: Progress in justice systems and anticorruption frameworks

World Governance indicators show progress on voice and accountability and political stability, related to the elections, but not really on rule of law and regulatory quality. They also highlight a strong decrease in the control of corruption. Progresses on voice and accountability refer to the support to civil society notably, and some opening of the democratic space.

Figure 1 Worldwide Governance Indicators for DR Congo



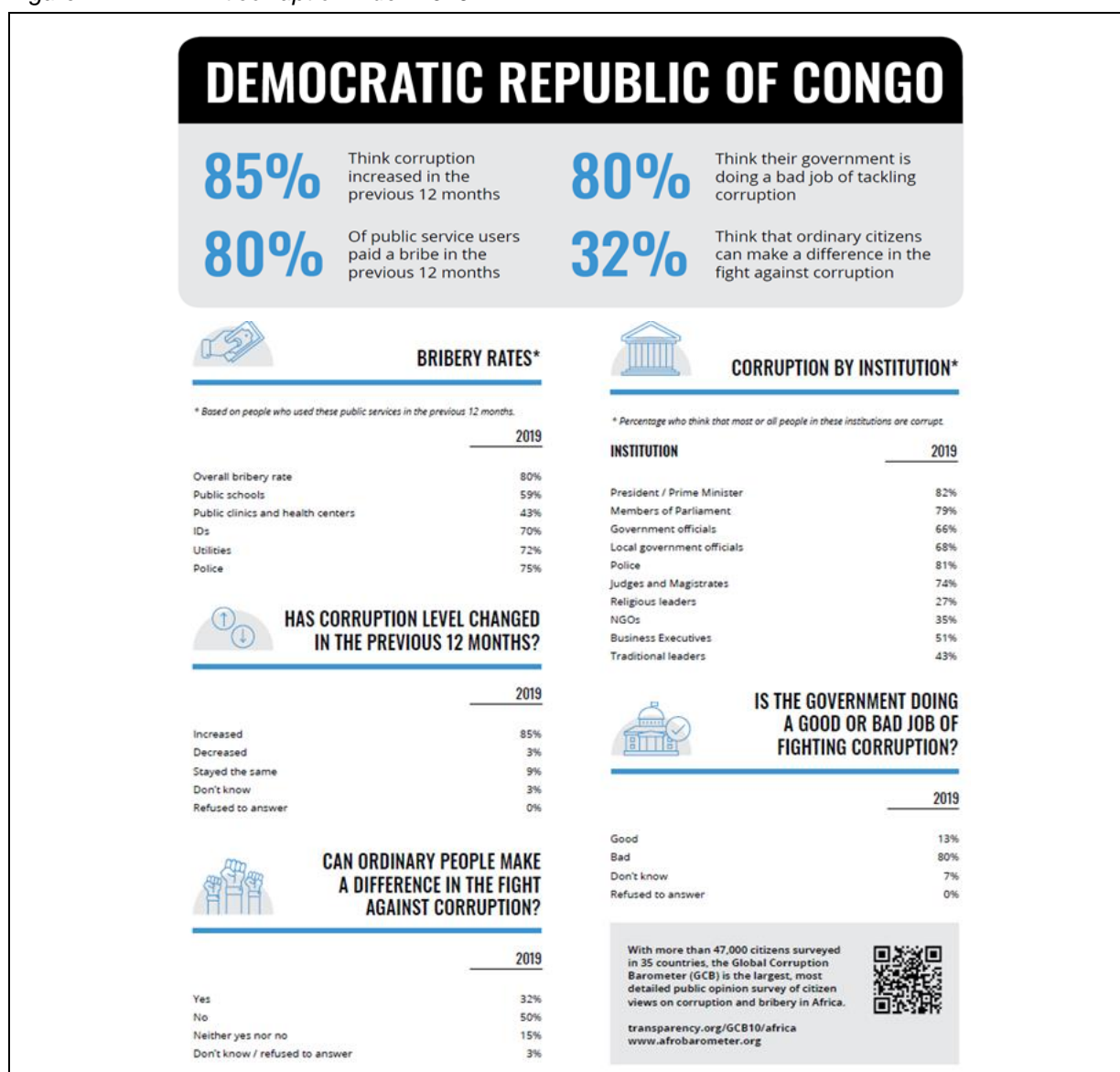
Source: *Worldwide Governance Indicators, World Bank*

The traditional and informal justice system has not been integrated in the interventions, oriented to the promotion of the positive law. In other countries, for example South Sudan, efforts to streamline the traditional customary justice have proven to their potential for results, at least in harmonizing and formalizing the corpus by ethnic group. This could be especially useful in a context where the potential for formal administration coverage faces significant challenges and limitations in terms of quality / effectiveness. Studies have been carried out on alternative conflict resolution mechanisms and social cohesion dynamics in some regions, notably Congo Central, Haut Katanga and Lualaba. The objective is to define a national policy on this topic. Challenges remain also in the coverage of the justice system. There should be one peace tribunal per territory but some territories are larger than countries like Rwanda or Uganda.

Anticorruption remains a key challenge, despite recent initiatives to tackle it. In 2019, more than 80% of stakeholders indicated an increase in corruption, sharing the perception that corruption is the highest at the government / prime minister level, right before the police (see Figure 2). This obviously raises strong concerns regarding the perceived legitimacy of these institutions. Some progress has been made recently though: in October 2021, a national assessment on anticorruption « Etats Généraux de la lutte anticorruption » took place, leading to recommendations on how to tackle the issue.

⁵ Three cases of convictions on war crimes and crimes against humanity between 2012 and 2019, <https://www.icc-cpi.int/drc>

Figure 2 Anticorruption index 2019



Source: Transparency International, Anticorruption Index 2019

EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions

JC6.1 Legal safeguards, checks and balances

Impartiality of the judiciary remains a strong challenge, and the justice personal is even refusing that justice fees are officially published in court buildings. Some attempts to change this significant protests from judges and lawyers alike, highlighting the lack of structuration and reliability of the system. Some additional structural settings limit the impartiality of the judiciary even further. Police forces are civilian but depend on military jurisdictions and face a challenge of a double hierarchical line, for example in the case of the OPJ / judicial police, which is under the police commissioner and hardly under the justice order.

Some small progress have nevertheless been made with the help of EU support. In 2017, the EU supported military justice, notably through Cellule d'Appui aux Poursuites judiciaires (CAP) in the East of the country, ex-province Orientale (Ituri, Tshopo, Haut-Uélé et Bas-Uélé), Nord-Kivu, Sud-Kivu, ex-province du Katanga (Haut-Katanga, Lualaba, Haut-Lomami and Tanganyika) and Kasai Central. This contributed to an increase of 5% in the trust of the population in the military judicial institutions. This level of trust remains quite low though (from 25% in 2015 to 30% in 2017). EU support also led to an increased mobilization of judicial stakeholders on international crimes and to 27 lawsuits on international crime and human rights abuses. Collection of evidence improved with the use of phone tapping during lawsuits for the first time.

In early 2010/2011, support to the Parliament also started under the 10th EDF for a 7 years duration, with the objective to support National Parliament and Provincial Assemblies. This led to some improvement in accountability of the executive power on budgets and the use of different control modalities, despite elections

(and by extension the Parliament) only having a limited influence in general. Results of EU support in terms of capacity building and improving information systems were also limited. It still managed to support the democratic debate and to promote a better understanding of the role of different democratic institutions.

JC6.2 Oversight institutions, non-state actors and the private sector

Accountability of government institutions and control carried out by oversight institutions remains quite low and EU support did not bring any significant improvements. The EU supported the Public Finance Management reform under the 10th EDF and under the 11th EDF together with AFD, mainly in an effort to connect the financial entities and support the mobilisation of the financial resources. There was no related support on the State budget / control mechanisms for expenditures which raises questions on the EU's strategy. In addition, there was no real continuity on the PFM interventions and the sustainability prospects are low. For example, SAP was provided but ultimately abandoned since the financial envelope was too limited. A dedicated committee was put in charge of piloting the PFM reform but got dismantled in 2015/2016. The EU also contributed to the pooled fund between DfID and the World Bank for public accounting/financial management under the 10th EDF but this led to limited results. Despite EU efforts to support the Cour des Comptes under the 9th EDF with the construction of a dedicated building and the recruitment of magistrates, no real control or oversight seems possible. The current President has shown interest in dynamizing again this oversight institution, but current magistrates are quite old and there seems to particular will for major reform.

Corporate social responsibility mechanisms have been strengthened during the evaluation period, but the EU was not directly leading on these dynamics. A key initiative was the launch of the OECD Due diligence guidance in 2009, which followed the US Dodd Franck Act, Conflict Minerals Bills, requesting US companies to be able to ensure that their supply chain doesn't include minerals linked to conflict and serious human right abuses. This led to the implementation of a due diligence and traceability system in the DR Congo and in the Great Lakes. As a response, the EU launched its own regulation in 2017. The revision of the mining code also took place with strong involvement of the CSOs. Nevertheless, DR Congo's capacities remain too limited for an effective control of the extractive sector, which represents a key source of revenues and where some of the countries' major companies are active. The EU did not contribute to large national programmes dedicated to strengthen governance in the extractive sector, such as for example PROMINES (funded by the World Bank). The Burundi EUD provided some funding to EITI⁶ and to ICGLR⁷ since ICGLR is based in Burundi. Further EU interventions are now planned in the sector, including at the level of the Ministry of Mines to support the institutional management and coordination capacities.

EU has been successful in strengthening the involvement and role of civil society in the security sector. Some efforts have been made to ensure cross-cutting integration of specialized CSOs into security and defence related interventions, and Security Sector Reform, to support the control of the army reform, and the interaction with the Parliament, notably the Defence and Security Commission. This helped to establish linkages between CSOs and the Ministry of Defence, and for the defence forces to have better consideration for the CSOs. CSOs now get invited by the MoD to some meetings. The integration of CSO in the PROGRESS project to reform the army was also oriented to strengthen the linkages between the army and population in some pilot provinces, through civil-military actions (costing around 1200 euros each), and for advocacy purposes to improve the livelihoods of the military (so deprived that they can rent their weapon for 20 USD a night). There is a law drafted in 2013 on the status of the soldiers including indicators on the livelihoods but this is linked to application measures / decrees and is not applied. An issue is notably that soldiers don't want to retire since they have no pension.

EQ7: Broader effects on RoL&AC culture, human rights and democracy

JC7.1 Promoting a RoL&AC culture

The evaluation could not observe any major changes that would indicate a stronger RoL&AC culture in DRC. Obviously, the issue of political will and institutional commitment always appears as a constraint in all RoL / governance interventions. This raises strong questions on the actual demand for such interventions from part of the local elites. RoL/ governance interventions are mostly linked to international pushes, more than endogenous dynamics, and could appear as imposed to developing countries such as the DRC. The economic interests of the elites in the DRC are also particularly strong, with predatory behaviours and impunity starting from the top which cascades to the other levels. As such, the integration of this perspective in economic / natural resources management is key. The support to national parks can be a good entry point since those parks are used by armed groups as a shelter, and natural resources remain a key funding source for armed groups. This being said, there seem to be limited actions on the key stakeholders involved in supporting / funding armed groups such as politicians or businessmen. Some interventions included a component of

⁶ Extractive Industries Transparency Initiative

⁷ International Conference for the Great Lakes Region

participatory governance, mostly through the civil society, to promote human rights in rural areas. Overall, there was a shift around the 2016 electoral crisis and the lack of a democratically elected government to strengthen support at the grassroots level. There was also support to media, through various projects under different instruments, and the integration of radio interventions in various types of interventions.

JC7.2 Fostering human rights

EU efforts to fostering human rights through RoL and in the wider area of justice and security reform have been challenging. The EU has funded a significant number of interventions through the EIDHR instrument, but no new interventions have been launched since 2018. The portfolio includes support to victims of human rights abuses, fight against torture and impunity, support to human rights defenders, support of human rights CSOs as well as support to the thematic group on human rights to boost the national justice reform at institutional level. Support to police and justice also includes strong human rights components in terms of ability of the stakeholders to comply with human rights. This is a specific challenge given that some ex-members of armed groups were included into security and defence forces, with a serious history of human rights abuses. There is a widespread culture of abuses, in particular to women. The portfolio also includes support to minorities, such as pygmies, on land law and citizenship.

JC7.3 Application of democratic principles

After several years of political turmoil, the 2018 elections consisted in the first democratic change of power in the country. The EU contributed significantly with financial and technical support to the electoral process, with 33 contracts on various aspects of election law, citizenship, grassroots participation and local governance mechanisms, technical support to CENI and election observations, for a total of almost 60 million Euros. Mainstreaming of civil society through support to hundreds CSOs in various sectors also raised the voice of the population and contributed to structure, empower and emancipate the population, including socio-economically, and to civic education. The EU remained afterwards the first donor supporting the civil society, directly or indirectly, and streamlining this support throughout the sectors, and the EU is in charge of donor coordination in that respect. This contributes to empower the population and strengthen their voice. This contributes also to strengthen their influence over the government at national and local level.

Support to the civil society is considered as key by the CSO, since it gives them a voice and has in that contributed to promoting democratic principles. EU support and protection is also considered a strong security by them, including at diplomatic level. A communique by the Ambassador indeed helped to support democratic voices, notably in 2018 on the army's involvement in the elections, while it should be only the police, following an analysis by the CSO which was denounced by the army. The EU is considered also a relay, spokesperson and amplifier of the voice of CSOs, allowing them to come to Brussels to speak to the Member States. The support to CSO differs also from the one of other donors, since this is a direct support to the organisations, while other donors assist them mainly through other organisations.

EQ8: Effects on wider EU external action goals

JC8.1 Peace, resilience and stability

In the context of the DRC and compared to the needs, the EU's impact on peace, resilience and stability has remained quite limited. The peacebuilding portfolio of the EU mostly consists in IcSP grants to NGOs for specific projects. EDF remains oriented towards traditional sectors of interventions without a clear articulation with peacebuilding objectives.

Some interventions are likely to have effects on the conflict drivers though, by contributing to better structure and administrate the territory. The peacebuilding portfolio of 15 contracts includes both grassroots and institutional support, notably support to dialogue within / between communities as well as with administration, community mobilization, in particular youth, notably in the Kasaï, as well as support to state security, and to defence forces as part of the security sector reform. The EU provided support to criminal justice at the police level, and fight against impunity, to address the conflict legacy.

One key driver of conflict in DRC are natural resources. JC 8.3 below provides a more detailed account on EU's efforts to improve governance and RoL&AC in natural resource management.

JC8.2 RoL&AC for functioning markets, trade and private sector development (compliant with human rights and due diligence)

The private sector has rarely been involved directly in EU support to RoL&AC, including in terms of trade unions / professional unions. Some initiatives were oriented to building a commercial court notably, but faced challenges on the location and use of the facility, since the volume of cases was quite limited in the chosen area. Several projects actually targeted the role of the civil society in natural resources management, on forest and extractive industry.

On the due diligence in natural resource management, please see below. The EU was involved in the interventions at the regional level through funding to ICGLR notably. The EC Regulations on due diligence also is a step forward but the direct effect and implementation on the ground remains limited.

JC8.3 Natural resource management

Natural resources are at the core of the conflict and different successive wars in the DRC since the mid-nineties, as highlighted by the reports of the UN group of experts since 2007. Those dynamics have strong ramifications in the neighbouring countries, and started with the border management approaches during / after the Rwanda genocide.

The role of the EU natural resource management mostly comes from the EU regulation of 2017, hence as an external framework. It followed the US Dodd Frank Act conflict minerals bills, and legal evolution to implement traceability over supply chain on Tin, Tantalum and Tungsten. Here linkages with regional initiatives appear, notably through the ICGLR, but interests remain high from neighbouring countries to access natural resources from Eastern DRC. Armed group of foreign origin are still present in the DRC;

There has never been any legal prosecutions with respect to this nonetheless. Besides, gold export from Rwanda significantly increased over the timeframe. It is indeed now the first source of export, implying that cross border illegal trade is significant, and that cross-border dynamics still remained largely uncontrolled, without effects on mineral smuggling. The perception of several stakeholders is that efforts undertaken on due diligence and ICGLR over the past decade, given the limited involvement of the neighbouring countries using the information on the supply chain to build refineries. The valorisation of DRC minerals indeed mostly take place in the neighbouring countries, where the taxation system is also more favourable to companies.

Overall, 13 contracts from the inventory cover natural resources governance, including EUR 40 million to protect priority national parks and sustainable agriculture, as well as EUR 13 million for Lake Edward Integrated management of renewable natural resources, biodiversity and security challenges. This also aims to reduce deforestation since DRC forests concentrate the world's second largest carbon dioxide stock after Amazonia.

EU interventions intended to support the management and governance of natural parks have direct linkages with RoL. Support to national parks can be a good entry point since those parks are used by armed groups as a shelter, and natural resources remain a key funding source for armed groups. This said, there seem to be limited actions on the key stakeholders involved in supporting / funding armed groups such as politicians or businessmen.

EU interventions include support to Ecoguard, through equipment, training, including on human rights and defence, organizational process to adjust the payroll, payment of pensions, and payment of salaries, as well as creation of new units. It also strengthens the linkages between community and guards. The project also contributed to institutional reform of ICCN, the national institute for conservation. This support also included training of judges on environmental law (Garamba Park), as well as of police and FARDC. There are some judicial officers in the park. In the Garamba, no rebel attack took place since 1,5 years. This type of support represents a massive financial investment (160 million euros on the 9th and 10th EDF), with a strong substitution aspect and the challenges of sub-contracting to private stakeholders specialized in natural park management in Africa. This is an example of a functioning public/private partnership over a long period (10/20 years) and linked to a similar approach of USAID and AFD in other parks.

Overall assessment

The case of the DRC illustrates the challenges of interventions in a protracted crisis largely related to the weaknesses of the governance in the country and challenging regional – and by extension international – dynamics, in relation with the geopolitics of neighbouring countries and access to natural resources. Those have been limitedly addressed, with the absence of a regional strategy at the EU level, in contrary to the Sahel. This conflict context is associated – logically – with the high footprint of the army on the administration of the country. The weaknesses of the institutions in an unstable context also hamper the potential democratic functioning of the State.

After the two main Congolese wars, the EU played a key role, along with other stakeholders, in supporting the core Rule of Law institutions, Police, Justice and the army. This support was oriented on the long-term and contributed to reorganize and structure better those institutions that are central to the rule of law in the country, at the administration, human resources and planning level to various degrees. Those long term dynamics which started in the aftermath of the peace agreements, were interrupted with the suspension of assistance to institutions decided by the EU given the postponement of the 2016 elections and have only been restarting recently.

The use of EDF meant also rather long processes with an institutional entry point, with more limited results at operational level, given the weaknesses of the institutions and strong political dynamics that limited the performance of the funding. Infrastructures represented a significant share of the funding in justice and police

notably, and a leverage for political dynamics with uneven success. There was no specific support to investigation units to address illicit funding flows and trafficking fuelling armed groups and conflict dynamics for example. IcSP was mostly used for stabilization / peacebuilding at the local level and through media. Accountability remains a challenge, with the lack of measures / counterparts and commitments that would ensure the sustainability of the results. In the meantime, significant amount of funds are invested in infrastructures to secure some political buy-in. Accountability remains a challenge, while as indicated by one Congolese stakeholder the “this issue of sovereignty becomes a slogan”. Institutional anchorage in the DRC is also often biased, with a tendency to get overly involved with cabinet & ministers, instead of securing administrative / technical linkages. RoL/ governance interventions are mostly linked to international pushes, more than endogenous dynamics, and could appear as imposed to developing countries such as the DRC. As such results remain quite limited. The economic interests of the elites in the DRC are also particularly strong, with predatory behaviours and impunity starting from the top which cascades to the other levels. As such, the integration of this perspective of economic / natural resources management is key.

Progresses in the PFM remained quite limited, despite joint efforts with other donors, with a focus on resource mobilization, over State budget. Several projects were related to natural resources dynamics, with funding at various levels, but quite limited on the direct structuration of the mining sector in the DRC. The role of the corporate sector has been addressed through a new regulation in 2017 for , as a corollary to the US Dodd Frank Act, but there are no related actions for its operationalization on the ground, while EU, and in particular its Member States, have limited economic interest in the area (no major international company, or involvement of the significant mining sector of the country).

The political transition of 2018 represented a significant step forward to a democratic regime, to which the EU contributed with direct support to the electoral process but also by strengthening the voice of civil society, involved in the different sectors of intervention and through dedicated projects. However, the issue of political will and institutional commitment always appears as a constraint in all RoL&AC interventions. This raises strong questions on the actual demand for such interventions from part of the local elites. RoL&AC interventions are mostly linked to international pushes, more than endogenous dynamics, and could appear as imposed to developing countries such as the DRC. The economic interests of the elites in the DRC are also particularly strong, with predatory behaviours and impunity starting from the top which cascades to the other levels. As such, the integration of this perspective in future RoL&AC efforts is key.

This is already partly reflected in the general evolution of the EU's positioning and change of paradigm: the approach changed from intervention and partnerships with State institutions, which proved to be clientelist and limitedly able to serve their populations, to more focused interventions at regional level, likely to create dynamics in only a few areas. The effects of this change in the partnership dynamics – with the new instrument NDICI – and by the largest donor are still difficult to anticipate, but the impact on the consistency and unity of an already fragmented governance and very fragile country might be significant.

Despite all the challenges, as phrased by one stakeholder, the European Union, along with all the other donors, contributes to ensure that “the small and fragile light of justice and rule of law does not turn out”.

Case study note – Guatemala

Introduction.....	17
Context	17
Political economy analysis	18
Overview of the EU support to RoL&AC	19
Strategy and implementation of EU support to RoL&AC	22
EQ1: EU strategic framework/institutional environment.....	22
EQ2: Responsiveness, ownership and flexibility	23
EQ3: Partnerships and coherence	26
EQ4: Choice of modality	27
Effects of EU support to RoL&AC.....	30
EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions	30
EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions	32
EQ7: Broader effects on RoL&AC culture, human rights and democracy.....	34
EQ8: Effects on wider EU external action goals	35
Overall assessment	37

Introduction

Remark: This case study note does not constitute a separate evaluation of EU support in the country or its situation with regard to RoL&AC. It presents country-related findings relevant to the overall assessed judgement criteria and indicators, and feeds into the main evaluation report of the Evaluation of the European Union support to Rule of Law and Anticorruption in Partner Countries to which it will be attached as an annex.

Context

'While Guatemala holds regular elections that are generally free, organised crime and corruption severely impact the functioning of government. Violence and criminal extortion schemes are serious problems, and victims have little recourse to justice. Journalists, activists, and public officials who confront crime, corruption, and other sensitive issues risk attack.'⁸

Guatemala, the largest Central American country with a population of 16 million, ended its 36-year long civil war in 1996 and since then, the path to democracy has been rocky and governance is volatile. Electoral and party financing corruption show the influence of non-elected and illegal actors on the government, and potential military influence on the administration of former President Morales.⁹ The country has experienced the growing influence of Clandestine Security Organizations and Illegal Security Groups (CIACs). Human rights violations and associated impunity as well as insecurity of human rights defenders continue to be a crucial problem.

With the penetration of political parties through illicit financing, the CIACs extended their reach to the public administration and the three State powers and through corruption they permeated and co-opted virtually the whole Guatemalan State, reducing the effectiveness of public service delivery. A study on criminal networks carried out by Acción Ciudadana shows the co-optation mechanisms through which CIACS seized power of influence: financing of election campaigns, control of public contracting in ministries and public agencies with the largest budgets, and placement of operators in key public positions.¹⁰ And corruption has been a serious and worsening problem in the country.¹¹

The judiciary is compromised by corruption and illicit influence. The innovative International Commission against Impunity in Guatemala (CICIG for its name in Spanish) had generated hope that reforms in the justice sector and addressing wide-spread impunity are possible. However since the government closed CICIG in late 2019, mainly in response to its very success, there have been serious backlashes and the judiciary has been captured by high-level corrupt networks. The successive capture of all key institutions of the judicial system is popularly called 'Pact of the Corrupt'.

Violence and extortion by powerful criminal organisations, which the government has often been unable or unwilling to control, remain serious problems. Long delays impede accountability, as courts often fail to respect legally mandated timeframes and may take months to reschedule suspended hearings. Criminal proceedings against powerful actors often suffer unreasonably long delays due to the extensive use of motions by criminal defendants. Intimidation of judges and prosecutors and corruption in the justice system remain problems.

Guatemala is part of the '[Northern Triangle](#)' along with El Salvador and Honduras, meaning it is a strategically important transit nation for the transnational drug trade. This has contributed to both violence and rampant corruption. In recent years, transnational criminal groups, particularly Mexican cartels, have expanded their presence through the Northern Triangle.

Overall institutional governance and capacity is weak at all levels of the administration and frequent changes in authorities and staff is an impediment to institutional strengthening for better service delivery.

Despite fairly stable economic growth and being considered a lower middle-income country, high inequalities persist. 'In contrast to most countries in the region, poverty has increased over the last decade, affecting 59% of the population, with higher rates of 76% and 79% among the rural and indigenous populations, respectively.'¹² 'Guatemala also has the sixth highest rate of chronic malnutrition in the world and the highest in the Americas. In 2019 only 40% of Guatemalan families enjoyed food security. Low central government revenues (an estimated 9.7% in 2019) continue to limit public investments and restrict both the quality and coverage of basic public services.'¹³

Two thirds of the population work in the informal sector, and massive migration to the United States is a political issue for the US and an economic one for Guatemala with remittances accounting for a record 12% of GDP in

⁸ See Freedom House Guatemala <https://freedomhouse.org/country/guatemala>

⁹ See Freedom House, Guatemala Country Report 2019.

¹⁰ See Acción Ciudadana; 'Redes de corrupción y corruptoras criminales: reformas para su erradicación', 2010.

¹¹ For example, Guatemala's score on the Corruption Perception Index (CPI) has gone down between 2014 and 2019 from 32 to 26 out of 100 points.

¹² See [IDB Guatemala Country Programme Evaluation 2012-2016](#).

¹³ See TOR for EU Guatemala country programme evaluation.

2018.¹⁴ A new record is expected for this year, contributing to reactivate the economy following its contraction during the Covid-19 pandemic.

Finally, Guatemala is amongst world most vulnerable countries to natural disasters, hurricanes and earthquakes, and the consequences of climate change.

The key development challenges identified by the EU and its Members States (MS) are:¹⁵

4. ensuring human security, defending and developing the rule of law and ending impunity;
5. fighting against structural economic and social inequality and discrimination;
6. guaranteeing respect for human rights; and
7. combating widespread poverty and malnutrition.

In addition, there is the need to strengthen the state's legal and institutional capacity and to put mechanisms in place for peaceful conflict resolution.

The main institutional challenges are: strengthening the civil service; making Congress more effective; increasing transparency and tackling corruption; and strengthening the link between central policy-making and local service delivery.¹⁶

Political economy analysis

The twelve years that CICIG operated are a parenthesis in the long history of impunity and corruption that the country has historically experienced. CICIG, which had started its work in September 2007, had over the years become extremely successful in its mission to investigate complex criminal networks, dismantle them and bring the involved high-level political, military, and business figures to justice. Under the leadership of three very different Commissioners, CICIG in conjunction with the national Prosecutor General's Office investigated numerous high-level cases and supported the prosecution of these cases many of which ended in jail sentences, involving high-ranking officials, from presidents, vice presidents, ministers, parliamentarians, mayors, businessmen, military and police officials, etc.

Not even during the internal armed conflict did the political, economic and military elites feel their status quo as threatened as by CICIG. Control institutions that previously had never operated according to their constitutional mandates such as the Prosecutor General's Office, the Judiciary and the Police, among others, contributed for the first time in investigations of high-level corruption. CICIG had left an important national capacity mainly in the Public Ministry where the Special Prosecutor's Office against Impunity (FECI) continued to work and enjoyed prestige and citizen confidence. CICIG had turned not only in the most trusted public institution in Guatemala but also one of the most successful anticorruption instruments in Latin America, and possibly beyond.

However, since the closure of CICIG in 2019 this situation has dramatically changed. The public discourse vis-à-vis CICIG and its staff has turned from glorification into hate-speeches and those once considered national heroes (national investigators, attorneys, independent judges) are now intimidated, legally criminalised, dismissed from their positions or even forced into exile.

Although Guatemala has a long-standing history of high-level corruption and a violence-based control of the whole political and economic system, involving all parts of the State and the economic elites, as well as illicit often narco-related criminal actors, the current administration is popularly called 'Pacto de los Corruptos' (Pact of the Corrupt). State capture, in particular of the Justice Sector after the closure of CICIG, has become worse.

In November 2020, citizen protests sprung up after congress approved a budget for 2021 that cut the judiciary budget by half while increasing funding for government departments accused of misappropriating public funds, among other controversial measures. These protests were more nuanced than those in 2015, but the state response has also been more violent.¹⁷

The current president, Alejandro Giammettei of the right-wing Vamos party, governs with a fragile ad-hoc coalition of several political parties in Congress. However, high levels of party fragmentation are likely to undermine political effectiveness in the medium term.¹⁸ The President faces several serious allegations of corruption, among others raised by the former director of FECI.¹⁹

The sacking on 30th July 2021 of the national anticorruption 'hero', Juan Francisco Sandoval, special AC prosecutor and courageous leading national counterpart of CICIG, has sparked mass protests and road

¹⁴ See <https://www.dw.com/en/guatemala-alejandra-giammattei-wins-presidential-vote/a-49989569>

¹⁵ See MIP 2014-2020.

¹⁶ See MIP 2014-2020 Guatemala.

¹⁷ See <https://insightcrime.org/news/analysis/guatemala-budget-frustrations-boil-over/>

¹⁸ <https://country.eiu.com/guatemala>

¹⁹ See <https://www.articulo66.com/2021/08/24/alejandra-giammattei-corrupcion-sobornos-revela-efiscal/>

blockages as well as public pronouncements by the EU and some of its MS.²⁰ In the US 'concerns are mounting about the government's commitment to tackling corruption and according to some analysts US aid could be cut as a result.'²¹

In particular the independence of the justice sector has been consistently undermined and as of today, the two remaining independent Supreme Court judges call the country an authoritarian regime and state that judicial independence is not existent anymore. In 2019 the Constitutional Court ordered Congress to re-start the process of selecting and confirming magistrates to the Supreme Court and appellate courts. The ruling resulted from an investigation by Guatemala's special anticorruption prosecutors' office, which uncovered that nominees to the courts, their electors in Congress, and a series of political brokers outside the system had met informally to influence the outcome of the process. This court ruling, which ordered a re-do of the entire appointment process, has not been complied with until today.

In addition, the appointment of the magistrates of the Constitutional Court in early 2021 is seen by many as a consolidation of mafias united in the " Pact of the Corrupt," a group of politicians and judges who seek to co-opt the judiciary in order to avoid being prosecuted for corruption.

On the other hand, justice officials who have shown themselves to be independent, including prosecutors, judges and even Constitutional Court justices, have been targeted with legal actions and lawsuits. Committed civil servants face systematic smear campaigns and attacks aimed at undermining public support and delegitimising their work.

Civil society organisations are often considered by the captured Guatemalan state powers as an enemy. The recent NGO law, approved against the advocacy of the international community including from the vocal Biden administration, puts more restrictions on CSOs in terms of funding and activities. Vocal organisations and/or individuals have to fear silencing.

In view of this grim situation, the Donor Coordination Group (G13) has come out with public pronouncements, e.g. vis-à-vis the sacking of the Head of FECCI and the restrictive NGO law, seen as yet another backlash of RoL and AC. The EU supported this pronouncement (although it is perceived to be timid), but Spain and Italy took a distance and are seen to be supportive of the government. The 'good' news is that the US is taking again a strong(er) stance on governance and AC issues. However, what was destroyed during the Trump administration (in particular CICIG as a beacon of hope) is gone and the Biden administration's alternative approach is possible, namely to work with a Task Force of specialised attorneys to investigate complex criminal and corruption networks in Guatemala, Honduras and El Salvador, remains to be seen.

This bleak situation of the current political economy in Guatemala, which is not so distant from its neighbouring countries Honduras and El Salvador, poses a great challenge for the EU and its MS as well as the main donor and political actor in the region, the US, as to which actions to take in the realm of RoL&AC but also more broadly.

On the side of the Guatemalan government, it is possible to speculate that there is no great interest to dance to the tune of democratic values and principles promoted by the EU and its MS. Development aid does not play a great role in the state budget. Critical civil society in Guatemala, though, is in a delicate situation and requires decided support by the international community, including the EU and its MS.

Overview of the EU support to RoL&AC

Historically, the EU has been the main contributor to Guatemala in the implementation of the Peace Accords and has generally been seen as a credible partner.

The EU in Guatemala is providing strategic support towards a more democratic and inclusive society, eradicating poverty and moving towards environmentally sustainable development. The overall purpose of EU bilateral donations channelled through government and state institutions in each one of the **three main focal areas**: (i) **food security**; (ii) **peace/security/conflict resolution/social cohesion**; (iii) **economy/trade /competitiveness**, was to contribute to sustainable development.²²

The support of the EU to Guatemala in the **period of 2007-2013** focused on social cohesion, human security, economic growth and trade, with emphasis on good governance, human rights (especially the indigenous people), pro-youth and rule of law related policies contributing to citizen security.²³

²⁰ <https://twitter.com/elfaro/status/1421214986672738309>

²¹ <https://country.eiu.com/guatemala>; 'According to the United States Trade Representative, corruption and 'Communist China' are the two biggest threats facing U.S. business interests in Guatemala.'

²² See TOR for Guatemala Country Programme Evaluation as well as MIP 2014-2020 Guatemala.

²³ See Guatemala Country Strategy Paper (CSP) 2007-2013.

During this period, a total of EUR 135 million was planned in the MIP while, so far approx. EUR 118 million has been spent: i) food security amounted to roughly EUR 58 million; ii) conflict resolution, peace and security EUR 44 million; iii) competitiveness EUR 6 million; and iv) 'others' on budget transparency EUR 10 million.²⁴

The interventions that could be directly linked to the field of RoL and AC are:

- the Programme to Support Security and Justice in Guatemala (SEJUST) aimed at structural reform of the justice and security sector of Guatemala in the framework of the implementation of the "National Accord for the Advancement of Security and Justice in Guatemala". It ran from 2012 – 2018 with approx. EUR 18 million and seems to have faced implementation challenges of different kinds.
- Support to the implementation of the International Commission Against Impunity in Guatemala (Comisión Internacional contra la Impunidad en Guatemala – CICIG), various renewals from 2010-2015 in line with the official bi-annual renewal of CICIG with approx. EUR 11,5 million.

With regard to interventions to strengthen CSOs in the realm of RoL and AC the following seem to be relevant:

- Support to the Advocacy and Legal Advice Centre (ALAC) for anticorruption (2013-2015)
- In addition, several human rights related CSO activities were supported (women and indigenous rights, territorial governance, and others)

In terms of aid modalities used, much of the food security support as well as a large youth programme and a justice sector programme were handled through budget support. The budget transparency programme seems to have been meant to strengthen the grounds for this aid modality, more than pursuing a strategic approach to address corruption in the country. The SEJUST was complemented with a strong TA contract. Support to CICIG was channelled through a multi-donor arrangement managed by UNDP. ALAC project was funded through EIDHR based call for proposals process.

EU support to Guatemala in the **period of 2014-2020** focused on i) food security, including a primary health care programme, with a total of EUR 50 million; ii) conflict resolution, peace and security (including a large youth programme) total EUR 47 million; iii) competitiveness EUR 30 million; and iv) 'others' aimed at improving transparency and the fight against corruption in the public service total EUR 12 million.

Out of the eight strategic priorities identified by the EU for this period, the following seem to be especially relevant for the present RoL&AC evaluation:

1. strengthening the justice and security system and supporting violence prevention policies, with an emphasis on upholding human rights and reducing impunity;
2. creating a fair, transparent and predictable environment for doing business;
3. ensuring that a sustainable, fair policy on using natural resources and adapting to climate change is enforced; and
4. strengthening the state's central and local institutional capacities to make and implement policy.

The interventions that could be directly linked to the field of RoL and AC are:

- Support to the extended mandate of CICIG – 2017-2021 with a total of EUR 10 million managed through UNDP.
- Programme to Support Security and Justice in Guatemala (SEJUST) started in 2012 under prior MIP and was foreseen until 2018, but finally was finalised in 2019. Implemented through a Programme Budget, implemented by the Secretaría Ejecutiva de la Instancia Coordinadora de la Modernización del Sector Justicia (SEICMSJ) with roughly EUR 18 million.

Interventions implemented by CSOs that can be linked to RoL and AC include:

- Strengthening territorial governance (2017 – closed)
- Strengthening territorial governance (2018 – 2021)
- Towards territorial governance in areas of palm industry (2018-2023)
- Sustainable, transparent local management with focus on governance (2020 – ongoing)
- Social Auditing at sub-national level, including an ALAC element (2020-2022)
- AT to facilitate the cross-cutting implementation of SDG and human rights based approaches in CSO-LA actions (UNDP).

The food security related programmes have been managed by PAHO, UNICEF and WFP; support to CICIG through UNDP; a violence prevention programme has been managed through AECID.

It is important to note that in parallel to the strategic evaluation of EU support to RoL&AC in partner countries, the Evaluation of EU cooperation with Guatemala between 2007 and 2020 is currently being carried out by

²⁴ See inventory

PEM. The relevant staff of Particip and PEM are coordinating as closely as possible for the benefit of both external evaluations and in order to avoid interview overload for Guatemalan stakeholders.

Table 2 Overview of EU-financed interventions to the support of RoL&AC in Guatemala selected for the case study

<i>D or C year</i>	<i>Title</i>	<i>Budget (mEUR)²⁵</i>	<i>Typology</i>	<i>Implementing partner</i>
2010	Programa de Apoyo a la Seguridad y la Justicia en Guatemala (SEJUST) (D-21929)	22	Justice (system)	Gvt (above EUR 2 million) CSO (approx. EUR 800.000) Private sector
2011	Fortalecimiento de la independencia judicial de Guatemala (C-265500)	0.14	Justice (system)	CSO – International Commission Of Jurists Association
2012	Promoción del Acceso a la Justicia a través del Centro de Asistencia Legal Anticorrupción (c-309365)	0.12	Justice (access)	CSO – Centro de Asistencia Legal Anticorrupción
2012	Promoviendo la transparencia fiscal de las industrias extractivas en Guatemala (C-294768)	0.36	Governance (natural resources)	CSO – OXFAM
2013	Project to support the International Commission against Impunity in Guatemala (CICIG)'s exit strategy until September 2015 (D-24390)	3.7	Justice (system)	UN agency
2017	Support to the extended mandate of the International Commission against Impunity in Guatemala (CICIG) (D-39237)	5		
2019	Support to the extended mandate of the International Commission against Impunity in Guatemala (CICIG) (D-40871)	5		
2016	Hilando Tejidos de Justicia y Verdad en Guatemala (C- 374972)	0.32	Justice (system)	CSO – Centro para la Accion Legal en Derechos Humanos Asociacion
2017	Mejorando la Gobernanza e Integridad en la Gestión de los Servicios de Agua en el Altiplano Márquense (GIGAM) (C-391645)	0.4	Governance (other)	CSO – Asociacion De Desarrollo Integral De Municipalidades Del Antiplano Marquense
2017	Hacia una gobernanza territorial en áreas de expansión de la industria palmera (C-391528)	0.5	Governance (natural resources)	CSO – Actionaid Guatemala
2020	Prevención y reducción de riesgos de corrupción a través del ejercicio de Auditoría Social y acceso a la justicia de víctimas y testigos de corrupción en Guatemala (C-421768)	0.21	Justice (system)	CSO – Accion Ciudadana Asociacion

²⁵ Planned EU contribution

Strategy and implementation of EU support to RoL&AC

EQ1: EU strategic framework/institutional environment

JC1.1 Clear, context sensitive and realistic

Considering that the EU cooperation had been somewhat scattered in its early years of engagement at the time of the Peace Agreement in 1996, considerable progress has been made towards supporting a smaller number of priority areas in order to achieve more impact. Throughout the last two multi-year planning cycles (2007-2020) the **approach of the EU to address RoL&AC in Guatemala has been explicitly and continuously framed from the perspective of peace and security, conflict resolution and with a strong emphasis on the defence of human rights, in particular for women, youth and indigenous people.** Further, the EU aims to help foster a culture of peace and dialogue and to tackle a number of structural governance deficiencies.

The planned interventions were **also clearly aligned with one of the strategic priorities of the Joint EU-Member State Strategy²⁶, namely justice, security and peace** by strengthening the justice and security system and supporting violence prevention policies. The joint EU-MS strategy makes also **explicit reference to the reduction of corruption**, an objective not clearly captured in programmes of the MIP, mainly to be pursued by multi-donor support to CICIG.

Sensitivity for the context is certainly reflected by the very priority areas that the EUD in Guatemala chose, considering that they speak to some of the greatest development challenges of the country. However, **highly relevant contextual factors with the ability to negatively affect or block the country programme have not been clearly mentioned, probably because they were considered as politically sensitive.** These include, e.g. the levels of state capture as well as their changing forms and dynamics over time and how this can impact on the foreseen interventions. In a related point, the **mitigating measures established to counter the identified risks for the peace and security and conflict resolution area are relevant in an ‘ideal-world’ scenario but lack a certain grounding in reality.** For example, donor coordination is admittedly challenging everywhere, but even more so in highly political contexts – such as the security and justice sector of Guatemala -, and technical-level coordination needs to be combined with high-level political consensus building among countries with very different interests and historic relations with the country. Such an approach would require the necessary human, and to a lesser extent, financial resources which have not been put into place. Or, mitigating measures could have included an explicit component to work with the media, civil society, think tanks and academia to foster continuously strong demand for reform.

It is important **to note**, though, that the **MIP 2014-2020 was designed in a period of a relatively ‘normal’ democratic regime in Guatemala**, when the country was despite all its governance challenges **on a path of improvements.** To what extent the deteriorating situation and increasingly serious backlashes could have been foreseen is a question to be explored as part of a lessons learned exercise.

In terms of measuring results when supporting RoL&AC reforms in partner countries, the MIP 2014-2020 is rather weak. Thus the indicators established in the MIP for the area ‘security, peace and justice’ attempt to capture the evolution of violence against women and youth, as well as cases brought to court, etc. But in particular the indicators on the performance of the justice system do not allow to capture precisely the performance of the judicial system. E.g. the indicator ‘number of cases brought to court involving women in rural areas’ only gives the absolute numbers but does say in relation to many accusation or reports received. The indicators do not reflect either, the efforts to overcome the case backlog. Further, considering the importance for institution building, it is surprising that there does not seem to be an emphasis on measuring trust into the justice sector institutions. This may be due to the fact that national monitoring and statistic systems are used. Further it is striking that there is no specific indicator to assess results in the fight against corruption and impunity. On the other hand, MIP refers to the CPI of Transparency International to measure long-term progress, although this index did not allow precisely this due to methodological variations from year to year (an issue which has been widely publicised by TI).²⁷ In view of the before, **there is an open question as to whether or not EU supported interventions should include some key indicators for which a specific measurement instrument could or should be developed**, funded and applied regularly over time, e.g. by an academic institution, a survey company or a national CSO.

²⁶ At the planning stage of MIP 2014-2020, France, Germany, Italy, the Netherlands, Spain, Sweden and the UK had a donor presence in Guatemala. At the end of the MIP, France and the Netherland have withdrawn from the country and Germany and Italy are increasingly going for regional cooperation approaches, while the UK does not belong to the EU anymore.

²⁷ The use of the CPI to measure results of development interventions has unfortunately been widely used by many DPs in many countries despite the numerous efforts of TI to warn against this type of use of the CPI.

JC1.2 Coherence with nature and goals of EU external action

The EUD multi-annual programmes (2007-2013 and 2014-2020) in Guatemala were **clearly articulated with respect to other core EU values, in particular democracy, human rights, independent civil society, inclusion and non-discrimination and gender equality**. The issues of human rights, inclusion and gender equality have been particularly relevant as described in the sections above. However, given the relevance of elections as well as the electoral system, independent electoral oversight institutions and political financing for democracy, it is unclear why the joint EU-MS strategy has not included this fundamental area into its priority areas.

The EU multiannual programmes in Guatemala **were clearly linked to peace, resilience and security** – as described in the sections above – as well as economic growth and private sector development through its focus area on competitiveness. Although the EUD **recognises the relevance of land use and the extraction of natural resources**, among others as drivers of conflict but also as very important areas for the protection of human rights, **the issue of transparent and equitable natural resource management has been addressed in a rather tangential manner**, e.g. through the support of some CSOs for punctual projects. Despite the fact, that this is the **result of a strategic choice of a certain amount of priority areas**. While this is a valid and needed approach in order to improve results, it might be useful for the EU delegations in Guatemala and in general to develop a brief analysis of these issues, a concise justification of why the EU does not chose this area for explicit important interventions, and what it suggests the EU may be able to do (or not to do) at the international level, including a critical review of EITI for example.

JC1.3 Conducive institutional environment

EUD staff, who are responsible for a wide range of issues, all with their particular specificities and need for some expert knowledge, **would appreciate capacity building in areas like RoL and AC**. These issues are usually handled by external EU staff or experts who may not know Guatemala well enough. These experts may design the new projects or programmes but without opportunities for EUD national staff to gain experience and/or contribute to the design. The experts also usually do not leave institutional memory. Therefore, **it would be good to have national capacity** in this regard, at least a basic understanding and knowledge. This would also help **to provide more informed and solidly based inputs for the political dialogue of the EU**. In this regard, EUD staff would welcome the development of instruments or approaches for the political monitoring of project/programme implementation and create a **communication channel with the Ambassador and the political section**, especially in the current situation of deteriorating RoL&AC.

RoL&AC interventions are not purely technical problem-fixing intervention but highly political and require sustained, well-informed, strategic and astute engagement between development partners and national counterparts. In view of **staffing shortages and large portfolios to be managed by EU staff, the human resources and institutional incentives are not sufficient to adequately accompany RoL&AC implementation**. Staffing at the EUD is limited and **does not allow for a consistent RoL&AC ‘mainstreaming’ approach** for project design and inter-project coordination at implementation stage. This is certainly not only a problem for the EU in Guatemala and elsewhere, but a more general ‘missed opportunity’ of donor agencies. A collective approach between the EU and its MS to jointly engage an anticorruption advisor, possibly through a specific project but with a clear mission to promote and coordinate joint action both in terms of programming and political dialogue, would be an option.

The **mechanisms and processes for reporting results achieved seem rather weak** – at least in terms of public external access to information and through CRIS. It also seems that there is no consistent approach to identify success stories or failures or both (like in the case of CICIG when looked at over time). However, EUD staff and other interviewees suggested to develop a critical review of CICIG to be shared within the EU and the donor community only in order to learn from both success and mistakes and thus inform future programming decisions.

EQ2: Responsiveness, ownership and flexibility

JC2.1 Context, political economy and/or conflict analysis

The EUD in Guatemala has so far not conducted any documented political economy analysis at country or project level, and this is something that in the current circumstances **would certainly be valuable for future investments, both at national and sub-national level**. On the other hand, judging from the way how the multi-year country programmes were framed it is clear that the EUD has had a good understanding of the overall country context and that the preparation of the MIP 2014-2020 was largely participatory. The process consisted in discussing different options and pathways with the government of Guatemala, including a broad range of ministries and agencies, as well as justice sector institutions, with some 70 representatives from civil society and the private sector, and with other development agencies, from Member States (Germany, Spain, Sweden), other bilateral cooperation countries (US, Norway and Canada) as well as multi-lateral organisations.

The EUD has also **consistently sought elite buy-in and societal ownership for the large RoL&AC programmes it supported**. However, during programme implementation and certainly with hindsight it became clear **that elite buy-in is all but static and that it can easily change, especially when elite political and economic interests are threatened**. The continuous existence of CICIG had been at stake several times and the Guatemalan government requested the renewal of its mandate to a large extent out of political calculation, and not so much due to a profound commitment with the cause. The more successful CICIG became the stronger the resistance and active fighting back of the national elites. While the EUD was certainly aware of these developments, the CICIG Action Fiche of 2018 does not refer to the manifest risks of an increasingly hostile political environment. The political and policy dialogue around CICIG is certainly a good example in terms of publicly communicating levels of ambition and shared agendas during the time of government support for CICIG. The multi-donor response, including that of the EU, to the changing and finally hostile environment for CICIG is analysed below.

With regard to SEJUST, the emerging lessons learned indicate that both the **government and justice sector institutions formally signed up to the project, but in reality did not have political will or interest** for real inter-institutional coordination. In this regard, it is worth to note that the stakeholder analysis of Action Fiches tends to focus on describing the roles and functions of stakeholders but does not analyse their (vested) interests, level of power or relative political weight in favour or against reform and the wide-spread cooptation of state institutions. Regarding the civil society component of SEJUST, the project design did not built in sufficient alliances with State institutions to agree with them how the results of the citizen observatories would be used. **With hindsight, there are open questions about the extent to which the programme design was 'grounded' in the country's reality** and that more lessons learned from the predecessor project PARJ would have been useful.

Overall, the EU supported RoL&AC programmes in Guatemala **would have benefitted from explicit and clearly formulated theories of change with a strong focus on the underlying assumptions**.

Finally, the underlying logic for the support of civil society initiatives takes the national context into consideration and CSO projects generally focus on the generation of certain results. However, given the short time horizons of these projects do not allow to generate solid theories of change.

JC2.2 Engagement with actors at different levels

The EUD in Guatemala **clearly pursued an approach to engage with relevant existing public institutions at all levels in its interventions to promote the RoL&AC. However, it has been increasingly challenging to identify strategic entry points to work with state institutions directly as these are systematically captured**.

In this sense, the support to CICIG and its national counterpart institutions was an excellent take up of a 'historic' opportunity to support strategic and meaningful anti-impunity and high-level anticorruption work. Despite its hybrid international-national character, CICIG had been requested sovereignly in 2006 by the then President Berger, the request had been ratified by Congress in 2007 and was thus fully nationally owned. While the two prior Attorney Generals (Claudia Paz y Paz 2010-2014 y Thelma Aldana 2014-2018) provided strong national leadership, the current one (Consuelo Porras 2018-2022), close to the 'Pact of the Corrupt', has been instrumental in dismantling all progress achieved, including the closure of CICIG and the destitution or removal of relevant attorneys and independent judges of the High Risk Courts.

On the other hand, the final evaluation of SEJUST has as a recurrent theme in that the EU did not engage sufficiently with existing institutions and actors to make the project's objective more impactful and sustainable, e.g. seeking inputs and collaboration from universities or engaging with national justice sector entities for the definition of social accountability initiatives. Programme implementation resulted to be complex and minor formal issues were used as an excuse to hinder implementation. Last but not least, the Executive Secretariat of the Justice Sector Coordination Instance did not have the 'political' mandate to implement the project. It must be noted, though, that engagement with and the leadership of some justice sector institutions was positive, such as the INACIF at the national level and the Centros Integrados de Justicia at the sub-national level.

The RoL&AC related engagement of the EUD in Guatemala **with actors from civil society**, and to a lesser extent the private sector, seems to have had a **strong sub-national focus** which may respond to the logic of strengthening civic initiatives around human rights, social accountability and governance close to the ground. Considering the need for prioritisation, this is a valid approach. However, there has been **a lost opportunity to provide stronger and consistent support to national RoL&AC relevant CSOs with a strategic view to fostering strong counterparts for CICIG** (during the time of its existence) and **strong counterweights to the increasingly autocratic State**. The essential role of civil society and the media in the continuous fight against impunity and corruption, ergo in defend the rule of law, is strongly and explicitly highlighted in the final report of CICIG. As said above, needed and desired EU support by national CSOs does not only focus on financial contributions, but also political backing, especially in the current situation.

Finally, the CICIG experience has shown how a successful no-impunity and anticorruption initiative can turn into a **national and even regional champion**. **CICIG had become over time THE regional reference** in this field, it inspired the creation of its cousin-organisation MACCIH in Honduras as well as the establishment of Anticorruption Commissions in Ecuador and El Salvador, though in both cases in a much watered-down version aimed at putting curtains of smoke, more than addressing corruption seriously. And the last Commissioner Iván Velásquez was referred to by many as an anticorruption ‘rock-star’. Although there are many reasons for this situation, including the personal styles and preferences of the national Attorney Generals, with hindsight it is clear that the **trade-offs between CICIG being the champion itself and letting shine national partner institutions for trust building need to be more consciously pondered**.

JC2.3 Adjustment to changing conditions and new opportunities

As described above, changing conditions in the country context of Guatemala, in particular a drastically deteriorating situation of the RoL and AC since 2015 onwards is one of the key issues of the Guatemalan case study. Virtually all interviewees coincide that the current situation in terms of judicial independence and the separation of the state powers and trust in public institutions has reverted to the situation of the 1980s. The analysis for the EU’s response to changing conditions needs to be divided into two sub-issues: i) flexibility with regard to adjustments of particular programmes, and ii) adjustments at the overall programming and engagement level.

With regard to **adjustments of particular programmes, the flexibility of the EU has been mostly valued**. For example, the SEJUST final evaluation applauds the flexibility of the EU to adapt and respond to changing conditions, in particular due to changes in the leadership of partner institutions. The adaptive response approach allowed to carry the project through until the end. Also, **the continuous support to FECl following the closure of CICIG, was initially considered as needed and valuable** with a view of trying to guarantee continuity of the investigations and prosecutions against high-level complex corruption networks.²⁸ However, as indicated above, **it would have been important to reorient some of the funding to support national CSOs** and thus strengthen potential counter-weights to the captured institutions and the state-actor driven criminalisation of integer justice officials. Also, with the subsequent movements of the ‘Pact of the Corrupt’ mentioned above, the support to FECl and the MP by the international community **has met with increasing criticism in particular from civil society**. The **EU is painfully aware of the situation and is caught in dilemma described as ‘it is like walking on raw eggs to define what best to do to do something useful.’** Adding to this dilemma is the fact that support to CICIG is managed through a multi-donor trust fund and different funders as well as the implementing agency UNDP seem to have different views on what best to do. While some take the position to stay engaged for a variety of reasons, albeit with a very low profile and trying to avoid public visibility, others favour a clearer distancing. Issues related to political dialogue and donor coordination linked to the adjustments are addressed below.

With regard to **adjustments of overall EU programming and engagement, the real challenges are lying ahead for the new EU multi-annual MIP 2021-2027** which will consist of around 200 million Euros. Following the finalisation of both CICIG and SEJUST programmes, it is clear that there is no room nor reason for institutional engagement at the national level with regard to the RoL&AC programming. The justice sector will not be a focus area anymore, but **the new programme will be focused on access to basic services and perhaps support access to justice at local / community level**. There seem to be relevant entry points to focus on access to justice for women and youth as well as for indigenous people, in particular at the local level. However, if this path was to be pursued, political economy analysis and iterative power relations mapping is crucial considering the existence of corrupt networks, criminal enterprises and narco-structures at sub-national level. Support for civil society activities will reportedly be stepped up, providing room for more emphasis on social audits and social accountability. In this regard it would be important to find creative ways on how to further strengthen national CSO networks integrating activities and actors both at national and sub-national levels, ideally through long-term projects (e.g. up to 10 years but sub-divided into two to three project cycles).

In addition, **there is need for some lessons learned exercises** to inform the new country programme as well as EU support to the RoL&AC in deteriorating governance situations more broadly:

- A critical review of CICIG analysing the factors of its initial success as well as of its subsequent failure. Both are intrinsically linked and have led to what some call ‘the cure was worse than the sickness.’ Although this popular saying is understandable from the national perspective, it would be a great loss for the international AC movement if CICIG was not critically analysed in order to build on its successes and learn from its failures. The case study on CICIG by the Swiss Development Cooperation agency could be a starting point. Such an exercise would need to be done for the international community (at least initially) in order not to negatively affect ongoing investigations.
- A review of EU support to areas relevant for the private sector to identify entry points and leverage RoL&AC issues more systematically and coherently. This should include a critical review on how

²⁸ See SDC Capex – Case Study on CICIG (2020).

current approaches to foster 'business and human rights' projects contribute (or not) to ensuring that the RoL&AC related issues are seriously addressed, not only from a formal compliance perspective. It should also include the identification of opportunities to integrate a clear and explicit focus on RoL and AC into the relations of trade and commerce between companies from EU member states to Guatemala as well as Guatemalan companies doing business with Europe.

EQ3: Partnerships and coherence

JC3.1 Partnerships based on comparative advantages

In Guatemala, the so-called G-13 Donor Group is the coordinating body between countries, bilateral and multilateral agencies (Canada, Germany, Italy, Spain, France, Sweden, Switzerland, United States, United Kingdom, IDB, World Bank, IMF, the UN, the OAS and the EU).

For the period of 2014-2020, **the EU and its Member States present in Guatemala, developed a joint development cooperation strategy for Guatemala focussing on five priority areas, including 'Justice, Peace and Security'**. The joint strategy also provides a mapping of the main focus areas as well as a list of programmes of each Member State and the other G-13 members in an effort to ensure synergies and avoid duplication.

In the case of the **CICIG** support programme, implemented by UNDP, **was one of the outstanding joint donor supported initiatives until 2018**. Under the umbrella of its UN mandate, CICIG allowed to coordinate donors well around a shared agenda that all donors had signed up to and allowed for a coordination channel. In July 2017, the then US Ambassador, e.g., emphasized the fundamental support of the international community by the donor group towards CICIG for the promotion of the rule of law. The international community was valued for its united position, its financial, technical and also determined political support to CICIG. This was expressed, e.g., in their open and strong support for many of the legislative proposals, and anecdotal evidence indicates that a number of European Ambassadors had appeared at times in Congress in order to explain why it was important to support the legislative proposals. In addition, the US, as the most important donor and supporter of CICIG, reportedly used bilateral diplomatic channels in support of strengthening the institutional arrangements and conditions for CICIG to be effective. However, two years into the Trump administration, the US started in 2018 to withdraw its support to CICIG (see below political dialogue for details) which coincided with the increasingly fierce resistance towards CICIG by the Guatemalan political and economic elites. While career diplomats, such as the then US Ambassador in Guatemala, as well as public officials in the State Department and USAID continued to try and support CICIG and the MP at the technical level, the political backing in the White House was lost or rather it was traded. In this context, the EU and its Member States continued to pursue an aligned approach at the technical level. At the political level, however, divisions of positions emerged and have become more obvious since the closure of CICIG in late 2019. Thus the EU, Sweden and Germany largely continued its public support for CICIG, although civil society would have welcome more vocal and stronger statements. Some other Member States, though, including Spain and Italy often remained silent or did not sign up to joint political statements, reportedly due to the prevalence of other national interests, including private sector investments from their countries. Overall, the US was considered as the only player that could have done something to avoid the inglorious end of CICIG. In addition, the bilateral cooperation from EU countries is shrinking, with some leaving Guatemala altogether and others going for regional cooperation programmes. **In sum, the combination of the national elites turning against CICIG and the US withdrawing its political support in late 2018, heavily influenced the since then non-united position of the EU and its Member States vis-à-vis CICIG and its follow-on institutional support.**²⁹

In case of SEJUST, opportunities to create synergies were not fully used and there was a risk of duplication e.g. capacity building for IDPP (INL/US, Chile, GIZ, AECID) or the Citizen Observatory of Criminal Justice (SEJUST and GIZ). The **SEJUST** final evaluation concluded that that a better joint planning with IDB and USAID/INL would have allowed to strengthen the sustainability of EU investments in the justice sector. It also stated that it would have been **important for the sector to have a better and openly accessible overview of which entity is funded by which donor programme**, for what and with what amounts as well as which funding gaps exist.

Overall, the EU is **clearly seen as a highly relevant global player and development actor in Guatemala**. Its comparative advantages of being a big and solid institution with political weight and **relative impartiality** (as compared to the US, e.g.) **makes it a valued partner**, more recently in particular of civil society. Its important **financial, technical and political support for 'just causes'**, including human rights, no-impunity, CSO, democracy, indigenous people and women, etc. is **particularly valued in the current situation** with an increasingly hostile and oppressive government towards honest justice operators, critical CSOs and media. The EU has also been important for the justice sector. Compared to other donors, its focus on the sub-national level as well as on access to justice for women was particularly valued by interviewees. Synergies with AECID

²⁹ This paragraph has been adapted, with formal permission of SDC, from the SDC CapEx case study on CICIG from 2020.

from Spain are worth to be noted. Finally, the **EU was seen as being less prone to political pressures as compared to bilateral aid agencies**, e.g. the EU does not have to promote the interest of specific national companies and can act more independently. On the other hand, the EU is perceived to have **varying positions** on commercial versus development issues, **depending on the respective Ambassador**.

JC3.2 EU support to RoL&AC has been delivered in a coherent manner

By and large, it can be said that the **EU support to RoL&AC has been delivered in a coherent manner until 2019 when the CICIG was abolished by the then President Morales**. Nevertheless, there are legitimate and important **open questions as to whether, the EU in coordination with its Member States could have taken additional measures to prevent CICIG from being closed**, for example influencing the UN Secretary General to substitute the last Commissioner, although such a decision would have implied serious trade-offs with uncertain results.

The period following CICIG closure, when the ‘Pact of Corrupt’, which dominates the government and Congress alike, has taken increasing and unlawfully control of justice sector institutions, **has confronted the EU with difficult dilemmas and as yet unanswered questions:**

- In view of a government clearly violating the rule of law and eliminating the separation of State powers and in a situation where the international community and the EU do not have much political weight as development actors, should aid be withdrawn? Would this make a difference, and if so how and for whom?
- If the EU wanted to focus mainly on supporting civil society organisations, would this lead to the government ‘sending the donor home’, especially in a context where the government leverages a strong discourse of national sovereignty and could accuse the EU of interference into national affairs or instigator of social unrest and conflict?
- Or acknowledging that some cooperation with the State is needed, what would or should be the entry points for leveraging the RoL&AC agenda? The foreseen focus of the coming MIP on basic public services may be a pathway. But it will require a strong and well-resourced approach to intelligently ‘mainstream’ a RoL&AC lens.
- Considering the significant interest of EU Member States in trade and certain economic sectors (e.g. electricity, natural resources and others) as well as the interest of Guatemalan businesses to export to Europe, what are possible levers in these areas to foster the RoL&AC agenda? And what is the political will of EU Member States to go along this route?
- Finally what should be the red lines to decide that value and principle based development cooperation is not possible anymore? Would it make sense to consider in a context like that of Guatemala to pursue a full different approach of cooperation, e.g. humanitarian aid to address food insecurity and migration issues coupled with a strong programme for business development in line with international and European standards? Both approaches could allow strong support for national civil society organisations.

These and other issues are no easy questions to be resolved. And it is worth noting that the EU even struggles to address similar situations within its own Member States, e.g. Poland and Hungary, where the EU counts with far stronger levers.

EQ4: Choice of modality

JC4.1 Mix of modalities

The aid modalities used for RoL&AC interventions in the last MIP included a **multi-donor fund managed by UNDP for CICIG**; a **programme budget for SEJUST** managed by the ‘Secretaría Ejecutiva de la Instancia Coordinadora de la Modernización del Sector Justicia’ with a series of Programme Estimates and accompanied by a comprehensive TA contract; and **grants provided to CSOs on the base of calls for proposals** and funded through the EIDHR and CS-LA instruments. While the UNDP managed multi-donor fund has seemingly been implemented without problems, the SEJUST programme budget encountered serious difficulties. Due to a variety of operational difficulties as well as institutional dynamics among the counterparts an extension of the programme until 2019 was granted. Although the operational difficulties were considerable, it seems that the thrust of problems had their origin in the lack of political buy-in and interest in the overall programme.

In Guatemala, **no RoL&AC interventions are provided through budget support**. Considering the country context, one would think that this is due to the levels of corruption. However, seemingly the shift away from budget support is rather due to two other factors: i) complex contracting procedures under Guatemalan law, which hindered budget execution and the contracting of services and goods; and ii) weak national sector policies and plans impeding a reasonable forecast of what would be achieved.

Considering the **importance of civil society engagement** with RoL&AC related activities, it is worth highlighting a **some of challenges and issues for potential review** :

- The time-horizons for CSO projects led RoL&AC activities have been generally short, with a **length of 2 to 3 years**. It is widely recognised, though, that it takes a long time to achieve tangible change of legal frameworks, policies, institutional dynamics as well as individual conduct and social norms in RoL&AC related areas. Also, in order to achieve sustainable change it is relevant to ensure that projects can span over two government periods, covering especially the transition from one government to the next. In this sense, **the short time horizons serve a counter-purpose**.
- EUD funding for CSO work has been substantial during the MIP 2014-2020 (aprox. 15 million Euro). However, the list of CSO projects indicates that the modality to provide funding **based on proposals leads to a set of dispersed CSO initiatives which do not necessarily support and/or reinforce each other**, nor do they seem to be connected with the large programmes for institutional support to the Guatemalan State. It is surprising to see, e.g., that there was only one 2-year CSO project that spoke to the CICIG programme (ALAC run by Acción Ciudadana). This is certainly to a considerable extent the result of how the EIDHR and CS-LA instruments are operated, but raises the question if it greater connections between the different types of interventions might strengthen the pursued results.
- The approach of the EU to **foster through its calls for proposals networks or ‘consortiums’ of organisations is valuable**, especially the focus on integrating national and sub-national CSOs. Yet, the **short time horizons are not prone to foster real network building** or strengthening, which would be relevant for more sustainable results: in case that one of network members went through a crisis or was even shut down, the overall network would stand a chance to continue to exist.
- At times just one specific national CSO may be in the position to be ‘fit for purpose’ in a particular thematic and/or geographic area. Currently, however, the **EU allows direct selection of a CSO on the basis of a ‘monopoly position’ only in very specific situations** which are hard to be argued, which can hinder the engagement with strategically important CSO partners.

In view of these points, it would be **highly relevant to explore possible solutions both at national level and where necessary at headquarter and policy level**. An extension of time horizons would allow to develop better theories of change. In the meantime, the EUD at country level could explore how to create conditions (framed in the calls for proposals) that would result in longer-term projects (a number of projects actually run for 3-4 years). The EU could also consider to pursue a multi-donor funding arrangement for specific CSO networks and foster national as well as sub-national presence. Examples of TI Chapters in Bangladesh and Mozambique could serve as helpful references. In sum, it is good that **the EUD plans to develop a CSO roadmap for 5-6 years as part of the MIP** in order to foster a **national eco-system of CSOs** with thematic, local and national ‘vasos comunicantes’.

The EU at central level might want to review its logic for CSO support, in particular for contexts of fragility or deteriorating governance. In such situations, **it is crucial to foster and support strong civil society networks and cohesion rather than focusing on competition** between CSOs. This would require a significant change in conditions, processes and also staffing on the ground. The approach of the Swiss development cooperation in this regard could serve as relevant example.

These issues are likely to not only apply to the EUD in Guatemala but to EU partner countries more generally and **merit a closer review and potential reform at EU headquarter level**.

JC4.2 Mutually reinforcing dialogue and programming

In a situation of deteriorating rule of law, political and policy dialogue from the international community is both a key area and key challenge for coherent action of the EU, its Member States and other development actors. Considering the relevance of CICIG and its fundamental role for the RoL&AC agenda and the criminal justice sector in Guatemala, both in terms of progress and subsequent backsliding, the analysis of this JC **will focus on political and policy donor dialogue largely related to CICIG** and its national counterparts.³⁰

It is worth noting upfront, that the success of CICIG was the main factor that led to its death in 2019. From late 2016/2017 onwards CICIG faced a more complex national context than during its prior years, **since the ‘system’ of the corrupt started to fight back**. One of the key findings in this regard is that **not all actors seemed to have acknowledged that fighting high-level corruption in a context of systemic state capture is deeply political in nature**. The economic and political elites ‘played the political game’ in the sense that they supported CICIG when their own interests were threatened by the criminal networks (CIACs). But when the Commission investigated many of the them, threatening their political or economic survival by putting them into jail, the elites joined forces and designed astute anti-CICIG strategies taking advantage of the Trump

³⁰ The following paragraphs have been adapted, with formal permission by SDC, from the SDC CapEx case study on CICIG in Guatemala from 2020.

administration. The 'system' combined campaigns for discrediting CICIG (e.g. accusing it of foreign interference into national affairs and blaming it for an economic and investment slow-down) and for absurd defamations (e.g. accusing it to be a spy of Russia and linking CICIG to conservative value issues such as abortion or same-sex marriage), with political 'presents' to the Trump government (e.g. support for the US Embassy in Jerusalem; a migration agreement), with intimidation of the international community (e.g. declaring the Swedish Ambassador as persona non-grata and threatening others in the same line), as well as strategies to undermine popular support in Guatemala (e.g. portraying the commission as foreign agent, its staff as communists and even terrorists). These efforts and their massive funding by the Guatemalan elites in conjunction with the changing political context in the US undermined support for CICIG. **Civil society organisations and the independent press, which had been economically suffocated by these same elites, were too weak to counteract the anti-CICIG campaigns.**

The creation of CICIG had been accompanied by a convergence of different interests of different donor countries behind the same goal, to help combat CIACS and the related impunity. However, **during the final phase of CICIG, just when it came under sustained attacks by its national enemies, the dynamics of the donor community experienced important changes:** i) the White House, influenced by the anti-CICIG campaigns and its own policy change on migration, withdrew US political support; ii) a diplomatic attack of President Morales on the Swedish Ambassador silenced this outspoken CICIG defender; and iii) other European countries lowered their public political backing of the Commission, partly because they were presumably intimidated, partly because they did not want to put at risk other political and development interests.

Reportedly the **US was the only player that could have done something to avoid the inglorious end of CICIG.** Given the power of the US in Guatemala until recently, continued bipartisan support might have prevented its closure by the then Guatemalan President, involved himself in illicit party funding allegations. The other bilateral donors of the G13 and the EU continued to publicly pursue joint positions, but faced considerable challenges: i) Ambassadors faced the threat to be treated like the Swedish Ambassador; ii) with the US and Sweden 'lost', there was a void in terms of political leadership;³¹ iii) G13 donors had internally different views on whether or not to defend the CICIG Commissioner. Also, the **Europeans**, were not only weakened in their position but they **would not have been able**, not even collectively, **to counterbalance the void left by the withdrawal of the US.**³²

With the new government of President Giammattei, assuming office in **January 2020**, the so-called 'Pact of Corrupt' has come to power and continued to attack, even more systematically, judicial independence, the rule of law and critical voices of society (CSOs and media).

In view of this situation, the **EU as part of the G-13 has participated in public statements** on the deterioration of the RoL situation and expressed its concern, e.g. vis-à-vis the dismissal of the Director of FECL, or the restrictive NGO law. The EU Parliament published resolutions on Human Rights ([2017](#)), Human Rights violations and CICIG support ([2019](#)), as well as on the NGO Law ([2020](#)). And recently, the new **US administration has taken again a stronger stance on RoL&AC related issues**, trying to 'condition' continued financial support to the MP and FECL in particular. However, both publicly known conditions (continued employment of the Director of FECL and non-sanctioning of the restrictive NGO law) were disregarded by the Government. While the US withdrew funding from the MP/FECL and put the Attorney General on the Engels-List of non-democratic and corrupt public officials from Central America, the government stepped in and provided a huge budget to the MP. This has been read as a demonstration of the sovereignty and independence of the Government. On the other hand, positions of EU Member States in view of recent events have been largely in line with the G13, but Spain and Italy continued the diplomacy of public silence.

Altogether it is **noteworthy, that the international community has lost over the past years considerable power of influence vis-à-vis the Guatemalan government.** Especially the fact, that not even the US does not have real leverage anymore constitutes a great difference. Some interviewees indicated that the Guatemalan government is not interested in 'normal' diplomatic relations but that it follows the logic of a mafia-group. And finally, there is a catch-22 dilemma in the sense that the **EU and its Member States are missing greater expressions of civil society** as a basis for stronger political backing, while **civil society feels abandoned by the international community** and is fearful of state reprisals.

To date the **response of the EU to the consistently and increasingly serious deterioration of the RoL&AC situation in Guatemala since 2017/18 has not included yet any 'hard' measures.** A first question in this regard is whether or not it is clear **'what the red lines are' to trigger a strong response?** Have such red-lines been defined for the case of Guatemala? What kind of evidence would be needed? And who would or should participate in such a decision? The second big set of questions are related to: **what type of response**

³¹ In a similar but much less dramatic situation during 2015/2016

³² End of text adapted from the above mentioned SDC CapEx study on CICIG.

could be used and with what purpose? What type of information or evidence would be needed to implement the response? Would EU Member States have to agree to it and would they do it? To name but a few.

With regard to the red lines, it might be necessary to conduct a ‘lessons learned’ exercise and critically analyse the pathway that the rule of law took in Guatemala from around 2015 onwards. E.g. **what led to the ambiguities in the response of the international community to events of 2014/2015** when the Supreme Court was captured but the development cooperation continued to be provided? What would have been the alternatives? **To what extent is the often used argument valid, that it is better to stay engaged, even with a low profile, instead of withdrawing?** What results does this bring about? And to what extent does the **donor response play into the hands of astute corrupt governments playing games?** Such a lessons learned exercise should cover the full period since 2015 including a prospective analysis of how key actors in the country as well as abroad assess the usefulness and potential consequences of the different sanction instruments that the EU could use.

Judging from the interviews held with EU staff from the development and political sections, **it seems that for the EU the red lines have not been fully crossed yet and that ‘soft’ power is used to confront the situation.** This includes discontinuing development cooperation with the justice sector and an increase of civil society support, as well as continued work on business and human rights. With regard to the latter, it was noted that the new EU individual sanction system and the system of due diligence for companies from third countries could eventually be used. Concrete implications as well as (un-)intended consequences would need to be analysed.

The picture for concrete sanctions, which are hoped for by civil society actors as well as independent justice operators, **is not clear yet, nor which of them might be used, under what conditions and with which expected effects.** For example, the sanction lists of the US and the EU for individual corrupt officials are not considered to have much impact on national dynamics. Rather economic sanctions for Guatemalan exporting companies would be needed to generate an impact on powerful families in the country (e.g. those active in the sugar and mining sector). Import restrictions from Europe could be useful, prohibiting the entry of goods into Europe if these are not reasonably certified. Current business sector initiatives that promote environmental standards should be complemented with respect of human rights and anticorruption standards. In the same line, more pressure could be exerted in Europe by European business associations (e.g. those for sugar or pesticides). It was highlighted, that any economic (sanctions) approach would need to be coordinated centrally from HQ level.

On the other hand, the EU – Central American association agreement was not considered as possible lever yet, given that one EU MS has not been able to ratify due to administrative-legal problems (not the lack of political will). While Europe-wide trade agreements would ideally be used more for RoL&AC issues, there were doubts as to the willingness of MS to sign up to them. Another way to influence the private sector could be the use of incentives, e.g. by establishing an Award Programme that would honour every year a big company which proves that it takes RoL&AC in its investment countries seriously.

In sum, currently existing hard measures have not yet been applied by the EUD in Guatemala and doing so would seem to involve important leg-work first. Finally, interviewees highlighted that the regional context in **Central-America is not conducive for RoL&AC work** with neighbouring country being even worse off than Guatemala.

Effects of EU support to RoL&AC

EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions

JC5.1 Core legal and administrative reforms

During the evaluated period, EU support to RoL&AC played a crucial role in Guatemala to improve core legislative and administrative reforms, but since 2019 there has been a strong reversal of the progress made in particular in the national level criminal justice system. CICIG contributed fundamentally to legislative reforms for the criminal justice system, although certain law reform proposals had been suggested by civil society organisations before. During its initial years, also called the ‘legislative phase’, a whole set of (innovative) laws was passed to facilitate investigations and prosecutions of high-level cases of complex corruption networks. The support of the international community for these legislative reforms had been very important and some would not have passed without this support, especially that of the US Embassy. Under the third and last Commissioner, CICIG used an initiative for a constitutional reform to promote further improvements of the Guatemalan justice system, including issues related to indigenous rights. But this generated fierce resistance from conservative political and business elites which accused CICIG of trying to change the political system, and finally the whole constitutional reform failed. CICIG’s inflexible position not to drop the parts on indigenous rights of this reform earned the Commission an unnecessary fight with national elites in a context of profoundly rooted racism.

During the CICIG time, sufficient funding and training was available in particular for those national level justice institutions involved in investigations, prosecutions and sanctions of complex high-level corruption cases (e.g. FECEI within the MP, special high-risk courts). After the closure of CICIG, the multi-donor trust fund as well as the US continued to provide funding with the aim to ensure continuity, albeit without CICIG. Also, the legality of the high-level complex corruption investigations and prosecutions was ensured. The Technical assistance from CICIG to national authorities greatly contributed to institutional and process strengthening and put emphasis on developing solid investigations in order to ensure clear decisions on sanctions.

However, **opportunities to link CICIG revelations of structural RoL&AC shortcomings going beyond the justice sector have not been taken up for further political and/or technical engagement**, e.g. political system and electoral integrity; illicit financial flows and money-laundering of the proceeds of massive grand corruption, rent-seeking and drug-trafficking practices well documented through CICIG supported investigations; private sector integrity (e.g. beneficial ownership).

After the closure of CICIG, though, the strategy of the ‘Pact of the Corrupt’ has consisted in i) reverting some of the legislation (e.g. judicial career law, political party funding law); ii) **blocking access to information requests** to hinder social control and legal action promoted by civil society; iii) discontinuing employment or **dismissing CICIG trained core staff**; iv) **(ab-)using the legal system** through, often unlawful, persecution strategies of the individuals who had been involved in high-level investigations and prosecutions (investigators, attorneys, judges, CSO, journalists). Some of them have made use of protection programmes of foreign Embassies (as was recently the case with the Director of FECEI). In view of these events, the US withdrew its funding to the MP entirely, while UNDP opted for staying engaged but with a low profile. It is a challenge for DPs to find an adequate way to act in a ‘principled’ manner in view of serious rule of law violations by state actors and to stay ‘intelligently’ engaged at a less visible technical level. The G-13 donors do not have a joint approach in this regard, not even between the EU and some of its MS (see below).

On the other hand, **EU support to access to justice in remote areas and for women in particular resulted in a mixed picture with regard to funding, training and digital capacity** of the counterpart institutions. While training materials and activities were generally valued, in particular in the case of INACIF, the final evaluation of SEJUST stated that more should be done to ensure that valuable manuals, training materials, textbooks on specific issues should be made easily publicly available for counterparts and universities.

JC5.2 Strengthening of institutional architecture

The creation of a specialised ‘no-impunity’ and later ‘anticorruption’ investigation and prosecution system, that was ring-fenced by design against political interference and strongly supported by CICIG and key governments like the United States, was crucial for the judicial successes and became a point for strategic international support. One crucial element was the institutional strengthening of the Special Prosecutor’s Office against Impunity (FECEI), created in late 2008 as a specialised unit of the Ministerio Público (MP) and operating under the leadership of one and the same highly committed Prosecutor since 2009. The other crucial element were special High Risk Courts (Juzgados de Mayor Riesgo) established in Guatemala City and subordinated to the Supreme Court. Although, with hindsight this institutional arrangement is considered by some interviewees as an ‘island approach’, it has been highly effective.

The results of CICIG, MP and the High Risk Courts in terms of investigations, prosecution and sanctions are impressive and go beyond what its promoters and the Guatemalan people had imagined. Working jointly with the Prosecutor General’s Office (Ministerio Público – MP), CICIG achieved accusations against the former president and vice president of Guatemala; the prosecution of dozens of top government officials, a Supreme Court justice, two former presidents, members of Congress, government ministers and individuals of the economic elites; the removal of more than a dozen corrupt judges and thousands of police officers; and the arrest of powerful drug traffickers. CICIG also helped reduce the impunity rate for violent crime from 98 percent in 2008 to 87 percent in 2016.³³

However, since the closure of CICIG, much of the progress made has been dismantled by key figures of the ‘Pact of the Corrupt’, including first and foremost the current Prosecutor General. Thus, the Director of FECEI was just recently sacked (see above), other independent unit directors of the MP have been transferred to irrelevant positions, relevant cases have been closed, and the independent judges of the High Risk Courts have been attacked or intimidated. There is general fear that political interests will continue to interfere in the near future in the selection of judges risking further backsliding in judicial independence. In addition, the MP through its local-level offices has dismissed and closed numerous criminal accusations without investigating them, thus not restricting access to justice.

On the other hand, the large SEJUST programme was relevant to decongest the justice system and increased access to justice at the sub-national level. SEJUST and its predecessor PARJ contributed

³³ See <https://www.crisisgroup.org/latin-america-caribbean/central-america/guatemala/70-saving-guatemalas-fight-against-crime-and-impunity>

to the integration of judicial services at local level through the ‘Centros Integrados de Acceso a la Justicia’ (CIJ). The EU supported the construction, equipment and training of people for five of such CIJ in remote areas. These centres integrate all relevant justice institutions and related services in one (Public Ministry, Police, INACIF, Judicial Organ and IDDP). They work 24/7 and have made an important contribution to facilitate access to justice in remote areas for (poorer) people in general and for women. But SEJUST’s aim **to strengthen justice sector coordination at the national level fell short of expectations, which was to a considerable extent due to the lack of political will of the government and the justice sector institutions.**³⁴ And the final programme evaluation concludes that there is no justice and security sector strategy in Guatemala, nor does the ICMSJ (Justice Sector Modernization Instance) have a planning, prioritisation and impact evaluation system. Overall, it indicates that it would have been good to conduct an impact analysis from a sector perspective altogether, including the contributions of other important development cooperation projects, including from IDB and AECID.

JC5.3 Progress in justice systems and anticorruption frameworks

CICIG in cooperation with national justice institutions (in particular FECI and anticorruption courts) could show to the public that the Guatemalan State is captured by criminal networks of political, economic and illegal actors. Bringing these people to justice demonstrated that elites involved in criminal activities were no longer untouchable. Some of the complex corruption cases investigated by FECI and CICIG had been reported by civil society organisations acting on behalf whistle-blowers and victims of corruption, thus facilitating access to justice of normal citizens, e.g. by the Advocacy and Legal Advice Centre (ALAC)³⁵ run by Acción Ciudadana, the Guatemalan national chapter of Transparency International. **The ALAC more generally provided access to a safe corruption reporting system, protection and legal aid.** During the two years of EU funding (2013-15) alone, 82 cases received legal aid and were accompanied in judicial process. The ALAC had also considerable approval in terms of user satisfaction with the results (70% approximately).

The SEJUST project, on the other hand, focussed more on expanding the supply-side of justice to the sub-national level. Through the above mentioned CIJs **access to justice** was enhanced, in particular for **women and poor(er) people**. It also helped improve the **prison conditions for women and youth**, building a prison block for women with minors at charge and providing youth with technical and inter-personal skills training to improve their chances for finding jobs.

In addition the **Human Rights agenda** pursued by the EUD helped improve **access to justice of women affected by violence** as well as of **indigenous people** bringing them closer to national and Interamerican Courts with regard to defending their rights vis-à-vis extractive industries. It is not clear, however, if and how this agenda can be further pursued under the current circumstances.

EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions

JC6.1 Legal safeguards, checks and balances

The twelve years that CICIG operated are a parenthesis in the long history of a dysfunctional justice system, impunity and corruption that the country has historically experienced. Control institutions that previously had never operated according to their constitutional mandates such as the Prosecutor General’s Office, the Judiciary and the Police, among others, contributed for the first time in investigations of high-level corruption.

As said above, **CICIG created specialised and ring-fenced institutions within the national justice system (FECI and the High Risk Courts), and the political backing of FECI by the international community, in particular the US, was a crucial element for its success.** The first process for the selection of judges at the High Risk Courts had been accompanied by CICIG to ensure transparency and independence. The following processes were then conducted under the auspices of the Supreme Court. The Human Rights Prosecutor, who is currently the last independent actor in the judicial system (elections for his successor are due in mid-2022, though), had intervened at several occasions to defend CICIG against the government’s attempts to limit its mandate. And also the prior Constitutional Court had tried to stop political interference of CICIG. During this period, CICIG turned not only in the most trusted public institution in Guatemala but also one of the most successful anticorruption instruments in Latin America, and possibly beyond. In the year of its abolishment in 2019, CICIG had a public approval rate of around 70% and had led the people believe that RoL&AC against highest level connected political and economic elites as well as criminal networks is possible.

³⁴ See SEJUST final evaluation and interviews.

³⁵ ALACs are safe and confidential mechanisms for citizens to report on suspected cases of corruption. ALACs are run by many TI national chapters around the world.

However, this brief window of highly relevant progress with regard to judicial independence has closed together with the closure of CICIG and with the political and economic elites as well as state security forces regaining control over power and resources sharing arrangements. Virtually all interviewees agreed **that the current situation is as bad as in the 80s and some say it is worse than ever before given that violence is not committed by non-state actors but by the very state itself. Judicial independence is in-existent and the ‘Pact of the Corrupt’ controls the government, Congress and the Judiciary.** The Prosecutor General was recently placed on the Engel List of the US (a list of corrupt and undemocratic actors); Congress has not elected Supreme Court Judges and magistrates since a flawed election process in 2019. An environment of fear and legal uncertainty is widely spread among independent judicial operators and critical voices from civil society. Many interviewees indicated with frustration and depression that the cure (CICIG) was worse than the illness. This does not mean, however, that it was not useful, much rather a critical lessons learned review is much needed, in particular among the international community (see below).

JC6.2 Oversight institutions, non-state actors and the private sector

CSO coalitions have been playing a fundamental role in Guatemala with regard to demanding and advocating for the respect and protection of human rights, anticorruption, justice reform, accountability, etc. In 2015, protests against the corrupt President of the time contributed to his stepping down. They protested also in 2017 against the Corrupt Pact. New civil society networks and social movements, including ‘digital’ ones came into being around the anticorruption agenda but seem to remain in certain niches. CSO coalitions were also fundamental in defending CICIG and its last Commissioner against Government interference at different crucial points. The Observatory of Criminal and Gender Justice and the Observatory of the Penitentiary System helped strengthen CSO oversight. The ALAC provided access to reporting system, protection and legal aid for corruption reports and accompanied the cases in the justice system. It also provided information and inputs for high-level complex AC cases which they handed over to CICIG and proposed several legal reforms. As said above, the **Human Rights prosecutor (Ombudsman) successfully intervened several times to stop political interference into the functioning of CICIG** and is the only independent bastion today, but elections for his successor are due in mid-2022.

Generally, **CSO in Guatemala are critical and present at national level well sustained legal actions against government officials or public monitoring results.** CSOs can **act as counter weight to captured state institutions** and limit the degree to which the State and its processes can be manipulated. This is certainly one of the reasons for the recently approved repressive NGO law, widely seen as an attempt of the ‘corrupt system’ to silence critical voices. This law was passed by Congress despite pronouncements against it by the international community and in particular the US as well as the EU.

However, the **abolishment of CICIG had a severe effect on civil society’s beliefs and hopes and many fear to be ‘silenced’, either through legal action by state actors who are part of the corrupt system or by the restrictive NGO law.** Some relevant CSO at national level indicated that it is not possible anymore to engage with any kind of state institutions to work towards common goals, which used to be the modus operandi to promote transformative change, and that in the current situation independent and more confrontational action was of the order. This would generate greater risks for repression, though.

Although a number of civil society organisations are fairly strong and vocal and although there is a sort of shared national agenda among RoL and AC organisations, it is noteworthy that **consistent cooperation and joint initiatives are not necessarily natural.** There is a certain atomisation between different groups for a variety of reasons, including leadership styles and competition for funding. In particular the latter is relevant in light of more and more DPs withdrawing from Guatemala.

Many interviewees indicated that **stronger support for CSOs from the international community was needed** in the current complex situation. Symbolic and political backing and financial support is crucial.

Finally, the **private sector in Guatemala is clearly co-responsible for the current situation** given the role of powerful national economic elites as part of the corrupt structures exposed by CICIG, as a main actor of the anti-CICIG campaign and as an important element in the current Pact of the Corrupt. **During the anti-CICIG campaign, the progressive private sector was side-lined, out- manoeuvred and ‘burnt’.** However, the private sector is at the same time stigmatized although it is not a monolithic block and some initiatives are under way supported by the EU to work on **‘companies and human rights programmes.’** These include capacity building of all actors involved, including companies from European MS as well as state actors (Ministry of Foreign Affairs, e.g.) and are targeted at the palm industry and electricity generation, among others. Also, interviewees clearly highlighted the importance to find incentives or pressure points in order to leverage coalitions for change from the private sector, suggesting the use of economic incentives and/or sanctions (see below).

EQ7: Broader effects on RoL&AC culture, human rights and democracy

JC7.1 Promoting a RoL&AC culture

The EUD in Guatemala has a comprehensive human rights and civil society strengthening portfolio, a ‘traditional’ area for EU engagement in the country, amounting to roughly EUR 15 million for the MIP 2014-2020. The focus lies on organisations of **women and indigenous people** to support dialogue processes between organisations and state institutions, to promote **access to justice**, to bring indigenous people closer to national and Inter-American courts of justice, to **foster social auditing**, to support and strengthen **human rights defenders** as well as to promote the integration of **human rights principles into businesses**. A EU funded project aims to help articulate the work of EU funded CSOs so that these integrate the 2030 SDG agenda into their activities, plans, policies with emphasis on resilience, gender, risk management, climate change and accountability, especially at local levels. A stronger and explicit focus on transparency and anticorruption would be relevant for the future. Overall, the EU tries to support coordination among CSOs by developing the calls for proposals in a way that CSOs have apply in the form of a consortium building alliances with others.

There have also been **two projects specifically related with the anticorruption agenda of civil society in Guatemala**: the already mentioned support to ALAC (2013-2015) and social auditing at territorial level (2020-2021) both carried out by Acción Ciudadana and aimed at having strong CSOs in the country. While these projects are without doubt very valuable, it is surprising that the significant support to CICIG as a highly innovative and promising no-impunity mechanism was seemingly not accompanied by a strategy to support relevant national CSOs for activities related to CICIG’s mandate throughout the period of the MIP. This would have been important to complement the ‘supply side’ approach on institutional strengthening with ‘demand side’ support, especially in view of the fact that the existence of CICIG had been at risk ever since its creation. The SEJUST programme contained a civil society component focused on the creation or strengthening of citizen observatories of the criminal justice system, which unfortunately did not materialise. **How the EU and its MS could complement institutional RoL and AC interventions with support to CSOs for the same field of action is an area for further analysis in order to identify lessons learned for future similar situations.**

Another important issue is **the political and symbolic support of the EU for CSOs**, by many considered in **the current situation as even more important than financial support**. Civil society organisations feel abandoned by the international community (IC). Some do not contact the Ambassadors anymore, which is a drastic difference compared to 3-4 years ago. Although CSOs and political analysts admit that civil society is divided and that this can constitute a problem for IC support, they highlighted the existence of well-known and trust-worthy CSOs that the IC could work with.

The RoL&AC issues have so far not been systematically integrated as cross-cutting themes into EU funded programmes and projects in Guatemala. Corruption is part of Governance and Human Rights crosscutting analysis in project design, **but it would be desirable to make it more self-standing and prominent**. A cross-cutting lens in other sectors and programmes would be a relevant opportunity **to ensure that the issues remain relevant**. E.g. sector or programme wide corruption vulnerability assessments could be done as a first step. In a context of structural high-level corruption, opportunities to pursue a sector AC approach with incremental change and making use of the self-interest of involved actors can be a valuable opportunity (the work of the Anticorruption Evidence Programme housed at SOAS and funded by DFID pursues such an approach which would be worthwhile to look at for this purpose).

JC7.2 Fostering human rights

As said above, the **EUD in Guatemala has a comprehensive human rights portfolio with strong focus on women rights and access to justice for women**. Also, the **justice sector programme SEJUST** includes a **relevant gender lens** and the results in terms of access to justice for women at local level as well as improved prison conditions were highlighted by the final evaluation and interviewees. In addition, the EU funds a project carried out under delegated cooperation agreement by AECID to address violence against women (PREVI). Thus it can be said that the promotion of gender equality is very present.

The EU has also contributed to the multi-donor funding of UDEFEGUA, a Guatemalan CSO, to **organise legal defense for investigators, attorneys, judges, or other people against whom criminal charges have been filed** as part of the ‘revenge’ campaign of the ‘Pact of the Corrupt’.

JC7.3 Application of democratic principles

From PEA section: On the side of the Guatemalan government, it is possible to speculate that there is no great interest to dance to the tune of democratic values and principles promoted by the EU and its MS.

It is important **to note**, though, that the **MIP 2014-2020 was designed in a period of a relatively ‘normal’ democratic regime in Guatemala**, when the country was despite all its governance challenges **on a path of**

improvements. To what extent the deteriorating situation and increasingly serious backlashes could have been foreseen is a question to be explored as part of a lessons learned exercise.

EQ8: Effects on wider EU external action goals

JC8.1 Peace, resilience and stability

Overall, the EU in Guatemala **tried to systematically integrate aspects of inclusion, rights and voice into the design of its RoL&AC related interventions, although the implementation level showed a somewhat mixed picture.** In this sense, the SEJUST project had included the creation and strengthening of two citizen observatories of criminal justice and prison system. But despite efforts to create indicators, these observatories did not come into being due to design weaknesses and implementation challenges. On the other hand, the overall Human Rights and CSO agenda of the EU in Guatemala speaks to this indicator. Also, the small but seemingly relevant EU funded project to support the mainstreaming of the Agenda 2030, including an emphasis on women, indigenous populations and accountability issues, speaks to this indicator. Finally, CICIG opened spaces for direct dialogue between CICIG and citizens in order to involve indigenous authorities, academics, students and representatives of citizen organisations into its work. CICIG also had a strong media and public relations strategy aimed at generating support from the media, social networks and the public at large. This approach was successful as expressed in the strong public support of CICIG. However and as said before, the approach of the multi-donor fund for CICIG (including the support from the EU) managed by UNDP did not include a specific component to directly support national civil society organisations for advocacy, engagement as joint plaintiff and/or the generation of a strong civil society coalition around anticorruption and no-impunity work by strengthening the voice and participation of civil society. This may be the result of the nature of EU support to CSO administered through open calls for proposal. At the same time it raises the question if and how the EU could pursue a stronger and more continuous approach to support the voice of anticorruption actors.

Overall, the EU in Guatemala pursued **in the design of its RoL&AC interventions a comprehensive approach to address challenges of impunity throughout the penal chain related to criminal justice. Yet at the implementation level the picture is again more mixed.** The support to CICIG was fully focussed on fighting impunity and strengthening the criminal justice chain with excellent results (see above). The very success of CICIG, though, led to fierce resistance of political and economic elites as well as of criminal and mafia structures and finally resulted in the closure of CICIG and the gradual but persistent loss of judicial independence. The SEJUST project, on the other hand, aimed at strengthening the coordination of justice sector institutions and to improve criminal justice investigation capacity. While the latter generated positive results in particular in the area of forensic investigations, the results in the area of justice sector coordination were poor, **mainly due to lack of political will but also due to operational programme implementation challenges.**

The support to **CICIG had contributed to increase trust in public institutions** and generate confidence that high-level corrupt actors would not be above the law. But **CICIG's closure** and the subsequent capture of the judicial system as well as state-actor driven persecutions of trusted honest public officials, journalists and CSO activists has **increased national polarisation**, led to **street protests** against the government and is reportedly contributing to an **increasing radicalisation** of rural, mostly indigenous and peasant communities.

JC8.2 Functioning market in compliance with human rights and due diligence

According to the available indices, **the overall business environment from a RoL&AC perspective has largely remained the same for the past years.** The Rule of Law Index shows for Guatemala that the regulatory environment score has slightly improved from 0,40 in 2015 to 0.42 in 2021, civil justice has remained the same at 0,36 in 2015 and 2021, while the absence of corruption scored 0.33 in 2015, 0,37 in 2019 and going back to 0.33 in 2021 (showing the impact of CICIG). On the other hand, the Doing Business Index of the World Bank shows that the overall performance of Guatemala has basically remained the same over the past ten years with only small variations, scoring 62,6 out of 100 and ranking 96 out 190 countries in 2021.

The EU supports Business and human rights programmes but it is not possible to go into detail.

JC8.3 Natural resource management

With regard to this JC, the MIP 2014 – 2020 states that ‘while land tenure issues – often historical – play a major part in conflict, in the last few years there has been a marked increase in conflict related to the management of natural resources and investment policies in mainly rural and indigenous areas. The lack of effective mechanisms for informing and consulting the affected population and of the implementation of good corporate social responsibility practices has made matters worse.’ Given that **natural resources management is not a focus area per se of the EUD in Guatemala, it seems to have approached this problem from the human rights perspectives and the demand-side for accountability by supporting**

some CSO and human rights initiatives in relation to natural resources. These projects seem to be rather 'scattered' which can be a result of the respective calls for proposals through which they were selected.

With regard to international **multi-stakeholder initiatives** related to extractive industries, **in particular EITI**, the most relevant RoL&AC CSOs coincide in saying that **they have not turned into serious and trusted mechanisms but rather have served the government as image white-washing.** The same applies to CoST and OGP in Guatemala, especially under the recent governments which shown no political will in these areas but rather aim at limiting access to public information and transparency. This raises important **overarching question: under what conditions should countries, that signed up to international (multi-stakeholder) transparency initiatives, be excluded from these?** The reputation and credibility of these initiatives is at stake not only in Guatemala but in many countries around the world, and with it the credibility of donors at global level.

For the EUD in Guatemala, an open question is whether the extractive industries issue should be addressed more coherently in the next MIP, in particular with regard to land use and its connection with conflict and climate change given Guatemala's great vulnerability. There will be, however, **a valid tension between the many different areas the EU needs to address and a clear focus on some priority areas in view of trying to generate change.**

Overall assessment

The promotion of RoL and AC of the EU in Guatemala has taken place in a context of seriously deteriorating Rule of Law and severe backlashes in the fight against corruption since 2019. Although Guatemala has a long-standing history of high-level corruption and a violence-based control of the political and economic system, the current administration, popularly called “Pact of the Corrupt”, has captured and controls the government, Congress and the Judiciary. Judicial independence is in-existent and violence is not any more committed by non-state actors but by the very state itself. This situation has been a challenge for the RoL and AC approach of the EUD to date and will impact the coming MIP.

During the period covered by this evaluation, the EU in Guatemala has framed the promotion of RoL and AC from the perspective of peace and security with a strong emphasis on the defence of human rights. The EU supported an innovative international no-impunity commission (CICIG) addressing complex corrupt networks of the political and economic elites as well as of organized crime, and it supported the supply-side of justice at the sub-national level with a focus on access to justice for women. But RoL and AC issues have so far not been systematically integrated as cross-cutting themes into EU funded programmes, a missed opportunity in the past and a crucial avenue for action in the future.

The EU had a Joint EU-Member State Strategy which included RoL and AC as priority area. Support to CICIG was one of the outstanding joint donor supported initiatives and included a strong coordination component for policy dialogue, both between the development and political sections of the EUD as well as between the EUD and the many other donor governments and donor agencies.

In terms of results, EU support to RoL&AC played a crucial role to improve core legislative and administrative reforms and CICIG in cooperation with national justice institutions could demonstrate to the public that the Guatemalan State is captured by criminal networks of political, economic and illegal actors, but since 2019 there have been strong reversals of the progress made in particular in the national level criminal justice system. On the other hand, EU support to the supply side of justice helped decongest the justice system and increased access to justice at the sub-national level, in particular for women affected by violence as well as of indigenous people. Support to CSOs has been substantial, but initiatives seem somewhat dispersed and more support, political and financial, is needed to strengthen social demand for the RoL and AC agendas in an environment of shrinking civic space.

The EU is a relevant global player and development actor in Guatemala, less prone to political pressures than bilateral aid agencies. However, the at times non-united positions of its member states on commercial versus development issues pose a challenge to impactful policy dialogue, raising the question if the EU can credibly support the RoL and AC agendas.

The deteriorating RoL and AC situation has confronted the EU with difficult dilemmas and as yet unanswered questions, including what the red lines are in view of a systematic dismantling of the Rule of Law, democratic institutions and increasing repression of independent justice operators, critical civil society organizations and media, which hard measures including economic sanctions might be used, under what conditions and with which expected effects.

Altogether, the current Guatemalan government does not have an interest to dance to the tune of democratic values and principles promoted by the EU and its MS. Development aid does not play a significant role in the state budget, international donor governments have largely lost their influencing capacity (not even the government of the United States is taken “seriously” anymore in the RoL and AC arena). It is difficult to identify strategic entry points to work with state institutions directly as these are systematically captured. However, there are a series of avenues where the EU and others may be able to continue with RoL and AC programming: integrating systematically a strategic RoL and AC lens into EU funded programmes; working on with women and youth violence issues; fostering local level governance and accountability; support civil society at national and local levels.

Case study note – Jamaica

Introduction.....	39
Context	39
Political economy analysis	40
Overview of the EU support to RoL&AC	42
Strategy and implementation of EU support to RoL&AC	44
EQ1: EU strategic framework/institutional environment.....	44
EQ2: Responsiveness, ownership and flexibility	46
EQ3: Partnerships and coherence	48
EQ4: Choice of modality	49
Effects of EU support to RoL&AC.....	51
EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions	51
EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions	52
EQ7: Broader effects on RoL&AC culture, human rights and democracy.....	53
EQ8: Effects on wider EU external action goals	55
Overall assessment	56

Introduction

Remark: This case study note does not constitute a separate evaluation of EU support in the country or its situation with regard to RoL&AC. It presents country-related findings relevant to the overall assessed judgement criteria and indicators, and feeds into the main evaluation report of the Evaluation of the European Union support to Rule of Law and Anticorruption in Partner Countries to which it will be attached as an annex.

Context

Jamaica is a constitutional monarchy and a parliamentary democracy based on the Westminster system of government. It became independent in 1962 and since then there has been a 'cry for justice', among others reflected in the songs of Bob Marley.³⁶

Jamaica has a long tradition as a stable democracy with respect for the rule of law and observance of most fundamental human rights and freedoms. Successive relatively fair and free elections have resulted in peaceful transitions of power between the two major political parties. Jamaica fares well in terms of regulation of political finance and electoral administration. Human rights, freedom of speech and of the press are generally upheld.³⁷

Jamaica is an upper middle-income country with the largest population in the English-speaking Caribbean, roughly 2,8 million people. However, Jamaica, has struggled for decades with low growth, high public debt and external shocks that further weakened the economy. Over the last 30 years, real GDP per capita increased at an average of just one percent per year, making Jamaica one of the slowest growing developing countries in the world. The country continues to be confronted with high levels of unemployment that predominantly affect the youth (12,9% in general versus 28,6% for youth, late 2016). Importantly, there are major inequalities between a small elite, smaller middle class and large parts of the population living in very poor and violent contexts.

With regard to the public institutions there seems to be a paradox. On the one hand, Jamaica counts with fairly robust and generally well-reputed formal democratic and public institutions. On the other hand, there seems to be fairly low levels of public trust in service delivery and even less in fair and equal services and justice. Also, there seems to be an overall serious disillusionment of Jamaicans with the State and a history of empty promises for reform. This creates a contradiction between robust institutions and weak performance.

The Justice sector³⁸

The above-mentioned paradox of robust formal institutions and low trust in them, also affects the justice sector. One of the greatest strengths of the Jamaican justice system is the widespread confidence and belief in the integrity³⁹ and commitment of the judiciary. With regard to accountability, there has been no evidence of political interference in the appointment of judges, but the lack of transparency in the process is unsatisfactory and poses a clear risk. In 2007, the specialised Drug Courts were perceived as effective. In contrast, problems of access and delay as well as weak implementation and underfunding of reforms have led to a decrease in public confidence in the justice system.⁴⁰ The justice system is further weakened by the pressures from rising crime,⁴¹ inefficient processes and limited resources, making access to justice a real concern.⁴² In addition, rising crime and insecurity have been identified as major contributors to the low levels of economic growth and threats to the achievement of inclusive development goals.⁴³ These serious problems have deterred investment, destroyed capital formation and discouraged business development.⁴⁴

While legislation has been introduced (including the Proceeds of Crime Act), strategies developed and a Major Organized Crime Agency (MOCA) established, the effectiveness of these measures is hampered by a lack of capacity. One of the main concerns that have been identified is that the key law enforcement agencies (LEA)

³⁶ See Jamaica Rule of Law Report (2007)

³⁷ See EU Gender Analysis (2017)

³⁸ In 2007, a national wide Justice Sector Review Task Force produced a comprehensive Justice Sector report and laid out recommendations for the 10 years, based on a vision for the whole system. This report indicates the will and need for a transition from the traditional justice system, inherited from British colonial rule, to a national justice system (in the broad sense, including criminal, social and environmental justice, although the report focusses on the criminal justice part) properly owned by Jamaicans.

³⁹ E.g., according to the 2007 Rule of Law Report 'Codes of Conduct play an important role even in countries such as Jamaica where the ethical standards of the judiciary is already very high.'

⁴⁰ See Jamaica Rule of Law Report (2007).

⁴¹ 'Jamaica currently has one of the highest per capita levels of homicide and violent crime in the world. This is the result of a combination of factors including imports of illegal firearms and ammunition, the supply and trans-shipment of illegal narcotics, financial frauds, including Ponzi schemes and the Lottery scams, and opportunities for corruption and extortion, all of which have encouraged the use of violence by criminals.' – EU Gender Analysis (2018).

⁴² See EU Gender Analysis (2017)

⁴³ See JSAT – ROM (2018)

⁴⁴ See National Security Sector Reform Policy (2013)

often act in a rather uncoordinated manner and their effectiveness is diluted. Due to the high levels of fatal shootings and allegations of abuses by the security forces, an Independent Commission for the Investigation of Abuses by Agents of the State (INDECOM) was established in 2010.

The areas of human rights concern, includes extra-judicial killings committed by members of the security forces, poor prison conditions, inadequate prosecution of security forces suspected of involvement in crimes, an overburdened judicial system and frequent/lengthy delays in trials, human trafficking, violence against women and children, and violence against members of the LGBT community.⁴⁵

Corruption and anticorruption

In July 2008, public opinion polls listed for the first-time corruption as the second most serious problem in Jamaica, behind crime and violence. Informed experts indicate, that Jamaica has not (yet) experience the type of grand corruption afflicting most of Latin American countries, involving multi-million dollar scandals. Rather there are high levels of collusion between the relatively small political, bureaucratic and economic elites in a small island state, where ‘everybody knows everybody’ which implies conflicts of interest. Lack of transparency in contracting and the appearance that lucrative contracts are given to the ‘well-connected’ as well as weak corporate oversight are special areas of concern. The known scandals and cases do not seem to involve large amounts but have a terrible effect on trust in and the legitimacy of the government. There is a growing recognition that the problems are not merely the result of mismanagement or incompetence, but a direct product of a political system that rewards patronage at the expense of transparency. Also, there is a growing sense that society must take action against corruption in order to win the ‘other’ battles of crime and violence.⁴⁶

In 2019, the risk for corruption and fraud remains substantial and can potentially have significant implications for growth and financial stability. In its 5th Review of 2019, the IMF pointed out to the serious shortcomings in the governance of public bodies, PFM and effectiveness of anti-money laundering and counter terrorist financing (AML/CFT) framework and put forward a set of recommendations. Although the GoJ is implementing a set of corruption-fighting measures and undertaking a full legislative review, progress was seen as slow. However, once implemented, these measures are expected to improve the legal, regulatory and institutional framework to limit the scope for corruption and fraud.⁴⁷

Key to an effective anticorruption strategy is the ability of two new organisations to work effectively together: the Integrity Commission and MOCA. According to key informants interviewed for this case study, in 2019 civil society expressed concerns about the Government’s commitment to completing the process of filling the senior leadership positions at the Integrity Commission, as well as providing sufficient funding to the Integrity Commission and MOCA. While these issues have started to be addressed, key informants coincided in indicating that there is no political will to address persistent legal and operational challenges for these agencies to effectively investigate high-level corruption allegations. Rather, the political elites are seen as promoting formal institutional reforms while limiting the very powers and tools of these agencies to prepare solidly founded investigations. The Judiciary is very slow and of low quality, and hardly any case of corruption has resulted in a conviction. Overall, there is an increasing perception of impunity for white-collar crime.

Despite this situation and frustration expressed by many key informants, it is important to note that there is still a genuine respect for the law, for democracy and for independence of the Judiciary. In other words, the system is not (yet) fundamentally broken. Also, despite increasing visibility of alleged cases of high-level collusion, self-enrichment, bribery and kickback schemes associated to large contracts or land use, it seems that those involved (still) constitute a minority among public officials and parliamentarians. These elements together may lead to somewhat ‘relativist’ positions considering that the situation is not as bad as in many other countries in the region, in particular Latin American countries. The lack of ‘hard’ evidence also seems to contribute to challenges for international development partners (IDPs) to raise concerns and focus the political dialogue more strongly on high-level corruption networks and their negative effects for Jamaica, including the nexus with organised crime as well as the investment climate. However, this situation should rather be seized by all actors, national civil society, national authorities and the IDPs, to identify an agenda of a few pivotal reforms aimed at disrupting what many call a cancer of corruption, avoiding that it further penetrates and erodes national systems.

Political economy analysis

Government

First of all, it is important to bear in mind that the civil service in Jamaica was established during the British colonial rule and seems to largely remain ‘where the Brits have left it’. It is a rather hierarchical system operating in a highly stratified society with a small ruling elite of British, Lebanese, Chinese, Indian descent.

⁴⁵ See EU Gender Analysis (2017)

⁴⁶ See USAID Anticorruption Assessment (2008).

⁴⁷ See PFM Transparency Annex (2019)

Although the positions of Permanent Secretary in ministries and agencies is supposed to be a technocratic position, it is often a political position, presumably to pay favours to political supporters as well as to exert certain control over resource opportunities.

Newly-elected governments have come to power in some occasions with a strong anticorruption focus and seem to have followed through on their commitments by appointing a series of reform champions to new positions.⁴⁸ The current government has 3-4 reform-minded high level positions, including the Prime Minister, as well as the Minister of Finance who has pushed important reforms and created additional checks and balances. Reform champions in government have been able to make a difference, which gives a certain hope that further change is possible, in particular when linked to specific sector outcomes and not anticorruption per se, e.g., financial sector.⁴⁹

Nevertheless, there have been warnings of to-be-expected resistance since 2008, as the state moves to tighten procurement, clean up 'ghost worker' lists, move from low-level to higher-level targeting of corrupt police and public officials on a non-partisan basis, and move toward political party accountability.⁵⁰ In more recent times there have been attempts by the government to implement undemocratic reform or use undemocratic practices in key RoL areas. However, strong and loud resistance by CSO, professional organisations, judges and media were able to revert these attempts.

The society is very relationship based and relationships do play a role in the civil service, it seems that the defining factor of service delivery is more the hierarchy and a certain sense of fear not to operate by the books. There seem to be underlying logics in the Jamaican society which make determined action against corruption difficult, even for reform-minded people: People have secrets on each other which operate as a disincentive to hold people accountable and this situation results in both sides being 'safe.'⁵¹ In the recent past there were expectations that the government would remove some high-level 'bad' apples, including a minister, but nothing happened.

According to the EAMR 2019, 'in the Justice sector the success is that there is bipartisan support for the sector policy – which is not the case in any other sector. Strategic changes in the justice sector however led to significant delays in the implementation of the current JSRP programme (Chief Justice was changed in February 2018 and Permanent Secretary reassigned in February 2019). This is significant as certain decisions in that sector are intricately linked to power and personalities. Open, robust and ongoing dialogue between EUD and all required interlocutors have however helped.'

Also, leadership matters, not only in the public but also the private sector. There are some private sector firms which make substantial contributions to CSOs, and the relevance to work with AC oriented private sector leaders, though obvious, must not be underestimated in particular in a country where opportunities and hope for change still exist.

An important point of both the political and economic colluding elites is that they are competing with each other. There are divisions between them, which allows to identify entry points to work with some of them regarding certain issues, following a logic of promoting change in their 'self-interest'. With regard to the private sector, different dynamics operate in different sectors. And in both cases, it is to be expected that the incentives and interests for change vary over time in a fairly dynamic way depending on the changing context.

Civil society and private sector

The private sector has been playing an active role in i) corporate social responsibility; ii) citizen security; iii) providing job opportunities; but not so much (yet) on the anticorruption, integrity, anti-collusion side of things. One relevant actor is the Private Sector Organization of Jamaica (PSOJ). Generally, it seems that the dynamics are fairly focused on local and Caribbean dynamics more than larger regional or international ones. The Jamaican private sector is reportedly more connected with the US and Canada than with the European markets.

Jamaican CSOs are invaluable in terms of strengthening justice; but its size, strength and vibrancy remain weak because of their lack resources and dependence on international donor support. Since 2013 several

⁴⁸ In 2007, e.g., reform-minded leaders were appointed to police and customs (USAID assessment 2008) and the Chief Justice, the Minister of Justice have been champions of justice system reform and have laid a strong foundation for the work that lies ahead (Rule of Law Review 2007).

⁴⁹ Interviews for recent times as well as USAID assessment (2008): 'Together with the help of foreign experts and a public opinion increasingly intolerant of high-level corruption, reform champions are beginning to use legislative and statutory authority to act as change agents in a country long accustomed to business as usual. Independent journalists are pursuing high-level cases with new vigor, using recently-enacted Freedom of Information legislation.'

⁵⁰ USAID assessment (2008)

⁵¹ E.g. recent scandals indicated that PM should have fired people based on the available evidence and as a sign of political accountability, but then this did not happen. Perception of impunity leads to disillusionment

human rights CSO have announced their closure due to funding difficulties. CSO coalitions (e.g., PSOJ, Caribbean Policy Research Institute, National Integrity Action (NIA), the Jamaica Umbrella Group of Churches (JUGC)) can bring pressure to bear and it seems that strengthening of CSO coalitions, including at grass-roots level, is an important area / entry point for further RoL&AC work. According to interviews carried out in the field phase, there has been concern about CSO pressure and advocacy not being sustained, thus having limited sustainable impact.

The Jamaican society⁵² at large is tired of 'empty' promises, they want to see real action. However, due to high levels of disillusionment of the people with the government, there seems to be a generally low level of interest for getting engaged, leading to a vicious circle.

There seems to be an interest mainly from the government in joining the EITI, apparently following a scandal involving the Minister of Energy (bauxite). Otherwise, EITI has not come up as an issue during the interviews and does not seem to be high on the radar.

International Community

The international community is seen to have an understanding of the national context and dynamics but does not necessarily go deep enough in its understanding and analysis, in particular with regard to and anticorruption.

IDPs seem to have a fair understanding of the interests, motivations and relations of political and societal actors in Jamaica, although there do not seem to be documented political economy analysis (PEA). Documents may contain stakeholder analysis in terms of roles and functions, but do not dive into their interests, motivations, etc.⁵³ And, in comparison to many Latin American countries in the region, there are not (yet) CSOs or media initiatives engaged in network mapping and analysis with a view of visualising power relations between political and economic actors as well as the nexus with organised crime.

Overall, IDPs are working well together and heads of agencies meet regularly. In particular Western 'like-minded' IDPs seem to largely coalesce around the government-led development strategy 'Vision 2030.' There is a perception that most IDPs are not willing to address in a more determined (and strategic) way politically sensitive issues, in particular related with high-level corruption. Nevertheless, during the interviews a battery of valuable suggestions was made pointing both to the need for IDPs to join forces for an explicit anticorruption agenda as well as to concrete suggestions for such an agenda (see below EQ 4 on political dialogue). Within some donor circles, there is disillusion about direct / explicit AC54 and they seem interested in other approaches, like digitalisation to modernise the public administration and the justice sector (with regard to the latter, though, a confidential document raised relevant doubts as to the preparedness of the sector for such an approach as well as the underlying assumptions).

Overview of the EU support to RoL&AC

The EU support in Jamaica is framed in line with the Vision 2030 Jamaica – National Development Plan, which has four broad themes: i) Development and Protection of Human Capital; ii) National Security and Justice, iii) Economic Stability, Competitiveness and Employment, and iv) Environmental Resilience and Climate Change Response.

The 11th EDF Multi-Annual Indicative Programme focuses on:

1. Justice, including Citizen Security (50%) – a sector considered key in promoting equitable economic development in view of the high rates of violence and crime and the insufficient capacity of the justice sector.
2. Environment and Climate Change (30%) – given that the natural environment is vitally important to the two major economic sectors agriculture and tourism and considering the already high exposure of Jamaica to natural disasters.
3. Public Finance Management (8%) – given that weaknesses in the Public Finance Management system negatively impact on fiscal discipline, efficient service delivery and strategic resources allocation and considering the still high level of public debt.⁵⁵

⁵² Jamaican society is rather conservative and family-oriented society – churches and church organisations play a fundamental role.

⁵³ Confidential reports contain at times valuable assessments – not clear yet to what extent such documents are shared among donors

⁵⁴ ' There are things that can be done not directly through AC'.

⁵⁵ See ROM – PSEP 2017

EU support in Jamaica is channelled through both project and budget support modalities, with an important increase of the latter between the 10th and 11th EDF.⁵⁶ The overall bilateral envelope under the 11th EDF is EUR 66 million.⁵⁷ Justice, PFM and Environment/Forestry (85% of the financial allocation in 2019 of EUR 46 million) as well as the Citizen Security Programme developed in 2019 are implemented through budget support. The rest includes procurement, mainly Technical Assistance and Calls for Proposals for CSOs. Citizen Security programme is currently under formulation as budget support.⁵⁸

Table 3 Overview of EU-financed interventions to the support of RoL&AC in Jamaica selected for the case study

<i>D or C year</i>	<i>Title</i>	<i>Budget (mEUR)⁵⁹</i>	<i>Typology</i>	<i>Implementing partner</i>
Public sector				
2019	Citizen Security programme (D-42051)	15,7 mEUR, 4,3 mEUR	Peace, Resilience & Security	Government of Jamaica (budget support), Consulting company (technical assistance)
2017 (signed 2018) 36 months 24 months closure	Support to public financial management reform programme (D- 39229) The component funded by the EU focused on transparency and accountability with an implicit expectation to help prevent corruption.	2,9 mEUR, 0,65 mEUR	Governance (PFM), with indirect relation with the fight against corruption – focus on transparency and accountability with an implicit expectation to help prevent corruption.	Government of Jamaica (budget support) , Consulting company (technical assistance)
2015 (signed Nov 2016) 48 months	Jamaica Justice Reform Project (JSRP, D-38731)	23,7 mEUR	Budget support CSO support TA support	Government of Jamaica (budget support) , Consulting company (technical assistance), CSOs
2014-2019	Justice, Security, Accountability, Transparency (JSAT, D-24523)	12,6 mEUR 1,75 mEUR	Justice (system) Porgramme Budget (Complex with lot of procurement and different procedures) INDECOM component directly by EUD Technical Assistance	Ministry of National Security and MOJ Business and Strategies in Europe (B&S Europe)
2009-2015	Security Sector Reform Project (SSRP)	33 mEUR	Peace, Resilience & Security	Ministry of National Security / Jamaica Constabulary Force (JFC) and Ministry of Justice (Sector Budget Support)
2014-2020	Public Sector Efficiency Programme (PSEP)	31 M. US\$ 6,6 M. US\$ (5 M Euros) from EU – grant(IDB – 14 M. China Co-financing Fund – 11 M.)	Governance	Inter-American Development Bank
CSO & Private Sector				

⁵⁶ The 10th EDF used a combination of project (PROMAC, JSAT, PFMSPP and PRP) and budget support modalities (Accompanying Measures for Sugar 2013 under the 10th EDF and Debt Reduction and Growth Enhancement Programme).

⁵⁷ See EAMR 2019

⁵⁸ See EAMR 2018

⁵⁹ Planned EU contribution

<i>D or C year</i>	<i>Title</i>	<i>Budget (mEUR)⁵⁹</i>	<i>Typology</i>	<i>Implementing partner</i>
2019/22 months	Combatting corruption in Jamaica: Improving Citizens' Access to Justice through Accountability, Transparency and Access to Information (C-407411 part of D-38731 – see above)	0,25 mEUR	Anticorruption	CSO – National Integrity Action
2018 24 months	A New Jamaican Justice Era: Consolidating Community Access and Alternative Justice for the Protection of All Community (C-399843 part of D-38731 – see above)	0,25 mEUR	Justice (access)	CSO – University of West Indies
2018	CSOs as actors of Governance and Democracy in Jamaica (C-407603)	0,37 mEUR	Governance (democratic)	CSO – Caribbean Policy Research Institute
2018 24 months	Advocating for Justice (C-399848)	0,22 mEUR	Justice (system)	CSO – Caribbean Vulnerable Communities Coalition
2018	Public Stewardship and Accountability in Jamaica (C-407601)	0,42 mEUR	Governance (other)	CSO – The Private Sector Organization of Jamaica LTD.
Aug 2016- March 2017	Seminar for Ombudspersons of the West Indies (C-367273)	0,02 mEUR	Justice (system)	CSO – University of West Indies
2015	Inclusive and Participatory Governance in Jamaica	0,27 mEUR	Governance (democratic)	CSO – Caribbean Policy Research Institute
2015 (24 months)	Combatting Corruption in Jamaica: Improving Governance and the Justice System (C-319746)	200.000 Euros	CSO contract	National Integrity Action
2013 (12- max. 18 months)	Combatting impunity by strengthening legal support	0,18 mEUR	Justice (access)	CSO – Jurists for Jamaica

Strategy and implementation of EU support to RoL&AC

EQ1: EU strategic framework/institutional environment

JC1.1 Clear, context sensitive and realistic

The EU has become the **lead development partner in Jamaica to address issues of security and justice**. While EU support in the past largely focussed on security aspects and interventions related to justice had been framed as accompanying the major security programmes, the NIP 2014-2020 recognised that justice is a critical link between security and development. Therefore, greater emphasis was placed on justice reforms in order to support Jamaica to achieve its envisioned national development outcomes anchored in the Vision 2020.

The EU and other development partners (DPs) coincide with the Jamaican government in **considering that the high level of crime and violence together with institutional weaknesses in the justice sector** impede economic growth, deter foreign investment, hinder more effective poverty alleviation and constitute great economic and social costs to Jamaica and its citizens.

Against this backdrop, the NIP 2014-2020 built on the results achieved in the EU's prior support programme⁶⁰ and **continued to support Jamaica in modernising its justice system**, in strengthening the institutional and administrative capacity of justice institutions **as part of structural reforms**, in ensuring judicial integrity and

⁶⁰ E.g., “ results related to improvements in security and justice infrastructure; social interventions in volatile and vulnerable communities; mainstreaming of human rights issues in the Jamaica Constabulary Force (JCF); the roll out of community policing; increasing the number persons receiving training at the JCF training facility; increases in the competence of judges; and support to the reduction of case backlog in the courts.” (NIP 2014-2020)

independence, in enhancing transparency and accountability of court operations and in improving access to justice, with a focus on detention conditions and juvenile justice.

Budget support is the main aid modality, in particular under current 11th EDF, **the holistic RoL support is aligned with national strategies and priorities for the sector** and complementary to other DPs, including international organizations. There have been large consecutive programmes in the Justice Sector for the last 10-12 years (SSRP, JSAT, JSRP and the new Citizen Security Programme).

With regard to the anticorruption approach, the EU pursues in Jamaica some explicit AC objectives, in particular related with the justice sector (e.g. corruption within the police, state capacities to investigate corruption) and civil society support for AC advocacy. The EU has also supported Jamaica to strengthen its PFM system, including some aspects relevant for the prevention of corruption. This seems to respond more to **the logic of ensuring proper conditions for its significant budget support rather than to a strategic AC approach**.

The EU and other DPs recognise that the Jamaican government and the public sector more generally **does not (yet) have a culture of easily engaging with civil society**. In order to address these issues in particular for the area of RoL&AC, the **EU uses two complementary approaches**: i) justice sector programmes contain an explicit component to foster civil society advocacy; and ii) a broad human rights and civil society strengthening agenda through its EIDHR and CSO-LAC instruments. In particular the human rights portfolio is considered by the EU as an approach to address corruption related issues. Despite the fact, that the EU has supported CSO advocacy initiatives around corruption, more strategic approach could be developed in view of a lack of sustained social demand for RoL and AC reforms.

JC1.2 Coherence with nature and goals of EU external action

Jamaica, is a stable and free democracy with relatively robust national institutions, where the EU's RoL&AC agenda can be fairly easily articulated with other EU values. And this has clearly been the case in Jamaica where the EU fosters the democratic principles of judicial independence as well as of independent oversight of justice and security sector institutions. This is illustrated in the strengthening of the Jamaican court system, including the Court of Appeals, the support for the creation and strengthening of INDECOM to investigate abuses of the police forces, the creation and strengthening of MOCA and the Integrity Commission, to name but a few. The respect and guaranteeing of human rights was mainstreamed into the EU support to the Jamaican police. As said above, the RoL&AC agenda is clearly linked to the EU roadmap to strengthen independent civil society and to foster respect for human rights. For example, the EU "Gender Analysis – Jamaica – Justice, Environment & Climate Change and Public Financial Management" from November 2017 served as input for the EU gender approach in Jamaica. And the justice sector budget support programme sought to advance the GoJs agenda towards achieving SDG 5 (Gender Equality) through the provision of 3 additional Family Courts.

As laid out in the 2011 European Commission Communication entitled 'The Future Approach to EU Budget Support to Third Countries' stresses that commitment to the fundamental values of human rights, democracy and the rule of law is essential for the establishment of any partnership and cooperation between the EU and third countries. And the Cotonou Partnership Agreement defined governance as a key principle of cooperation between the EU and ACP countries. RoL&AC are intrinsic elements of governance and coherence with EU external action is pursued.

On the other hand, the establishment of the EU Chamber of Commerce provided an opportunity to engage with the private sector. The Covid-19 pandemic, though, disrupted the momentum for the operationalization of the Chamber.

Ensuring coherence between internal RoL&AC policies and EU external action in the area of RoL&AC has not constituted any particular challenge, given that there have not been significant transitions or backlashes in terms of RoL&AC in Jamaica. Rather the current tendencies of progress in terms of RoL&AC legislation, institutions and policies are generally in line with EU internal RoL&AC policies.

JC1.3 Conducive institutional environment

The use of **budget support for a number of the large RoL related programmes constitutes a positive incentive** for an overall conducive institutional environment to work on RoL and to some extent on AC in Jamaica. Thus, the policy dialogues during the design and implementation phases provide fora for serious and mutually respectful concertation efforts. In addition, the **EU brings its political and development cooperation weight to the table**, given that it is the largest grant giving institution in Jamaica. The logic of budget support contributed to the efficient implementation of programmes as well as to problem solving dialogue in case that indicators risked not to be met on time.

In addition, **the different technical assistance teams played a critical role for effective programme deliveries**. When TAs were associated with budget support programmes, they helped resolve technical and

administrative issues, prepare special reports and facilitate the submission of documents and disbursement requests. In the case of JSAT, a complex programme with a large number of activities and heavy concentration on procurement requiring several different procedures, the TA has proven competent in work planning, execution and reporting, even though the decision-making took place in the Dominican Republic, not in Jamaica.

On the other hand, while **complementarity between national, regional and thematic instruments is considered important, it is difficult to achieve** due to the different programming cycles and various levels of programme management (thematic – HQ, regional – EUDEL BB, national EUDEL Jamaica, inter-ACP CARICOM secretariat). Fluid communication and better coordination with other entities managing the thematic and regional issues needs further improvement.

EUD staff working on RoL&AC is generally **valued as competent, serious and rigorous**. With regard to **AC**, though, there seems to be **room for more clearly defining roles and responsibilities**. The current EUD team working on RoL&AC use opportunities to integrate AC approaches into their own portfolios (e.g. transparency and accountability related to PFM) or to develop high-level indicators for “their” budget support programme (e.g. on perceptions of police corruption as part of the Citizen Security Programme). However, a strategic overall approach to AC seems to be missing. In view of the increasing visibility, public concern and sophistication of corruption, collusion and nepotism in the country and in view of the recognition of its close links to crime, violence, insecurity and the overall investment climate, it would be useful for the **EUD to attract well-experienced and well-trained anticorruption expertise as part of the EUD team and to establish a clear lead on this issue**. This person could be responsible for driving a strategic AC agenda within the EU, including to strategically integrate an AC (and potentially RoL) lens into other priority sector programmes of the EU.

Nevertheless, several interviewees **alerted that an EUD anticorruption lead might face institutional and cultural challenges**. On the institutional side, incentives are set in a way to ensure that donor funds are disbursed, and respective careers are not necessarily helped by confronting partner governments with corruption challenges. On the cultural side, a job-title as anticorruption expert or official might generate distancing or the closing of doors on the side of government counterparts, who are usually sensitive to “outsiders” telling them what to do.

EQ2: Responsiveness, ownership and flexibility

JC2.1 Context, political economy and/or conflict analysis

The EU in Jamaica is recognized and valued for its overall good understanding of the national political, economic and social context as well as for having chosen budget support as its main aid modality for state-to-state cooperation. The latter **allows to be largely aligned with national priorities and needs**, which has been one of the recurrent positive reflections of interviewees, in particular from state institutions. The EU supported RoL&AC programmes are focussed on priority needs identified in the Vision 2030 Jamaica (Jamaica's overarching development framework). The expected outcomes are supported by the National Security Policy and the Jamaica Justice System Reform Policy Agenda Framework. **Broad bi-partisan support for justice sector reforms has been highlighted** as one of the key elements for success, and reportedly does not exist in other sectors.

The EU has been recognized for providing support and good understanding of the context for CSO engagement, where the Government does not open easily to CSO participation.

Despite the good understanding of the national context, **no documented political economy analysis have been produced or referred to by the EU**. Considering that Jamaica is a small island country with small intertwined political and economic elites dominating the country's affairs, this seems to be an **area for improvement**. For example, high-level collusion and corruption has been an increasing concern of the public as well as civil society and private sector organizations. There have been warnings of to-be-expected resistance, as the state moves to tighten procurement, clean up ghost-worker lists, move from low-level to higher-level targeting of corrupt police and public officials on a non-partisan basis, and move toward political party accountability.⁶¹ In this regard, some interviewees alerted that unless DPs, including the EU, understand the networks of political, economic and organized crime actors, they might throw good money after good things but with little effect,⁶¹ given that these network dynamics override formal institutional checks and balances and can torpedo institutional reform. The latter is illustrated in a series of examples where institutional reforms were approved (e.g., the creation of the Integrity Commission) while their effectiveness was restricted from the outset.

At intervention level, the level and robustness of contextual analysis seems to be somewhat uneven. While for the JSRP, the buy-in of the Justice Ministry and Ministry of Finance and Planning was considered as very high, JSAT was based on a too simple intervention logic as a result of insufficient ‘ground truthing by

⁶¹ USAID assessment (2008)

consultants in design phase'. In some cases, intervention logics are presented as theories of change, falling short of the underlying conceptual approach of the latter. And finally, it is not clear to what extent open and frank sector or institutional assessments are shared between DPs (e.g., a non-public confidential justice sector assessment by another donor).

The **inclusion of relevant societal actors in identifying priority areas and entry points** for RoL&AC programmes **has taken place**. But some programme reviews indicate room for improvement including for the strengthening of collaboration mechanisms, both among and between state institutions, as well as civil society.

In Jamaica, the main **policy and political dialogue of the EU takes place around budget support**. In particular, policy dialogue around the JSRP and recent CSP programme have been used to generate shared analysis and a plan for action. **The partnership is considered to be based on mutual respect and the EU has been able to influence the RoL reform agenda** and, to a more limited extent, the **AC agenda**. With regard to the latter, many interviewees indicated that the **level of ambition could and should be higher** with a focus on a few critical issues that could serve as game changer for high-level corruption and impunity. Nevertheless, it was widely recognized that such an approach would need careful crafting and strategic communication, being mindful of the government's resistance to the term 'corruption'. With regard to civil society, it is worth noting that partnerships between the EU and CSOs should extend beyond funding opportunities, but with the EU accompanying CSO activities to give them greater voice.

JC2.2 Engagement with actors at different levels

The **RoL&AC programmes supported by the EU** are largely nationally-led through public sector institutions. The EU's approach to work with government strategies and policies is considered as commendable by many interviewees. The EU works specifically through the Ministry of Justice, the Ministry of National Security and the Ministry of Finance. Other relevant justice and security sector institutions (including the police, INDECOM, MOCA, Integrity Commission, etc.) are drawn to the table for consultation and agreements. Taking into consideration that Jamaican public sector institutions do not easily open up to civil society participation, the EUD in Guatemala has **included a civil society component into all justice sector programmes**.

On the other hand, with regard to **high-level corruption and collusion as well as impunity for white-collar crime, the approach of the EU is considered by many interviewees of falling short of the country's reality**. The fact that strategic AC reform areas have not been included yet into national policy frameworks or objectives might explain why the EU has so far taken a rather implicit approach.

Further, the EU has developed a **CSO roadmap** to foster citizen demand for key governance, justice, security, RoL&AC reforms as well as to promote human rights. The focus of EU support lies on **strengthening advocacy activities** in a context characterized by **wide-spread citizen apathy, lack of trust in public institutions and disillusionment** with (empty) promises from the state.

A **distinctive feature** of the Jamaican context is the **private sector engagement in security, justice and governance reform issues**. Endowed with strong and frank leadership, some private sector organizations/initiatives constitute potential for drivers of change. The EU not only supported an initiative of the Private Sector Organization of Jamaica (PSOJ) to generate public debate and dialogue on anticorruption but also seized the opportunity to support the recently founded Crime Monitoring and Oversight Committee (CMOC), a multi-stakeholder initiative, including the governing and opposition parties, to monitor compliance with the commitment to key RoL&AC reforms.

There seems to be a **clear and reasonable division of labour / complementarity between different donors** in order to support collectively the broad range of relevant actors in the justice sector. And the **EU itself has a coherent and comprehensive allocation of funding**: i) RoL&AC related interventions are mostly implemented through budget support and include, as said, a civil society component; ii) TAs for budget support programmes played an important role to support government partners; iii) CSO-LA and EIDHR instruments are used to support civil society actors in the areas of RoL, justice, security, human rights and civil society participation for accountability.

JC2.3 Adjustment to changing conditions and new opportunities

During the evaluation period, **no major changes, transitions or backlashes have occurred in Jamaica**, nor has there been a serious deterioration of the rule of law. Rather, Jamaica aims to be perceived as a liberal democracy.

Regarding the **flexibility** of the EU to adjust to changes occurring during implementation of programmes and projects, there is a bit of a **mixed picture which seems to be related to the different aid modalities**. Thus, there has generally been flexibility to respond to unanticipated needs or make adjustments to budget allocations in directly implemented projects (e.g. PSEP, JSAT). However, changes to indicators in **budget support programmes** resulted in more complexity. The final evaluation of the SSRP programme noted that

'some flexibility with respect to achievable indicators should be accorded to implementing agencies at the mid-term of project execution.'

In terms of **seizing new opportunities, the EU has been assertive** in providing support, e.g., to the before mentioned Crime Monitoring and Oversight Committee (CMOC) as a multi-stakeholder and across-the-political-spectrum initiative which has agreed on a set of key legislative and institutional reforms for the country to address more effectively the high levels of crime, violence, insecurity and high-level corruption.

EQ3: Partnerships and coherence

As a brief context for this EQ:

1. the EU is the largest grant giving donor in Jamaica;
2. there is no other bilateral development cooperation programme from EU MS in Jamaica;
3. only four EU MS are physically present in Jamaica: Belgium, France, Germany, Spain.
4. the other main development partners active in RoL&AC are: Canada, UK, USA as well as the IDB.

JC3.1 Partnerships based on comparative advantages and donor coordination

The **EU** established itself as the **lead development partner for justice sector reform** in Jamaica, thanks to the size and scope of its funding and the political dialogue associated with its budget support (the EU is the only donor to provide budget support in RoL&AC).

Development partners generally respond collectively to the needs and priorities determined by the government and identify which donor can respond to which of the needs within their agency's strategic plans and priorities. There is a **fairly clear division of labour** between the EU and other DPs active in the sector. The EU and Canada focus on access to justice, the UK and USAID on efficiency in the justice sector, and the IDB is more engaged in the area of citizen security. In addition to support for institutional strengthening, capacity building, inter-institutional coordination and training, the EU agreed to provide the actual equipment and technology to underpin the necessary actions and address bottle-necks, an area of support that other DPs were reportedly unwilling to take-up.

In terms of partnerships and donor coordination, a structured government-led overall donor coordination is not in place, but there are relevant coordination mechanisms at different levels and for different purposes. At the political level, the so-called ABCE group (America (USA); Britain; Canada and the EU) consists of a Heads of Mission coordination mechanism and has held meetings on Security and Crime as a priority. The Heads of Mission of the four EU Member States hold monthly meetings and discussions include RoL, security, corruption. Thanks to the EU development section there is good information for this dialogue and the EU can draw on expertise offered by EU MS institutions. At the technical level, the responsibility for donor coordination lies in principle with the Planning Institute of Jamaica (PIOJ) and the PIOJ has technical working groups that are supposed to be working. However, in practice this has not been the case, unless there are additional incentives or conditions. For example, when donor coordination was formally included into the Financing Agreement for a justice sector budget support programme, it worked well, but only during the implementation period of the programme. In contrast, there is much greater government-donor coordination on citizen security as a central issue to the government. **Overall, despite the lack of more robust and regular government-donor and donor-donor coordination mechanisms, the issue has not come out as a great area of concern during the interviews.**

The EU is doubtless highly regarded as adding value in Jamaica as a respectful, value-driven, context sensitive, standard-setting, inclusive and rigorous development partner. The EU's sizeable funding and budget support is not only recognized for the modernization of justice sector institutions but also as a catalyst to leverage priority issues and to achieve a better justice sector system (e.g. substantial increase in government funding to the justice sector). The EU is seen as global leader, with sizable power and lasting collective principles that it stands by, capable of exerting political influence in a substantial but prudent way. The voice of the EU is known to be used for structural as well as punctual issues, although not always loudly or in the public space. The EU is valued for seizing opportunities to strengthen national voice and demand for justice and security sector reform and accountability (e.g. CMOC and the Jamaican Accountability Meter Portal). On the other hand, many interviewees indicated that the EU could and should develop a more strategic approach to high-level corruption and impunity for high-level white-collar crime, ideally in a coordinated way with other DPs. On the negative side, the comparative disadvantages are mainly focussed on operational issues, including heavy bureaucracy, tedious processes to make project adjustments, rigidity in budget support indicators, and sometimes perceptions of bias towards European providers.

JC3.2 EU support to RoL&AC has been delivered in a coherent manner

The EU in Jamaica has provided support to **strengthen Jamaica's financial management systems, both in response to the identification of national needs and in the context of providing large budget support programmes.** Funding has gone through i) the IDB managed PSEP programme to enhance control and

accountability of public resources, with a focus on budget transparency, public procurement, and parliamentary oversight; and ii) the PFM support Programme which focussed on public procurement, as well as the internal and external control functions. Overall, the objective has been to foster transparency and accountability with an implicit expectation to help prevent corruption.

The linkages between RoL&AC and security sector interventions have been a strong and intrinsic element of the EU support to Jamaica. As described above, in a context of extremely high crime and violence and related human rights abuses, development cooperation – including that from the EU – had initially focussed on the security sector, especially the police, INDECOM and prisons. With the technical support from Canada, bottlenecks in the justice sector were identified as impediments to progress in addressing crime, violence and insecurity as well as to ensure access to justice to vulnerable groups. The role of the EU in the transition towards a justice sector reform policy and justice sector plan has been essential in that the political dialogue around budget support helped the country to identify priority areas for justice reform. Today, justice and security sector reform go hand in hand, DP programmes, including from the EU, are complementary, and the EU is recognized for its ‘end-to-end’ approach to security and justice and to work with CSOs on human rights, prison issues, and accountability.

Coherence with the wider interests of the four EU MS present in Jamaica is ensured through the processes of developing the country programme and specific thematic programmes as well as the monthly Head of Mission meetings.

EQ4: Choice of modality

JC4.1 Mix of modalities

Budget support (BS) is the main aid modality with regards to funding volumes, in particular under the current 11th EDF. Budget support programmes **include a civil society component, which receives 5% of the funding** and provides an important opportunity to foster state-society relations in a context, where the national government does not easily open up to civil society participation. **Technical Assistance components complement BS programmes and are considered crucial for the achievement of the agreed upon objectives.**

As said before, the EU is the only DP providing budget support and the **initial drive to use this aid modality reportedly came from HQ**. In a context of stable democracy, no serious concerns about the eligibility of Jamaica for BS, openness of the government to negotiate high-level indicators, the decision to move towards budget support is reasonable. **BS delivered on the assumption that it helps to achieve broad and more profound reforms.** Interviewees from state institutions recognised e.g. that ‘BS is an incentive for our reforms’, that ‘the Ministry of Finance was obliged to come through with the requirements’ or that the design of BS justice sector programmes ‘was providing the way for reform’ and that BS ‘was a catalyst for a better justice system.’

One particular challenge of the BS programmes so far has been that there has not been a ‘deep dive’ into strategic AC measures. The EU has pursued an approach to strengthen the systems without directly touching these issues. Corruption is flagged in the Risk Management Framework and in the PFM analysis for BS disbursements and mitigating actions include a permanent dialogue with the authorities. Nevertheless, there is a missed opportunity. On the one hand, the EUD recognises that there is a slow pace of action and limited tangible results with regard to corruption mitigation. And on the other, most interviewees, including from some state institutions, said that a deep dive into better understanding corruption and the associated network dynamics is necessary. Also, the EU should identify **strategic levers for AC reform, agree with other DPs on some long-term priorities and short-to-mid-term milestones** and include this in **the policy dialogue with the government.**

Other aid modalities had valued merits, too, as well as some challenges. For example, the JSAT project with a strong focus on providing equipment, technology and infrastructure improvements. Despite significant operational challenges for project implementation, there was overall great appreciation of the equipment, infrastructure and IT tools provided. At the same time, there was some concern related to maintenance and spare parts as well as to ensure the availability of appropriate human capacity.

Finally, the **EU in Jamaica uses two complementary approaches to strengthen independent civil society**: i) all justice sector programmes contain an explicit component to foster civil society advocacy; and ii) the EU supports a broad human rights and civil society strengthening agenda through its EIDHR and CSO-LA instruments. While EU support to CSOs was generally highly valued, including the ‘political-institutional’ support for certain advocacy activities, **the short funding cycles emerged as recurrent concern, as they do not allow to achieve transformative change**, to sustain public pressure or foster a culture of citizen demands for democratic reforms. The **promising evolution in this regard** is that the **next EU funding cycle will allow CSO projects to run for up to 4 or 5 years and co-financing will be reduced to 5%.**

Budget Support indicators have been regularly monitored and largely met, and in cases where this was at risk strong policy dialogue and TA helped to overcome the problems. For example, in March 2018 the six indicators associated to the BS Justice programme were either exceeded or fully achieved. Later in 2018, though there

was the risk that two indicators would not achieve their milestones. Strong dialogue, direct interaction between the EUD and the highest level influencers within and outside of the sector combined with the determined efforts of the implementing ministry, indicators were achieved within the agreed standards. Also, the EUD monitors and assesses continuously the contextual situation. For example, in 2019 the EUD observed that while public policy in the justice sector remains stable and BS continues to be appropriate, there are occasions when fundamental values are at risk, referring to the attempt of the Prime Minister to attempt the Chief Justice on a temporary basis. In view of the governments reversal of this decision in response to public outcry, the EUD concluded that there are no particular concerns. On the side of government entities, interviewees highlighted the fact that BS represents an extremely mature relationship.

JC4.2 Mutually reinforcing dialogue and programming

The **EU as the largest donor to Jamaica plays an important role in policy and political dialogue** and has used this role consistently over the years with inputs from civil society, the private sector and programming staff. For the justice sector BS programme, for example, the EU held a total of 30 formal dialogues over 2 years (2019/20) focussed on monitoring progress, ensuring civil society participation and encouraging a performance management culture within the judiciary. Articles 8 Dialogue in 2019 discussed issues around fundamental values such as human rights, justice system, tax matters, and in 2020 discussions centred on fundamental values and the creation of a national human rights institute.

The **EU has supported CSO actors in political dialogue thus strengthening the positions of the CSOs** and indirectly helping to pass certain laws. For example, in 2019 dialogue with civil society entities have strengthened their advocacy and resulted in the passage into law of major pieces of legislation. And the **budget support policy dialogue** has been used to **leverage the demand for more external and independent oversight of citizen security interventions**.

Interviewees identified one important area for additional candid political dialogue: strategic anticorruption commitments and measures. ‘Less diplomacy and more advocacy’ including from DPs is needed, in particular but not only considering the linkages between crime and corruption. The political sensitivity of this issue as well as contextual challenges of a small island state were recognised. But the EU and other DPs could align around national agreements, like those anchored in the CMOC commitments, where the government and the opposition have agreed with national CSOs and the private sector on key reforms. In particular those related to address corruption (e.g. legislation on unexplained wealth orders) are lagging behind in implementation. The EU, ideally in coordination with other DPs, should agree on a few strategically selected priorities and lend its public and private voice to having sustained pressure. It was considered crucial to find ways that would focus on the people who facilitate corruption (politicians providing protection, lawyers who benefit from proceeds of crime, some people in business), a relatively small group of people, take them ‘out of action’ and disrupt their ‘business.’ The EU could consider using trade incentives. In any case, the (public) voice of the EU on these matters is considered as key, given that it can speak with its money.

Synergies between high level dialogue processes and operational interventions at national have been used or created. The document review revealed that the EU in Jamaica has maintained over the years a sustained and robust dialogue at operational, policy and political level to consolidate policy progress. One interesting example for this case study is the following: in 2019, close to the signature of the Jamaica Crime Consensus the EU has particularly insisted on the need to create a fully independent mechanism with members sitting in the Crime Monitoring and Oversight Committee directly elected by the groups they represent. The EU later provided strategic support to CMOC to contribute to its effective functioning. In some areas, though, there is room for improvement. For example, interviewees considered that some additional push from the DPs and the EU could help achieve important change for the Integrity Commission, to reform its and allow the Commission to inform the public about its work, which is crucial for public trust. More generally, interviewees highlighted that synergies between high-level dialogue and interventions – and vice-versa – should be strengthened to address high-level corruption and impunity. E.g. the justice sector reform programmes could allow to promote some pivotal movements in this regard, in particular since relative independent judges may act without too many personal implications when confronting powerful individuals. Creating the conditions to bring some high-level people to court was considered by many as fertile ground for change. Complementarity areas of action include illicit enrichment, unexplained wealth orders, appointments of public boards and conflicts of interest regimes. Including interviewees from state institutions agreed that addressing high-level corruption is an area of need for the country to coalesce around. Collectively, donors, including or led by the EU, should establish a process to develop a strategic anticorruption roadmap, ideally linking it to the Jamaican Crime Consensus as nationally-led entry point.

There have not been any events that would indicate a deteriorating RoL&AC situation, restrictions of civil space or other serious backlashes.

Effects of EU support to RoL&AC

EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions

JC5.1 Core legal and administrative reforms

The comprehensive **EU support to Jamaica's justice and security sector has contributed to the creation, reform and/or strengthening of a series of key institutions**. These include the creation of INDECOM (Independent Commission of Investigations) in 2010 through a Parliament Act which repealed the Police Public Complaints Authority; MOCA (Major Organised Crime and Anticorruption Agency) in 2014 resulting from a merger of the former Anticorruption Branch (ACB) of the police and the Major Organised Crime and Anticorruption Agency; the Integrity Commission in 2018 as a single anticorruption agency reporting to Parliament; and the design of an Independent Fiscal Council to support Parliament in its oversight function. The police was strengthened through training and increasing its forensic capacities, an anticorruption branch within the police was supported, an Anticorruption Policy and Strategy for the police developed, and the Public Services Commission (PSC) – an external oversight mechanism for the police, created. In addition, in the area of PFM reform support, significant legislative reforms in the areas of procurement, tax and custom administration and revenue appeals were achieved, a Management Accountability Framework for the Parliament developed and a Technical Office to support the members of parliaments in fiscal and budget analysis set up. The EUs support to civil society, notably NIA, contributed to getting the Political Party and Campaign Financing Registration Act passed. On the other hand, interviewees pointed to **Jamaica having a fairly robust legal framework for tackling crimes, while implementation and enforcement are the main challenges**, not the legal or regulatory frameworks.

The EU has **contributed to significantly increase funding for the justice sector**. The budget support indicator of the JSRP programme 'Increased budget allocations to justice sector institutions and programmes and budget execution' was met and according to interviewees the 'government itself sees the importance of the investment in the sector.'

EU support to the justice sector has strongly focussed on providing technical and digital equipment for key areas in many of its partner institutions. And capacity building initiatives have made significant contributions to justice reform activities. For example, training and IT equipment provided to INDECOM contributed to a significant increase (694%) in the output of the Legal Department as well as a reduction in the processing time of cases, helping to eliminate case backlog. Additionally, the installation of audio-visual recording equipment into 19 courts (78 court rooms) across the country facilitates video and audio evidence and electronic recording of evidence for the courts of Jamaica, helps improve witness protection, and allowed the Justice Sector to continue 'business' during the Covid-19 pandemic. This unexpected result was highlighted by virtually all interviewees, including the Chief Justice, as especially relevant. The improvements to court infrastructure have proven highly relevant, e.g. in the case of the Court of Appeal chambers for judges (which increased from 7 to 13) as well as two major court rooms to address complex cases were established, and restorative justice centres and family courts built. The prior outdated and largely insufficient court infrastructure was considered by all interviews as a serious impediment for court performance. An electronic case management system in the Courts Management Services was established and is expected to replace the largely paper-based system (the procurement process, though, of this system has faced numerous challenges of all sorts). Finally, EU support to training was particularly relevant in converting the police training school into a modern police training facility renamed as National Police College of Jamaica. And justice sector worker training provided by NIA, MOJ and the Justice Training Institute was valued by sector experts.

JC5.2 Strengthening of institutional architecture

The Jamaican justice sector has experienced **important results in terms of addressing case backlogs and reducing clearance rates**. For example, under the SRRP, there has been a drastic reduction in case backlog (82% in Supreme Court Criminal Division and 99,7% in Circuit courts), and the JSRP contributed to improving service delivery to constituents through the reduction in backlog and the adoption of performance & service standards. In addition, great gains were made in parish courts, where 83% of criminal cases are disposed in 12 months, 92% in 24 months, and the situation for civil law cases is similar. The Court of Appeal has improved its performance, too, although the main challenge continues to be getting transcripts from trial courts in a timely way. **The rule of law principle of timely delivery and access of justice is moving into right direction**. Interviewees further highlighted the first strategic plan of the justice sector as an important achievement.

In line with the national justice sector reform strategy, the **EU pursued an integrated approach to justice sector institution strengthening**. Its support to national law enforcement institutions, including the police, INDECOM, MOCA and the Integrity Commission, as well as its substantial support to help the court system to become more effective, speak to this integrated approach. The police made progress to address internal corruption as reflected in disciplinary actions taken against officers charged and this information has been made available on the Anticorruption Branch's website. In the case of MOCA, the remit of this entity was shown

to change from police corruption to addressing public sector corruption and to engage in investigating economic and financial crimes. By sharing information between the two agencies, they have reportedly become more effective. The more recently established Integrity Commission, in turn, has been facing a challenge since its creation, the prohibition to publicly communicate information on the cases it is investigating, which has negatively affected its capacity to generate public trust.

Despite these overall positive results, **interviewees have raised several recurrent issues of concern**: i) the lack of convictions in cases of corruption allegations against high-level officials; ii) a series of legal and operational challenges to collect and/or produce solid evidence in cases of alleged high-level corruption/collusion (investigations usually do not go beyond the facilitators while not getting at the 'master-minds'); iii) the need to further overcome institutional 'silo' mentalities and operational limitations. **The main concern can be summarised as the vastly negative effects of 'impunity for high-level white-colour crime' on Jamaican overall development as well as the recognition that there are (still) important entry points to bring about change, which need to be taken up.**

With regard to **quality data production and monitoring capacity of RoL&AC institutions** the following two issues are particularly noteworthy: i) the improvement of the **court system of its data management** and statistics has widely been considered a **success**; ii) INDECOM publishes valuable information and statistics; iii) the **budget support** aid modality has had a positive effect on **strengthening national monitoring and evaluation systems**, as programme data collection became at the same time part of the national justice system.

JC5.3 Progress in justice systems and anticorruption frameworks

As said above, there been **progress in terms of access to justice through an important decrease of backlog of cases, increased witness protection** through the audio-visual equipment for court rooms as well as through **mobile legal aid clinics** reaching out to remote communities.

The strengthening of **three family courts and six restorative justice centres** in communities have further helped increase access for vulnerable communities.

In addition, the **child diversion policy, which the EU helped to implement, has been a crucial approach** to ensure appropriate access to justice for youth. Related to this issue is JSRP result: the rehabilitation services for children in custody maintained 100% enrolment rate throughout the programme.

And finally, civil society led projects worked with vulnerable communities, including the rehabilitation of inmates.

EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions

JC6.1 Legal safeguards, checks and balances

First of all, it is noteworthy that the **Jamaican judiciary is largely considered as independent and valued for its integrity**. Also, **judges are recognised for their independence**, although there are issues of competence. As the one of the key interviewees put it 'the system of justice is immune and fearless, even though some judges need to be replaced.'

Secondly, EU programmes **contributed to strengthening the impartiality of justice and AC institutions**. This is illustrated by the adoption of performance & service standards for the judiciary; the development of a governance and reporting framework for Court Management Services; the progress made by the police in addressing internal corruption as a result of an institutional AC policy and its implementation leading to detection and disciplining / sanctioning of cases. The 2012/2013 National Crime Victimization Survey showed a positive perception of the police in areas close to communities served by Community Policing. In 2015 LAPOP studies also reflected a reduction of the bad perception of the police compared to earlier studies even though it was still not very positive.

One of the most relevant recent events for the independence of the judiciary consisted in the appointment of the Chief Justice. The **government attempted to limit the independence** of the judiciary, when the Prime Minister appointed the Chief Justice in a temporary position which is against the constitution. This move was stoutly opposed by civil society and all media actors and in response to this **public outcry**, the government overruled its own particularly unpopular decisions. The **Chief Justice was appointed subsequently for the legally foreseen permanent position** and is highly regarded as an independent and outspoken judge.

On the other hand, aspects of legislation governing lead authorities in RoL&AC institutions does not (always) seem to ensure independence. In addition, the nomination of the members of multiple public boards which oversee a variety of issues related with public policy and public functions has been a long-standing issue of public concern. Appropriate safeguards and conflicts of interest management are not in place, posing serious challenges for the independence of these boards and reinforcing opportunities for corruption, in particular in a small island state like Jamaica with its acknowledged practices of collusion and 'watching each other's back'.

Last but not least, interviewees have highlighted the challenges associated with the legal profession in the country. Not only has the Bar Association been identified as one of the opponents to legal reforms necessary to fight more effectively organised crime and corruption. Also, a number of Attorneys-at-Law in Jamaica have been disbarred or disciplined due to illegal or unethical activities.

JC6.2 Oversight institutions, non-state actors and the private sector

External oversight of the Parliament has been strengthened in terms of budget transparency and oversight, budget documentation, external audit, and legislative scrutiny of the audit reports have improved. The external audit function and scrutiny by both the Public Accounts Committee and Public Administration and Appropriation Committee of the House of Representatives enhances fiscal discipline. The Independent Fiscal Council was designed to provide parliament and the public with nonpartisan and objective fiscal and budget analysis thereby empowering the decision makers in making evidence-based decisions and in better executing their oversight and scrutiny role in relation to the Government budget and its compliance with the Fiscal Rules.

For **Caribbean standards civil society in Jamaica is fairly active and has been crucial** to demand accountability and transparency, considerably supported in these endeavours by the EU. For example, the Jamaican Accountability Meter Portal is working on civic engagement and oversight of government and parliament accountability in an innovative way. CAPRI think-tank is producing reports and public events to enhance civil society participation to evidence-based policy making on sensitive and key topics. The Caribbean Vulnerable Communities and Jamaicans for Justice helped with the documentation of abuse and discrimination, including from police forces, and contributed to the creation of INDECOM, among others by documenting all steps in the line of police abuse impunity. Caribbean Vulnerable Communities also takes legal cases to the Interamerican Human Rights Commission (including on trans rights).

The EU has **contributed to multi-actor coalitions engaging in transparency and integrity related processes**. Thus, number of CSOs, including National Integrity Action, Jamaicans for Justice, CMOC, CAPRI and others, have contributed to bring about legal and/or institutional change as well as to engage in national dialogue and public debates on RoL&AC related issues. For example, grant funding and other support provided to CSOs helped improve budget transparency through public education (CAPRI) and the passage of the Campaign Financing Bill and the Integrity Commission Act through advocacy (NIA). Also, NIA played an important role in getting public, private and development actors to the table to, discretely and openly, discuss governance, integrity and corruption related, sometimes sensitive, issues. The approach of the **EU to go beyond funding opportunities of CSOs and help them to have a greater voice** when interacting with certain target populations certainly helps.

As said above, in Jamaica the private sector is a distinctive feature given that **private sector organisations have demonstrated their interest and commitment to engage in security, justice, RoL** and anticorruption reform initiatives. The perhaps most encompassing multi-stakeholder initiative in these areas is the already mentioned Crime Monitoring and Oversight Committee, consisting of 16 members from a broad cross section of private sector, youth, women, unions, CSOs, a nominee of the PM and the opposition. But currently compliance with the agreed upon key reform measures, in particular with regard to AC related issues, is lagging. The EU also supported the Jamaican Private Sector Organizations in view of its efforts to generate public debate on RoL&AC issues.

On the side of challenges, **CSO face difficulties to sustain the demand and public pressure for change, partly due to funding shortages for more long-term engagement on specific issues**. This is particularly problematic for civil society monitoring of public policy implementation, as the Jamaican paradox consists precisely in having good laws and institutions, but implementation is unsatisfactory in many cases. This so-called implementation gap contributes to the identified citizen apathy. People largely believe that nothing can change for the better, even police shootings and corruption does not generate a citizen response, and people are tired of empty government promises. Despite the existence of some pilot projects on civic engagement (integrity clubs in schools, eg.), broader programmes on civic education and human rights are needed. Also, it is important to further encourage cooperation, joint advocacy and joint activism.

EQ7: Broader effects on RoL&AC culture, human rights and democracy

JC7.1 Promoting a RoL&AC culture

Efforts are made by the EU in Jamaica to address social and cultural factors in its programmes. Given that most of justice and security sector programmes are mainly implemented through budget support, the design of the programmes is framed within national policies and strategies and implementation is handled mainly by national public entities. Nevertheless, within the design of the new Citizen Security and Justice Programme (CSJP) **a social norms study was developed** by the Violence Prevention Alliance in order to inform CSJP's social marketing strategy geared at changing the social and cultural norms that give rise to violent behaviours and the Ministry of National Security has expanded its policy and programme focus in

addressing cultural, social and economic factors that have been associated with crime.⁶² Also, the EU recognised that cultural norms of competitiveness and attitudes of exclusion in the workplace need to be addressed to ensure sustainability of technical and institutional capacity building provided by the JSAT programme. However, **regarding other RoL and specifically corruption related social norms**, interviewees indicated that the EU has a fairly good **understanding but does not go deep enough to ‘really’ understand the dynamics**. In Jamaica, a very small country, people go through the same law school and know each other, which results in a remarked reluctance to call out on each other or to identify corrupt lawyers. Reportedly people rather keep secrets on each other for fear of becoming victim of the power structure, including retaliations in future occasions when present relations of authority are inverted. **Understanding in depth the motivations and pressures for unlawful and corrupt behaviour** as well as identifying **levers for change (both incentives as well as sanctions including social shaming)** would be an **important input** for initiatives aimed at cultural change for integrity.

As said above, the **EU has pursued a comprehensive approach to work with society at large to strengthen their demand for reforms** and assume their own role and responsibility to achieve better results. This is reflected in i) its grant funding to strengthen civil society organisations in advocacy and participation for transparency and accountability, ii) its political-institutional support for CSOs to strengthen their voice in advocacy activities, iii) the inclusion of a significant CSO component in all large budget support programmes; iv) its strategic support to private sector organisations and private-sector-led multi-stakeholder initiatives like CMOC.

With regard to **systematic integration of RoL&AC lens into other EU sectors of intervention**, the analysis of documents and interviews leads to a somewhat **mixed picture** which can be summarised as follows: efforts at political level were made under a very energetic and charismatic former Ambassador, and at programme level opportunities are used intelligently when they emerge, while otherwise more implicit or indirect approaches seem to be chosen. The PRP and Forestry Programme include a focus on governance, conflict of interest management in community decision making, and combatting illegal practices, including timber trafficking, among others and this emphasis is certainly a good starting point. However, an important path for the **EU’s future engagement in Jamaica would be to ingrate consistently a strategic and candid anticorruption or pro-integrity lens all interventions**.

JC7.2 Fostering human rights

The EUD in Jamaica commissioned a **Gender Analysis in 2017 as basis for its overall gender approach** in Jamaica (and neighbouring islands) and which provided a basis for integrating a gender lens into EU programming. Overall, the gender and vulnerable groups lens is present in programming and reporting documents. In addition, specifically the EIDHR instrument has been used to support CSOs in this field. And the JSRP programme included the establishment of 3 additional Family Courts especially providing protection and access to justice for women and children.

In terms of the EU standing up against discrimination, the EU is seen by a number of interviewees as reliable and values-driven partner to challenge certain standards (including criminalisation of same sex marriage, other LGBTI rights, death penalty, etc.), even though it may not always use its public voice, but rather use a variety of channels to exert influence or bring pressure to bear. Also, in the case of a multinational mining corporation and illegitimate land use, where government had lifted a set of legal norms to allow mining operations in a protected UNESCO area, ‘the government finally bent to pressures from CSO and IDPs, although the latter may have acted prudently behind the scenes.’

JC7.3 Application of democratic principles

Jamaica has a long tradition as a stable democracy with respect for the rule of law and observance of most fundamental human rights and freedoms. Successive relatively fair and free elections have resulted in peaceful transitions of power between the two major political parties. Jamaica fares well in terms of regulation of political finance and electoral administration. Human rights, freedom of speech and of the press are generally upheld. EU interventions related to RoL&AC have benefitted from the Jamaican context, and have continued to strengthen the respect from democracy, and human rights. Jamaica with relatively robust national institutions

⁶² The following illustrates well the analysis of the issues at stake: ‘ They place no hope in the police to bring justice and claim that by running a legal business as a front for an illegal on, they are just following the example of politicians and businessmen. The ‘informa fi dead’ culture remains strong because the communities do not trust the police. They feel that a reformed police force would make a difference to improving the trust. The view held by communities is that the poor man gets no justice in this society. It seems likely that as the Courts become more efficient, as appears to be happening under the direction of the new Chief Justice, and if simultaneously police investigation improves, this social norm can be undermined.’ Social norms project – 2018.

provides a context where the EU's RoL&AC agenda can be fairly easily articulated with other EU values. And this has been the case.

With regard to the anticorruption approach, the EU pursues in Jamaica some explicit AC objectives, in particular related with the justice sector (e.g. corruption within the police, state capacities to investigate corruption) and civil society support for AC advocacy. The EU has also supported Jamaica to strengthen its PFM system, including some aspects relevant for the prevention of corruption. This seems to respond more to **the logic of ensuring proper conditions for its significant budget support rather than to a strategic AC approach**. In view of the increasing visibility, public concern and sophistication of corruption, collusion and nepotism in the country and its close links to crime, violence, insecurity and the overall investment climate, a strategic overall approach to AC seems to be missing. With regard to **high-level corruption and collusion as well as impunity for white-collar crime, the approach of the EU is considered by many interviewees of falling short of the country's reality.**

EQ8: Effects on wider EU external action goals

JC8.1 Peace, resilience and stability

The EU support for the **security and justice sector aims 'by definition' to support peace and resilience in Jamaica by addressing major destabilizing structural issues, such as violence and crime** as well as violent reactions by some state institutions (e.g. by the police through extra-judicial killings). There was a noticeable impact in a decrease in the number of extra-judicial killings of citizens by the police, e.g. since the establishment of INDECOM. Additionally, there have been less street protests because of INDECOM's impact and the faith residing in its actions to secure citizen rights. And the support to address corruption within the police itself has contributed to improving public perceptions on police.

As said before, **the EU has systematically pursued to integrate inclusion, rights and voice in its interventions and to contribute to an environment of accountability**. This is reflected in particular in i) the inclusion of a significant CSO component in all large budget support programmes; ii) the political dialogue with the Jamaican government to ensure civil society and external oversight of programmes; iii) its long-term engagement with community development through the PRP programmes, especially the component supporting the Jamaican Social Investment Fund aimed at particularly vulnerable communities, iv) its grant funding to strengthen CSOs in advocacy and participation for transparency and accountability as well as to foster human rights (especially of women, youth and inmates).

And as also indicated above, the EU **approach to address impunity challenges in the criminal justice system has doubtless been comprehensive** in itself and was further helped by good complementarity with other DPs. This is reflected in the fact that the police and all relevant investigative institutions were strengthened as well as the court system to ensure that justice is effectively discharged. Result have been presented in prior sections. **The most prominent and relevant area for determined future engagement is impunity for high-level corruption.**

JC8.2 Functioning market in compliance with human rights and due diligence

A distinctive feature of the Jamaican context is the **private sector engagement in security, justice and governance reform issues**. Endowed with strong and frank leadership, some private sector organizations/initiatives constitute potential for drivers of change. The EU not only supported an initiative of the Private Sector Organization of Jamaica (PSOJ) to generate public debate and dialogue on anticorruption but also seized the opportunity to support the recently founded Crime Monitoring and Oversight Committee (CMOC), a multi-stakeholder initiative, including the governing and opposition parties, to monitor compliance with the commitment to key RoL&AC reforms.

JC8.3 Natural resource management

No relevant information available was found nor did it emerge as an issue in interviews.

Overall assessment

Jamaica has a long tradition as a stable democracy with respect for the rule of law and observance of most fundamental human rights and freedoms. But Jamaica faces a paradox: while it counts with fairly robust and generally well-reputed formal public institutions, there is low public trust in fair and equal access to services and justice. The justice system is weakened by pressures from rising crime. Rising crime and insecurity are also major contributors to the low economic growth. The small island state is characterized by high levels of collusion between the small political, bureaucratic and economic elites. It is recognized that the problems are not only the result of mismanagement or incompetence, but the product of a political system that rewards patronage. Also, there is a growing sense that society must take action against corruption in order to win the 'other' battles of crime and violence.

The RoL agenda is central to the EU's engagement in Jamaica, where the EU has become the lead donor for the security and justice sectors. The EU's support to RoL and AC is aligned with government strategies and focused on modernising Jamaica's justice system as part of structural reforms, ensuring judicial integrity and independence, enhancing transparency and accountability of court operations and in improving access to justice, with a focus on detention conditions and juvenile justice. Broad bi-partisan support for justice sector reforms has been highlighted as one of the key elements for success, and reportedly does not exist in other sectors. The EU also pursues some explicit AC objectives, in particular related with the justice sector (e.g. corruption within the police, state capacities to investigate corruption) and civil society support for AC advocacy and helps to strengthen the PFM system. The latter, though, seems to respond more to the logic of ensuring proper conditions for its significant budget support rather than to a strategic AC approach.

Budget support (BS) has evolved to be the main aid modality. BS programmes include a civil society component and provide an important opportunity to foster state-society relations in a context, where the national government does not easily open up to civil society participation.

The partnership between the EU and Jamaica is based on mutual respect and the EU has been able to influence the RoL reform and, to a more limited extent, the AC agendas. The use of BS for large RoL related programmes provide positive incentives. In addition, the EU brings its political weight to the table, given that it is the largest grant giving institution in Jamaica. BS has also been key in policy dialogue in order to leverage the demand for more external and independent oversight. However, there is room for improvement to use BS to leverage key issues around high-level corruption. An important path for the EU's future engagement in Jamaica would be to ingrate consistently a strategic and candid anticorruption or pro-integrity lens into all interventions.

In terms of results, the comprehensive EU support to Jamaica's justice and security sector has contributed to the creation, reform and strengthening of a series of key law enforcement institutions, to help the court system to become more effective, to improve access to justice through an important decrease of backlog of cases and increased witness protection, to significantly increase Jamaican State funding for the justice sector and to strengthen external oversight of the Parliament. The support to civil society led to demand for change and multi-actor engagement for transparency and integrity related processes. The approach of the EU to go beyond funding opportunities of CSOs and help them to have a greater voice certainly helped. A distinctive feature of Jamaica is the private sector engagement in security, justice and governance reform issues, constituting potential drivers of change. On the other hand, CSOs face difficulties to sustain the demand and public pressure for reforms, partly due to funding shortages for more long-term initiatives. Clearly an area for future EU support.

The EU is highly regarded as adding value in Jamaica as a value-driven, context sensitive, standard-setting, inclusive and rigorous development partner.

At the same time, the EU could and should develop a more strategic approach to high-level corruption and impunity for high-level white-collar crime. The distinctive feature of Jamaica in this regard is that i) corruption, collusion and policy capture is not as bad as in many other countries in the LAC region, ii) there are reform oriented politicians and there is competition between political actors, and iii) the private sector has a demonstrated interest to engage in this kind of reforms. These conditions lead to a perceived paradox: given the political sensitivity of corruption, the EU prefers not to rock the boat and rather continue to pursue systems reforms assuming that these will eventually lead to making corruption more difficult and to bring some of the big fish to court in order to strengthen deterrence. However, there is little evidence that these kind of assumptions actually work. Rather, there are considerable risks that the contrary may become the case. Opportunities to pursue a determined and strategic anticorruption agenda while drivers and enablers for change still exist, should be used.

Case study note – Kenya

Introduction.....	58
Political economy analysis	58
Overview of the EU support to RoL&AC	60
Strategy and implementation of EU support to RoL&AC	63
EQ1: EU strategic framework/institutional environment.....	63
EQ2: Responsiveness, ownership and flexibility	65
EQ3: Partnerships and coherence	67
EQ4: Choice of modality	68
Effects of EU support to RoL&AC.....	71
EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions	71
EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions	73
EQ7: Broader effects on RoL&AC culture, human rights and democracy.....	74
EQ8: Effects on wider EU external action goals	77
Overall assessment	79

Introduction

Remark: This case study note does not constitute a separate evaluation of EU support in the country or its situation with regard to RoL&AC. It presents country-related findings relevant to the overall assessed judgement criteria and indicators, and feeds into the main evaluation report of the Evaluation of the European Union support to Rule of Law and Anticorruption in Partner Countries to which it will be attached as an annex.

Political economy analysis

Kenya has enjoyed relative stability since its 1963 independence, though characterised by recurrent episodes of violent electoral conflicts. The autocratic one-man rule by President Moi from 1978 to 2002 left a deep mark on the country and the social contract between state and society. Even after the shift to a multi-party democracy in 1992, the executive continued to exercise considerable control over the judicial and legislative branches through repression, threats and far-reaching forms of patronage which undermined the economy and the rule of law. The country continues to suffer from endemic levels of corruption spreading through all sectors, levels of governance and society. A “*self-serving political class*” with limited integrity⁶³ and supported by crony business interests, helps to sustain a culture where various forms of injustice are often tolerated and the protection of human rights is weak.

As a lower-middle income country (since 2014), Kenya is the largest and most diversified economy in East Africa and a regional hub for transport, finance and trade. with the potential to become a middle-income country. However, 1/3 of the people are living below the poverty line, with limited access to qualitative public services, including justice. Police and prisons (suffering from severe overcrowding) continue to be poorly rated. Kenya has faced high levels of insecurity for many years as a result of competition for land (exacerbated by drought and climate change), exclusionary ethnic identity and victimisation dynamics, armed civilians operating as bandits or criminal groups (including across borders) and a history of marginalisation of the country’s periphery, particularly North-East counties -which are increasingly becoming transit points for migration and breeding grounds for radicalised youth. Kenya borders countries characterised by instability -generating major security threats as well as refugee flows and semi-permanent refugee camps being installed on the territory.

The ethnic polarisation and related political and socio-economic divides in Kenyan society manifested themselves in a violent post-electoral governance crisis at the end of 2007-early 2008. However, the country has repeatedly shown its capacity to handle major political tensions⁶⁴. The crisis led to a grand coalition government aimed at restoring national cohesion. It paved the way for the progressive 2010 Constitution, which drastically changed the formal rules of the game. It includes a Bill of Rights for all Kenyan citizens (irrespective of their social, religious or ethnic background) as well as provisions regarding the separation of powers, the existence of independent checks and balances institutions, devolution to counties or new norms and standards on integrity, public transparency, social accountability and the fight against impunity.

After the peaceful elections of 2013, the government continued to launch reforms and enact laws to translate core provisions of the 2010 Constitution into practice, with varying levels of commitment and effectiveness⁶⁵. Major setbacks can be noted related to the vetting of the Police, the application of the 1/3 gender clause in parliament, the limited progress in the fight against impunity (as illustrated by the lack of follow-up of the 2013 report produced by the Truth, Justice and Reconciliation Commission) or the proliferation of extrajudicial killings. In 2020, Kenya ranked 102 out of 128 countries on the Rule of Law index (with its 8 criteria), with the lowest scores being obtained on the criterion “*absence of corruption*” (122 out of 128) and “*order and security*” (117/128)⁶⁶.

The independence of the judiciary remains a major point of confrontation between political elites that seek to protect a culture of patronage, corruption and impunity facilitating access to power, on the one hand, and a judiciary sector with reformist eager to push for a genuine implementation of the Constitution and better rule of law, on the other hand. Recent examples of judicial independence are the decision of the Supreme Court to annul the 2017 general election results, forcing a rerun and the August 2021 ruling of the High Court and Court of Appeal against the executive, which pushed for far-reaching constitutional changes through the called the ‘*Building Bridges Initiative*’⁶⁷. The courts ruled that the bid to amend 74 clauses of the 2010 Constitution,

⁶³ A term coined by several Kenyan interlocutors interviewed during the field phase.

⁶⁴ Turi, G.C. 2021. *Kenyan voters need leaders focused on equity and inclusivity*. Institute for Security Studies, Blog, 6 October 2021

⁶⁵ Interviews with civil society organizations such as Transparency International confirmed the deliberate attempts of political elites to slow down the application of the 2010 Constitution (e.g. by adopting law but then preventing implementation decrees or foreseeing the institutions in charge with sufficient funding).

⁶⁶ World Justice Project. 2020. Rule of Law Index.

⁶⁷ The proposed bill included retrogressive changes compared to the 2010 Constitution such as increased presidential powers, an expanded executive (e.g. through installing a hybrid form of government, based on power sharing between a president and a prime minister, presented as a way to ensure a “more united nation” and ensure a better share power

which was backed by President Uhuru Kenyatta and his allies, was unconstitutional (as it did not follow the rules and procedures foreseen to amend the fundamental law) and represented a case of unlawful conduct.⁶⁸ These rulings demonstrated that Kenya's constitution is not merely a piece of paper and that courts can use the rule of law to ensure a peaceful resolution of political conflicts.

However, evidence also indicates Kenya's judiciary continues to be confronted with major challenges which reflect poor adherence to the rule of law. These were well summarized by the Kenyan section of the International Commission of Jurists (ICJ) in the context of the UPR process in Geneva. The main weaknesses include: (i) a lack of implementation of (national, regional, international) court decisions; (ii) continuous and discriminate budget cuts to the judiciary (which also explains the limited judicial infrastructure and shortages in terms of qualified human resources at various levels)⁶⁹; and (iii) the deliberate undermining of the independence of the judiciary.⁷⁰ There is also fragmentary evidence of cartels in the justice sector and corruptive practices⁷¹

Equality before the law is a major challenge in a country with huge income and regional disparities. Women in particular are confronted with legal barriers to enjoy their rights. The gender gap index score increased in 2021 meaning females were 30% less likely to have the same opportunities as males in the country. The situation worsened in terms of the criteria 'economic participation and opportunity' and of 'political empowerment'.⁷² While women have the legal right to own land, in practice only 2% is in their hands. Women hold less than 10% of the available credit in Kenya. Part of problem lies in the prevailing legal pluralism. While the Constitution is the supreme law, there is also Islamic law (with specific 'Khadis' courts) and customary law (unwritten norms and practices of smaller communities predating colonial times). These competing systems are often in tension and can serve to restrict women's rights and maintain inequalities. Social norms further compound the situation in an adverse manner⁷³.

Consultations during the field phase illustrated the main obstacles preventing an effective fight against corruption, such as resistance of powerholders to push through genuine reforms, poor implementation of laws (such as the access to information bill which hamper action by CSOs, the Parliament or the media), the limits encountered by independent bodies, the reluctance of reporting on corruption (exacerbated by the absence of effective protection of whistle blowers), the politically induced weaknesses of prosecution⁷⁴ or the lack of responses to critical reports on PFM by the Auditor-General.

While the 2010 Constitution remains a source of inspiration for both reformists within state agencies and civil society activists, a recent poll done shows that many Kenyan citizens are now, ten years after the adoption of the Constitution, much less optimistic about its capacity to change the way of doing politics in Kenya, reduce ethnic polarisation, ensure gender equality and bring more socio-economic justice.⁷⁵ The COVID-19 had a profound impact on the country's economy and on the living conditions of citizens, further deepening the socio-economic divides as well as the poverty and vulnerability levels. Women and girls were particularly affected, as reflected in growing violence.⁷⁶ On the positive side, the COVID crisis triggered advances in digitalization processes regarding the rule of law and the provision of justice⁷⁷.

between the different ethno-regional groups) or the granting of oversight over the judiciary to the President. See: Mbaku, J.M. *Is the BBI ruling a sign of judicial independence in Kenya?* Brookings, Africa in Focus, 19 August 2021.

⁶⁸ Shihalo, W.K. 2021. *Kenya's next election in view: the struggle between elites and the rule of law is intensifying*. Blog in 'The Conversation', 28 September 2021

⁶⁹ For instance, 75% cut after Supreme Court decision to nullify presidential elections in August 2017 or the Treasury decision to slash 50% of the judiciary budget after decision to suspend from office all governors having corruption related cases. See Mtua, T. 2019. *The judiciary and the rule of law in Kenya*. An ICJ Presentation at the 35th pre-session of the UPR, Geneva. 10th December 2019.

⁷⁰ Through fake news and malicious accusations to intimidate judges, through delays or refusal by the President to appoint judges and members of independent commissions or through amendments to provisions guaranteeing judicial independence (like recently with the abovementioned Building Bridges Initiative (BBI))

⁷¹ Transparency International was asked to do a study on corruption/governance in the judiciary system. It was a complex task, taking almost 6 years (reflecting internal resistances to change). The report was not made public.

⁷² Global Gender Gap Report 2021.

⁷³ White and Case LLP. 2017. *Kenya: Closing the credit gap for women entrepreneurs*. 20 Nov 2017.

⁷⁴ According to several interlocutors the weakest element in the chain, as exemplified by the number of cases that never get to a conclusion, despite the existence of legal timelines (cynically, the law foresees that if the case is not handled within years for "administrative reasons", the person facing charges can resume office, including political functions).

⁷⁵ Only 23% of Kenyans expressed satisfaction with how the Constitution was implemented and 77% are either dissatisfied or disinterested. Infotrak poll referred to in: Mwaura, W. 2020. *Letter from Africa: Why Kenyans are no longer cheering their Constitution*. BBC.

⁷⁶ Human Rights Watch. 2021. Report by Nnoko-Mewanu, J. e.a. *I Had Nowhere to Go. Violence against Women and Girls during the Covid-19 Pandemic in Kenya*.

⁷⁷ Confirmed by several interviews during the field phase.

The above succinct political economy analysis reveals that the Kenya country context provides a mixed picture regarding the feasibility of RoL&AC reforms. On the one hand, progress on democracy and development is stifled by a political settlement between elites aimed at safeguarding high levels of state capture and impunity for poor governance and corruption. On the other hand, there reformist forces across the board, innovative experiments regarding the RoL, the promotion of social accountability and alternative justice systems⁷⁸ as well as societal demands for social justice and against corruption. Overall, the space for civil society is contested but not fundamentally shrinking. While the environment is undoubtedly challenging for domestic and external actors to push forward the RoL&AC agendas, there are also a wide range of opportunities and strategic entry points for relevant interventions. Kenyan stakeholders interviewed insisted in particular on the potential of investing in “*equality before the law*” as key enabler to connect the rather abstract notion of the RoL with issues that really matter for (poor/vulnerable) Kenyan citizens (e.g. land rights, economic justice, rights-based approaches to basic social services).⁷⁹ It is all about justice in sectors through the strengthening of regulatory frameworks and institutions that are critical for the achievement of inclusive development (e.g. health, taxation, extractive industries).

Overview of the EU support to RoL&AC

During the period covered by this evaluation (2010-2021) two programming cycles applied:

CSP 2008-2013

As a member of the ACP group of States, Kenya benefitted from successive European Development Funds. Under the 10th EDF, a Country Strategy Paper (CSP) was elaborated in a participatory manner, which retained two focal sectors: regional economic integration (by means of transport infrastructure) and agriculture / rural development. Non-focal sectors would provide capacity development amongst others for “*improving governance and strengthening non-state actors*”. The CSP includes commitments to undertake “*mainstreaming efforts ... on good governance, democracy, human rights, the rule of law and support for NSAs*”.

In the absence of solid government reform commitment in the area of RoL (and even less on AC), the EU opted to mainly focus on the demand-side for governance/RoL by engaging primarily with non-state actors. In practice, this took the form of a wide range of small projects targeting institutional development and empowerment of CSOs as governance actors (i.e. participation in policy processes, advocacy and watchdog roles). One programme was wider in scope and budget, i.e. the “*Building Bridges through Accountable Governance*” running from 2010 till 2014.

The country strategy evaluation of EU cooperation with Kenya over the period 2006-2013 considered that the EU “*in the Kenya country context of fragmented project aid and relatively weak donor coordination, adopted a pragmatic approach*”. The evaluation recommended that the future assistance should be in areas where the EU “*has built up comparative advantage and should be in line with government’s priorities*”.⁸⁰

MIP 2014-2020

The elaboration of the MIP benefitted from the above-mentioned recommendations of the country evaluation and from the joint programming approach with Member States and other donors that started in 2013. Some internal lessons at EU level were equally drawn from past interventions on governance / justice. First, that “*past support in this area lacked a comprehensive strategy and was too scattered and limited in scope*”. Second, that there was a “*limited institutionalized dialogue and information exchange between NSA (which mostly benefitted from the EU governance programmes) and national governments*”. Third, the need for a further “*consolidation*” of interventions in access to justice and electoral reforms “*with an expansion of scope and resources to allow some tangible impact*”. Fourth, that “*PFM reforms can only be effective if they are led by GoK and if they get high level political support*”.⁸¹

Based on all this, the EU sought to align more with Kenya’s ‘Vision 2030’ (the main long-term policy document) and the ongoing reforms processes aimed at implementing the 2010 Constitution, particularly in the area of governance, justice and the rule of law. It led to a MIP based on three sectors of concentration, including two of a developmental nature and largely a continuation of previous EU support (food security and resilience to climate change; sustainable infrastructure). The third sector, called “*Accountability of Public Institutions*” (14% of total budgetary envelope) sought to roll out a more upfront and comprehensive approach to addressing governance/RoL issues (combining both the demand and supply side). It pursued three specific objectives, formulated as follows in the MIP:

⁷⁸ Efforts are ongoing at national level to align alternative traditional/informal justice mechanisms to the 2010 Constitution. For an overview, see: Republic of Kenya, the Judiciary. 2020. *Alternative Justice Systems Framework Policy*. August 2020.

⁷⁹ Source: interactions with Kenyan civil society actors during the field phase

⁸⁰ European Commission. 2014. *Independent evaluation of the European Union’s Co-operation with Kenya for the period 2006-2012*.

⁸¹ Source: MIP 2014-2020.

- the justice system is made available to a greater diversity of Kenyans;
- public funds are better monitored and accounted for at all levels of governance;
- the 2017 elections are credible and centered around issues of public interest

Under this heading, Access to Justice occupied a central place, with the 'Programme for Legal Empowerment and Aid Delivery' (PLEAD), launched in 2016 and now to be extended till 2024. Using different instruments (EDF, thematic lines, IcSP, EUTF), other projects addressed specific justice issues (including at county level) as well as sensitive policy areas such as land governance and the countering of violent extremism (with potential ramifications into addressing RoL challenges). In 2019, the EUD launched a budget support operation for "Public Accountability and Service Delivery" (PASEDE) to support the new PFM Report Strategy 2018-2023 of the GoK. The assumption is that this will facilitate a more effective high-level political dialogue, including on corruption (considered as a "high risk" in the action document).

It is interesting to note that in the past two programming cycles the EU avoided to engage in a direct, open and comprehensive manner on AC -despite it being one of the key obstacles for the prevalence of the rule of law and for inclusive socio-economic development. The Court of Auditors (CoA) Report of 2020 on European aid to Kenya was highly critical on this policy choice.⁸² However, in the view of the EUD the political economy conditions were simply not present to meaningfully engage with the government on AC reforms. In the formal reply to the CoA, the Commission and EEAS admitted that corruption is one of "the biggest obstacles to Kenya's development". However, the phenomenon should be seen as "a deeply rooted societal challenge that cannot be tackled head on. Supporting electoral systems to introduce the emergence of issue-based politics, promoting access to justice, and increasing transparency of public finances are important aspects to work on to help Kenyan society to transition out of a social contract driven by corruption and patronage to a modern functioning democracy".⁸³ This explains the pragmatic approach adopted by EUD over the past years (see further below for the evaluation of this response strategy).

On the basis of this analysis, a sample of programmes to be examined for this case study was selected -in consultation with the EUD in Kenya (see table below). Some areas initially identified for the case study were not retained, as it was felt that their focus was not sufficiently related to RoL&AC issues or because they were too sensitive to discuss with national stakeholders (e.g. security projects or electoral assistance, particularly in 2022 with possibly conflict-ridden presidential elections⁸⁴). It was also agreed to use the field phase to assess the degree of mainstreaming of RoL&AC issues in (i) the development-oriented sectors of concentration of both the CSP and NIP and (ii) other policy areas in which the EU invests (e.g. trade, private sector development, investment facilities⁸⁵). The latter is relevant for a country like Kenya, as it is an economic regional power (with limited levels of aid dependency) and a strategic ally for the EU (in terms of geopolitical, security, economic and other interests). In such a context, the use of other sources of EU leverage (beyond development resources) becomes a critical challenge.

Table 4 Overview of EU-financed interventions to the support of RoL&AC in Kenya selected for the case study

<i>D or C year</i>	<i>Title</i>	<i>Budget (mEUR)⁸⁶</i>	<i>Typology</i>	<i>Implementing partner</i>
2010	Bridging Divides Through Accountable Governance in Kenya	EUR 9,2 M	Project approach	Ministry of Justice, National Cohesion and Constitutional Affairs and Ministry of Local Governments
2016 (extended)	PLEAD	EUR 34,5 M	Project Approach	UNDP (for support CSO providing legal aid) UNODC (for support national agencies)
2014	Improving the Juvenile Justice System in Kenya		Project Approach	CESVI

⁸² European Court of Auditors. 2020. *Report of EU aid to Kenya*.

⁸³ Ibid.

⁸⁴ International Alert. 2022. *Uwiano, machafuko au utengano. The Path towards August 2022 Elections in Kenya*.

⁸⁵ Mismanagement and graft scandals proliferate in public investment projects. See Voanews/Reuters. 2020. *Amid Kenya power struggle, IMF says investment program in crisis*. January 17, 2020. According to the IMF report, an estimated 500 projects had ground to halt due to "non-payment to contractors, insufficient allocation of funds to projects, and litigation cases in court"

⁸⁶ Planned EU contribution.

<i>D or C year</i>	<i>Title</i>	<i>Budget (mEUR)⁸⁶</i>	<i>Typology</i>	<i>Implementing partner</i>
	Imarisha Haki (fight against torture, ill treatment and violations of human rights in criminal and juvenile justice systems)		Project Approach	Kenya National Commission Human Rights
2016	EU Land Governance Programme (to be extended)	EUR 10,4 M	Project Approach	FAO
2018	Kenya-EU partnership on Countering Violent Extremism	EUR 5,5 M	Project Approach	National Counter Terrorism Center
2019	Public Accountability and Service Delivery	EUR 26 M ⁸⁷	Budget support	Treasury Government
2008-2020	A selection of projects in support of CSOs using thematic budget lines ⁸⁸		Project modality	Different agencies, including through sub-granting mechanisms
2014-2020	Different initiatives in support of devolution / local governance at county level which touch upon RoL&AC issues ⁸⁹		Project modality	Different agencies, with local authorities as beneficiaries of wider programmes (like PLEAD, IDEAS ⁹⁰)

⁸⁷ In this envelope, 23,5 M is for budget support, 2,5 M for complementary measures.

⁸⁸ Since 2008 the EU has funded a wide range of small projects for civil society on governance related aspects. For efficiency reasons, only a few have been picked out for more detailed analysis, while others will be surveyed in a more incidental manner.

⁸⁹ While the EU approach towards empowering Kenyan civil society in the area of the RoL/AC has been developed over time and is quite explicit, comprehensive and closely monitored, a different picture emerges regarding local authorities. Since the new Constitution was promulgated, the EU has increasingly sought to engage at local level to support effective devolution and facilitate access to justice. Yet the "actors-dimension" (i.e. what is expected from local authorities in terms of RoL/AC) is less explicitly defined and is rather embedded in the wider aim of promoting participatory local governance. The field phase sought to dive deeper in these local level initiatives to detect relevant actions touching upon RoL/AC).

⁹⁰ IDEAS ('Instruments for Devolution Advice and Support') is a 28,6 million EUR bilateral programme involving Kenyan state agencies, 15 county governments as well as the World Bank.

Strategy and implementation of EU support to RoL&AC

EQ1: EU strategic framework/institutional environment

JC1.1 Clear, context sensitive and realistic policy frameworks

RoL&AC is systematically highlighted as *core values/principles* underpinning the partnership relation in core external action documents (e.g. the Cotonou Agreement, EU-Kenya strategy papers, the Economic Partnership Agreement with the East African Community/Kenya) and in programming papers (CSP, MIP). It is also recognised that these issues constitute major challenges in the Kenyan context.

In the CSP 2008-2013, there was rather basic analysis of core policy priorities and an equally cryptic reference to the response strategies to be used in relation to governance (and within this broad umbrella to the RoL agenda). The MIP 2014-2020 provides a more sophisticated policy framework for the EU to engage on RoL&AC, yet primarily focused on using the development cooperation instrument. There is no concrete elaboration on how other key processes and tools could be used to promote RoL&AC issues.

An illustration of this “*disconnect*”⁹¹ is the whole area of expanding trade relations between the EU and Kenya, underpinned by an Economic Partnership Agreement (EPA) and reinforced by the “Strategic Dialogue” between both parties, recently put in place. No evidence has been collected of a pro-active use of these important trade protocols to directly and pro-actively engage and promote the RoL&AC agendas. Part of the reason is that trade relations are mainly organised at regional level, involving different circuits and actors. Regional trade programmes offer relevant complementarities (i.e. management of non-tariff barriers, mutual recognition agreements, trade facilitation) yet their focus is logically on the economic/technical dimensions. There is less interest/capacity to strategically use the power of the EU on trade to push for RoL&AC agendas in Kenya – a country with substantial exports to the EU. Recently, the EU and Member States have been raising issues faced by EU investors / private sector during policy dialogues (e.g. in the framework of the above mentioned PASEDE programme on PFM). Member states (such as Sweden and Denmark) are equally pinpointing uncertainties around taxation, valuation, custom procedures, all linked to unclear legal frameworks and corruption. Doubts have also been raised as to the leverage the EU would derive from using its trade power -considering amongst others the amount of remittances from the diaspora⁹². A similar storyline emerges when looking at EU programmes in support of private sector development, also characterised by a limited integration of RoL&AC issues. Things may evolve in the future though. In the Annual Action Plan 2021, a ‘*Business Enabling Environment and Export Programme*’ of EUR 25 million was approved with the potential to limit corruption at borders. The above analysis indicates that so far the EU in Kenya has not put in place and integrated and coherent engagement strategy on RoL&AC -combining all the possible elements of leverage and instruments at its disposal (indicator 1 of the JC).

Within the EU development cooperation portfolio on governance in the past decade there is evidence that the principle of differentiation and adaptation to specific country contexts was followed (indicator 2 of this JC), although the EU’s (evolving) response strategies were not always explicitly spelled out. Interviews with EUD Kenya staff suggest that three factors influenced both the CSP 2008-2013 and the MIP (2014-2020):

- the concrete political economy dynamics in the country – as it engaged on a complex and still ongoing transition from an autocratic one-party regime to a more inclusive and rule-based democratic system, underpinned by the progressive 2010 Constitution;
- the related political space available in-country to meaningfully support genuine RoL&AC reforms, sufficiently owned by the power holders;
- the *mandate* provided by the EU hierarchy to the Delegation to spend political capital on RoL&AC reforms.

These three factors combined provided the incentive structure for making programming choices in the various periods under consideration. They also help to explain certain rather surprising features of EU response strategies, like the absence of a major support programme targeting directly and explicitly the fight against corruption (despite its huge incidence and cost in Kenya). Yet available evidence suggests that the EUD applied a quite coherent political economy logic over time, assessing realistically the space available for reform and choosing coherent entry points for response strategies with levels of ambition related to “*what was feasible*” at a given moment of time.

This sequenced approach is visible when comparing the CSP (2008-2013) and the MIP (2014-2020). The EUD clearly felt the political economy conditions were not suitable to structurally engage with the coalition government that had emerged after the violent 2007 election crisis on nationally driven reforms in the field of RoL and even less on AC (which would have been regarded by the elites in power as “*internal interference*”

⁹¹ Interview with EUD Kenya official.

⁹² Comments provided by an EUD Kenya official

and a “*driver of instability*”⁹³). The tensions surrounding the International Criminal Court procedure involving top Kenyan politicians (2013) further reduced the scope for a genuine partnership with the GoK on major governance reforms. In this context, the choice was rather made to work on the ‘demand side’ through a set of projects geared at restoring trust (i.e. the Bridging Divides initiatives, see below), preparing the ground for the devolution process to counties and, later on in the cycle, a major programme on legal empowerment and aid delivery (PLEAD). Political economy conditions gradually improved from 2017 onwards and this allowed the EUD to make an effective use of the windows of opportunity provided by the PLEAD programme to strengthen its position as a credible partner to reform-minded institutional actors (primarily in the judiciary). This, in turn, enhanced the leverage capacity of the EU, particularly as it also received over time a stronger mandate to work on RoL&AC issues from (i) a critical 2019 Court of Auditors report pleading strongly for bold action on AC⁹⁴; (ii) from the new NDICI regulation reflecting a more geopolitical Commission and a providing a new set of instruments; (iii) the 2020 EU Action Plan on Human rights and Democracy, with a clear set of priorities on RoL&AC (see Inception report for this evaluation).

The EU policy frameworks do not provide overall clarity on how to achieve and measure results when engaging in sensitive areas like the RoL&AC (indicator 3 of this JC). This is entirely left to the action documents of specific actions.

JC1.2 Coherence with nature and goals of EU external action

The various RoL interventions, particularly under MIP 2016-2020 are clearly articulated with respect to other core EU values (indicator 1 of this JC), including ‘*democracy*’ (see projects geared at avoiding electoral violence); ‘*human rights*’ (see selected projects on criminal and juvenile justice); ‘*independent civil society*’ (a core focus since CSP 2008-2013, reconfirmed by the 2020 EU roadmap for engagement with civil society in a context of shrinking space); ‘*inclusion and non-discrimination*’ (see PLEAD with its focus on equal access to justice for all Kenyans, particularly vulnerable and discriminated groups at county level) and ‘*gender equality*’ (a cross-cutting topic, also consistently translated in successive Gender Action Plans).

While there is a clear link between the RoL agenda/portfolio and wider EU external action objectives (indicator 2 of this JC) such as prevention of conflicts, resilience, security and social cohesion, this appears to be much less the case in the EU programmes related to economic growth, private sector development and the transparent and equitable natural resources management (with the exception of the issue of land grabbing). Important opportunities have been missed by the EU to also promote the RoL&AC in these policy domains which are crucial for citizens and their “bread and butter needs”.

There is evidence of a deepening partnership in many policy areas (beyond the traditional field of development cooperation) where common interests exist (e.g. security, fight against terrorism, migration, climate change, global rules in multilateral fora) and where a “*rapprochement*” can be observed between *internal* EU policies and *external* action (indicator 3 of this JC). Yet at this stage, only limited evidence has been found on efforts to ensure coherence between the (expanding) internal RoL&AC architecture and tools and the EU engagement on these issues in its partnership with Kenya. Particularly in the field of AC, such an articulation would appear to have a substantial potential.

JC1.3 Conducive institutional environment

Political and institutional incentives to engage on RoL&AC (indicator 1 of this JC) have been mixed. As mentioned above, the CSP 2008-2013 adopted a quite prudent and pragmatic approach to fostering the RoL and avoided the topic of AC (influenced by the prevailing political fragility and lack of government reform commitment). The bulk of the resources went into safer, development-oriented sectors (infrastructure, regional economic integration). While this choice can be understood considering the prevailing political economy conditions at that time, several interlocutors felt that the EU had missed valuable opportunities to integrate RoL&AC issues in their sector interventions.

The overall authorisation environment for the EU to act on RoL agendas improved in the framework of the MIP 2014-2020 programming process and the EU is now widely seen as an important and credible player in this field by both Kenyan actors and other external agencies (see below for further analysis). However, the challenge of getting more directly involved in AC is still very much on the table (with promising initiatives in the pipeline beyond 2020) and the mainstreaming of RoL&AC agenda remains limited. In various talks with EUD staff, the lack of an effective mainstreaming strategy regarding the RoL&AC was recognised⁹⁵, yet linked to systemic institutional constraints such as silo approaches (e.g. tendency of sector units to delegate the whole issue to the governance unit), capacity and workload issues, the lack of useful guidance from HQ on how to

⁹³ Interview with official EUD Kenya.

⁹⁴ European Court of Auditors. 2020. EU Development Aid to Kenya.

⁹⁵ EU Member States interviewed recognized they also struggled with the integration of RoL/AC issues in sector operations for largely similar reasons (silo approaches, lack of incentives, overload of the governance unit).

mainstream RoL&AC agendas as well as limited availability of external expertise that can be mobilised (particularly at the critical stage of project design).

The evidence is mixed with regard to strategies and approaches used to mobilise available human resources and knowledge to meaningfully intervene in RoL&AC issues (indicator 2 of this JC). The joint programming exercise launched in 2013 initially facilitated joint analysis and stimulated the search for a better division of labour. However, these gains could not be maintained. The field phase revealed important challenges in terms of coordination, complementarity and coherence (see below EQ 3). These limitations also affect the overall institutional capacity of the EUD to deliver on the RoL&AC agenda. While the governance unit is endowed with relevant levels of expertise and qualified local staff (helping to safeguard the institutional memory), it is not in a position to effectively deal with all the implications of engaging strategically and pro-actively on RoL&AC issues on its own⁹⁶, including in terms of building deeper relationships with key national actors.⁹⁷ The adoption of a *whole of Delegation approach* could help, particularly in the area of fighting corruption (as a cross-cutting challenge)⁹⁸ as well as a better coordination with Member States and other actors (to ensure a much more solid knowledge base and sharing of experiences and expertise)⁹⁹. The observation was also made that the supply of relevant knowledge Delegations receive from HQ on how best to intervene on RoL&AC issues is limited. Support may even be declining as problems exist with replacing departing staff in the few positions available at HQ¹⁰⁰.

During the field consultations, the observation was also made by several stakeholders that the EUD can still refine the ways it deals with national partners, including on issues such as putting ownership before visibility concerns and respecting local value systems (e.g. hierarchies among the authorities). As one interviewee coined it: *“the role of the EU should be that of a midwife but the processes have to be the baby of domestic actors”*. No evidence has been found of structured partnerships between the EU and local, European or international knowledge institutions working on RoL&AC issues while the involvement of other relevant DGs of the EU (DG Home, DG JUST) remains limited.

The implementing agencies in charge of the RoL programmes have set-up M&E systems and reported on results. The quality of these systems varies substantially. It is possible to see improvements over time -as recent projects have better log frames and the implementing agencies (also national) enhance their capacity for M&E. On the whole, additional evidence collected during the field phase confirms that reporting is still too much focused on (quantitative) results achieved, without a deeper analysis of the conditions that explain success or failure and without a systematic set of reflections on adjustment, sustainability and exit strategies. It is also not evident to find much trace of reporting on transformative changes, though these exist, amongst others as a result of the sustained and flexible EU support provided over time (see further EQ 5-6). During the debriefing session with the EUD, the point was made that measuring results of a transformational nature in the area of governance -which by definition happen over a longer period of time- remains relatively uncharted terrain and a huge methodological challenge¹⁰¹.

EQ2: Responsiveness, ownership and flexibility

JC2.1 Context, political economy and/or conflict analysis

At this stage, no evidence was collected that the EU engaged in *formal* political economy or conflict analyses during the evaluation period¹⁰² (indicator 1 of this JC), either internally or with external help for guiding programming choices. However, available evidence indicates that there has been a quite systematic *informal* process within the EUD (and Member States) to assess the overall levels of elite buy-in and societal ownership for RoL&AC reforms. These internal analyses did influence EU programming choices (see JC 1 above), including to stay away from providing budget support to RoL reforms or direct involvement in AC matters. Furthermore, the EU response strategies (in both the CSP and MIP) were formulated in a rather inclusive manner (indicator 2 of this JC), involving in particular national agencies, a diverse set of actors of the vibrant

⁹⁶ Several interviewees used to work with the EUD confirmed that the human resource base in the EUD is *“rather thin in relation to the tasks that need to be performed in the governance unit”*.

⁹⁷ A Member State representative pointed in this context to a perceived limited EU access to high-level actors in the judiciary, which in turn is seen to be linked to a lack of time and capacity to invest in partnership relations over time (based on trust, iterative dialogues, mutual interests, etc.).

⁹⁸ During the debriefing, the Head of Delegation spelled out the ambition to move in this direction in order to tackle the corruption challenges in a more upfront, comprehensive and effective manner.

⁹⁹ The various donor agencies interviewed during the field phase all stressed the need to better work together, revitalize joint analysis, agree on a task division based on comparative advantages, mobilize existing expertise and deepen the links with local knowledge producers.

¹⁰⁰ Source: Interventions of EUD staff during the debriefing.

¹⁰¹ Source: intervention of EUD official during the debriefing session.

¹⁰² In 2021, 60 conflict analyses were carried out by EC/EEAS including in Kenya.

Kenyan civil society and local authorities at county level. There is less evidence of strategic dialogues between the EU the private sector on RoL&AC matters¹⁰³.

JC2.2 Engagement with actors at different levels

The various RoL programmes supported by the EU display a fairly solid understanding and integration of prevailing norms and practices in the political culture of the country (indicator 1 of this JC). There is limited evidence of the EU pushing for ill-adapted templates or best practices borrowed from elsewhere. This alignment with the realities on the ground seems to have been helped by (i) a willingness to associate state and non-state actors in programming; (ii) a concern to ensure ownership of the processes by domestic actors; (iii) the effective choice of adequate qualified implementing agencies, familiar with the field (e.g. UNODC in PLEAD or selected civil society organisations in charge of specific projects).

A similar logic prevails further down the line of the project cycle. A relatively solid reflection has generally been carried out during the identification and formulation of the various projects and programmes on 'strategic entry points' (indicator 2 of this JC). This is, for instance, exemplified in the choice to roll out PLEAD primarily in poor counties in order to reach out to vulnerable groups with highly limited access to justice. The various Action Documents also suggest that a decent stakeholder analysis is usually done (though sometimes of a rather technical, depoliticised nature) so as to ensure that all the relevant public and private actors are involved (in line with their mandates and capacities). The same 'multi-actor' logic is globally present in the various RoL projects regarding the required division of roles and responsibilities and the coherent allocation of funding between the various actors involved in implementation (indicator 3 of this JC). This suggests an effective use of the flexibility provided by the project modality and of the tool of programme estimates to plan activities and mobilise/fund different agencies during successive implementation phases.

JC2.3 Adjustment to changing conditions and new opportunities

As explained above, the EUD has adopted a rather pragmatic approach to programming RoL support, starting with an informal analysis of "*what could be done*" at a certain moment in time of the major, complex and non-linear political transition process that started after the end of the Moi regime. The CSP 2008-2013 clearly applied a problem-driven logic (indicator 1 of this JC) by making the strategic choice to concentrate RoL support on actors that represent the demand-side for effective reforms (mainly non-state actors). Rather than embarking on large-scale comprehensive interventions, it preferred a down-to-earth approach to strengthening first the organisational capacity of targeted non-state actors through relatively small projects focusing on facilitating gradual change processes, adapted to the constraints of the actors involved.

The same logic was largely followed in the design and implementation of RoL projects under the MIP 2014-2020, but on a larger scale and with more sophisticated ambitions and methods of work (e.g. PLEAD). This suggests a willingness and capacity to adjust to changing conditions (indicator 2 of this JC), even if this is, so far, not reflected in solid theories of change. Stakeholders interviewed agreed that one of the main strengths of the EU's flagship programme PLEAD is its flexibility to react "*in real time*" and ability to go for "*unexpected wins*".¹⁰⁴ A clear example is the choice of the PLEAD programme to shift to a more 'virtual' approach to justice provision in the face of the COVID pandemic -which had never been a priority in Kenya (see Box 1 for evidence on the digital response strategy of the EU). Another example relates to embracing new priorities of top officials, such as the new Chief Justice, who wanted to privilege a stronger focus on women and children. The EU gave the green light to UNODC to explore opportunities in this area -instead of sticking to the project's initial log frame of PLEAD and concentrating on ticking the boxes.

Box 1 *Flexible EU response to facilitate access to justice during COVID*

Digital transformation is a considerably new topic within the EU funding framework. The Covid-19 pandemic disrupted the traditional court process while opening sets of new opportunities for digitalization within the justice system in Kenya. Evidence indicates that the EU swiftly adopted online tools to facilitate project implementation. The flexibility in the PLEAD program provided room for innovation and adaptation. The UNODC, NLAS reported that the project supported the acquisition and installation of court and prison digital equipment which facilitated "virtual justice". These addressed some of the barriers (case backlogs, distance, cost) that caused delays in the justice process. For example; "*a judge sitting in Nairobi can now hear cases far away in the counties; Cases of prison vans lacking fuel were eliminated, thus speeding up prisoners' recourse to justice; Saves time & incidents of missing files that is notorious with Kenyan courts (thus 'clipping the wings of cartels')*".¹⁰⁵

While quick wins can be obtained through swift responses, interviews during field phase confirmed that transformational change on RoL&AC issues is by definition a mid to long-term endeavour. There are no silver

¹⁰³ Some EU Member States active on the RoL/AC in Kenya (the Netherlands, Denmark) are increasingly reaching out to private sector actors/institutions that may act as drivers of change.

¹⁰⁴ Interview with staff involved in the implementation of PLEAD.

¹⁰⁵ Source : reporting by UNODC as implementing agency.

bullets, only gradual progress, that can be stimulated from the outside when there is “a willing leadership”, sufficient protection of reformist forces, a focus on concrete problems (e.g. case management, professionalization of the sector, strategic planning, change management, reduced prison sentences¹⁰⁶, uptake of alternatives to prisons), genuine domestic ownership and clear-cut empowerment strategies of local players (including their capacity to attract funding to sustain their work).

EQ3: Partnerships and coherence

JC3.1 Partnerships based on comparative advantages

EU development partners have embarked on joint programming (indicator 1 of this JC) in 2013, involving 8 Member States (Germany, France, the Netherlands, the UK, Denmark, Sweden, Italy and Finland). A mapping was carried out of the development sectors that needed to be covered in order to respond to the new 5-year cycle (MTP-II) of the GoK related to implementing the ‘Vision 2030 long-term policy of 2008. Guiding principles were endorsed related to the division of labour (to some extent applied subsequently), use of country systems (initially in a timid manner yet steadily growing) and joint monitoring and evaluation (no evidence that this was effectively done). Task Teams were set up on a sectoral basis, including one on “*Election, Justice, Democratic Governance and Devolution*”, to continue the process of joint analysis, programming and implementation.

Consultations during the field phase clearly revealed that the EU continues to play in many ways a useful (lead) coordination role. This works particularly well at the level of Heads of Missions (EC/Member States) and related high-level political dialogue/diplomacy, but less at the operational level. While the EU-supported PLEAD has effectively complemented MS efforts, there is limited traction for a truly joint approach to RoL&AC and strategic task division among the EU/MS. The joint programming process lost momentum over time, leading to a more classical system of working groups focused on exchange of information and exploring ad hoc synergies. Particularly the working group on the judiciary was seen to be less than effective, pushing 3 MS to set-up their own subgroup (with IDLO). Areas of improvement were seen to include: (i) putting in place a less fragmented / overlapping set of donor working groups; (ii) a greater collective responsiveness to demands of state agencies (so as to enhance ownership levels); (iii) a greater openness towards engaging with non-EU external agencies (e.g. through the adoption of joint political positions regarding corruption); (iv) revitalizing joint analysis¹⁰⁷; (v) organizing an effective division of labour based on comparative advantages, particularly in the area of AC¹⁰⁸ and (vi) using the Team Europe logic as additional driver for joint action on the RoL&AC.¹⁰⁹

The partnership dimension (indicator 2 of this JC) is mainly found at the level of implementing agencies (such as UNODC, UNDP). The relationships developed through PLEAD go beyond mere contractual arrangements. There is space for an iterative dialogue, joint agenda-setting as well as review and adjustment of the programme. The World Bank is equally an important ally and dialogue partner, a collaboration deemed effective, including through the EU-supported World Bank’s ‘Kenya Accountable Devolution Program’. Specialised organisations like the International Law Development Organisation IDLO are equally perceived add value in relevant working groups led by EU. No references could be found pointing to direct partnerships with regional instances working on RoL&AC, such as the East African Community, the African Union and related bodies and courts, European organisations (like the Council of Europe) or global institutions.

As far as the added value of the EU (indicator 3 of this JC) it is seen by stakeholders consulted to primarily reside in: (i) the EU’s diplomatic weight and presence on the public scene (as a “*recognized actors listened at by Kenyan politicians and public opinion if speaking with one voice*”); (ii) the ability to substantially fund innovative programmes like PLEAD over time; (iii) providing political support (protection) to domestic actors of change (particularly CSOs dealing with corruption). At the same time, several interviewees reflected on the actual levels of EU leverage to push forward sensitive reforms on the RoL&AC. Other external players may have more political weight (UK, USA, China) and the EU has a wide range of own interests to defend as well (potentially reducing the appetite to be too outspoken on RoL&AC matters).¹¹⁰

¹⁰⁶ This is another area where change will be gradual, as socio-cultural norms interfere. For instance, judges are reluctant to give low bails, as there would be a thinking that they have been bribed or the risk exists that the police get angry as they work hard to build up a case only for the suspects to be released on easier terms.

¹⁰⁷ There are plenty of opportunities in this area, as the chances of pushing for genuine reforms largely depends on the availability of sophisticated levels of knowledge on drivers of change, factors of resistance or strategic entry points to use. For instance, while the EU and other donors increasingly target the local/county level for governance interventions (with potential to also enhance the RoL/AC), the knowledge base on the phenomenon of local state capture and related corruption dynamics, is thin (source: interview with EUD official and Kenyan civil society actors).

¹⁰⁸ Several donor agencies with long standing experiences in the fight against corruption expressed their willingness to join forces with the EUD as and when it intensifies its involvement in this area.

¹⁰⁹ Interview with staff of EUD Kenya

¹¹⁰ Interview with staff of EUD Kenya

JC3.2 EU support to RoL&AC has been delivered in a coherent manner

The first indicator related to coherent delivery of EU support seeks to understand how the EUD in Kenya has ensured transparency and anti-fraud controls in sector operations and what responses were provided when problems occurred. The issue of whether or not budget support can be provided to an endemically corrupt country like Kenya has been lingering on for quite some time. There is also a long tradition of tensions around the use of this aid modality, including with Member States. Back in July 2004, the EU decided to freeze a major aid package because of concerns with rampant corruption and inaction of the government. In December 2005 the EU gave the green light for a new budget support operation after quite some arm-twisting around the conditions for its disbursement.¹¹¹ The CSP 2008-2013 led to several budget support operations, accompanied by PFM measures. However, the above-mentioned Country Strategy evaluation (2014) concluded on the limited success of the PFM reforms in the absence of a committed government. The 2019 Court of Auditors equally stressed the less than optimal linkages between EU provision of (budget) aid and the respect by Kenyan authorities of commitments made and performances required. The 2019 PASEDE program seeks to utilise budget support as a trigger for more profound PFM and accountability reforms. It is early day to assess the progress achieved, yet concerns exist on the willingness at the top to go forward and about the limited financial incentives provided by the EU. Furthermore, the absence of a clear EU strategy to mainstream RoL&AC (social accountability) issues in sector operations may have further weakened the ability to effectively combat fraud.

The EU has not been structurally involved in security sector reform in Kenya (indicator 2 of this JC). However, consider the prevailing insecurity and threats of terrorist attacks, there has been a growing EU support for a wide range of (regional) dialogue and capacity development initiatives (financed under the IcSP and the EU-TF). They cover chemical, biological, radiological and nuclear defense (CBRN), risk mitigation, counter-terrorism, maritime & safety security and the fight against organised crime. Another interesting element is the strategic partnership between the EU and the National Counterterrorism Centre (NCTC), focusing amongst others on Countering Violent Extremism. However, there is no documentation available at this stage to properly examine if and to what extent RoL&AC concerns were coherently incorporated in the various initiatives.

The question whether there was coherence between EU interventions in the RoL&AC and wider EU / Member states *interests* in Kenya (indicator 3 of this JC) is difficult to assess. For sure, the joint programming process helped to ensure coordination/division labour between the EU and MS yet this is confined to *development cooperation* responses. Programming documents do not contain strategic reflections on the coherence with the *wider interests* of the EU/Member States. In the reply to the abovementioned 2020 report of the Court of Auditors, the Commission and EEAS provide a hint about these wider interests beyond those related to trade: *“Kenya is a troop contributor to the African union’s peacekeeping mission in Somalia (ANISOM) and it is hosting around 0.5 million refugees from Somalia and South Sudan. Kenya is a strategic country in the wider horn of Africa, with which the EU shares interests, liberal and democratic values and multilateral agendas. It has the potential to play a stabilising role in the region”*. Furthermore, there are indications that economic interests may be jeopardise unified EU positions. The example was given of attempts to foster ‘zero corruption’ approaches in the international business with Kenya, with some big companies signing up to this call. However, practices were seen to exist whereby intermediaries are used by some Member States to facilitate deals¹¹²

EQ4: Choice of modality

JC4.1 Mix of modalities

The context / risk analysis undertaken for the CSP 2008-2013 correctly concluded that there was no genuine commitment of the GoK to engage in credible RoL&AC reforms (indicator 1 of this JC). The implicit theory of change adopted was that the good governance agenda -including the RoL and *public accountability* (the label used to indirectly fight corruption) had to be pursued by supporting civil society organisations with a view to strengthening first the demand-side for reforms. These strategic choices logically led the EU to opt for project approaches rather than budget support (or a mix of both modalities). The result was that in the period 2008-2013 a wide range of (relatively self-standing) civil society initiatives were funded dealing with different aspects of the governance agenda, including civic education. The 2010 Constitution provided an overarching policy framework to choose relevant projects (e.g. extending support to emerging counties), reaching out to national agencies on specific themes (e.g. access to justice) and gradually introducing more substantial programmes with larger funding and more direct participation of national agencies (e.g. ‘Bridging Divides Through Accountable Governance in Kenya’).

¹¹¹ An earlier warning of the EU Ambassador that Kenya would lose the funds if the president did not sign off on a tough anticorruption bill was met with a vehement criticism of the Minister of Foreign Affairs, accusing the envoy of “*rude*”, “*inacceptable*”, “*unprofessional*”, “*undiplomatic*” and “*amateurish behavior*”.

¹¹² Source: Interventions during the debriefing session with EUD.

In the MIP 2014-2020, the EU initially continued to go only for the project modality in the domain of RoL&AC, as exemplified by the more comprehensive PLEAD intervention. The feedback received during the field phase concurs on the usefulness of the project modality to engage on RoL&AC matters in the Kenyan context. It allows to strategically reach out to a diversity of actors in a relatively tailored manner (e.g. using sub-granting approaches towards smaller organisations), focus on empowerment and institutional development of change actors, facilitate multi-actor dialogues on specific justice issues and above all manage programmes in a demand-driven way. This is particularly the case for PLEAD, which engaged funding through programme estimates allowing for adaptive approaches to agenda-setting and implementation¹¹³. In using project approaches, the EU in Kenya could rely on well-performing implementing agencies, particularly UNDP and UNODC who could mobilise effective project management teams with the required process facilitation skills to work on the demand-side of governance reforms or on multi-actor dialogue approaches to push forward reforms in a collaborative mood. Two challenges were pinpointed during the stakeholder consultations. First, the need to avoid competition between implementing agencies (selected by the EU) and other relevant centres of knowledge and expertise on RoL&AC matters, with the risk of creating overlapping mandates and tensions between key players. Second, the critical importance of exploring ways and means to deepen ownership of the reforms by giving more direct management responsibilities to *national* institutions and specialised agencies. Even if the intermediaries respect roles and responsibilities of national structures and limit themselves to a facilitating role, there is a point where donors (the EU) should rely on the national bodies in charge (if conditions of trust exist).

In 2019, the EU deemed the political economy conditions to be more conducive to have a budget support operation in the form of a Sector Reform Performance Contract related to governance reforms, resulting in the above mentioned PASEDE. The Action Document explains in quite some detail why there is now more scope to provide budget support as well as the risks attached to it. On paper, its specific objectives provide plenty of opportunities to integrate RoL&AC issues as they focus on: (i) improved financial transfers to counties; (ii) enhanced revenue mobilisation; (iii) improved business environment; and (iv) sound public investment management.¹¹⁴ Furthermore, the core problem that the action aims at addressing is “*the weak link between policy planning and budget planning and execution. In practice, this requires improving PFM functions with improved service delivery in mind*”. Corruption and infringements on the rule of law often tend to occur in that part of the chain. This is, amongst others, illustrated by the 2017 Public Expenditure and Financial Accountability (PEFA) review in Kenya. It highlighted major problems with timeliness and reliability of transfers to counties, ministries, departments and agencies. This results in cash rationing, usually through monthly releases of funds. Though seemingly a financial-technical matter, this situation impacts heavily on the capacity of the actors involved to fulfil their mandates properly. For the counties -which have a key role to play in fostering a more inclusive and rule-based society, this is a major challenge to their authority, delivery capacity and legitimacy (in the eyes of their constituencies). The performance indicators chosen in PASEDE do address the issue of county allocations, yet did not contain specific elements regarding RoL&AC. Furthermore, it is too early to fully assess compliance with budget support indicators (indicator 2 of this JC), partly because delays were incurred to start up the operation. However, a perceived bottleneck for compliance may be the relatively low levels of financial incentives provided. The EU budget support is channelled through grants but their amount (circa EUR 6 million a year) is rather marginal in comparison to ordinary state revenues. Larger concessional loans would probably attract more interest from the Government.¹¹⁵

Regarding possible synergies *within* the RoL&AC portfolio between levels of intervention (bilateral/regional/global) as well geographic/thematic instruments (indicator 3 of this JC), available evidence shows that such complementarities mainly exist at the *bilateral level*. No relevant EU-supported *regional/global* initiatives have been identified on RoL&AC matters, except in the area of security / fight against terrorism). Programming documents and EARMS make general references to the importance of synergies between the geographic and thematic instruments, but the reporting on this dimension is anecdotal and scattered. The documentary analysis allows to see possible complementarities on content matters (e.g. between different projects dealing with respect for human rights in criminal justice) yet there is no evidence that the EUD proactively and coherently sought to articulate these different interventions for greater impact.

JC4.2 Mutually reinforcing dialogue and programming

Policy and political dialogue have been complicated during the whole evaluation period¹¹⁶, particularly when it comes to RoL&AC matters (indicator 1 of this JC). Many factors explain this: (i) the endemic nature of corruption -as a culture that permeates the whole system, from the top to the bottom- which makes it very

¹¹³ Source: various interviews with actors involved in PLEAD as well as mid-term review and other progress reports.

¹¹⁴ Source: Action Document PASEDE

¹¹⁵ Source: talks with EUD official.

¹¹⁶ A finding corroborated by the abovementioned Country Strategy Evaluation of EU support to Kenya.

difficult for external agencies to address it upfront¹¹⁷; (ii) the lack of elite commitment to reform and related attitude of dismissing the gravity of the problem; (iii) the limited scope to dialogue in the absence of a clear and coherent EU strategy, underpinned by a solid mandate from the hierarchy at HQ level¹¹⁸; (iv) lack of budget support operations in the field of RoL&AC (till 2019) providing potential incentives for such a dialogue; (v) the relatively scattered nature of EU-supported RoL interventions, which make it difficult to organize the voice of civil society for dialogue purposes at higher levels; (vi) internal challenges experienced at EUD level (e.g. in terms of access to key decision-makers, convening power, follow-up of dialogue processes).¹¹⁹ In the absence of evidence on how political dialogues were prepared, organised, conducted and ensured of an effective follow-up, it is not possible to assess linkages between these dialogues and programmatic choices/operational interventions (indicator 2 of this JC).

Progress reports and EARMs suggest the core EU programmes on RoL (e.g. PLEAD) allow for regular and appreciated multi-actor dialogue processes, which effectively help to adjust priorities or respond to new needs in a demand-driven and flexible manner. However, the project modality imposes limitations in terms of scope (dialogue mainly on project implementation) and scaling-up (not evident to translate relevant project outcomes in policy influencing and reform).

In the reply of the Commission and EEAS to the above-mentioned Court of Auditors report of 2020, it is stressed that *“the European Union also contributed to the fight against corruption through diplomatic activities. EU Ambassadors regularly raised it when meeting counterparts at all levels of Government of Kenya and in particular on the occasion of the article 8 dialogue”*. Interestingly, the reply insists on the need to acknowledge *“President’s Kenyatta fight against corruption after his re-election in 2018”* -a quite surprising point to make considering the longstanding and well-documented resistance of the dominant elites to really reduce impunity for high level corruption cases (in 2021 the Pandora papers directly targeting the President’s family demonstrated again the limits of formal announcements and plans to fight corruption).

Kenya has not featured on EU blacklists regarding money laundering. No evidence was found that the EU has activated human rights clauses, other provisions in international agreements (such as the Cotonou partnership Agreement) or trade sanctions to push forward RoL&AC agendas (indicator 3 for this JC)

¹¹⁷ Source: Debriefing seminar with EUD. The example was given that it is counterproductive for EU to work on corruption by focusing on high-level *individual* cases. The challenge is rather to seize all windows of opportunities to engage structurally on potential triggers for change (e.g. oversight institutions, public procurement, digitalization) and to adopt a firm political stance on the need to address corruption. The World Bank in Kenya shares the same approach and insists on focusing more on “confronting” corruption rather than “fighting” it. Confronting corruption uses a holistic approach that places more emphasis on identification of corruption risks in specific sectors, institutions, systems and processes, etc. rather than fighting corruption after the “horse has bolted” (source: written comments of WB official).

¹¹⁸ Source: Interviews with EUD officials.

¹¹⁹ Source: Interviews with EU Member States and EUD officials

Effects of EU support to RoL&AC

EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions

JC5.1: Core legal and administrative reforms

Available evidence suggests the EU went through phases in trying to foster legal and administrative reforms related to governance/justice/RoL -with *significant results* achieved over time (see Box 2 below).

Prior to 2010, the focus was on empowering reformist forces to work on specific issues (devolution, public service delivery) in an environment which was not conducive for genuine policy changes. The 2010 Constitution provided a frame to move to a higher gear. Thematically, the focus remained on a selected number of issues. Yet it was now possible to push for legal/administrative reforms oriented towards implementing the radical changes in governance envisaged in the fundamental law. It allowed the EU to provide support in a quite holistic way, focused on: (i) helping to enact new laws; (ii) ensuring their dissemination and uptake by population; (iii) further empowering citizen voice and evidence-based engagement in the selected reform areas as well as (iv) reaching out to national agencies in charge.

The “*Bridging Divides through Accountable Governance*” project (2010-2014, EUR 9,2 M) illustrates well this intervention logic. Focusing primarily on access to justice and local governance, it targeted both national agencies, citizens (as final beneficiaries) and relevant non-state actors (community actors, research institutes, etc) to improve accountable and responsive governance. An additional component involved support for the Kenya National Dialogue and Reconciliation process. The final evaluation of this project aptly concludes that the intervention was “*conceived and implemented against a background of far-reaching reforms in Kenya’s governance context, set off by the need to stabilize the country after the post-election violence of 2007*”. The report argued that the programme objectives fitted particularly well with the identified priorities of key implementing agencies and CSOs involved. Despite significant underspending (only 32% of the funds for the devolution component were spent) the activities yielded high ownership levels and positive effects (e.g. on capacity development) on which future programmes in the same area could build. Main weaknesses involved an insufficient context analysis of power and interests of stakeholders and opportunities for engagement, particularly at county level; the failure to integrate gender and human rights as well as a limited monitoring and evaluation framework (which helps to explain why it is difficult here to report on deeper changes potentially induced by the project).

Box 2 Going beyond the promulgation of laws: EU support to a legal aid system

Experience across the globe indicate that achieving results in governance reforms requires time as well as a context-specific and strategic engagement of external agencies over the long-term. This logic was successfully applied in EU support to the provision of legal aid. A politically savvy support was provided over a period of more than ten years, based on a sequenced approach inspired by political economy realities. Initial projects focused on supporting CSOs advocating for legal aid as well as awareness creating activities. The 2010 Constitution created a dynamic which allowed for a qualitative jump forward, coalescing forces to demand legal changes. The EU support then sought to facilitate the drafting and enactment of a national legal framework. To operationalise the new law, the PLEAD programme stepped in and accompanied the implementation process, including the empowerment of the agencies in charge as well as building capacity at county level. A similar sequenced approach was followed in promoting access to justice, with as recent innovation the work on small claims courts.

Available evidence suggests that the various RoL programmes, generally targeting relevant national agencies and institutions, did provide useful support, mainly in terms of funding, capacity development and standards (indicator 2 of this JC), less in digital capacity (though this evolved rapidly during the COVID crisis, see EQ 2 above). However, the project modality adopted implies that the support is limited in volume and time. There is no indication that the projects triggered greater awareness and preparedness by higher authorities to endow national RoL institutions with adequate levels of funding and ongoing support for capacity development. That is where relevant donor support hits the wall of domestic political economy constraints and resistances to change that prevail in Kenya (as explained in the introduction). At the top, many political and business elites are not interested in funding a highly efficient justice system. If anything, they seek to undermine its overall capacity to apply the rule of law and combat corruption. Another indication of this ongoing struggle for control of the judiciary is the crisis in the Kenya Law Society. Supposed to act as a guardian of core values (independence, impartiality) and as a promotor of reforms, it has been increasingly infiltrated and controlled by political forces, with resulting risks to de-professionalize the judiciary.¹²⁰

The RoL portfolio did not target the harmonisation of domestic and international law nor judicial cooperation (indicator 3 of this JC).

¹²⁰ Source: Interview with Kenyan justice actor and documentary analysis.

JC5.2: Strengthening of institutional architecture

There is no comprehensive major EU programme to structurally support the long-term strengthening of the overall institutional architecture of core RoL&AC institutions (indicator 1 of this JC). Yet in the thematic areas selected (access to justice, criminal and juvenile justice) the various EU programmes have contributed to reinforce core elements of the system. In the flagship RoL initiative PLEAD, there are two relevant outcomes in this respect. Outcome 2 is dedicated to strengthening the court administration and case management nationally and in 12 focal counties. Outcome 3 focuses on improving the quality and efficiency in the criminal justice system (e.g. the ability of the judiciary to handle and determine criminal cases in an expeditious manner and compliant with the Bill of Rights). To make progress on both fronts, a mix of support is provided (TA, trainings and equipment). The MTR of PLEAD indicates some progress achieved in case management in the criminal justice system, particularly within the Office of the Director for Public Prosecution (ODPP) and the judiciary -though obtaining a clear picture of advances made in the wider system remains a challenge.

As mentioned before, the RoL programmes of the MIP 2014-2020 systematically adopted a solid multi-actor approach (bringing together relevant public actors and non-state actors) in the selected thematic areas. This suggests an EU commitment to promote interagency cooperation (indicator 2 of this JC). The Action Document of PLEAD clearly states that “*support to the justice system can only be effective if it integrates the impact of the support provided on all actors of the underlying chain*”. In this logic, PLEAD has a specific outcome 4, explicitly geared at promoting the coherence, cooperation and collaboration within the justice sector, focusing in particular on providing ongoing support to the ‘National Council on the Administration of Justice’ (NCAJ) to play its legislative value.

The 2021 mid-term review provides highly interesting reading about the integrated approach followed by the EU/UNODC in strengthening the administration of justice and operationalizing alternatives to imprisonment in Kenya. They shed a light on the success factors in terms of methodology adopted by PLEAD, including “strong project design that emphasized national partner’s engagement in systematic needs assessment¹²¹, consultations, operational policy development and interagency coordination. Priorities for project activities were established systematically and strategically and always in a manner that respected the stakeholders’ own strategic priorities”. It also concludes that ownership over institutional change processes generally remained high¹²² throughout the PLEAD implementation so far.”¹²³ Other findings of the MTR include the substantial progress achieved in interagency coordination – a process fostered by the successful strengthening of the above-mentioned NCAJ.¹²⁴ Looking forward, the mid-term report observes that “*the project has reached a stage where system-wide cooperation is more possible than ever*” with “possibilities [...] for system-wide impact of key reforms”.¹²⁵ However, there is also no shortage of challenges for next stages, including (i) further empowering the ‘Court User’s Committees’ (CUC) in the implementation of access to justice reforms at local level; (ii) rolling out the various training initiatives across agencies and across the whole justice sector¹²⁶; (iii) improving data gathering, justice statistics and performance monitoring; (iv) institutionalizing and deepening the digital gains obtained during the COVID period; (v) promoting alternatives to imprisonment (which will require a national public education campaign as cultural resistance remains high); or (vi) enhancing the political dialogue on the reforms.

Evidence suggests PLEAD also contributed substantially to launching promising dynamics on enhancing data availability in the criminal justice system. It is an uphill struggle considering baseline conditions, including a lack of policies and standard operating procedures on crime recording and data production across the justice institutions.

JC5.3: Progress in justice systems and anticorruption frameworks

This is a crucial component of the EU’s overall strategy regarding the RoL over the past two programming cycles. A wide range of projects targeting non-state actors (and women in a particular) were supported since 2008 aimed at (i) informing citizens about crucial democratic and rights issues; (ii) giving ‘a voice’ to vulnerable and marginalised people; (iii) empowering civil society organisations for participating in public affairs and policy-making. The 2010 Constitution paved the way for a more structural approach to facilitating access to

¹²¹ For an example of such a needs assessment, see : Office of the Director of Public Prosecution. 2019. *Prosecution Training Needs Assessment*.

¹²² Several key institutions have embarked on home-grown change management processes as a result of PLEAD support (source : mid-term review PLEAD).

¹²³ Dandurand, Y and V. Chin. 2021. *Programme Status Review (Mid-Term) Recommendations*. June 23, 2021

¹²⁴ Though much remains to be done as the NCAJ still needs to strengthen its secretariat in charge of the various committees and task forces on reforms. It still has to acquire a fully independent status, with its own legislation, mandate, budget and executive director.

¹²⁵ Ibid.

¹²⁶ The effectiveness of training activities depends on the agencies involved. Some appreciate the capacity assistance but are less eager to review their own practices or feel that the proposed new approaches do not take into account “the agency’s organizational culture or its social and institutional environment”.

justice. Building on the successful experiences of past projects, the EU initiated in 2017 the PLEAD programme. As its title suggests, it retains a crucial place for access to legal aid, especially for the poor and vulnerable located in the most marginalized counties of the country. It is based on an intervention logic which seeks to combine actual delivery of legal aid services through specialised civil society and support to the effective implementation of the new legal and regulatory framework on legal aid (through a collaboration with the Department of Justice). Available reports, particularly from implementing agencies of the various programmes related to access to justice (including PLEAD) clearly suggest high levels of relevance and usefulness for the beneficiaries of legal aid. They also stress the centrality of gender equality concerns in relation to access to justice. A more refined analysis of deeper institutional changes at system level (county courts, national agencies involved, Department of Justice) will be carried out during the field phase.

Some evidence is available suggesting that EU-funded programmes did incorporate attention to traditional justice systems. For instance, the Civil Society Democratic Governance Facility (called Amkeni Wakenya) led by UNDP and co-funded by the EU, reports efforts to increase understanding among more than 10,000 citizens on the relationship between traditional justice systems and the formal justice system.¹²⁷ Again, the question raises how these valuable initiatives at *project* level (focused and time-bound) contribute to influence/trigger broader reform processes (to be investigated during the field phase).

EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions

JC6.1 Legal safeguards, checks and balances

Enhancing the independence and impartiality of the judiciary through establishing legal safeguards and checks and balances has *not* been a direct target of RoL interventions. The limited scope of the AC portfolio also excluded a systemic approach to strengthening the relevant agencies in line with international standards (indicator 1 of this JC).

All relevant national, regional and international surveys, reports and studies confirm the poor health of the rule of law¹²⁸ and the endemic nature of corruption. To underpin its core recommendation to the EU to invest more in RoL and above all in AC, the Court of Auditors of 2020 on EU's aid to Kenya refers to a recent perception of corruption analysis, according to which:

- 67% think corruption increased in previous 12 months
- 45% of public service users paid a bribe in the previous 12 months
- 71% think their government is doing a bad job in tackling corruption
- 54% think that ordinary citizens can make a difference in the fight against corruption.

The judiciary enjoys a slightly better reputation as reformist forces within that system are seen to fight for safeguarding the independency of the judiciary (as proclaimed in the 2010 Constitution) and have displayed courage in prosecuting top officials involved in corruption (this information responds to indicator 2 of this JC).

JC6.2 Oversight institutions, non-state actors and the private sector

EU efforts directed towards oversight institutions have mainly been targeting non-state actors in the thematic areas selected. Various generations of capacity development initiatives have been supported over the past 10-15 years with the aim to collect evidence, monitor transparency and demand accountability. These efforts were confined to the thematic RoL areas in which the EU engaged (access to justice, devolution and local governance, criminal and juvenile justice).

A case in point comes from the Civil Society Democratic Governance Facility of UNDP (Amkeni Wakenya) co-funded by the EU. A progress report of 2012 provides a good indication of the nature of the accountability processes supported through non-state actors. Under Access to Justice, the facility supported 5 CSOs with grants (amounting to USD 300,000 in the first year) to roll out civic education activities and to promote alternative dispute resolution mechanisms at the community level, particularly in marginalised areas. With respect to devolution, Amkeni supported 10 CSOs to undertake awareness raising activities at community level as well as to engage in policy dialogues at the national level. Accountability mechanisms in the form of 'County Oversight Committees' and 'Civil Society Performance Checklists for Transition to Devolved Governments' were elaborated in several counties.

Reviewing the quite broad and disperse set of activities, three evaluative reflections can be made. First, while there is a thematic complementarity between the various projects, there does not seem to be an EU strategy

¹²⁷ Amkeni Wakenya. 2012. *Strengthening Kenyan civil society to participate more effectively in democratic governance and reforms*. A report submitted to the EU Delegation in Kenya.

¹²⁸ See the successive reports of the World Justice Project and related rule of law index, showing limited progress if not regression in Kenya on most indicators.

to build strong connections and synergies between all these interventions (through a genuine ‘portfolio approach’) in order to enhance overall visibility/impact. Second, there is no consolidated (M&E) material that allows to understand to what extent these projects have been of interacting with and influencing national reform processes on the policy issues at stake (some projects have facilitated dialogue with national agencies, but there is no information on what happened over time in terms of policy change). Third, it is equally difficult to assess the sustainability of the positive dynamics generated through activities. Regarding the latter, the point was made that sustainability is not always a primary objective of civil society engagement at individual project level. The EU supports the policy objectives in CSO-LA and EIDHR with a view to strengthen the capacity of a wide range of CSOs to act as governance actors (including smaller organisations at grassroots level and less traditional streams of work). The purpose of the funding is to further develop their agency, not necessarily the actual activities. For example, for investigative journalists, the EU can help to strengthen their working methods, but funding investigative journalism will require sources of a different nature and over a longer period of time¹²⁹.

An interesting feature of several RoL projects funded by the EU is the attention paid to support data production and other evidence-based material to influence policy-making and underpin transparency and accountability processes. A positive experience in this regard comes from the project *‘Improving the Kenya Juvenile System’* (2012-2016). At the time of closure, it could report a contribution to a significant reduction of multiple forms of violence to children. Key to the progress achieved was the systematic attention being paid to the collection and provision of data and information on the condition of children -as the foundation for awareness campaigns and more effective action by the national agencies in charge (who were fully associated to the project). Another valuable output is the production of a ‘Guidelines Manual’ providing good practices and innovative models on a variety of structural challenges (e.g. case management capacity, reducing the use of custody, reintegration models).

As mentioned in the introductory chapter, there is no relevant documentation, analysis or evidence making it possible to ascertain how and to what extent the EU also engaged with the private sector as “actors of change” to get a greater respect for the rule of law and AC in the specific aspects related to the business environment (e.g. public procurement) and more widely (e.g. accountability for the ‘economic and social legality’ in the conduct of public affairs (indicator 3 of this JC).

EQ7: Broader effects on RoL&AC culture, human rights and democracy

JC7.1 Promoting a RoL&AC culture

Previous EQs have assessed EU support to formal institutions involved in RoL&AC. However, the relevance, effectiveness and the sustainability of these interventions largely depends on the degree of alignment with domestic social and cultural values and on the level of societal demand for reform. In core partnership and policy documents on Kenya-EU cooperation, there is a recurrent (diplomatic) reference to the fact that both parties share the values of democracy, governance and the rule of law. Yet beyond this official stance, programmatic choices reveal a finer understanding of where the country stands, what the blockages are and what an external actor like the EU can do – and not do in the prevailing context. As a result, EU support to RoL&AC during the two past programming cycles has been based on a fairly solid understanding of sociological and cultural realities and norms prevailing in society (indicator 1 of this JC), though the power analysis (i.e. who controls things, who pushes for change and where lie the main factors resistance) could have been more detailed in several project interventions. This applies particularly on local level interventions in the framework of devolution.

The focus of RoL support in the CSP 2008-2013 was on the demand-side for governance reforms. To this end, the EU pro-actively sought to reach out to societal actors (particularly civil society and human rights organisations) as well as to the emerging local authorities at county level. A wide range of projects were geared at strengthening the legitimacy of the rule of law -a fairly abstract and discredited concept in the eyes of citizens after decades of authoritarian rule and massive corruption at elite level. The implicit theory of change of EU interventions was that RoL&AC issues cannot be addressed ‘hands-on’ by an external actor in a highly polarised, divided and fragile context like Kenya¹³⁰ but rather require a context-sensitive and pragmatic approach, seizing the (small) windows of opportunities arising in a flexible manner and above all investing first in the foundations for an effective political and societal ‘uptake’ of major reforms. The implementation approaches used in the programmes suggest a recognition of the need for ‘process-approaches’ -starting with awareness creation, trust building, capacity development to gradually move into more complex aspects such as proposing concrete solutions, entering into dialogue with national agencies, monitoring progress achieved. These approaches and methods were successfully pursued during the MIP 2014-2020 in a more structured

¹²⁹ Source: Interview with EUD official.

¹³⁰ See the earlier mentioned reply of the Commission and the EEAS on the CoA report of 2020, which heavily criticized the absence of ‘direct’ action against corruption by the EU over the past ten years.

manner through PLEAD -which allowed to scale up the outreach and impact of the change processes supported. Over the two programming periods, there have been no significant attempts to structurally engage with media and private sector actors as potential drivers of change regarding RoL&AC reforms.

From an evaluative perspective, the key question is whether all these valuable project activities and processes have been pursued long and consistently enough to contribute to (gradual) changes in the overall RoL *culture* among both political and societal actors. Findings collected during the desk and field phases suggest there has certainly been a substantial contribution in terms of (i) creating more awareness at citizen level about the importance of the RoL for development and social justice; (ii) empowering civil society organisations to express voice and demand accountability in a credible manner; (iii) building trust and alliances between state and non-state actors in the thematic RoL areas supported by the EU; (iv) helping to translate constitutional provisions into legal and practical realities; (v) providing critical support to reformist forces at state level and within society; (vi) keeping alive the space for civic action; (vii) connecting RoL concerns and human rights (particularly women or detainees in prisons); (viii) facilitating access to justice for poor and vulnerable people.

However, other crucial factors have proven to be far more problematic to address and are most likely beyond the control of external agencies -as they touch upon the essence of how power and governance is organised in a society. They are linked to (i) influencing the incentive structure of the various categories of political and economic powerholders; (ii) fostering legal and administrative reforms; (iii) ensuring effective implementation of public policies in a rule-based manner; (iv) reducing the structural inequalities of income and opportunities resulting from a less than optimal application of the principle of equality before the law.

As mentioned before, the EU did not develop a coherent mainstreaming strategy to systematically integrate RoL&AC concerns in the various EU priority sectors (e.g. infrastructure, agricultural development, etc.) and this despite the existence of opportunities to do so.¹³¹ In a similar vein, it is difficult to detect a consistent EU application of rights-based approaches in sectors -which have the potential to engage on critical dimensions touching upon the RoL and socio-economic justice. There are concrete plans to change this in the programming cycle 2021-2027, particularly regarding the fight against corruption, yet this will require better methodological guidance from HQ as well as specialised technical assistance to ensure an effective mainstreaming (see EQ 1 above).

JC7.2 Fostering human rights

In this evaluation, it was decided to focus specifically on how EU support to RoL&AC managed to promote two types of human rights: (i) gender equality and women economic empowerment (indicator 1 of this JC); and (ii) fight against discrimination of vulnerable/marginalised groups (indicator 2 of this JC).

The EU has a long tradition to engaging on violence against women (including female genital mutilation), in close collaboration with other Member States. This high EU profile has been further enhanced as a result of the COVID-19 crisis, which led to increased levels of gender-based violence against women and girls. On gender equality, there is evidence that core programmes launched during the CSP 2008-2013, such as 'Bridging Divides Through Accountable Governance' largely failed to integrate gender and human rights¹³². A different picture emerges from the various civil society projects targeting access to justice and legal aid during the evaluation period, where women were generally a clear target group. Gender dimensions were duly considered in the action document of PLEAD, yet the issue is not addressed in the mid-term review report. The 2019 budget operation regarding PFM, public accountability and service delivery (PASEDE) has not integrated gender equality as a 'significant' or 'principal' objective¹³³, despite the huge opportunities to use this programme to that end (considering the major inequalities suffered by women in accessing public services). Furthermore, no evidence has been found that the EU tried to mainstream gender and human rights in its (indirect and limited) AC activities (generally reframed as promoting 'public accountability')¹³⁴.

In terms of women economic empowerment, the EU-FAO programme on land governance was effective in promoting equality before the law for women by investing in the digitalisation of land rights.¹³⁵ The project aimed to digitize all the land records to develop the land management system in Kenya (see Box 3).

¹³¹ This holds particularly true for concerns with transparency and accountability -areas in which Kenyan civil society organisations have been active and accumulated quite some experience and expertise.

¹³² See Independent evaluation of the 'Bridging Divides Through Accountable Governance'. 2014.

¹³³ Action Document PASEDE, p. 2.

¹³⁴ On the challenges involved in terms of ensuring that AC and human rights agendas can mutually benefit from each other, see: U4 Anticorruption Helpdesk. *Mainstreaming gender and human rights in anticorruption programming* CMI. 2018.

¹³⁵ Interview with EUD official.

Box 3 *Digital tools in support of women economic empowerment*

The EU-FAO initiative¹³⁶ developed various online tools such as : (i) the territorial diagnosis tool used in identifying land boundaries during land disputes;(ii) the National Land Information Management System which provided a standardized and integrated open online access to land registration services for all K and linkages to various land management ministries (land registry, ministry of land, Ministry of Finance); (iii) the Geospatial Information System (GIS) which is a platform for generating GPS title locator to identify the original owner, the image of the land, period of ownership, year of purchase, transaction number, the current status of land and how much the revenue officials have to collect. These have helped to address the increased cases of fraud, forgery, and corruption in the land sector which previously originated from the inconsistency of land records and ownership documents, the opaqueness nature of keeping land records. At the time of the evaluation, “over 14 land registries information had been moved to online platform out of 16”.¹³⁷ Women have also benefitted from this scheme to assert their rights without undue interference from different sources.

Since 80% of the land is owned under customary law, the programme adopted the traditional land management systems as starting point, including respect for communal land titles. The data collected showed that only 2% of land is owned by women. This evidence, in turn, has shaped dialogues towards better -taking into account cultural gender biases and discriminatory laws that impede land ownership. The programme invested in communal justice mechanisms -led by tribal elder- to resolve conflict while being sensitive to problems of gender inclusion in such processes in a patriarchal society. This helped to reduce pressure on the formal justice system beyond being easier to access, cheaper for communities, locally owned and resonating with the prevailing culture. Importantly, support to centralised digital registration of land titles allowed women to defend their rights without being subjected to corruption practices.¹³⁸

With regard to exploiting all opportunities to stand up against discrimination of vulnerable and marginalised groups (indicator 2 of this JC), the various EU support programmes to access to justice and legal aid have had as the key focus a concern to include vulnerable groups from the outset, amongst others by engaging in marginalised counties. Progress reports, the mid-term review of PLEAD and other evaluative material clearly show that this constant focus led to several positive effects on the lives of vulnerable groups.

Beyond these two specific indicators (gender equality/women economic empowerment and support to vulnerable/discriminated groups), the case study revealed other interesting practices to connect RoL and human rights. This holds particularly true for EU support (through PLEAD) to address major challenges in the criminal justice (by ensuring compliance with the Bill of Rights) and in the work regarding prison conditions (e.g. in terms of reducing overcrowding or safeguarding the health of prisoners and staff during the COVID-19 pandemic¹³⁹). A case in point is the Imarisha Haki Project, which strategically and successfully engaged on issues of torture and abuse of human rights within the criminal and juvenile justice systems. It used a 7-dimensional transformation strategy, including the use of Mobile Phone Technology, social media and SMS lines for reporting on torture and human rights violations.

JC7.3 Application of democratic principles

Equally for this JC, a delineation of the scope of issues to be covered was agreed upon at the outset of the evaluation process. The main focus would be on whether EU support helped to (i) protect fundamental rights and civic space and (ii) support the anchorage of local democracy principles by coherently applying the RoL and fighting corruption at local level.

Regarding the first indicator, the EU has been long standing partner of civil society to safeguard rights, freedoms and civic space. The progressive 2010 Constitution provided a major beacon and point of reference to the dialogue with GoK and several generations of support programmes aimed at strengthening the role of independent, peaceful, representative CSOs as actors in development and governance. The positive effects of this support (and that of EU MS and other external actors) is reflected in the vibrancy, dynamism, resilience, innovation and professionalism displayed by many civil society players (at both local and national levels). The EU Roadmap for engagement with civil society in Kenya¹⁴⁰ has two core objectives, respectively “*support to an enabling legal and institutional framework for CSOs at national and county level*” and “*increased participation, engagement and oversight by civil society in governance*”. There has also been a constant attention to strengthening CSO accountability and sustainability (particularly with a view to reduce the very high dependency on external funding). As mentioned above, the civic space in Kenya is not under heavy attack (as in other countries of the region and continent). The 2021 report of the CIVICUS Monitor considers the civic space in Kenya as ‘obstructed’ with several indicators evolving in a negative way (e.g. police brutality with

¹³⁶ The project ended on 31/03/2022 with the new digital land governance program started on the 1st April 2022 for the next 5 years (Euro 20M).

¹³⁷ Source: Interview with FAO official in charge

¹³⁸ Source: Interview with FAO official.

¹³⁹ Source: UNODC reporting on PLEAD outcomes.

¹⁴⁰ European Union. 2020 (update). *EU Roadmap for Engagement with Civil Society 2019-2021*.

impunity, restrictive media laws, freedom of expression in steady decline). The consultations confirmed this diagnosis, stressing that the political system in place “*can get very nervous when CSOs push for accountability in post-election violence or in corruption cases*”¹⁴¹. This led to government attempts to amend the Public Benefits Organisation Act 2013 by introducing retrogressive provisions or to the transfer of the oversight role from the Ministry of Devolution and Planning to the Ministry of Interior and Security -a process which could be halted. Evidence suggests the EU has consistently played a useful role in promoting constructive state-society relations (by favouring multi-actor dialogue and co-production processes on reforms agendas such as justice) while empowering CSOs as governance actors.

Regarding the second indicator for this JC (anchoring the local democracy through RoL&AC principles), a mixed picture emerges from the documentary and field analysis. On the positive side, there is abundant evidence that the EU has targeted the local level for its RoL&AC access to justice/legal aid work from the outset. This local focus was consistent with the bottom-up approach adopted to promote governance reforms and with the chances provided by the 2010 Constitution in terms of devolving power to elected counties. Several projects and programmes included (marginalised) counties in their geographic scope. A wide range of initiatives were supported to raise awareness on the new role division in a devolved system, to capacitate the emerging local authorities, to foster citizen participation as well dialogue and partnerships in delivering services (including access to justice/legal aid).

The 2014 IDEAS programme (EURO 28,6 million) represents another attempt to improve local governance and planning systems, including county statistical capacity, PFM and public procurement as well as revenue generation. The EU also participates in the World-Bank led multi-donor trust fund related to the Kenya Accountable Devolution Program (KADP) and the Kenya Devolution Support Program (KDSP), all geared to empowering both local authorities (as accountable institutions) and enhancing citizen engagement in governance. Available reports on progress achieved refer to positive contributions resulting from the capacity building, analytical and technical assistance provided, e.g. in terms of gradual streamlining of devolved functions and resources for enhanced revenue generation and service delivery, public financial management reform; improved revenue allocation; public participation initiatives and accountability¹⁴². Experience shows that levels of reform commitment and progress achieved vary substantially among counties (reflecting diverging local political economy conditions).

Two main challenges for the EU could be observed in fostering RoL&AC agendas at local level. First, there is no coherent EU intervention strategy that connects the local governance support of the EU with *specific* RoL&AC objectives and expected outcomes. Linkages exist in practice, but they are not explicitly framed/labelled as such. The possible RoL&AC dimensions are encapsulated (hidden) in the generic term of promoting local governance. This makes it difficult to adequately monitor whether EU-supported efforts at local level effectively help to anchor RoL principles or combat corruption. Second, the risk of technocratic approaches to capacity development of counties or citizen participation should not be excluded. A case in point is the ‘Bridging Divides through Accountable Governance’. The 2014 evaluation concludes that “*the context analysis on devolution contained in both the Programme estimates and the Technical and Administrative Provisions for Implementation*” *could have been more comprehensive. While these context analyses acknowledged the need to improve governance in local authorities and improve engagement of citizens with them, they did not provide a comprehensive analysis of the potential challenges and opportunities that would emerge in the transition to devolution. Had a more comprehensive scoping been undertaken, the Programme’s design would have better anticipated some of the complexities associated with the transition*”.

EQ8: Effects on wider EU external action goals

This final EQ looks at the *instrumental use of the RoL* to foster wider goals (than conformity to the law and related reforms of justice systems or strengthening oversight institutions). To this end, it uses the ‘*thick*’ definition of the rule of law¹⁴³, embracing the protection of socio-economic rights, inclusive development, the transparent management of natural resources or the promotion of public goods such as peace and security. The need to ensure a connection between RoL principles and these wider objectives is critical to maintain trust in a society, keep alive the social contract and prevent conflicts.

JC8.1 Peace, resilience and stability

The EU’s *project portfolio* regarding the RoL were largely focused on fostering first the ‘demand-side’ so paid great attention to inclusion, rights and voice (particularly of women and vulnerable / marginalised people) as well as to create first and foremost an environment of public accountability (first indicator of this JC).

¹⁴¹ Source: Interview with a leading Kenyan CSO on justice and human rights.

¹⁴² Kenya now has first Citizen’s Accountability Audit (CAA) Engagement Framework in Africa; the first County Data Desk, while [Maarifa Center](#) is the first award-winning platform which collates, shares and promotes homegrown innovations from counties.

¹⁴³ Bingham, T. 2010. *The Rule of Law*. Penguin Books, 2010, p. 66-67.

Interventions in the field of justice were thematically concentrated on a few areas (probably a wise choice in the absence of space for big bang reforms) that were directly linked to topics that directly concern people (access to justice, devolution/local governance, accountability for service delivery). This is consistent with the overall (implicit) theory of change, apparently adopted in the two past programming cycles, that investments in targeted, people-centered RoL/justice activities are key precisely to underpin the very *foundations* of a less divided, more cohesive, socially just and ultimately more democratic and peaceful society. However, there is less evidence that EU support to more inclusive processes (particularly in the justice sector) also led to more inclusive development outcomes (in terms of fighting inequalities and promoting social justice). This is not linked to the relevance and quality of EU interventions, but to the systemic constraints to inclusive development.¹⁴⁴

In the past two programming cycles, the EU did not directly target the fight against impunity (indicator 2 of this JC), particularly in corruption matters. As mentioned before, this strategic choice was based on a solid analysis of prevailing political economy conditions in the country and a recognition of the limits of external agencies to address *upfront* a structurally embedded culture of corruption cutting across all levels of society -without a clear national leadership of the reform processes involved.

There were no state building contracts in Kenya that could have been used to forge the social contract between state and society (indicator 3 of this JC). However, there were several sector budget operations during the evaluation period in infrastructure and rural development. Evidence indicate that these EU interventions were primarily focused on development 'needs' rather than adopting a RoL lens (with a focus on transparency, accountability, rights-based approaches).

JC8.2 RoL&AC for functioning markets, trade and private sector development (compliant with human rights and due diligence)

The evidence collected shows the EU did not explore possible ways and means to use trade and private sector development processes to push forward RoL&AC agendas. There was no shortage of opportunities to do so, considering the relative importance of trade relations between the EU and Kenya (as reflected in the prevailing EPA and Strategic Dialogue between the two parties), the huge challenges for domestic, European and international private sector operators to deal with endemic corruption practices (e.g. in contract management, public procurement, beneficial ownership, tax crimes) or the equally sobering situation of labour rights in the country (which often constitute infringements to the rule of law).¹⁴⁵ As a result, there is a major disconnect between EU investments in the RoL&AC through the development cooperation instruments and the effective use of the leverage potential of the trade partnership (which generally include provisions related to EU values) to promote the same agendas. This may be partly related to the fact that trade relations are primarily driven by regional dynamics (in the framework of EU cooperation with the East African Community) and involving different players and interests. It reflects the well-documented limits of current EU approaches to using trade agreements or the Generalized System of Preferences (GSP) to promote Non-Trade Policy Objectives (NTPO) including on rule of law issues.¹⁴⁶ However, it also illustrates the lack of mainstreaming RoL&AC issues in the EU's trade relations or private sector development efforts (for reasons explained in EQ 1). A similar story applies to blending operations and investment facilities, which do not integrate RoL&AC concerns.

JC8.3 Natural resource management

Available evidence indicates that this has not been a policy area receiving targeted attention so far in overall EU cooperation strategies. There is one notable exception, i.e. land governance, where the EU has a partnership / funding agreement with the FAO to explore ways and means to structurally improve land governance with a strong RoL dimension and a focus on applying innovative approaches at county level (see EQ 7).

¹⁴⁴ For an excellent overview of the notion of inclusive development

¹⁴⁵ For a recent overview see: Solidar. 2021. *Economic & Social Rights Report Kenya. Zoom on Decent Work.*

¹⁴⁶ Borchert, I, e.a. 2020. *The Pursuit of Non-Trade Policy Objectives in EU Trade Policy.* University of Sussex, University Libre de Bruxelles and CEPR, CESifo, CEP. April 2020

Overall assessment

Kenya is a country with important development potential as well as a strategic partner for Europe on an expanding set of common interests. Yet it is also prone to recurrent violent conflicts linked to elections, ethnic divides and huge inequalities. Since the end of the authoritarian regime of President Moi, it is involved in a complex transition from a social contract driven by corruption and patronage to an inclusive and transparent system of democratic governance. Guided by the progressive 2010 Constitution, there is ongoing political and societal struggle for the correct application of the rule of law and the curbing of endemic corruption.

In this challenging context, the EU has been able to roll out during the evaluation period (2010-2021), a relevant and increasingly sophisticated RoL agenda. Acknowledging the limited elite interest in genuine reforms, the EU made the right choice to start from the bottom-up by providing effective project support to a wide range of civil society actors (also at local level) with a view to strengthen the demand side for reforms. As the overall political environment gradually became more conducive, the outreach was broadened to state actors in targeted thematic areas (mainly the equitable access to justice, including through informal systems, and legal aid). More recently, the EU launched a first budget operation in the governance domain on PFM and engaged in an innovative land governance programme (using digital technologies, also to defend women's rights). To the appreciation of Kenyan actors, the EU used participatory, multi-actor and multilevel approaches in RoL processes. It mobilized experienced implementing agencies for its flagship justice programme PLEAD (the largest in sub-Saharan Africa) which could operate in a flexible manner to adapt to new demands. There was special attention to inclusion of vulnerable groups while linkages could be noted with other priorities of EU external action (e.g. human rights, gender equality, conflict prevention). EU added value was also seen to lie in the diplomatic weight of the EU/MS and the (financial) ability to engage in major RoL programmes over time.

The EU support to the RoL generated positive effects, e.g. in terms of citizen awareness, civil society empowerment, changes in legal frameworks, capacity development of state agencies, collaborative arrangements between state and non-state actors, improved data collection for influencing policymaking, etc. However, sustainable outcomes are more difficult to observe, amongst others because theories of change are implicit and M&E systems are mainly activity and output driven.

There are areas where EU approaches and methods of work could be further refined. These include: i) reinforcing the ownership and local agency in EU programmes; ii) improving the strategic coordination / division of labour between EU/MS and other external actors in RoL& AC; iii) clarifying the division of responsibilities with implementing agencies (mainly in policy/political dialogue and in terms of visibility); iv) conducting more regular mid-term reviews with all stakeholders; v) developing structured exchange platforms; vi) enhancing M&E and accountability systems, also from a beneficiary perspective.

Important gaps were noted in the EU portfolio, such as the limited engagement in AC (though speeding up as of recently) and the absence of a mainstreaming strategy to RoL&AC in traditional development sectors and other key policy areas (including trade and investments). These are partly linked to institutional capacities to deliver. While there is expertise at EUD level (including local staff with the institutional memory), the human resource base is thin, considering the (expanding) RoL&AC agenda. This is compounded by the limited tradition of mobilizing, in a strategic and structured manner, existing expertise in-house (e.g. in DG JUST/HOME) or in specialized knowledge institutions (international or domestic).

Case study note – Kyrgyzstan

Introduction.....	81
Context	81
Political economy analysis	81
Overview of the EU support to RoL&AC	82
Strategy and implementation of EU support to RoL/AC	83
EQ1: EU strategic framework/institutional environment.....	83
EQ2: Responsiveness, ownership and flexibility	85
EQ3: Partnerships and coherence	86
EQ4: Choice of modality	87
Effects of EU support to RoL & AC.....	88
EQ5: Effects on RoL/AC (I): the quality / efficiency of justice systems and AC institutions	88
EQ6: Effects on RoL/AC (II): independence, impartiality, accountability of the justice and AC institutions	90
EQ7: Broader effects on RoL/AC culture, human rights and democracy	93
EQ8: Effects on wider EU external action goals	94
Overall assessment and lessons learned	95

Introduction

Remark: This case study note does not constitute a separate evaluation of EU support in the country or its situation with regard to RoL&AC. It presents country-related findings relevant to the overall assessed judgement criteria and indicators, and feeds into the main evaluation report of the Evaluation of the European Union support to Rule of Law and Anticorruption in Partner Countries to which it will be attached as an annex.

Context

Kyrgyzstan is a lower-middle income country, one of the poorest in Central Asia, with a largely rural population. It is heavily dependent on migrant remittances from Russia and Kazakhstan and on the output of a single gold mine for foreign exchange. It suffered particularly harsh consequences of the COVID-19 pandemic because of the loss of remittance income and the poor state of its social protection system. It was also a leading recipient of donor COVID support, including from the EU.

The Rule of Law is identified as a priority in many government strategies in force over the evaluation period: the National Strategy for Sustainable Development (NSSD) 2013-2017, the Mid-Term Development Programme for Kyrgyzstan 2012-2014, the Government's Programme and Plan on Transition of the Kyrgyz Republic to Sustainable Development for 2013-2017, the Kyrgyz National Development Strategy 2040 (2018), and the Development of Judicial System in KGZ 2019-2022. None of these, however, sets forth a credible, implementable, and monitorable RoL&AC reform strategy and process. Kyrgyzstan continues to have a system characterised by low professionalism, a highly politicised judiciary, imbalance of power between prosecution and defence, poor enforcement of judgments, lack of coordination between Parliament and the executive branch, lack of transparency and accountability, and other problems typical of post-Soviet states.¹⁴⁷ The country is deeply and pervasively corrupt despite repeated public commitments to fight graft (Transparency International 2018 and 2019). Commitments in the area of human rights have not been followed up on (Human Rights Watch 2021); for example, while the government recognises gender inequality and long ago ratified CEDAW, there has until very recently been neither a national gender policy nor effective implementation of laws protecting women's rights.

EU interviews suggest that the EU's cooperation with Kyrgyzstan was pursued in a context where the powerful forces shaping the country and the region are i) the legacy of Russian influence and ii) Chinese economic clout, particularly in the form of abundant credit, which raises, however issues of over-indebtedness. There will likely be increasing synergy between Chinese and Russian influence post-Ukraine, as the two countries appear to be joining in what amounts at least an *entente cordiale* if not an alliance, as well as a de facto economic area. As experts interviewed pointed out, Turkey, with religious and linguistic links to the country, is increasingly exercising soft power through the financing of universities and mosques. Given the limited amount of money it can deploy, the EU's Central Asia regional emphasis on resilience and soft power is context-sensitive and realistic (CEPS 2019; CABAR 2020 for the EU's limited leverage).

Unfortunately, all events and Government actions since the botched October 2020 parliamentary elections have amounted to a step backward for RoL in Kyrgyzstan (e.g., SWP 2021), which can only bode ill for anticorruption, as well (despite public commitment to clean government). While the EU took immediate steps (delaying signature of the financing agreement for a new phase of RoL support, suspending budget support in other areas), it remains to be seen how the EU's engagement will adapt to this new context; a 'neo-traditionalist' environment, meaning a return to Soviet governance absent the Party with a strong dose of populist nationalism and traditional values added (CABAR 2015, Doolotkeldieva 2020). Now more than ever, the EU faces the problem of how to operate effectively in a national context of clan politics and strongman authoritarian rule. Interviews suggest that the EU is still, as of this writing (April 2022) carefully and prudently exploring how its cooperation will adapt to this setback, a decision not made easier by the geopolitical shock of the Russo-Ukrainian War, which will be felt directly in Kyrgyzstan due to the return of workers from Russia and other impacts of sanctions on that country.

Political economy analysis

Based on interviews and research cited above, Kyrgyzstan remains in the grip of clan patronage, dating back to Soviet days, which maintains its grip by instrumentalising regional and ethnic divisions. There is a long history of regional (North-South) and ethnic (Kyrgyz-Uzbek) rivalry in the country, whose history has been punctuated by a (roughly five-year) cycle of flawed elections, violent protest, and political instability. From the standpoint of this case study, two such incidents are of the greatest importance. Following violence in the southern Osh region in 2010, the government was forced out of power, its leader fled the country, and

¹⁴⁷ See, e.g., reports from international NGOs such as Freedom House and Human Rights Watch (in list of references), diagnostic studies from international organisations such as the World Bank (nd, *ditto*) on the judiciary and the OECD (2021, *ditto*) and EBRD (2015, *ditto*) on the legal environment for business. For summaries, see RoLPRO and RoLPRO 2 project documentation (ADs, FAs).

sweeping governance reforms were instituted. Thus began what might be called a Bishkek Spring, in which market-oriented reforms flourished, civil society and media expression were quite free relative to other countries in the region, and a parliamentary system of governance (the only one in the region) was adopted.

In the runup to October 2020 parliamentary elections, the EU (and other donors) supported electoral reforms which resulted in an election judged free and fair by international observers.¹⁴⁸ However, anger at the exclusion from Parliament of opposition parties under the rules in force boiled over into the streets of Bishkek, resulting in the storming of the White House. Violence along ethnic lines also broke out in Osh and other parts of the country, and in the aftermath, President Sooronbai Jeenbekov was forced from office - the 10th change of government since 2011, with an average tenure of less than one year. In January 2021, presidential elections led to the landslide election of Sadyr Japarov, a former member of Parliament representing a nationalist, populist position which emphasises traditional Kyrgyz values. The same election saw overwhelming support for a constitutional reform to return to a presidential system of government, and in summer, a constitution heavily criticised by, inter alia, the OSCE and Venice Commission (2021) was adopted. EU officials interviewed pointed out that there had been trends of concern since 2016, at least; however, the months following the presidential election have seen an acceleration of backsliding, with serious human rights abuses and a significant reduction in civil society space to criticise government.

Kyrgyz political culture is dysfunctional. The October 2020 events represented an insurrection against parliamentary elections. Yet Parliament continued to sit, beyond its constitutional limit, and turned into a rubber-stamp institution for the new President. As a study from the Bertelsmann Stiftung (2022) put it, Parliament had become, by the time of the outburst of popular anger, “a political bargaining club, lacking any stable political alignments, holding no principled positions on any public issue, and willing to join the side of the strongest contender.” In fact, it became an object of popular contempt. That the discredited Parliament, sitting as a caretaker chamber, passed legislation of the highest constitutional importance was “a political irony.” The opposition, civil society organisations and political parties in general view the presidential office as the ultimate authority in the country. With regard to other national institutions such as the judiciary, law enforcement or government ministries, the level of legitimacy accorded to them varies somewhat, but is generally low. In the most recent opinion poll by the International Republican Institute (2019), carried out in December of that year, respondents’ views of parliament, the president and various state institutions were about evenly split between positive and negative, with parliament generally considered slightly more negatively than the president. Only about 30% viewed the courts favourably. Shadowy institutions, most importantly the State Committee for National Security, wield strong influence over public institutions

Overview of the EU support to RoL&AC

The major cooperation engagements between the EU and Kyrgyzstan, under a Partnership and Cooperation Agreement (now on the verge of maturing into an Enhanced Partnership and Cooperation Agreement), were the MIP 2014-2020 (now available, as well, for 2021-2027) and the EU Central Asia Regional Strategy, modified in 2019 and running out to 2023. Focal sectors in the first were Rule of Law (including electoral reform), Education, and Integrated Rural Development (including social protection, formerly a focal sector in its own right). Focal sectors for 2021-2027 are Governance and Digitalisation (including Rule Law and Anticorruption), Human Development (including education and skills, with a strong gender component), and Green and Climate Resilient Economy.

Major EU bilateral spending actions related to RoL, democracy, and human rights were the ‘Promotion of the EU Rule of Law Initiative in Kyrgyzstan’ RoLPRO (2014-2018) and the second phase (RoLPRO²). A RoLPRO third phase (‘Justice4All’) was signed in December 2021 with a strong emphasis on building on progress in digitalisation achieved under RoLPRO². All three projects contain significant anticorruption elements, and with Justice4All, the link between digitalisation, anticorruption, and protection of human rights has been strengthened. In general, whereas RoLPRO 1 concentrated on government institutions, RoLPRO 2 saw greater attention to civil society, a trend that has strengthened in the design of RoLPRO 3.

Under the EU Central Asia Strategy of 2007 (updated 2019), the MIP 2014-2020 called under the Regional Security focal point for support to RoL generally speaking, in addition to improved border management, the fight against drugs, and the fight against transnational organised crime. Kyrgyzstan has benefitted from regional programmes. Among the most important of these is the EU-Council of Europe (CoE) Central Asia Rule of Law Programme 2020-2023, with components focusing on general awareness of CoE conventions, economic crime and anticorruption, and Venice Commission.

¹⁴⁸ For in-depth analysis of the EU’s support to the 2020 Parliamentary and 2021 Presidential elections via budget support for electoral reform, see the EC (2021) evaluation of EU support for budget support and blending in Kyrgyzstan.

Table 5 List of main interventions

D or C year	Title	Budget (mEUR) ¹⁴⁹	Typology	Implementing partner
2011	Promotion of Democracy and Stabilisation in Kyrgyzstan	1.1	Governance (democratic)	UNDP
2011	Bringing legislation of the Kyrgyz Republic in line with the international norms for judicial protection of the rights of children, women and disabled	0.3	Human rights	Max Planck Gesellschaft
2012	RoLPRO	13.2	Justice (system)	GIZ, CoE, political foundations and CSOs
2012	PAMF VI in Kyrgyzstan	1.7	Justice (system)	UNDP and CoE
2017	Judicial and Social Action for Enduring Stability and Peace in Kyrgyzstan	1.0	Peace, Resilience & Security	OHCHR
2018	RoLPRO 2	12.2	Justice (system)	GIZ
2019	Supporting Rule of Law in Central Asia	8.0	Justice (system)	COE

Strategy and implementation of EU support to RoL/AC

EQ1: EU strategic framework/institutional environment

JC1.1 Clear, context sensitive and realistic engagement strategies

The treatment of RoL&AC in the EU's strategic engagement with KGZ was explicit, realistic, and coherent (I-1.1.1). The main external action policy frameworks are the Central Asia Regional Policy (2007, updated 2019), the MIPs, of which the most relevant here is 2014-2020, and the Central Asia MIP 2014-2020. The regional strategy privileges socio-economic goals, security, and a broad reform and modernisation agenda that covers RoL&AC incl. democracy and HR. The underlying rationale is that stability and prosperity require strengthening the RoL&AC foundation. While elements such as women's rights, media freedom, and fair and transparent elections are present, emphasis is placed on business environment and attracting foreign investment. The Kyrgyzstan MIP aligns closely with the Central Asia strategy. The role of support to civil society and improved Public Finance Management (PFM) as means of tackling corruption is recognised. Security concerns are dealt with through regional programmes, specifically Border Management in Central Asia (BOMCA) and Central Asia Drug Action Programme (CADAP). One of the "main problems" impeding socio-economic development is identified in the MIP 2014-2020 as "The pervasive corruption, in particular in the judicial sector, which means that individuals and companies are deprived of legal recourse, undermining investor confidence and protection for human rights, among others." Selection of governance, judicial reform, RoL, and AC as cooperation priorities responded directly to government requests for support. Those requests, in turn, were grounded in the objective of enhancing the business climate, trade, investment, and economic growth.

Assumptions identified as necessary for success (implicitly, risks) are coherently identified: a legitimate government and citizen access the law when their fundamental rights, including human rights, have been violated. As discussed also under JC 2.1, however, the treatment has been rather shallow. The paradox is that the EU pledged to support each of these very two factors, giving rise to circularity - cooperation to support the foundations identified as necessary for cooperation to succeed. In the event, recent trends have weakened these foundations.

The national context was well taken into account (I-1.1.2). The favourable situation in Kyrgyzstan after 2010 - active and robust civil society, free media, willingness to address needed judicial reforms - informed both of the major EU targeted interventions, RoLPRO and RoLPRO 2, which recognised and addressed problems such as judicial corruption, underfunding, lack of professionalism, politicisation, poor enforcement of judgments, etc. Coordination between the legislative branch and Government was generally poor, resulting in administrative chaos. Specific entry points to address the wide range of problems and targeted actions were identified. As mentioned above, whereas RoLPRO 1 concentrated on government institutions (Parliament, Ministry of Justice (MoJ), GPO, and others), RoLPRO 2 expanded its support to better encompass civil society.

The MIP 2014-2020 analyses and takes into account specificities of governance, the regional security situation, and the ethnic tensions that, combined with a flawed political system, have made make the country prone to period paroxysms of violence (typically election-related). The Central Asia MIP 2014-2020 is also careful to point out the challenge of tailoring activities to the "variable geometry" of individual country needs,

¹⁴⁹ Planned EU contribution

especially in the absence of a regional counterpart organisation. In the case of Kyrgyzstan, one of the distinct features of the country was its relative (to other countries in the region) political pluralism, free media, and active civil society. The country was eager to reform and did not instinctively stonewall progress on human rights; however, it continued to suffer from rampant corruption. The EU RoL&AC support programme was designed around a credible inventory of problem areas and possible entry points for reform. However, the aftermath of the October 2020 and January 2021 elections has tarnished Kyrgyzstan's reputation as a star performer in the region. In returning to the authoritarian, nationalist, populist governance model, Kyrgyzstan has experienced what can be described as a regression to the regional mean. Thus, at the end of the evaluation period, the EU and other international actors found themselves fighting a rear guard action to defend gains that had been made previously.

A final evaluation of RoLPRO was critical of the excessive number of indicators employed and their fitness for purpose and pointed out that the project Logical Framework was never used for monitoring purposes because Outcome indicators were entirely lacking (I-1.1.3). The same weakness carried into RoLPRO 2, where interviews with stakeholders suggest that the EU is still trying to assess what actual impact has been. Indicators proposed in the RoLPRO 2 Action Document results framework lean heavily towards international institution (Transparency International, WB, ABA, etc.) quantitative indices, “*international organisation reports*,” and (far in third place) national NGO reports.

JC1.2 Coherence with nature and goals of EU external action

All EU strategic documents align support with promoting European values regarding democracy, human rights, independent civil society, inclusion and non-discrimination and gender equality (I-1.2.1). The new EPCA places strong emphasis on shared values, democracy and the rule of law, human rights and fundamental freedoms and sustainable development. At the same time, and as described above, while the EU has consistently supported European values and approaches in its cooperation with Kyrgyzstan, the main goal shared between the EU and national partners has been to meet RoL&AC conditions needed to ensure economic growth, a sound business environment attractive to international investment, etc. This is evident from the close alignment of Kyrgyzstan cooperation with the Central Asia regional strategy. Strategic documents systematically emphasise the necessity of RoL&AC, and especially the integrity of the judicial system, as a precondition for private sector development and international investment. In the area of natural resource management, no explicit links with the RoL&AC programme have been found, but the deep engagement of the EU in water management issues, a flashpoint for conflict, has significant impacts on regional security issues.

Through regional programmes focused on border management, drugs, and the fight against transnational organised crime incl. trafficking in human beings, the EU has engaged with peace and security issues (I-1.2.2). Commenting on the EU's regional policy (and, given the close alignment, on the bilateral Kyrgyzstan policy, the Centre for Economic Policy Studies concluded that the objectives, while rather modest, were realistic given the strength of Russian and Chinese influence in the country. In effect, the cooperation programme, and particularly in the area of RoL&AC incl. democracy and human rights, was a classic ‘soft power’ external action.

No evidence has been found that EU internal RoL and corruption issues have had any repercussions in its cooperation with Kyrgyzstan (I-1.2.3).

JC1.3 Conducive institutional environment

The institutional environment for cooperation is generally adequate (I-1.3.1). It appears that cooperation staff resources are sufficient, but that these are often stretched. Indicative of this is that DG INTPA/NEAR staff have not infrequently been assigned to tasks having to do with climate change, trade, and political matters outside their terms of reference strictly speaking.

No evidence has been gathered on involvement of other DGs (I-1.3.2). Human resources and knowledge from non-EU actors was mobilised simply by using their organisations as implementing partners (e.g., UNODC, OHCHR). At regional level, the involvement of the CoE through a bilateral TA project 2016-2018 and the current 2020-2023 Central Asia Rule of Law Programme has provided a strong platform to bring that institution's specialised expertise to bear, particularly now in the area of economic crime, anticorruption, and anti-money laundering.

As pointed out in assessing JC 1.1, **intervention logic and monitoring frameworks, specifically in the case of RoLPRO 1, were criticised by evaluators (I-1.3.3).** However, to fault them for failure to identify “*transformative*” results would be unfair, because the EU has not set its sights so high in Kyrgyzstan. EU support has concentrated on specific technical assistance and capacity building to encourage progress towards shared RoL&AC objectives in order to provide a solid foundation for socio-economic progress, concentrating on Government institutions in RoLPRO 1 and widening scope in RoLPRO 2 and 3.

The limits of discussing EU cooperation support in terms of transformation can be illustrated by two examples having to do with democracy and anticorruption. EU budget support to electoral reform

achieved good results in the beneficiary agencies (State Registration Service and State Elections Commission) – capacity built, biometric identification introduced, etc. Subsequent elections were held by international observers to be not ideal but acceptable from a fairness and transparency perspective. Yet the outcomes – violence, nullification of results, the rise of nationalist populism and retreat from democratic governance – are well known. EU support achieved technical progress, but cleavages in the underlying political culture remained, posing the question whether the EU merely made a flawed process more efficient. Similar logic could be applied to anticorruption, where EU support, particularly in digitalisation, has achieved superficial change, but there is no indication that a fundamentally corrupt judicial, political, and commercial culture has been changed. To conclude, judging EU cooperation in transformative terms may be setting up a straw man and knocking it down, as EU objectives in Kyrgyzstan, as discussed under JC 1.1 have been modest and realistic.

EQ2: Responsiveness, ownership and flexibility

JC2.1 Context, political economic and/or conflict analysis

While the EU has included context- and risk analyses in all its strategic documents, these have been superficial in the sense that none has addressed head-on the fact that Kyrgyz politics, and the economy, are dominated by traditional elites who maintain their power through patronage and have an interest in democracy only as strong as their ability to instrumentalise it in their favour (I-2.1.1). Add to this the deep ethnic and regional cleavages that afflict Kyrgyz society and a long-standing tendency towards nationalist populism. The judiciary is particularly corrupt – it is common knowledge that some judges purchase their appointment and then recoup their investment through corruption – and deeply opposed to reforms that would reduce its privileges. Government commitments to RoL have proven, in the event, to be easily broken. None of this is credibly reflected in EU documents which, for example (MIP 2014-2020), simply identify legitimate government and access to justice as the main precondition for programme success, giving rise to the circularity described in assessing JC 1.1. The need for deeper analysis was revealed by the 2020 and 2021 parliamentary and presidential elections, where support for electoral reform contributed to elections judged by international observers to be adequate, but frustrations with the political foundations for the elections boiled over into violence. With hindsight, technical support for improved functioning of electoral mechanisms was a superficial remedy for problems that run much deeper.

The EU's RoL&AC approach has been highly inclusive (I-2.1.2) and, with the progression from RoLPRO 1 to 2 to 3, has steadily brought more partners under its scope. It included all major actors and agencies in the justice system, including Parliament. Civil society, relatively free over the evaluation period (less so now) was extensively consulted in the elaboration of the EU programme and interacted closely with all branches of government through Public Councils (whose effectiveness in ensuring transparency and accountability has considerable weakened in recent months according to members interviewed). The EU also supported CSOs to improve access to justice for marginalised groups.

There has been active political and policy dialogue (I-2.1.3). As the EU's engagement has been largely demand-driven in the context of technical assistance and capacity building, much dialogue has been directed towards ensuring progress in areas or RoL reform identified by Government as a priority. There was, understandably, intense political dialogue following the events of late 2020 and early 2021. In RoL, only in electoral reform was there budget support, and according to interviews, policy dialogue there experienced phases of difficulty after the initial reform strategy was criticised by the Venice Commission, leading to project delays. These were ultimately overcome.

JC2.2 Engagement with actors at different levels

The taking into account of prevailing norms and institutional structures (I-2.2.1) has been discussed in assessing JC 2.1. The first of these has not been adequately reflected in the cooperation strategies pursued.

Through institutional analysis, and because the RoL&AC cooperation programme was mostly demand-driven, strategic entry points were identified and challenges, particularly capacity challenges, were taken into account (I-2.2.2). A structural challenge in Central Asia is that there is no regional-level interlocutor, a problem addressed to some extent by working closely with the CoE, which has a strong regional presence. According to persons interviewed, this has had the beneficial effect of engaging Kyrgyz authorities with peers in the region, as well as with groups such as GRECO (which Kyrgyzstan is considering joining).

JC2.3 Adjustment to changing conditions and new opportunities

Both RoLPRO 1 and RoLPRO 2 were problem- and demand- driven (I-2.3.1). All indications are that RoLPRO 3 (Justice4All) is, as well. The enthusiasm of Government for more work in RoL&AC this area is, based on interviews with representatives, not to be doubted. The opportunity that has, above all, shaped the evolution of the EU's support programme is digitalisation. The EU has carefully reviewed the potential contribution of greater digitalisation to justice sector efficiency (e.g., case management), human rights (e.g.

tracking persons through the justice chain), and anticorruption (e.g., through possible e-procurement). Users interviewed expressed enthusiasm over the improvements that have been made and opportunities for further progress.

Without question, the most important issue regarding flexibility and responsiveness (I-2.3.2) to changing conditions does not fall within the evaluation period strictly speaking but demands attention. This is the deterioration in RoL, democracy, and HR in the wake of the 2021 presidential election (which, however, persons interviewed dated back to 2016 at least, characterising the post-Presidential deterioration as “*the tip of the iceberg*”). The EU suspended budget support, delayed disbursements, temporarily suspended dialogue with MoJ, and delayed signature of the RoLPRO 3 financial agreement to indicate its disapproval of proposed constitutional changes that include a retreat from parliamentary governance (see also discussion under JC 2.3). Under RoLPRO 2, the EU also supported urgent consultations with Government regarding proposed revisions to the Criminal Code that marked a return to the past, succeeding in eliminating some (albeit not all) of them.

At the same time, RoLPRO 3 is essentially a linear extension of RoLPRO 2 (the fact that the actual project, formally ‘Justice4All’, is universally referred to as RoLPRO3 is not accidental), with an increased emphasis on digitalisation, greater involvement of civil society, and arguably a stronger gender focus. Without criticising this continuity – RoLPRO 3 it is, after all, building on significant achievements to date – the EU has not, in any way, withdrawn support in response to flagrant backsliding on commitments to European approaches and values. Based on interviews, this represents not inertia, but a strategic decision that continued engagement, not confrontation, is the best way to pursue EU objectives. The fact that RoLPRO 3 contains a significant CSO component may reflect a perceived need to ensure civil society resilience in the face of shrinking space and an increasingly acrimonious relationship with Government. RoLPRO 2 representatives, interviewed, stated that there was already a shift to greater support for civil society (and gender) underway.

At the same time, there has been no obvious shift in the theory of change underlying the EU’s engagement (I-2.3.3); the reaction to recent events represents is a course adjustment in the face of shifting needs. It should also be said, in view of the EU’s underlying concern with RoL as a foundation for economic growth, that during RoLPRO 2, there was increasing attention paid to criminal law.

EQ3: Partnerships and coherence

JC3.1 Partnerships based on comparative advantages

The EU, together with UNDP, chairs the RoL donor group in Kyrgyzstan, and coordination has worked reasonably well (I-3.1.1, I-3.1.2). But this has gotten easier as the evaluation period passed, because there were progressively fewer donors present. Despite mid-evaluation period hope for Joint Programming in Kyrgyzstan, there is still none in place. There are no ambitions for a Team Europe approach because there are so few EU MS present, although outside RoL&AC strictly speaking, this should not impede implementing the approach with EFIs given the importance of the blending modality.

More important in Kyrgyzstan than DAC donor partnership traditionally conceived is the competition for commercial and strategic advantage between DAC members, Russia, and China; particularly the latter because of its Belt and Road Initiative. In this competitive relationship, the EU is hampered not only by the superior financial resources of China but by the necessity to promote and enforce conformity with European values in areas such as human rights and gender. A range of partners interviewed expressed the hope that there could be better coordination between the EU and USAID, the two largest DAC players active in RoL. It is clear from reading the description of USAID project documentation that, particularly at the beginning of the evaluation period, there was considerable overlap and duplication. If experience in other countries is taken as a guide, this was probably the case particularly in legal training and education, where the EU and USAID typically propose competing curricula. Also mentioned were problems of incompatible computer systems.

Despite efforts to impose consistency, the concept of EU cooperation ‘value added’ (I-3.3.3) remains open to wide interpretation. A thorough search of strategic documents (bilateral MIPs, regional MIPs, Central Asia Strategy) reveals that the terms ‘added value’ and ‘value added’ virtually nowhere appear. This suggests that EU cooperation actions are more opportunistic than strategic. However, a working definition of EU value added often used is whether the EU was able to accomplish things that no EU MS acting singly or in concert would be able to achieve. The EU MS presence in Kyrgyzstan is weak, raising the role of the EU as de facto representative. Interviews with donors and implementing agencies suggested that, particularly in human rights and democracy, this gave the EU a unique voice. The EU is also able to act with a regional perspective, particularly from the security point of view (virtually no MS cooperation programme is able to implement multi-country actions). The EU’s perspective is one that, as a global player, prominently reflects peace and security concerns in addition to commercial ones. It is in these aspects of EU engagement that EU value added is truly

to be found, not in coordination or raising EU visibility (in a country with no accession ambition or potential) or in simply being a major donor.

JC3.2 EU support to RoL/AC has been delivered in a coherent manner

I-3.2.1 deals with whether EU cooperation was in conformity with European rules regarding fraud. **A complicated situation arose in RoLPRO 2 when the Kyrgyz security services ordered an investigation of the chair of the Supreme Court for allegedly misusing state funds to finance an information system on the grounds that the EU-financed RoLPRO 2-provided system was not working.** It was agreed to carry out an independent audit to determine whether the EU-financed system was actually working. Stakeholders interviewed, including the Supreme Court, expressed satisfaction that the dispute was being settled.

While the EU did not finance security sector reform strictly speaking (I-3.2.2), EU support to address regional security concerns, which includes country-level actions, was not only complementary to the EU's RoL&AC agenda, but there were synergies between the two, as well. There are close links between corruption, money laundering, the drugs trade, border management, and organised crime (incl. human trafficking).

Based on the very limited presence of EU MS apart from Germany, it has to be concluded that MS do not value their national interests in Kyrgyzstan to be very high (I-3.2.2). EU trade with Kyrgyzstan is extremely low despite GSP+. The fact that MS presence is so low may also indicate, however, that EU MS trust the EU to represent their interests.

EQ4: Choice of modality

JC4.1 Mix of modalities

Justice sector, and more generally RoL, reform was part of the National Strategy for Sustainable Development, but lacking in a sector reform strategy as in social protection, education, and integrated rural development. For this reason, if no other, budget support would have been an inappropriate modality (I-4.1.1). Moreover, in justice reform, Government had (for component 1, on strengthening human resources in justice institutions and developing the AC legislative framework) a very specific list of reform areas for which a consortium of EU MS implementing agencies was ideal. For component 2 on legislative drafting for AC, the CoE was the ideal partner for this classic technical assistance exercise. In both cases, previous implementing agency participation in the regional Partnership for Central Asia was taken into account.

The only subject of concern to this evaluation that benefitted from budget support was electoral reform. Here, the recent evaluation of EU Budget Support and Blending in Kyrgyzstan concluded that the budget support modality for electoral reform was a mistake. Policy dialogue was complicated. There was no reform strategy in place when budget support began; rather, producing a strategy was one of the conditionalities. Dialogue temporarily broke down when the Venice Commission issued a negative assessment of the first draft strategy. While it eventually resumed, there was a significant delay in adoption of the strategy, which has still not been codified in law. With hindsight, the evaluation concluded that budget support in electoral reform was a politically motivated choice designed to quickly provide concrete EU support for a partner regarded as the most open in the region to democratic reform. A well-designed project approach could have achieved the same results, perhaps with greater effectiveness. Despite good progress at output level, notably providing capacity in the form of human resources and equipment to beneficiary institutions, introducing biometric identification, reforming election legislation and regulations, the following elections were marred by violence and, eventually, the landslide victory of a nationalistic populist whose programme does not align well with EU values and objectives in the country

The only area in which I-4.1.2 on the monitoring of budget support conditionality is relevant is electoral reform, where disbursement reports show that performance indicators were closely monitored.

Synergy and complementary bilateral and regional programmes were pursued with good effect (I-4.1.3). The Kyrgyz activities of the Central Asia Rule of Law Programme, while still in early stages, have strengthened implementation of individual aspects of the bilateral (RoLPRO 2) programme. IfS/IcSP projects early in the evaluation period offered a rapid entry point and, both regional and bilateral, were able to cover issues not dealt with either under DCI or EIDHR funding. IfS was able to deal with urgent human rights issues arising from ethnic conflict, and later even dealt with issues involving the Constitutional Court. Regional programmes through which the EU supports improved border management and the fight against drugs have been synergistic with RoL support. EIDHR has provided pointed support to multiple aspects of democracy and human rights incl. gender and, in so doing, has provided granularity difficult to achieve in large programmes while encouraging small-scale CSOs (projects appx. EUR 100-200,000) with some degree of capacity building. All in all, the EU's modalities and instruments have allowed it to address issues ranging from gender to media freedom, conflict prevention and peace building, the fight against religious intolerance, the fight against torture and ill-treatment, adding what was called granularity and grass-roots involvement.

JC4.2 Mutually reinforcing dialogue and programming

There has been active and productive policy dialogue (I-4.2.1, I-4.2.2) under RoLPRO, RoLPRO 2, and the electoral reform budget support programme, the latter complicated somewhat by delays in developing the electoral reform strategy (a budget support conditionality). Civil society has been well represented in all areas of policy dialogue. This dialogue was mostly operational and technical level, aimed at ensuring that projects were going well and progress was being made. At higher political level, EU holds annual political dialogues with Kyrgyzstan: Cooperation Council, at the level of Foreign Ministers, focuses mainly on political matters, trade, economic and investment issues, as well as regional and international issues. Of particular importance are the annual Human Rights Dialogue in Brussels and the regional Central Asia Civil Society Forum. No evidence has been found on the concrete impacts of these highest-level dialogues on operational interventions in Kyrgyzstan. As stated at several points, there is no regional-level interlocutor for policy dialogue in Central Asia. Dialogue in the Cooperation Committee, a more technical meeting at the level of Deputy Managing Director for the EU and Deputy Minister for Kyrgyzstan, focuses on democracy, rule of law, civil liberties and human rights, trade, energy, environment, and bilateral development cooperation. It aims at taking stock of the progress/slowdown of Kyrgyzstan in carrying out political, social and economic reforms.

Policy dialogue was pursued with vigour following the political crisis (I-4.2.3). The EU's response to recent political developments in Kyrgyzstan has been measured. International NGOs regard current developments in Kyrgyzstan as very serious, indeed; the EU has taken more of a wait-and-see approach which prefers continued dialogue, with some degree of moral suasion included (as evidenced by the delay in signing the Just4All financial agreement), to a brutal downscaling of engagement.

Effects of EU support to RoL & AC

EQ5: Effects on RoL/AC (I): the quality / efficiency of justice systems and AC institutions

JC5.1 Core legal and administrative reforms

At the beginning of the evaluation period, legislation and the legislative process (I-5.1.1) were weak due to poor drafting skills in Parliament and insufficient expertise to review proposed legislation both in Parliamentary Committees and in MoJ. There was insufficient coordination between the Government and the Parliament and lack of proper planning of the legislative process, resulting in poor quality of laws produced, contradictions with laws in force (with knock-on effects for implementation) and need for frequent legal amendments. EU support strengthened the capacity of both Parliament to draft legislation and of MoJ to review it.

Through RoLPRO, the EU contributed to a thorough revision of administrative legislation in line with European good practice, notably the Administrative Procedure Law; adoption of a new Criminal Code (2019); strengthening professionalism of lawyers, judges and prosecutors through training at the three centres for judges, prosecutors, and advocates; building capacity of civil servants, strengthening the oversight capacity of Prosecutors' Office and Ombudsman Institute, and delivery of free legal aid through the MoJ. The final evaluation of the project concluded that the EU's support had the potential to change the public's behaviour and attitude towards the legal system, the types and number of litigation pursued, the overall level of accountability of governmental bodies, and the administrative law culture. As a result of digitalisation, a centralised database of laws in force was installed at the MoJ, with significant contribution to transparency and professionalism. A case management system was put in place and, overall, digitalisation contributed to increasing the transparency and professionalism of the justice sector.

A specific problem was posed in 2021 by the need to revise legislation in conformity with the new Constitution. The EU supported this process. Especially significant was the adoption in July 2021 of amendments to the Criminal Code of 2019. A thorough analysis by the NGO CABAR characterises this as a serious step backwards from a rights-based approach to a Soviet-style crime repression one. However, the EU through RoLPRO 2, in advising on the drafting and analysis process, was able to incorporate significant changes eliminating some of the more objectionable aspects of the new Code.

In addition to the EU, USAID was active in all the areas covered by this indicator, so the credit for improvements must be shared. As described under JC 3.1, the evaluators found considerable overlap and duplication between the two major players, especially in the area of training and capacity building. This situation had the potential to create confusion due to the different legal philosophies involved, one common and one civil, one adversarial and one inquisitorial, one tending to emphasise the responsibilities of rights holders and one tending to emphasise the responsibilities of duty bearers.

EU support contributed to capacity building through training and digital capacity across the justice sector (I-5.1.2). The RoLPRO final evaluation enumerated multiple training and skills enhancement actions, in many cases demonstrating that there had, in fact, been a demonstrable increase in effectiveness, transparency, and professionalism of beneficiary institutions and persons – Parliament, MoJ, GPO, Ombudsman Institute, judges, prosecutors, lawyers, bailiffs, etc. At the same time the evaluation warned that

changes in attitudes can lag significantly behind acquisition of skills. Based on interviews, continued funding is a source of concern; however, at least in the case of MoJ, there has been an allocation from the public budget that raises prospects for sustainability.

An internet search suggests that Kyrgyzstan accepted major international human rights conventions (I-5.1.3) well before the evaluation period, the only exception being the International Convention on the Rights of Persons with Disabilities, ratified in 2019. The main EU achievement in terms of harmonisation was the adaptation of the Kyrgyz civil, administrative, and commercial law to be compatible with European good practice. At the same time, most formal commitments to international harmonisation have been with members of the former Soviet Union, including sweeping harmonisation of commercial law with the Eurasian Economic Union. In the extradition field, there have been high-profile individual cases involving Uzbeks being extradited from Kyrgyzstan to Uzbekistan and Uyghurs to China. Reversing the position it had taken post-2010 violence, the ECtHR recently found in favour of the extradition of two ethnic Uzbeks from Russia to Kyrgyzstan, arguing that their ethnicity no longer placed them in danger of inhumane treatment. Kyrgyzstan is actively engaged with CoE regarding potential membership in GRECP and ratification of the Warsaw Convention on money laundering, discussions facilitated by the Central Asia Rule of Law Programme.

JC5.2 Strengthening of institutional architecture

The RoLPRO final evaluation concluded that court management improvements had expedited criminal case resolution, that court managers had been trained, and that an improved performance scheme had been put in place for judges (I-5.2.1). It did not note any improvements in the operation of the GPO. Based on the RoLPRO 2 Action Document, the justice system continued to suffer from the usual set of post-Soviet weaknesses stemming from lack of professionalism, transparency, capacity, and human resources.

No evidence has been found of EU support to improve inter-agency cooperation (I-5.2.2). At European level, Kyrgyzstan has a long-standing and cordial relationship with the Council of Europe. It has been a full member of the Venice Commission since 2004. It obtained Observer status in the Parliamentary Assembly in 2014, meaning that the CoE monitors human rights in the country. It has expressed interest in several CoE conventions and, as mentioned above, in joining GRECO and ratifying the Warsaw Convention. It has benefited from EU-financed CoE technical advisory services in electoral reform (Venice Commission) and anticorruption.

Digitalisation under RoLPRO made a positive contribution to RoL&AC, received increased impetus under RoLPRO 2, and has become the centrepiece of RoLPRO 3, in part because it is now conceived as a broad platform to support improvements not only in RoL narrowly speaking, but also human rights, anticorruption, and democratic governance (I-5.2.3). For example, regarding the first, a representative of the GPO, interviewed, pointed out that the information system developed with EU support includes the entire process of pre-trial proceedings from the acceptance of a report of an offense to the transfer of the case to the court, as well as the stage of execution of punishment. The same all-of- criminal-justice chain potential was brought up by MoJ representatives, including the potential to strengthen the probation system to prevent and identify recidivism through the universal criminal offence register. The presence of computers and new standard procedures in centres of detention has led, according to these representatives, to a noticeable reduction in torture. Elsewhere, EU-supported digitalisation has allowed publication of a comprehensive digest of laws and of court decisions, all vital for transparency, and has made possible a system of random case allocation, vital for accountability.

Despite improved capacity to produce justice sector statistics on case clearance rates, enforcement of judgments, criminal complaints, etc., useful for management purposes as well as transparency and accountability, no such statistics have been found. It is possible that they are available only in Russian. Persons interviewed expressed the hope that the current case management system, largely designed for judges, can be expended to provide full transparency to the public at large, but warned of persistent staffing problems, especially regarding skilled IT experts. Representatives of the judiciary interviewed were of the view that EU supported digitalisation has improved the work environment and professionalism of judges. However, a systems expert cautioned that multiple donors (which would essentially mean USAID) have supplied systems to different actors in the justice system that are not compatible.

JC5.3 Progress in justice systems and anticorruption frameworks

According to interviews, **the EU has significantly supported, through RoLPRO 2, access to justice via free legal aid provided by the MoJ.** While available mostly in criminal cases, this has been extended to civil cases, and includes victims of gender-based violence and human trafficking. Other weaknesses to be addressed are the shortage of participating lawyers and the fact that choice of counsel is made by the Court.

Women's NGOs have been extensively consulted in EU strategy formulation. At the same time, access to justice for women continues to be a difficult area in which to make progress in Kyrgyzstan (I-5.3.1); this despite the fact that, according to one international expert interviewed, Kyrgyzstan has the most woman- and child-friendly family law in the region. The problems are more easily enumerated than effectively

addressed. Women are subject to discrimination, violence including sexual assault and rape, and economic dependence. Their knowledge of legal rights is limited by low levels of education and, in many cases, geographic isolation. Mothers, older women, and husbands may discourage or prevent them from seeking legal advice or representation, or pressure them into consulting traditional, informal courts (I-5.3.2). Women's status is worsened by the fact that many have no birth certificate or residence papers, making them legal non-persons from the standpoint of demanding their rights. Lack of a birth certificate or a national identity card can have the same effect. While the Constitution recognises equal rights for women and Kyrgyzstan has ratified CEDAW, no policy was in place over the evaluation period to address gender equality. A rudimentary legal framework for addressing problems of GBV and discrimination existed, but no steps were taken to implement it. The attitude that problems such as domestic violence, bride kidnapping, and child marriage should be dealt with within or between families (or at community level) is widespread. While trust in formal justice institutions is low, trust in more easily accessible informal ones is even lower. Enforcement of family law decisions is a special problem. To summarise, the supply of gender justice is adequate on paper but minimal in fact, and demand is low.

Faced with these problems, the progress that the EU has been able to make has been limited. There have been some attempts to mainstream gender into RoL bilateral geographic support; for example, in providing training on legislative analysis to MoJ, gender was a focus. Judges and prosecutors have been trained on gender issues. EIDHR has been used to complement RoLPRO and RoLPRO 2. A particularly important action, the Spotlight Initiative (2020-2022), implemented by UN Women, responded to the spike in domestic violence that occurred during the COVID-19 pandemic, supporting service delivery and providing technical support for elaboration of the new National Gender Development Strategy 2021-2030.

All of the difficulties discussed above apply to other vulnerable and marginalised groups, such as children, the disabled, and members of ethnic minorities. Regarding the first two, the recent EU evaluation of budget support and blending in Kyrgyzstan (EC 2021) found that, despite EU support to deinstitutionalisation of children and the disabled, results have been mediocre, in part because of institutional resistance from groups that obtain budget from institutions; in addition to which, claimed progress was impossible to establish despite EU support for statistical systems.

EQ6: Effects on RoL/AC (II): independence, impartiality, accountability of the justice and AC institutions

JC6.1 Legal safeguards, checks and balances

Separation of powers in Kyrgyzstan has historically been strong on paper but weak in practice, with the legislature and judiciary dominated by the President and the national security apparatus and prosecutors exerting disproportionate influence over judges' decisions (I-6.1.1). In RoLPRO^o1, the EU supported professionalism, transparency, accountability, and capacity of the judiciary more than independence of the judicial branch per se. As pointed out in assessing JC1.3, to some extent, RoLPRO can be accused of making an institution deeply flawed in constitutional terms operate more effectively and with greater public credibility. Whereas RoLPRO 1 was largely a judicial strengthening project, RoLPRO 2 was a full-fledged judicial reform project, supporting independence of the judiciary through a wide range of actions: strengthening the role and capacity of the Council of Judges, improving the selection of judges; putting in place a pre-posting mandatory professional training for newly appointed judges, reviewing the system of re-appointment of judges, and putting in place a career development system for judges in cooperation with the Supreme Court. The action document recognised the ambition of these steps, describing them as *"truly political"* and requiring *"a change of mentality."* It was foreseen to create a new judicial function – 'justices of investigation' – to exert control over pretrial investigations so as to protect the rights of persons in pretrial hearings. RoLPRO 2 also supported the Bar Association Training Centre, the only one in Central Asia according to an expert interviewed, for advocates. Another expert interviewed cautioned, however, that the Bar Association is weak and splintered; in addition to which, the position of advocate is not widely respected.

A recent (2022) detailed assessment by the Bertelsmann Stiftung paints a disappointing picture of the state of the judiciary, particularly with the constitutional reform of early 2021 in mind but pointing to pessimistic earlier trends, as well. Judges have for years served the executive through pre-trial detention authorisations and political decisions, the most flagrant being the Supreme Court's clearing President Japarov of his previous convictions after he was freed from prison in the wake of the October 2020 protests. The resolution of corruption-related cases is especially likely to be politically tainted; as discussed under I-6.1.2, the fight against corruption in Kyrgyzstan is less a fight against corruption per se than a fight against corrupt political foes or members of rival clans. The Constitutional Chamber of the Supreme Court, which has been supported by the EU, has traditionally had a modicum of independence, but this has been reduced by the recent constitutional reform giving the President the power to appoint its president.

In view of such irregularities, Freedom House in its 2021 report (in the list of references) downgraded Kyrgyzstan from 1 (out of 4) to 0 on independence of the judiciary. In comments on the draft Constitution

eventually approved in April 2021, the Venice Commission and OSCE expressed concerns about the inappropriate control exerted by the President over the judiciary. (They saluted, however, the re-establishment of the Constitutional Court, which had been previously suppressed.)

Judges are appointed for a probationary period during which they are liable to come under political pressure and selection of judges is carried out by the Council for the Selection of Judges (CSJ), two-thirds of whose members are Members of Parliament; whereupon the President must approve proposed candidates, effectively exercising veto power. Senior members of the judiciary, interviewed, sincerely interpreted the involvement of Parliament in the naming of judges to be sufficient to guarantee

In effect, judges are selected on the basis of political compliance and the payment of bribes. The OECD Anticorruption Network for Eastern Europe and Central Asia, in its 2021 report, has summarised priority needs to improve the integrity of the justice system: prohibiting ex parte communication with the judges; ensuring implementation in practice of an automated case assignment system; guaranteeing security of tenure for judges; protecting judges from undue influence from legislative and executive powers during cases; and limiting the participation of Members of Parliament in the appointment of the Council for Selection of Judges. Representatives of the Supreme Court, interviewed, sincerely expressed the view that the fact that candidates proposed by the President must be approved by the Parliament as sufficient to guarantee independence of the SC from the Executive.

Anticorruption has been a core feature of all EU cooperation with Kyrgyzstan over the evaluation period (I-6.1.2). Responding to the pervasive corruption of the justice system, RoLPRO 1 emphasised corruption aspects of judicial transparency and accountability. RoLPRO 2 dealt more with corruption as a central aspect of judicial independence. Outside RoL narrowly defined, the EU provided budget support to the MoF for improved PFM and included PFM aspects in all its budget support programmes (which comprised the bulk of support to Kyrgyzstan). The regional CoE Central Asia Rule of Law Programme 2020-2023 is a major anticorruption and anti-money laundering action.

While that programme is still in its early stage, results over the evaluation period as a whole have been meagre. Paradoxically, the PEFA (2021), taking the PEFA 2015 as a baseline, identified a number of positive steps in PFM. Yet, as to corruption itself, credible assessments suggest that the situation is as bad as it ever was, suggesting that corruption is not so much a problem of leakage out of government accounts as it is one of sheer bribery. In a review of anticorruption policy, the OECD (2018) found that, while legislative and regulatory changes to implement the Istanbul Anticorruption Action Plan had been put in place since the previous review in 2015, these had no prospect of being effective. Responsibilities were blurred (*“almost all authorities are responsible for all measures”*), process was privileged over results, and the proposed timing was judged to be unrealistic. Summarising the situation, Transparency International (2019) mid-evaluation period noted a slight improvement since 2012 in its Corruption Perceptions Index (CPI), but none that would suggest a fundamental improvement. The same, it wrote, was true of the corruption component of the World Bank Worldwide Governance Indicator, and cited the World Economic Forum as having identified corruption as the greatest deterrent to doing business in Kyrgyzstan. Surveys of citizens (admittedly dating from early in the evaluation period), found that paying bribes for ordinary public services was common and most found their government was performing poorly at countering corruption. In short, it appears that both citizens and businesses accept corruption as a fact of life in the country and have little faith in government to address it effectively. One of the few positive developments of recent years has been the formation and dynamism of the Business Ombudsman Institute, described under JC6.2.

The public fight against corruption is essentially a battle between political clans, each accusing the other of being corrupt and instrumentalising the justice system opportunistically to reward clients — including organised crime figures—and punish opponents with the complicity of a pliant and itself corrupt judiciary. As the Bertelsmann Stiftung describes in the study referred to above, in a classic case of regulatory capture, government anticorruption agencies and the judiciary have themselves become corrupt. One NGO representative interviewed characterised public anticorruption policy as simply raiding political enemies' offices.

JC6.2 Oversight institutions, non-state actors and the private sector

Component 1 of RoLPRO strengthened oversight mechanisms, especially the Ombudsman's Office, but also the Parliamentary Committees which review legislation before it is submitted to vote and subsequently monitor implementation, MoJ, the GPO, CSOs and the media (I-6.2.1, I-6.2.3). Results noted by the programme's final evaluation are presented in Box 4.

Box 4 Results of RoLPRO

- An updated website of the General Prosecutor's Office was launched and the Communication Strategy adopted.
- Trainings on communications skills to raise public awareness of human rights.
- Development of a E-learning course on fundamental human rights.

- Development of the Ombudsman's Office website and complaints database. The OI produced videos, held communications events
- New MoJ website, allowing free access to legal information; MoJ communications events to raise public awareness of services offered.
- New templates and procedures for handling complaints were developed for the Government's Office, Ministry of Justice, and Ombudsman
- The website of the Government Office dealing with complaints was modernised.
- Over 11000 citizens received free legal consultations through the legal awareness campaign of the MoJ.
- Capacity building training for the Staff of the Constitutional Committee in law drafting to develop better skills on parliamentary oversight and monitoring the implementation of laws, particular focus on human rights and gender equality, resulting in the development of a monitoring manual on inspecting Government services to the public, and the conducting of a monitoring of public services by local governments on the national level with follow-up recommendations to improve the mechanism of monitoring.

Source: RoLPRO Final evaluation report

The evaluation was unable to reach strong conclusions on the actual effectiveness of producing these outputs, in large part because of the absence of monitoring frameworks that would have identified outcomes. Moreover, follow-up plans (e.g., how to deal with an increase in the inflow of electronic complaints or human resource staffing plans) were not evident. Nor was it clear how it was planned to coordinate between the multiple public oversight bodies receiving complaints.

According to representatives interviewed, **the Ombudsman's Office was effectively supported by the EU (through the Danish Institute for Human Rights) and, while not comparable to offices in countries such as those in the Eastern Neighbourhood, has made great strides.** Draft legislation to strengthen its independence and hopefully increase government compliance with recommendations (currently about 50%) is working its way through the legislative process and the first female head has just been appointed. The Office, with DIHR support, has developed a coherent strategy to advance in priority areas such as freedom of speech, women's and children's rights, and rights to legal representation. Others interviewed, while recognising significant progress in strengthening the Ombudsman's Office nonetheless expressed concerns about its effectiveness to defend human rights.

Component 3 of RoLPRO aimed specifically at strengthening oversight institutions, particularly the media. Throughout the evaluation period, and despite the fact that the atmosphere was better than in other Central Asian countries, Kyrgyz authorities continued to take an aggressive position towards any media criticism. The risks run by independent journalists ranged from physical assault and criminal charges (typically for defamation) to abusive lawsuits; the last two aided by a compliant judiciary. According to one person interviewed, the Adilet Legal Clinic is now handling cases of 40 journalists and bloggers who are the subject of criminal complaints. According to the final evaluation of Component 3, EU support succeeded in forming a network of independent investigative journalists and media outlets reporting on political and economic corruption. However, as multiple credible international NGO reports establish, the media (including social media) situation in Kyrgyzstan is dire. One representative stated that, while civil society always expects a troubled phase after the election of a new president, *"this time seems different,"* meaning more serious.

Relying largely on international organisation studies (including its own) and characterising the justice system as "a key obstacle," the OECD has recently identified needs in the legal environment for business, and especially FDI, in Kyrgyzstan (I-6.2.3).

- Absence of specialised economic courts, resulting in a system clogged with small claims, low procedural efficiency, poor case management, a high cost-to-claim claim ratio (nearly 50%), and poor enforcement of judgments.
- Low perceived fairness, high perceived corruption.
- While ADR and mediation mechanisms have been established, they need improvement, including better enforcement of arbitration awards.

Despite some progress, particularly in the area of business-government dialogue on corruption, limitations arose because of frequent changes of government interlocutors with varying levels of interest, scattered platforms, and weak disclosure requirements. The OECD welcomed the establishment (with support of EBRD) of the Business Ombudsman Institute in early 2020 and made suggestions to strengthen it. There are, in addition, a number of government committees and councils to promote business and entrepreneurial interests and rights.

The American Chamber of Commerce is well represented in Kyrgyzstan; there does not appear to be a similar presence of EuroCham. The ongoing EU-CoE Central Asia Rule of Law Programme contains a major component supporting the fight against economic crime, including strengthening of the Business Ombudsman Institute. CSR is little developed in Kyrgyzstan, and an OSCE analysis has found that, at least in mining (the major sector for FDI), it tends to be firm- and community-specific rather than responsive to an overall national perspective, thus giving rise to continuing local disputes and having little impact at national- or sector-level.

The recent forced nationalisation of Kumtor, the country's largest gold mine and principal source of foreign exchange, after two decades of legal acrimony and bickering in which courts systematically sided with government, has tarnished Kyrgyzstan's reputation in international business circles.

EQ7: Broader effects on RoL/AC culture, human rights and democracy

JC7.1 Promoting a RoL/AC culture

Analysis scattered throughout the EQs above indicates that EU support to RoL&AC was consistent with the prevailing cultural, sociological, political, and institutional context, even though the analysis found in strategic documents is rather superficial. See, in particular, section 0 on political economy and JCs 1.1 (realism, context sensitivity), 1.3 (political and institutional incentives), 2.1 (context analysis), 2.3 (flexibility), 6.1 and 6.2 (institutions) and 6.3 (role of the private sector).

EU pro-active engagement with a wide range of actors is evident. EU outreach to civil society has been discussed at multiple points, notably under JC2.3 and JC4.2. Civil society involvement in policy dialogue and in consultations regarding EU strategy has been adequate. As described, the engagement with civil society has steadily grown as RoLPRO, which largely addressed Government requests for technical assistance and capacity building, gave way to RoLPRO 2, and now as RoLPRO 3 emerges with its dedicated civil society component.

At the same time, a close look at the EU's involvement in RoL&AC reveals that this has largely focused on improving the ability of public institution to deliver justice (and AC); i.e., increasing the supply, rather than stimulating the demand (through awareness raising, empowering civil society, etc.). Excellent examples in the area of justice are digitalisation, which enables justice sector institutions to function more efficiently, and legal aid. The clearest example of insufficient demand, also from the justice area, is gender, where it is not surprising that rights that exist in theory under the Constitution and existing legal framework are little respected, because they are little invoked. No real evidence has emerged of EU support to groups defending the rights of ethnic minorities. The dangers of bolstering the efficiency of existing mechanisms without addressing deeper issues has been discussed in the context of the political debacle that followed the parliamentary elections of October 2020, which were technically acceptable according to international standards and thanks to EU support.

This exercise has not allowed the examination of RoL&AC on a sector basis, but a few points can be made. **As revealed by the recent evaluation of EU support in the form of budget support and blending, PFM reform was mainstreamed in all budget support programmes (education, social protection, education, integrated rural development), with limited but positive results.** There was also a PFM programme specifically directed at the MoF. In education, digitalisation is reported to have led to a decline in corruption. In social protection, it is still not uncommon for local offices to demand a small subscription fee for those seeking to qualify for social assistance. At least formerly, corruption was rife in water and sanitation; effectively in the form of bribes required for access to safe water. It is not known if this continues, or to what extent corruption prevails in the Government's ambitious plans to develop hydropower for export. It is credibly reported that the human rights situation deteriorated markedly during the COVID-19 crisis, both indirectly via the scapegoating and mistreatment of vulnerable and marginalised groups and directly in the form of lawyers not being permitted to visit clients and medical staff being forced to work against their will in unsafe conditions.

Results related to RoL, specifically justice, are described under JCs related to EQs5 and 6. Outcomes in the form of an enhanced RoL&AC culture have been meagre but, as pointed out in assessing JCs 1.2 and 1.3, the EU did not aim at transformative change, a strategic choice approved in this case study's overall assessment (see section 0 below).

JC7.2 Fostering human rights

International assessments have, across the board – women's rights, LGBT+, children's rights, rights of the disabled, ethnic minority rights, and more – found little to no improvement and, where progress is found, it is particularistic (a law passed, for example) and at the level of outputs or results, not outcomes. To quote the EU (2022) assessment in its Annual Report on Human Rights and Democracy in the World 2021 Country Updates:

"In general, the human rights situation in Kyrgyzstan is better than in other countries of the region; however the trend over the past year has been negative. The COVID-19 pandemic exposed further challenges in the society, including the ability and willingness of the authorities to ensure respect for human rights and international standards in times of crisis. Freedom of expression, peaceful assembly and association, freedom of the media, good governance and labour rights remained of concern [...] Civil society organisations have been increasingly under pressure. Their situation deteriorated with the adoption of laws on NCO financial obligations, with burdensome financial reporting requirements, and on the protection against 'false' information, which also threatens media freedom. The prevention of torture is still hampered by systemic barriers. Modern forensic science is still unavailable, obstacles remain to conduct visits and the Istanbul Protocol on reporting

cases of torture is not fully enforced. On the other hand, Kyrgyz authorities showed openness in cooperating with the EU on human rights issues, notably in view of signing and ratifying the Enhanced Partnership and Cooperation Agreement. In 2021, President Japarov vetoed for the third time the Law on Trade Unions that would impose serious restrictions on workers' rights to freedom of association and organisation.

The situation of national minorities showed little change and they continue to face discrimination in access to employment. The rights of persons belonging to religious minorities, while legally recognised, are not always respected. Discrimination against LGBTI persons remains widespread and unaddressed."

JC7.3 Application of democratic principles

This JC has been addressed by examining to what extent the EU has responded adequately to protect fundamental freedoms of expression, assembly and association as well as to resist attempts to reduce civic space in authoritarian / populist environments. With hindsight, this may not have been the best way to frame the question, as the EQ is meant to address outcomes of the EU response, not its adequacy in terms of what was done. **A review of the JCs by which EQs 1-6 were answered suggests that the EU response was appropriate, well-reasoned, and well implemented. A review of the JCs by which EQs 5-6 (RoL&AC) and EQ 7 (HR/ democracy) were assessed suggests, quite simply, that it did not work.** This is discussed further under the overall assessment that concludes this case study (section 0).

EQ8: Effects on wider EU external action goals

JC8.1 Peace, resilience and stability

Directly in the area of peace and security, regional projects addressed border management and the drugs traffic, specifically in the context of the NATO withdrawal from Afghanistan. In the immediate wake of the 2010 revolution, emergency special measures were used to promote peace. **The EU country strategy, particularly the MIP 2014-2020, has taken into account peace and security and the preconditions of inclusion, voice, and accountability. At the same time, the main thrust of the EU's RoL support was strengthening the justice system through improved legislation, reform of the criminal, civil, and administrative codes, training and technical assistance, and digitalisation.** All of these have effects on inclusion, voice, and accountability, but they are indirect and not easy to document. The RoLPRO final evaluation found that, while participation at all stages of the project encouraged inclusion, reporting did not allow the verification of effects on vulnerable populations including women (the latter due to lack of gender-disaggregated data). In April 2022, the end-of-mission report of the UN Women Working Group on discrimination against women and girls visit to Kyrgyzstan painted a pessimistic picture of the situation of women and girls, suggesting only limited effect of EU support.

Despite policy reforms at the level of legislation, there is widespread impunity for violence against women, including rape, sexual violence, and bride kidnapping. Impunity for domestic violence in Kyrgyzstan was also criticised in the Human Rights Watch 2021 annual report. The April 2021 Particip GmbH report on implementation of human rights conventions in Kyrgyzstan concluded that there was widespread impunity for ill treatment in the criminal justice chain, with investigative powers being ceded to the security forces that too often are the perpetrators of violence. The problem of ill treatment is implicitly recognised by both Government and the EU, as interlocutors from both sides cited the fights against human rights abuses in the criminal justice and law enforcement areas as one of the most important benefits of digitalisation. Impunity in the area of corruption, as discussed elsewhere, remains the norm. In the area of business law, as noted below, businesses continue to regard the court system as unfair. There has been some development of ADR, but the fact that most foreign investors prefer to go to international arbitration rather than the domestic system reveals distrust.

JC8.2 RoL&AC for functioning markets, trade and private sector development (compliant with human rights and due diligence)

In 2015, an EBRD assessment noted significant reforms since 2010 in the legal environment for investment, commenting that the main problems lay in implementation, not gaps. In its 2018 4th round anticorruption monitoring report, the OECD found that Government and the private sector had an active, but scattered AC dialogue, and painted a mixed picture of the actual situation. Frequent changes of government were identified as one of the challenges faced. The U.S. Department of State in its 2021 Investment Climate Statement, noted with approval the putting in place of the Business Ombudsman's Office (entirely donor-supported). However, in its report 'Improving the Legal Environment for Business and Investment in Central Asia', the OECD (2021) was very critical of the legal environment for business in Kyrgyzstan, citing among other issues unfair and biased courts, poor enforcement of judgments, high costs of pursuing contractual claims, and concluding (specifically with respect to contracts): *"The justice system remains a key obstacle for business and investment."*

JC8.3 Natural resource management

Despite the fact that EU strategy on RoL&AC in Kyrgyzstan is explicitly grounded in the goal of making the country more attractive to international investors and a better place to do business, no actions taken specific to the extractive industries have been found. Transparency International's 2020 report on accountable mining pointed to significant gaps in mining regulation, especially regarding the licensing of sub-soil resources and environmental protection, failure to implement existing policy frameworks, and resulting corruption. Community consultations were characterised as excluding women and vulnerable groups. Ockali et al. (2020) point to weak governance, lack of institutional trust, and limited cooperation across national actor groups, which combine to distribute costs and risks of mining to out-groups. At the same time, the Inter-governmental Forum's Mining Policy Assessment (International Institute for Sustainable Development Priorities 2018) was much more favourable, citing only outdated mining practice, tax unpredictability, and weak integrated socioeconomic and environmental assessments as problems. The operation of international mining firms in Kyrgyzstan have been widely published in the business press. In May 2021, capping twenty years of year of bitter litigation and disputes, including the prosecution of expatriate staff, the Government seized control of the Kumtor gold mine owned and operated by the Canadian firm Centerra.. This episode ended in April 2022 with Centerra selling its entire stake in the mine to the Government , as reported in the *Wall Street Journal* and *The Diplomat*, both of 04.04.

Overall assessment and lessons learned

The EU's support to RoL&AC in Kyrgyzstan has been an example of pragmatic engagement in a difficult context. While not analysed in depth in the EU's strategic documents, the underlying features of the Kyrgyz policy landscape were obviously known to the EU. Chief among these are clan politics, long antedating independence, in which strongmen (patrons) instrumentalise the political system in order to mobilise and reward subordinates (clients). The influence of organised crime is to be found among both classes. This is a situation of authoritarian rule; in Kyrgyzstan complicated by deep geographic and ethnic fractures (largely but not entirely overlapping), a nationalist populist traditionalism extolling Kyrgyz values, which are deeply patriarchal, and a fraught international security situation. The country appears, post-independence, to be gripped in a roughly five-year cycle of political instability and violence that coincides with elections. There is disaffection between a growing younger, internet-savvy, outward-looking generation and the older elites who hold the reins of political and economic power.

Corruption, defined by European norms, is rooted in the traditional exchange of gifts. It is pervasive and largely, if grudgingly, accepted by the population as a way of life. Were it eliminated tomorrow, all three branches of the Kyrgyz political system; the Executive, the Legislative, and the Judicial, would seize up; moreover, the wheels of commerce might cease to turn. Yet, all international assessments are that corruption is a major deterrent to needed Western FDI, which from a European point of view is a bulwark against Chinese influence.

What sort of progress could the EU hope to make in such a setting? Keeping in mind that, during the 'Bishkek Spring' that followed 2010, Kyrgyzstan distinguished itself as a beacon of liberal democratic progress in the Central Asia region; a 'donor darling' demanding EU encouragement? Among lessons that emerge from this Kyrgyzstan case study are the virtues of realism and modesty; of keeping ambition on a leash. Aligning with its Central Asia strategy, the EU did not seek transformational change in Kyrgyzstan; rather, it sought to work with Government on the shared goals of establishing a better foundation in RoL&AC for economic progress and, in particular, the improved business environment and enhanced international investment needed to produce it. Adding to the need for realism and modesty, the EU must compete with the historical legacy of Russian influence and deep economic ties (via trade and remittances) and Chinese hegemonic interests in the form of the Belt and Road Initiative (it is estimated that Chinese financial inflows to Kyrgyzstan exceed European by a factor of twenty to one)

At the beginning of the evaluation period, Government had a well-formulated agenda for improving the efficiency and, to lesser extent, transparency and accountability, of the justice system (principally the Judiciary, Prosecutors Office, and MoJ). It also recognised that Parliament, ineffectual as it was, was weakened even further by lack of coordination and skill in drafting legislation. The first major EU action covered here, RoLPRO, consisting mainly of technical assistance and capacity building with a strong dose of digitalisation included, was an appropriate response to these problems. The follow-on RoLPRO 2 project broadened its scope to work more with stakeholders outside Government, especially civil society while continuing to expand digitalisation. With RoLPRO 3, there will be an entire component devoted to civil society, more attention to gender, and RoL as a whole has been brought under the umbrella of Governance and Digitalisation. Another lesson that emerges from this linear progression is the virtue of long, sustained engagement marked by gradual deepening (here, more digitalisation) and broadening (here, more partners)

Digitalisation raises a number of issues and, indeed, the most recent (already somewhat dated) EU thematic evaluation of support to RoL (in the Enlargement and Neighbourhood regions) was rather critical of it, pointing out that it has the potential to simply make flawed systems work more efficiently. This is also a serious concern in Kyrgyzstan, and one that the EU must monitor. The EU's recent electoral reform budget support programme

suffered this fate; supporting a reasonably well-run election that exploded in popular discontent with its results. At the same time, the link between digitalisation, RoL, anticorruption, and human rights is now better understood than it was, and the partners are boundlessly enthusiastic.

One source of EU value added was its ability to finance regional programmes, and especially the relatively new Central Asia Rule of Law Programme implemented by the CoE. This brings Kyrgyz policy makers into contact with peers both within the region and in Europe itself, it promotes ratification of international conventions and submission to the associated monitoring processes, and generally brings shortcomings once hidden into the light of day.

How should the EU respond to backsliding on RoL, and especially democracy and human rights and AC? Backsliding in Kyrgyzstan on RoL can be discerned as early as 2016 – while regarded as a better performer within the region, the country has hardly been a model pupil by European standards. The events of the last eighteen months are only an eruption of trouble that had been long brewing. The EU's pragmatic reaction and continuing engagement have allowed it to fight a rear guard action against the more objectionable reforms proposed, and one of the lessons learned in Kyrgyzstan may prove to be that a cautious approach may prove the best strategy in the long run.

Effects of EU support on developing a RoL culture, human rights, and democracy have been modest, as has progress on accountability, voice, and transparency. Taking the last 2014-2020 period (roughly) as the reference period, the questions that the EU must pose, and suggested answers are:

- Is the situation regarding RoL&AC (incl. democracy and human rights) better or worse now than it was then? – Worse for RoL incl. democracy and HR, no change for AC.
- Would the change in RoL&AC incl. democracy and HR have been different absent EU support? – Unquestionably a worse deterioration regarding RoL.
- Is Kyrgyzstan still currently performing better on RoL&AC, cross-sectionally speaking, than comparator countries in the region? – Yes, despite significant regression to the regional mean, Kyrgyzstan in 2021 is still a better performer on RoL than the other countries in the region in 2021.

Case study note – Latin America & Caribbean (regional case study)

Introduction	98
Context – Political economy analysis	98
Overview of the EU support to RoL&AC	98
Strategy and implementation of EU support to RoL&AC	100
EQ1: EU strategic framework/institutional environment.....	100
EQ2: Responsiveness, ownership and flexibility	103
EQ3: Partnerships and coherence	104
EQ4: Choice of modality	105
Effects of EU support to RoL&AC	107
EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institution.....	107
EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions	110
EQ7: Broader effects on RoL&AC culture, human rights and democracy.....	110
EQ8: Effects on wider EU external action goals	111
Overall assessment	113

Introduction

Remark: This case study note does not constitute a separate evaluation of EU support in the country or its situation with regard to RoL&AC. It presents country-related findings relevant to the overall assessed judgement criteria and indicators, and feeds into the main evaluation report of the Evaluation of the European Union support to Rule of Law and Anticorruption in Partner Countries to which it will be attached as an annex.

Context – Political economy analysis

In past decade, the countries of Latin America have enjoyed various levels of economic growth and periods of macro-economic stability. However, considerable challenges remain and the development gains of many Latin American countries are fragile:

- Despite improvement in some countries, the region remains the most unequal in the world, partly linked to the low proportion of GDP taken as tax, the lack of fiscal equity and limited efficiency of the public administration (in tax revenue and expenditure as well as PFM).
- Crime rates are among the highest in the world. State institutions responsible for ensuring the key public goods of security, justice and rule of law are confronted in many countries with powerful and well-resourced organised crime interests (engaged in the drugs trade and other forms of trafficking, compounded by porous borders) as well as high levels of regular crime (reflecting the phenomenon of ‘state capture’¹⁵⁰). Insecurity in much of the region has important human, social and economic costs. It equally diminishes citizen trust in state institutions, thereby weakening the social contract which is essential for inclusive and sustainable development to be fostered.
- In some countries, voters have moved away from traditional parties towards populist/authoritarian leaders. At the same time, the scale of popular mobilization, particularly on corruption scandals and impunity, has brought opportunities for reform. The VIII Summit of the Americas in 2018 resulted in the adoption of the Lima Commitments, “*Democratic governance against Corruption*”, which represents an important reference for future cooperation to strengthen transparency, integrity, accountability and the capacity of democratic institutions. An internal EU analytical paper¹⁵¹ focusing on the opportunities created by the anticorruption wave in the Latin American and Caribbean region (LAC), observes that in 2018-2019 the movement has experienced some setback, with the attached risk of undermining past advances without sustained mobilization. In this light, it proposes various options for mainstreaming AC concerns in various themes (e.g. democratic governance, business environment and investment climate, growth and jobs agenda, the fight against organized crime). This could be done by using a diversity of instruments and regional tools (e.g. the Capacity to Combat Corruption (CCC) Index available as of mid-2019) and tapping into useful EU experiences or international/regional partnerships.
- The region has been particularly hard-hit by the COVID crisis and is facing its worst recession on record. The pandemic has aggravated existing structural challenges, including inequality, informal employment, gender-based violence, and insecurity. The social unrest and political instability that have marked the regional context in recent years could worsen as economic hardship is set to continue, notably for women, thus undermining social cohesion, democracy, the respect for human rights and the attainment of the SDGs.

Overview of the EU support to RoL&AC

The EU's partnership with Latin America is founded on close historical and cultural ties; extensive people-to-people exchanges; strong and growing trade and investment flows. EU policy programming documents from 2000 onwards systematically affirm that the relations are based on “*a deep bedrock of shared values and aspirations (commitment to democracy, human rights and rule of law; pursuit of social cohesion and sustainable development)*”.¹⁵²

Over the years, the two sides have progressively sought to build up a broad-based relationship of equals, founded on mutual respect and open dialogue. A bi-regional Strategic Partnership was established in 1999. The EU has negotiated association, trade or political & cooperation agreements with 27 of the 33 countries, making LAC the region with the closest formal ties to the EU. Summits, organized every two years, define common priorities and commitments on key areas of the partnership. Although EU cooperation with Latin

¹⁵⁰ For a practical case study on state capture, see: Oxfam and Latin American Council for Social Sciences (CLASCO). 2018. *Captive Democracies: Governing for the Few*.

¹⁵¹ European Commission, ReSPA G3. 2020. Regional Thematic Brief on: *Harnessing the opportunities of the anticorruption wave in LAC*. March 2020

¹⁵² See European Commission. 2009. Commission Staff Working Document on: *The European Union and Latin America: Global Players in partnership. Ten Years of Strategic Partnership EU-Latin America*. See also Multiannual Indicative Regional Programme for Latin America 2014-2021.

America and the Caribbean is governed by two separate legal frameworks and therefore programmed separately, the EU's interlocutor for the region-to region dialogue is Latin America and the Caribbean together. EU development cooperation instruments have been – alongside political engagement, trade and investment, and sectoral dialogues – a crucial building block of this relationship over the years. The regional MIP 2007-2013 had three sectors of concentration primarily focusing on traditional development sectors rather than on RoL&AC issues. These included:

- social cohesion, reduction of poverty, inequalities and exclusion (which included a component on “cooperation in combating international drug trafficking”);
- regional integration
- investing in people and increasing mutual understanding.

The introduction of the principle of ‘graduation’ in the EU’s 2011 “Agenda for Change” drastically reduced bilateral aid relations on the continent. However, the EU’s regional programmes for Latin America remained in place and were consolidated in the MIP 2014-2020. One component focused on “continental activities with Latin America”¹⁵³ with five thematic priorities:

5. The security-development nexus (EUR 70M), which included lines of action aimed at supporting “*regional reform efforts, mutual learning and regional benchmarking*” in the field of justice and security sector reform as well as on drug policies;
6. Good governance, accountability and social equity (EUR 42M), which builds on the longstanding EU interest to promote social cohesion. This window seeks to reinforce institutions and public administrations to provide quality services for social equity (with gender equality and the elimination of gender related violence as a crosscutting issue).
7. Inclusive and sustainable growth for human development (EUR 215M)
8. Environmental sustainability and climate change (EUR 300M)
9. Higher education (EUR 163M)

These common priorities (validated by the Summits) reflect challenges of a *continental* nature, which the EU has been supporting for quite some time. The resulting regional programmes tend to share a common ‘DNA’ in terms of approach as they all seek to:

- bring actors together in regional dialogues
- promote peer-to-peer learning;
- invest in capacity development of core national agencies
- stimulate structured forms of networking
- elaborate shared regional policy frameworks (that can be used as benchmarks) as well as regional manuals
- push for evidence-based public policies.

Three regional programmes are particularly relevant for the current evaluation -though RoL and AC issues are not the main and explicit focus but rather a component element of a wider policy agenda (i.e. of social cohesion, good governance, controlling illegal flows and transnational organized crime):

- EUROsociAL (a programme that started in 2005 and was extended twice for the period 2011-2016 and 2016-2021).
- Cooperation Programme on Drugs Policies (COPOLAD), which is a partnership cooperation programme between the European Union and Latin America and the Caribbean countries aiming at improving the coherence, balance and impact of drugs policies, through the exchange of mutual experiences, bi-regional coordination and the promotion of multisector, comprehensive and coordinated responses. COPOLAD is the only project that covers all 33 LAC countries, this way it addresses the drug production, consumption and trafficking problem of the whole LAC region. COPOLAD activities include drug supply reduction, drug demand reduction and consolidation of National Observatories.
- EL PAcCTO -- (“Europa-Latinoamérica Programa de asistencia contra el crimen transnacional organizado: por el Estado de Derecho y la Seguridad Ciudadana”). The objective of this flagship regional programme is to support LA partner countries in the fight against transnational organized crime in the framework of the UN Palermo Convention. Its unprecedented approach is comprehensive and based on 3 coordinated pillars covering the whole penal chain: (i) Police/Law Enforcement

¹⁵³ In accordance with the DCI Regulation, the Latin American eligible countries for Component 1 are the following: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

cooperation; (ii) cooperation between justice systems (combining judicial and prosecution cooperation); and (iii) support to the penitentiary systems Corruption, money laundering, cybercrime and gender are integrated as cross-cutting issues.

- In connection with the two last mentioned programmes, it is also interesting to look at the trans-regional Cocaine Route(s) Programme (CRP) under the Instrument contributing to Stability and Peace. In 2019, it was replaced by the Global Illicit Flows Programme (GIFP) operating in four continents and including seven separate yet interconnected projects dealing with the various dimensions of illicit flows.¹⁵⁴ Building on the positive dynamics of the CRP, the GIFP supports the fight against organized crime and tackles illicit flows in five ways: (i) information sharing and analysis to mitigate the impact of transnational organized crime on national and international governance, security and the rule of law; (ii) disruption of illicit flows (prevention, interception); (iii) linking the institutional chain of actors (on criminal investigation and criminal justice); (iv) supporting the development of national drug policies (and as such closely linked to COPOLAD) and increasing regional and transregional cooperation.

Other programmes will be considered from a ‘mainstreaming’ perspective. They do not focus on RoL&AC issues but they as they hold opportunities to indirectly promote these agendas

- EuroCLIMA dealing with climate change
- the LAIF (investment facilities), existing since 2010 in Latin America and 2012 in the Caribbean and mobilizing substantial resources for development purposes -with evident governance challenges particularly in difficult environments
- EU Americas Partnership on Raw Materials.
- Relevant trade association agreements.

Table 6 Overview of EU-financed interventions to the support of RoL&AC in Latin America and the Caribbean selected for the case study

<i>D or C year</i>	<i>Title</i>	<i>Budget (mEUR)¹⁵⁵</i>	<i>Modality</i>	<i>Implementing partner</i>
Since 2005	EUROSociAL ¹⁵⁶	EUR 32M	Project approach	Consortium led by FIIAP ¹⁵⁷ and Expertise France
	COPOLAD I COPOLAD II COPOLAD III	EUR 6M EUR 10M EUR 15M	Project Approach	Lead: FIIAP
2016	EL PacCto	EUR 20M	Technical Assistance programme	FIIAPP and Expertise France -with two European partners : IILA and Camoes Institute

Strategy and implementation of EU support to RoL&AC

EQ1: EU strategic framework/institutional environment

JC1.1 Clear, context sensitive and realistic engagement strategies

Good governance, respect for human rights and the rule of law have been long standing ingredients of major policy frameworks on EU-Latin America relations.¹⁵⁸ References to the rule of law and the fight against corruption also feature in successive regional programming documents, yet not necessarily as a core objective, focus and priority entry point during the initial part of the evaluation period. However, over time, the engagement strategies on RoL&AC gained in clarity, context sensitivity and realism. This trend is likely to be deepened in the coming years, as EU ambitions to be a geopolitical actor have become more explicit. This is

¹⁵⁴ These include: DISRUPT (on firearms), EU-ACT (drugs and organized crime), AIRCOP (airport communication project) SEACOP (Seaport cooperation project), COLIBRI (controlling and monitoring general aviation along cocaine routes), CRIMJUST (strengthening criminal investigation and criminal justice cooperation along drug trafficking routes, a project that focuses in particular on RoL/AC issues), MASIF (Monitoring and Support Project for the GILF) and EU-UNODC (illicit arms trafficking).

¹⁵⁵ Planned EU contribution

¹⁵⁶ A fourth extension is now under negotiation. Source: interview INTPA official

¹⁵⁷ International and Ibero-American Foundation for Administration and Public Policies.

¹⁵⁸ As re-affirmed by the Joint Communication of High Representative and Commission of 16 April 2019 on “*Europe, Latin America and the Caribbean: joining forces for a common future*”.

visible, amongst others, in the ongoing attempts of the EU to regain more political control and influence over the implementation of flagship regional programmes (see further EQ 4).

Regional cooperation between the EU and Latin/Central America has a long history, dating back to the gradual expansion of EEC partnership agreements from the 1980 onwards with other regions that those covered by the successive flagship “Lomé Conventions” and the Cotonou Agreement (focused on the former colonies of Africa, the Caribbean and the Pacific, united in the so-called ACP group). The intensification of the political, economic and development cooperation with Latin and Central America coincided with the democratisation wave in the region which swept away several military regimes. This helps to explain why EU policy documents of the 1990s already refer to ‘*shared values*’ between the two continents as far as democracy, human rights and the rule of law are concerned.

Yet the effective translation in clear programmatic choices related to the RoL&AC took considerably longer time. Programming documents display important policy shifts over time, including:

- *A gradual strengthening of the political dimension of cooperation.* The 2007-2013 Regional Indicative Programme is mainly of a *developmental* nature (e.g. social cohesion, regional integration, higher education) with only a few openings to governance related questions (e.g. international drug trafficking). The Multiannual Indicative Regional Programme for Latin America 2014-2020 is much more sophisticated in terms of context analysis.¹⁵⁹ While the sectoral focus on social cohesion (including a strong component of good governance, inclusive justice and accountable institutions¹⁶⁰) remains central and the issue of climate change is added, there is also a much more explicit focus on the ‘*security-development nexus*’. This analysis has been translated in a coherent set of regional programmes such as COPOLAD and EL-Paccto.
- *A shift away from promoting the ‘European model’* -as a set of best practices to be replicated in LAC- towards accepting the need for homegrown solutions for sustainable change and South-South exchanges¹⁶¹.
- *Growing realism reflecting changes in the geopolitical situation on the continent.* The worldwide trends of populism and authoritarian rule as well as the competition from global players (e.g. China) are instilling more realism in programming processes and creating space for more differentiated approaches according to the reform commitment of partner countries. It may also include largely suspending concrete EU support. Thus, the demand-driven engagement with Nicaragua and Venezuela has come to a halt in EUROsocial.
- *Multiple EU ambitions.* The MIP 2021-2027 for LAC fully reflects the core priorities of the Commission (e.g. green deal, digital transition) yet also affirms the ambitions to be a ‘geopolitical’ actor on the world scene. This, in turn, creates opportunities for enhancing the profile of the RoL&AC agenda. The new MIP foresees also a full-fledged Team Europe Initiative on the topic.¹⁶²

Regarding the issue of measuring results of regional programmes in the field of the RoL&AC, it can be noted that the Action Documents of EUROsocial, COPOLAD and EL Paccto do not contain elaborated theories of change. While the logframe matrix has become more sophisticated in the case of COPOLAD, a recurrent weakness to be found in all relevant action documents is the dominant focus on quantitative indicators (“Number of...”). Another challenge is the strong focus of regional programmes on training and capacity development of national agencies, including to cooperate regionally and intercontinentally (with the EU). Such institutional goals tend to be complex to monitor and evaluate as transformative changes (may) happen in a non-linear way over a longer time period. Positive effects are also influenced by factors beyond the control of programmes (as the high-over of national staff trained, partly due to the spoils systems in place in many CELAC countries). Furthermore, by nature regional programmes experience limitations to get structurally involved in *national* processes. They can reach out to national policy-makers, help elaborating regional policy frameworks and fund pilot projects. Yet this generally amounts to “*planting little seeds*” that may or not flourish in specific national settings¹⁶³. In addition, the RoL&AC agenda has to compete with many other EUU policy priorities. This trend has become more visible in the recent programming cycle, as the EU pushes its core priorities (green deal, digital, migration) in its bilateral portfolio. As a result, not many programming documents in LAC countries include a priority domain related to security and the rule of law. This, in turn, tends to make it more

¹⁵⁹ See for instance Action Document of the regional programme EL-Paccto.

¹⁶⁰ Eurosocial+ for the period 2016-2021 had 37 actions in good governance and 39 in inclusive justice. See: Estado de Acción de EUROsocial+. July 2021.

¹⁶¹ Eurosocial + promotes itself as a programme that “*does not introduce external agendas or initiatives*” (see website presenting the overall approach adopted).

¹⁶² Interview with EU official of INTPA

¹⁶³ Interviews with INTPA officials and implementing agencies -largely sharing the analysis of the structural limitations to measuring change processes in this type of regional programmes.

difficult to ensure that existing *regional* programmes on these issues effectively ‘land’ in partner countries and are reinforced by country level initiatives¹⁶⁴.

There is no real tradition in regional programmes led by HQ to produce EARMs or annual implementation reports. M&E is primarily done by the implementing agencies involved of the regional programmes. Quite some efforts are done at this level to report on achievements, but these display methodological flaws, e.g. a tendency to confuse ‘outputs’ with ‘outcomes’¹⁶⁵. The incentive structure may also cause problems, as these agencies have an institutional interest to project a positive image of the work done.

JC1.2 Coherence with nature and goals of EU external action

There is a relatively high degree of coherence with the *evolving* nature and goals of EU external action, particularly in terms sustaining democracy, promoting human rights and gender equality and the whole area of security.

These positive dynamics regarding coherence is reflected in:

- The gradual move away from a primarily development cooperation-oriented focus (MDGs) to a much more mature and reciprocal political partnership geared at addressing joint challenges and mutual interests through other means than the transfer of aid funds. The ‘graduation’ approach from bilateral support for most Latin America countries with a MIC/UMIC status, introduced in the EU’s 2011 Agenda for Change, epitomises this shift. Over the last years, the framing also changes in line with the Agenda 2030 on Sustainable development, with the notion of “global public goods” becoming the cornerstone of the partnership agreement and explains the focus in the regional programmes on the drugs trade and the fight against transnational crime.
- The existence of clear policy linkages in core EU documents between RoL&AC and the promotion of other core ‘values’. The message is consistently that supporting RoL&AC is not only a goal in itself, but also a means to protect democratic gains in the continent, foster human rights, link up with civil society as allies or promote gender equality (most regional programmes seek to mainstream gender issues).¹⁶⁶
- Similar linkages exist in core EU documents between RoL&AC and wider cooperation goals such as peace/resilience/security, trade (with the potential to use the numerous association agreements as trigger to foster RoL&AC) as well as the governance of natural resource management. Recent policy notes on AC (including above mentioned Regional Thematic Brief of 2020) very explicitly embrace such a wider agenda, also making a strong connection with the EU’s own interests in the region (e.g. stability, security) and ambitions as global player with a geopolitical mandate.

JC1.3 Conducive institutional environment

The overall picture is mixed regarding the existence of a conducive institutional environment. On the one hand, the regional programmes could thrive over the last decade due to positive drivers including: (i) the political space available to engage in continental collaboration on security and rule of law issues; (ii) dedicated staff in various units at HQ; (iii) a genuine interest and involvement of the European External Action Service (EEAS)¹⁶⁷; and (iv) the choice to rely for implementation on specialised agencies of Member States and this for a long time.¹⁶⁸ On the other hand, many of these enablers face major challenges. The political space for joint action on rule of law and anticorruption issues is shrinking in the region (particularly in Central America) due to the rise of authoritarian rule, the competition between global players and the limited visibility/weight of the EU¹⁶⁹. As the EU seeks to be a geopolitical actor the limits of its own human resource base (at various levels) is becoming increasingly obvious and problematic.

Two examples illustrate this assessment in greater detail. *First*, the recurrent use of (the same) specialised agencies from Member States has made it possible to mobilise the required technical expertise and experienced set of process facilitators which these regional programmes require. Their ability to perform these

¹⁶⁴ Experience suggests that the existence of a rule of law/security program in the bilateral portfolio is *in itself* no guarantee for an interest / engagement of EU Delegations in complementary regional programmes. Source: interview INTPA official.

¹⁶⁵ An example is the “tree with results” produced for COPOLAD II. Visually quite impressive (see below in matrix), with a tree with 4 main branches based on the main objectives (bi-regional dialogue, national observatories, demand reduction and supply reduction) spreading out into all kind of ‘results’ that can often be equated with ‘outputs’.

¹⁶⁶ The COPOLAD programme has produced a manual on how to integrate gender issues in the fight against drugs trade. The EUROCLIMA programme includes a specific component on gender

¹⁶⁷ Interview with EU official INTPA

¹⁶⁸ All the major programmes analysed here have been implemented by the same group of MS agencies, with the Spanish FIAPP as the lead actor (though consortium arrangements involved max 3 other agencies).

¹⁶⁹ HR/VP Borrell has many more burning priorities to attend. Yet visits of top officials are key to keep the political momentum in continental / regional partnerships. Source: EEAS official in a training event.

roles over a longer period helped to connect actors, build strong networks and roll-out coherent activities. It enhanced MS ownership of the regional interventions and allowed for greater collective action capacity (as a growing number of European specialised institutions participate in the schemes). Yet this reliance also had a price for the EU. In several regional programmes, the specialised agencies ended up being much in the driving seat. This reduced the EU's visibility and effective political engagement in dialogue processes (as EU staff missed direct contact with the processes and situations on the ground)¹⁷⁰. In recent years, the EU sought to *take back control* and insist on a much more balanced role division with the implementing agencies, particularly in terms of the political leadership of the EU. This process is ongoing, yet as the EU steps up its direct involvement, it is confronted with growing pressures on its human resources at various levels.

The move from a *payer* to a *player* also requires new skills which are not necessarily readily available in sufficient numbers. This holds particularly true in terms of dealing strategically and coherently with increasingly complex and diversified regional interventions or displaying a number of catalytic roles (e.g. connecting various regional programmes, ensuring linkages between regional dynamics and national processes in which EUDs engage, monitoring the work of implementing agencies, providing feedback to the political masters at HQ level, etc.).¹⁷¹ It was also reported that the two-year COVID restrictions paradoxically allowed EU actors to intervene more systematically in a wide range of meetings and dialogues in the various regional programmes. This helped to re-assert the EU lead, but also meant a serious increase of the workload.

Second, different internal institutional constraints are impacting on regional cooperation processes in general and on the EU support to RoL&AC in particular¹⁷², including:

- Some degree of institutional fragmentation at the level of INTPA, where regional programmes are split between two units (B1 and B2 along geographic lines, potentially hampering effective coordination and coherence.¹⁷³
- Disputes over “*who is best placed*” to deal with RoL&AC issues, with INTPA claiming that it can ensure a “holistic approach” (e.g. by looking at RoL issues in the governance of natural resources or in environmental programmes) while others see FPI as the more natural home (considering the highly sensitive political nature of RoL&AC).
- Lack of expertise on RoL&AC issues at both HQ and EUD level, aggravated by rotation and related loss of institutional memory. The planned TEI on RoL (MIP 2021-2027) is partly based on the same drive to broaden the circle of interested allies, including incentivising other DGs (DG HOME, DG JUST) to join and share their know-how more than is now the case.

EQ2: Responsiveness, ownership and flexibility

JC 2.1 Context, political economy and/or conflict analysis

The EU's regional responses in policy areas related to governance, security and (the less clearly spelled out component of) the rule of law, were underpinned by a relatively solid *problem analysis* (particularly in the regional MIP 2014-2020). There is no evidence (at this stage) of elaborated political economy analyses/studies seeking to ascertain levels of domestic ownership and reform commitment for translating the numerous dialogues, exchange and networking activities into effective reforms at national level. The action documents define relevant objectives and indicators, yet genuine “theories of change” that focus on conditions for ‘uptake’ of all the wealth of regional exchanges at *national* level do not seem to be available. There is also no evidence of systematic analyses regarding the impact of the growing populism and authoritarian rule in many partner countries for the regional programmes.

The EU regional programmes sought to enhance ownership by shifting away from the initial tendency to promote the *European* way of doing things in the policy areas covered. The choice was made to rather privilege demand-driven approaches and the search for home grown solutions. These may take inspiration from practices in European contexts yet without copying them. In the same spirit, efforts were done to link up specific countries sharing similar experiences.¹⁷⁴

While the demand-driven nature of EU support may facilitate ownership and uptake of regional policy recommendations at national level, it also has in-built limitations as an intervention approach. The point was repeatedly made that the regional programmes receive, not surprisingly, limited demands to work on corruption matters¹⁷⁵.

¹⁷⁰ Examples were given of EU actors not being invited to core dialogue meetings by the implementing agencies. Source: interview INTPA official.

¹⁷¹ Interview with EU official INTPA

¹⁷² Interview with EU official INTPA

¹⁷³ Interview with EU official INTPA

¹⁷⁴ Final evaluation of the COPOLAD programme 2010-2014.

¹⁷⁵ Interviews with EU officials.

JC 2.2 Engagement with actors at different levels

The core regional interventions (EUROsociAL, COPOLAD and EL-Paccto) adopted a multi-actor approach from the design phase. Political buy-in at the highest level was ensured through successive summits between the EU and Latin America and Central America. The networking approach was a core implementation principle right from the start, particularly in terms of involving in a wide range of relevant government agencies and specialised organisations from Latin/Central America and from Europe dealing with the issues at stake. Evaluation material suggest that certainly in the initial phase, the circle of participants to regional exchange processes in COPOLAD was a bit too restricted to the ‘usual suspects’.¹⁷⁶

The implementing agencies were key in facilitating the gradual application of the multi-actor approach and in terms of facilitating structured processes of dialogue (beyond ad hoc events) which helped to create (expanding) communities of policymakers and practitioners. One important success factor was the recognition that institutionalized inter-agency cooperation is key for meaningful actions in the fight against the drug traffic or the transnational organized crime.

The focus of national agencies and specialised technical bodies inevitably led to a less explicit focus on civil society, private sector or local authorities. -though meaningful ad-hoc interventions of European and LAC civil society organisations exist.

JC 2.3 Adjustment to changing conditions and new opportunities

Available evidence suggests that the EU managed to adapt and adjust its overall external action and cooperation programmes in the fields covered by this evaluation in four main ways: (i) broadening the scope of actors and specialised institutions involved on both continents; (ii) searching for innovative ways to promote capacity development, moving beyond traditional formats of training events to more demand-driven forms of institutional development; (iii) abandoning the ‘one-size-fits-it-all’ approach (= same recipes for all partner countries) to supporting bottom-up processes of collaboration between countries facing similar challenges; (iv) adapting to the deteriorating political situation in several places in both Central and Latin America (though this often seems to imply an ‘exit strategy’ as illustrated by the cases of Venezuela and Nicaragua). In many ways, the EL Paccto represents a good example of seizing new opportunities as it is fully aligned to the Agenda 2030 and related search for more efficient partnership models to deal with global challenges.

Another example of adaptation can be found in COPOLAD III. During the formulation process a clear choice was made to innovate methodologically by creating space “*to accompany countries at national level*”, based on a demand-driven approach. It consists in the design of specific results-oriented ‘road maps’ geared at peer learning and TA (mobilising expertise from different backgrounds in LAC-Europe). This method was already successfully used in EUROsociAL and EL PACCTO to facilitate linkages between regional and national processes.¹⁷⁷

EQ3: Partnerships and coherence

JC3.1 Partnerships based on comparative advantages

A selected group of Member states were consistently and effectively associated to the implementation of all regional programmes through their specialised agencies. A clear division of labour, based on comparative advantages between the EU and the MS involved, was agreed upon. However, over time the specialised agencies became too dominant in the whole process, leading to a relative marginalisation of the voice and influence of the EU (see below EQ 1). A renegotiation took place to rebalance the division of labour and putting the EU again in the driving seat in terms of political leadership of the various regional programmes. The jury is still out whether the EU will manage to occupy the center stage again, particularly in the political and policy dialogue.

By nature, the core regional programmes in LAC (EUROsociAL, COPOLAD and EL-Paccto) put the development of strategic partnerships and alliances at the centre. Their objectives are all about exchange of relevant knowledge, networking and the promotion of structured forms of collaboration between specialised agencies in both continents. Partnership development is pro-actively pursued and facilitated as a self-standing aim and key result to be achieved. The regional programmes seek to strengthen intra-regional cooperation through partnerships.

There is also a clear role division between the EU and participating Member States, based on comparative advantages. In this scheme, the EU provides the overarching political framework through its association with leading continental and regional bodies as well as the funding. The Member States are involved through their specialised implementing agencies which coordinate/facilitate the various regional programmes analysed in this case study. The choice for operators that are part and parcel of the external action system of Member

¹⁷⁶ Final evaluation of the COPOLAD programme 2010-2014.

¹⁷⁷ COPOLAD III, Annex 1. Description of the Action, p. 7

States with clear interests in the region has reportedly been beneficial, particularly in terms of ensuring the right levels of expertise as well as a capacity to mobilize other specialised organisations. The mobilisation of other relevant forms of regional, European or international knowledge and expertise is actively pursued in the various regional programmes. An interesting aspect of the partnership approach is the aim (particularly in EL-PacCTO) to ensure the involvement with other DGs of the EU, such as DG HOME and DG JUST. There are promising dynamics to be observed here and there is clearly a demand for a stronger involvement of these other DGs. Specialised UN bodies are also systematically associated to relevant components (e.g. UNODC). At this stage, it is less clear to what extent the programmes have also successfully fostered partnerships with global actors.

JC 3.2 EU support to RoL&AC has been delivered in a coherent manner

There is a high level of coherence between the regional programmes analysed and core security challenges in the continent. COPOLAD represents a longstanding and increasingly sophisticated cooperation between the two continents on drugs trade, which focuses on both supply and demand factors while adopting a comprehensive approach. The sustainability of this cooperation is ensured, considering the strong common interests in tackling this still very acute and growing global challenge. The link with the wider interests of the EU is also evident, as reflected in the aim of EL-Paccto. Its core aim to combat organised transnational crime is coherent with key RoL&AC challenges in the region as well as with the EU's own security interests. The same holds true for the Cocaine Route Programme (CRP) and its successor the Global Illicit Flows Programme. EUROsociAL's focus on social cohesion -as the basis for stability and democratic/inclusive societies- is fully in line with Europe's societal model.

EQ4: Choice of modality

JC4.1 Mix of modalities

The regional programmes effectively applied the project modality¹⁷⁸ over a longer period of time. Collective learning took place on what works well and less well, making it possible to introduce adaptations in each of the programmes as they were being extended for the new 4-5 year period. The overall conclusion of the mid-term evaluation of the EUROsociAL + programme¹⁷⁹ describing it as “*a virtuous combination of an EU high-level policy dialogue instrument and an excellent TA programme*” could largely be applied to the other regional initiatives considered. The choices made in terms of implementation approaches helped the EU in delivering concrete added value, particularly in terms of tackling issues of common interest at continental/regional level; enhancing knowledge levels and institutional capacities of partner structures and creating promising dynamics (that may go on beyond the duration of the programmes).

The demand-driven approach adopted in all regional programmes has proven to be a two-sided coin. It creates space for genuine national ownership, empowerment and agenda-setting. Yet at the same time, it implies a weaker involvement of countries with major governance and institutional challenges. In addition, tends to reduce the scope for ‘demands’ geared at tackling core rule of law, security or AC reforms.

JC4.2 Mutually reinforcing dialogue and programming

In the various regional programmes considered, the EU and the implementing agencies have pro-actively and creatively sought to ensure, through a wide range of methods, to articulate regional initiatives and national dynamics with a view to promote the effective uptake of new policy ideas / practices and wider reforms in public policy-making driven by national actors. However, the overall track record is mixed. While many success stories exist in terms of mutually reinforcing dynamics, the regional initiatives equally encountered different (structural) obstacles to ensuring an effective *landing* at national level in the form of genuine transformational changes on the ground. These are linked to factors largely beyond the control of the EU, including evolving political contexts in partner countries, lack of reform commitment (particularly regarding RoL&AC issues) or limited ownership by EUDs of the regional programmes. Regarding policy and political dialogue, a relative conducive environment exists for effective EU-LAC cooperation. The nature and focus of the regional processes (essentially geared at peer-to-peer exchanges, institutional support and enhanced collaboration) helped to ensure the agenda setting for iterative policy dialogues (linked to monitoring progress achieved) and political dialogues (to reinvigorate joint commitments and steer future programming). A point of contention has been the limited involvement of the EU in policy dialogues, yet this issue is in the process of being resolved (see above in EQ 1 and 3).

¹⁷⁸ In the regional programmes relevant to RoL/AC the project modality is used (indicators 1 and 2 of this JC therefore not applicable).

¹⁷⁹ Independent mid-term evaluation of EUROsociAL +. 2021.

With regard to the articulation between regional and national dynamics and programming, several observations can be made. First, there is wide evaluative evidence from across the globe about the challenges involved in linking regional and national EU support programmes. Not surprisingly, recurrent obstacles could also be observed in the LAC programmes. Evidence clearly indicates that the core regional programmes (EUROsociAL, COPOLAD, EL PacCto) sought from the outset to design interventions in such a way that they would be firmly embedded in national processes. This regional-national articulation was amongst others pursued by:

- targeting relevant national institutions to be involved in the regional events, trainings, peer-to-peer exchanges and networking activities;
- mobilising various sources of expertise at national level;
- associating national agencies to the overall governance of the programme;
- putting partner countries in the lead in terms of determining concrete projects at national level aligned to regionally agreed priorities (in EUROsociAL and EL PacCto), amongst others by successfully using the tool of country round table^{180s}
- stimulating EUDs to engage on the regional topics in their bilateral portfolio
- using national focal points as well round tables at country level (“mesas país”) which help to jointly set priorities (out of a too long shopping list of demands) and involve EUDs (while facilitating linkages with bilateral programming).

On paper, these different design choices created a relatively conducive environment for ensuring synergies and complementarities within the overall RoL&AC portfolio of EUDs between the various levels of intervention (bilateral and regional) as well as the geographic and thematic instruments used. In practice, the track record is mixed regarding the way this articulation worked out in various partner countries. Three main factors hampered effective linkages:

- Available reports show that the levels of ownership and performance differ substantially between participating countries. The Action Document of EL PacCto clearly identifies the risk that “*national ownership and commitment of participating countries may not be fully and permanently ensured*”. It also recognises that security and justice “*are at the heart of a society’s power structures*” and that all kind of forces may resist change. Another constraint identified is the “*lack of a professional and independent civil service, subjected to political control and characterised by a high turnover*”.
- Only a relatively small group of EUDs have selected RoL&AC as a core priority for the bilateral support (Peru, Bolivia, Guatemala, Honduras, Costa Rica and Panama). In partner countries without a meaningful portfolio of EU interventions, the ‘landing’ of the regional programmes is not evident.
- The classical problem of commitment by EUD staff to also take care of regional programmes (in addition to all their other work) can be observed in several cases¹⁸¹.

The 2019 evaluation report of the regional programmes with LAC confirms this analysis. It identifies as “*areas for improvement*” reimplementation challenges such as “*the lack of a regional capacity to monitor and evaluate the implementation of sectoral policy support*” as well as the less than optimal exploitation of the “*potential for coordination and synergies between regional, sub-regional and national cooperation programmes*”. During the field phase, a sample of partner countries will be selected (both good and less performing states) to explore in more depth the issue of effective synergies and complementarities between regional and national dynamics and their impact on the overall RoL&AC portfolio.

Regarding the use of political/policy dialogue, three observations can be made from an evaluative perspective:

- The existence a fairly solid institutional framework, built and refined over time, for the political dialogue between the countries of Latin America / Caribbean and the EU proved to be an asset for giving legitimacy and traction to the various regional programmes supported by the EU. The recurrent EU-CELAC summits provide a major opportunity to reaffirm common challenges and joint interests, define shared core priorities and monitor progress in cooperation processes. These major gatherings have limitations (particularly in the current rather troubled political climate in LAC), but they can help to send out strong political messages on highly sensitive issues (like prosecuting top level people for corruption) that may help national administrations to go ahead and act.¹⁸² This holds particularly true for the COPOLAD programme (see Box 5 below)
- A major lesson learnt in both COPOLAD and EL PacCto is that investments in capacity development of national agencies and networking help to pave for more content-driven and result-oriented policy

¹⁸⁰ A tool which was very positively evaluated in mid-term evaluation report of EUROsociAL +

¹⁸¹ Interview with EU official from INTPA

¹⁸² Interview with EU official from INTPA

dialogues. An improvement in the quality of these dialogues can be observed as the networks get more professionalized.¹⁸³ It helps to set common regional agendas (to be used as benchmarks¹⁸⁴, to ensure concrete and result-oriented policy dialogues (fed by experiences gained during implementation) and to jointly look forward to next challenges to be addressed, increasingly also through triangular cooperation (whereby countries of the region as expertise providers on specific issues).

- The effective involvement of the EU in policy and political dialogue processes remains a challenge for various reasons, including lack of specialised skills (particularly affecting the EEAS) and the “deficient” internal coordination at HQ levels (including other DGs).¹⁸⁵ This means that the full political potential of the regional programmes is not fully exploited by the EU. The idea was raised in this context to give a more clearly spelled out “political mandate” to EU units involved.¹⁸⁶

Box 5 *Linking political dialogue, programming and implementation*

In the framework of EU-CELAC relations, a specific ‘*Coordination and Cooperation Mechanism on Drug Matters*’ (MCCMD) has been put in place to facilitate and intensify political dialogue with a view to ensure that bi-regional cooperation in this domain is based on the principle of “*common and shared responsibility and results in public policies based on evidence and with a comprehensive and balanced approach*”. A clear institutional link is thus provided between political dialogue and jointly programming new priority interventions in the abovementioned spirit. The MCCMD is not only concerned with organising high-level conferences. It seeks to facilitate bi-regional cooperation on drugs, including by the institutional strengthening of National Agencies in the field of drugs policies or by the production of technical reports to support policy-making.

Effects of EU support to RoL&AC

EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institution

JC5.1: Core legal and administrative reforms

Consistent with their largely shared ‘DNA’ the various regional programmes have primarily focused on (first) promoting regional dialogues and the development of regional models for public policy that could inspire national policy-makers. The strategic focus on fostering legal and administrative reforms at *national* level was limited so far across the board. However, the regional processes have had positive effects on inter-institutional cooperation at *regional* level which in turn is gradually creating awareness and interest of the actors involved to proceed with national reforms of the legal and administrative frameworks.

A more detailed assessment first needs to recognize the scope of the various programmes. The three core regional programmes analysed seek to influence public policymaking at national level, respectively in the domain of social cohesion (EUROsociAL), the drugs trade (COPOLAD) and in relation to organized transnational crime (EL PacCTO). The latter is framed explicitly as a programme geared at strengthening “*e/ Estado de Derecho y la seguridad ciudadana*”. However, each of the regional programmes are all multi-dimensional in nature, with RoL and AC issues being only one of the components (and not necessarily the most prominent). These matters are dealt with as a cross-cutting issue (EL PacCTO) or under the broader umbrella of “democratic governance” (e.g. EUROsociAL) and are often targeting specific aspects (e.g. access to justice). According to the 2019 evaluation of the regional programmes for the period 2009-2017¹⁸⁷, the various programmes have produced an added value, particularly in terms of providing space for intra-regional cooperation based on the above principles and methods. The programmes have also earned credibility with political leaders, with scaling-up of results achieved and strong links with continuity plans by partner governments.

Focusing more specifically on the issue at stake under this JC, the findings regarding the three programmes are the following:

- The results achieved by COPOLAD concern various dimensions of drugs production, demand and trafficking -which are not directly linked to RoL&AC issues. Other core results do have a more direct link such as “human-rights based national drugs policies”; “strengthened action against illicit financial flows and money laundering derived from drug trafficking” or “increased control of precursors”. However, available evaluation material and COPOLAD reports on results suggest that the programme has mainly delivered new knowledge, guidelines and manuals to inform public policy-making (including

¹⁸³ Interview with EU official from INTPA

¹⁸⁴ Interview with INTPA officials

¹⁸⁵ Interview with officials from the implementing agencies.

¹⁸⁶ Ibid.

¹⁸⁷ European Commission. 2019. Independent evaluation of the “EU’s regional development cooperation with Latin America (2009-2017)”. Final Report, Volume 1, May 2019.

on core gender perspectives). This is consistent with the overall aim of the programme to foster bi-regional dialogues, peer-to-peer exchanges, networking, fostering partnerships (e.g. with civil society) the strengthening of National agencies or the creation of new structures (e.g. a National Drug Observatory in Bolivia). The programme does not have the mandate, funding and capacities to actively pursue effective implementation at national level. In the spirit of co-responsibility that underpins regional cooperation between the EU and CELAC, it is first and foremost up to the national agencies and actors involved to push at home for legal and administrative reforms or more effective public policies. Furthermore, it is here that the connection between regional and bilateral cooperation of the EU is crucial to accompany effective implementation at partner country level. Yet as mentioned above (EQ 1 and 4), not many EUDs have prioritised RoL&AC in programming and those who did (e.g. Guatemala) have experienced major challenges to push forward these agendas (see country case report Guatemala produced for this evaluation). In this context, it is not surprising to read in the independent evaluation of COPOLAD-II that the programme had limited influence on policy reforms in partner countries. In order to overcome this, COPOLAD-III now foresees to copy the successful model to include demand-driven actions geared at national uptake used in EUROsocial and EL-PacCTO.

- The programme EL-PacCTO has helped to creating a truly regional approach to combating transnational organized crime by fostering collaboration between police, law enforcement agencies, judiciary and ministries of justice/security), using European experiences to build such a common space as a source of inspiration. The focus has been successfully put on pushing forward regional networks and inter-institutional committees that facilitate such joint action in the three pillars of fighting organized crime¹⁸⁸. The (quantitative) indicators of the programme are fully aligned to this central objective (e.g. number of Joint Investigation Teams; number of countries joining the existing AMERIPOL entity; number of new strategic and/or operational agreements negotiated between EUROPOL/DG HOME; cooperation points between EUROJUST and LA countries; number of rogatory letters in the framework of Mutual Legal Assistance submitted and executed among partner countries, etc.). There is no comprehensive evaluation of the programme so far to assess the impact of all the regional initiatives and related national processes. However, in June 2021, the implementing agencies conducted a sort of a self-evaluation exercise to garner the opinion of the ‘Focal Points’ of the programme’s partner institutions in Latin America. The survey received quite a high response (from 61 representatives from 53 national and regional institutions in Latin America and Europe) and included seven EUDs. **Most of the partners considered EL PACCTO’s work to be essential in strengthening the fight against crime.** Box 6 below summarises key findings. Further analysis will be done in the field phase, by selecting specific countries for assessing the impact related to this EQ.

Box 6 *Results of the survey on EL PACCTO’s performance (2021)*

- **77% of Focal Points surveyed think that thanks to EL PACCTO, their country is better prepared to fight transnational organised crime**
- **83% think that EL PACCTO’s support effectively contributes to the fight against transnational organised crime in Latin America**
- **87% think that the results of EL PACCTO will be sustainable and lasting**
- **83% think that EL PACCTO has contributed to the specialisation and professionalisation of the personnel of institutions in Latin America**
- **86% think that EL PACCTO has contributed to improving the coordination and internal processes of the institution to which they belong**
- **70% think that EL PACCTO has contributed to improving inter-institutional coordination between the institution they represent and other institutions in their country**
- **73% think that EL PACCTO’s support has facilitated the international coordination and cooperation of the institution they represent**

- The successive EUROsocial programmes focused mainly the development and promotion of public policies, good practices and specific *regional* models for policy implementation -linked to service delivery as well as to specific justice and democracy objectives. For example, with the involvement of Public Defenders and Finance Ministries, a Manual of Good Practices among several countries was developed for the ‘Implementation of a model of inter-institutional coordination for investigation, prosecution and sanction of economic and financial crimes linked to corruption’. The final evaluation of EUROsocial II explains that, in various instances, the definition of demands by LA partners has been approached from the regional dimension. In particular, in the justice sector actors such as the Ibero-American Association of Public Defenders’ Offices, the Ibero-American Association of the Offices of Public Prosecutors and the Ibero-American Network of Judiciary Cooperation in Criminal and Civil Law have sought to develop collective actions. Moreover, the involvement of regional institutions such as the Inter-American Centre of Tax Administrations or ECLAC helped enhancing the

¹⁸⁸ Interview with staff from core implementing agencies.

regionalisation of some of the initiatives supported, especially where there was no well-established network in place. The programme continued to evolve under EUROsociAL + which sought to go beyond regional models and policies and get more focused on institutional strengthening of core agencies as well as quality of public services impacting on the lives of citizens (for an example see Box 7 below).

Box 7 *From regional policy dialogues to national reforms: the example of access to justice*

Within its democratic governance component, EUROsociAL has a tradition on fostering access to justice for vulnerable people. The successive programmes first concentrated on promoting regioexchanges and multi-actor dialogues to define shared regional agendas and policy frameworks. In countries with a conducive environment, national processes followed suit, focused first on policy development and then gradually moving into consolidating institutional mechanisms to facilitate access to justice. However, the mid-term evaluation indicates that relations with the legislative powers are still “embryonic”, reducing the programme’s ability to effectively influence legal and administrative reforms.

A common challenge experienced by all regional programmes is to influence the modus operandi of public policy-making processes. All too often, these remain stuck in rather “conjunctural” approaches to policymaking (reflecting the political economy conditions of most partner countries) as opposed to more “structured” reform approaches.¹⁸⁹ The prevailing spoils system and related trend to completely change the key civil service players when a new government comes in reinforces this rather ad hoc style of policy-making.

JC5.2: Strengthening of institutional architecture

There are no data available on the extent to which and how the regional programmes have helped to improve planning and implementation processes of core formal justice and AC institutions -as this was not the direct focus of the programmes. Other indicators under this JC are more relevant. Both COPOLAD and EL PACCTO -in their respective specialised niches- have successfully adopted a systemic and integrated approach focused on building interagency cooperation as well as linkages with relevant regional and international actors and processes (see Box 8 below). The various regional programmes analysed have all invested in building the capacity of national/regional bodies in LAC to produce quality data and monitor progress (e.g. through the National Drug Observatories in COPOLAD), also on specific issues (e.g. related to gender equality).

Box 8 *A promising regional structure for combatting transnational organized crime*

A major success to which EL PACCTO contributed is the creation a Latin American Committee on Internal Security (CLASI) that should benefit from the methodology and experience developed in the EU (without imposing a model). It will only be made up of volunteer countries, at the level of Ministers and senior officials of Interior, Security, Justice (according to their competencies in each country). The objectives of the CLASI are:

- The creation of a space for dialogue and high-level coordination to address the problem of transnational organized crime in the region;
- The identification of common priorities in the area of organized crime;
- The elaboration of multi-year strategic plans jointly among the participating countries;
- The establishment of a working process for the progressive development of an Instrument for the Documentation and Evaluation of Threats in Latin America (IDEAL);
- The political impulse for the strengthening and legal and practical establishment of AMERIPOL as a unique instance for the exchange and cross-referencing of information and police cooperation in Latin America

After a year and a half of intense work by Latin American law enforcement agencies from **Bolivia, Chile, Costa Rica, Ecuador, El Salvador, Mexico and Panama** and with European support, the threat documentation and assessment programme IDEAL has managed to **identify the criminal areas that have the greatest impact and assess the threats that loom in terms of transnational organised crime**. In addition, the instrument is committed to greater high-level coordination to tackle **arms trafficking, smuggling, cybercrime, environmental crimes and money laundering**, among other problems.

JC5.3: Progress in justice systems and anticorruption frameworks

The most relevant programme for this JC is EUROsociAL as the other regional programmes did not explicitly included targets to directly contribute to fostering more effective national justice systems (though *indirectly* the regional initiatives may help to create over time a more conducive environment for such national reforms). According to the mid-term evaluation, EUROsociAL + was effective in bringing agreed regional models and guidance on access to justice for vulnerable populations into a (limited) number of national policy processes. A case in point is Chile, where follow-up support by EUROsociAL allowed to stimulate a national policy to ensure juvenile penalty mediation with the overall access to Justice reform package.

The indicator on access to traditional mechanisms of justice is not relevant in this case study.

¹⁸⁹ Interview with staff from implementing agencies.

EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions

This EQ is globally not relevant for the core regional programmes considered, with the exception of some projects with EUROsocial focusing on access to information or inclusive justice. The previously mentioned EUROsocial + mid-term report emphasizes that the programme manage to accompany the national uptake of regional frameworks (e.g. the Inter-American Model Law 2.0 on Access to Information) in some partner countries. Similar processes were stimulated to enhance national policies for access to justice (see EQ 5).

EQ7: Broader effects on RoL&AC culture, human rights and democracy

JC 7.1: Promoting a RoL&AC culture

The core regional programmes (Eurosocial, COPOLAD and EL-PacCTO) reflect a solid understanding of sociological and cultural realities, both at the level of the programming documents (with growing levels of sophistication in context analysis over time) and in implementation (helped by the ‘demand-driven’ nature of the programmes, which substantially reduces the risk of pushing forward RoL&AC agendas based on European agendas and templates).

The various programmes engage primarily with *national institutions* which they seek to support/strengthen to enhance their processes for the design, reform and implementation of (evidence-based public policies -through peer-to-peer learning, experience exchange, studies, development of regional tools, networking, use of European expertise, etc. The choice for this specific institutional focus and approach, means there are no direct attempts to pro-actively engage with society at large (citizens, civil society, media, private sector, etc.) in order to strengthen the ‘demand’ side of reforms. These stakeholders are rather seen as beneficiaries of possible reforms undertaken by national actors (as a result of regional processes and initiatives). This also makes it difficult to assess the contribution of the programmes to fostering a RoL&AC culture. Available evidence shows that there is a real challenge of trust in democracy in the region. The 2020 Latinobarometro poll shows that support for democracy has waned. Less than half of Latin American are committed democrats and a growing number are indifferent towards their country’s political régime. A large majority is deeply satisfied with the way their democracies work in practice, as the system is seen to privilege the powerful few and lead to unfair distribution of wealth and access to services. Trust in institutions continues to fall.¹⁹⁰

The mainstreaming of RoL&AC programmes in other EU sectoral priorities (e.g. social protection, migration, employment policies) or investment facilities such as LAIF, appears to be limited. Policy and programming documents may mention the principle of the RoL but there is no evidence that this has also received attention in operational terms [during the field phase interviews may further elucidate this point]. AC issues are even less visible and targeted.

JC7.2 Fostering human rights

The various regional programmes studied in detail effectively integrate a human rights perspective. The regional protocols and manuals produced seek to promote alignment with international standards. They also focus on specific human rights (e.g. people deprived from liberty and the role of the “Defensas Públicas”).

The various regional programmes all seek to work on gender equality, using different entry points (e.g. COPOLAD focuses on integrating a gender lens in drug demand and supply reduction while EUROsocial has a much wider scope of action, targeting improvements in national legal frameworks and mechanisms, monitoring capacities related to gender equality. The nature of the EU supported interventions are geared at fostering greater regional awareness and exchanges, potentially resulting in more effective national public policies that are coherent with the respect for human rights. In this sense, they are expected to contribute to better RoL and AC frameworks. It facilitated the elaboration of three ‘regional protocols’ geared at promoting collaboration between the various actors of the justice in charge of violence committed against women. It also worked on regional guidelines to fight corruption, improve access to justice and legal aid as well as access to information.

The abovementioned 2019 evaluation on the EU’s regional development cooperation programmes concludes that although several initiatives supported by EUROsocial II addressed policy issues specifically related to women, the promotion of gender equality has not been a strong dimension of the EU support. EUROsocial II strengthened the past collaboration with ECLAC in the gender area with activities going beyond gender-based violence and sexual and reproductive health (e.g. issues of labour market and pension gaps and gender-responsive investment). More generally, EUROsocial II supported diverse initiatives targeting gender equality such as the ones focusing on ensuring better access to justice to women or job creation frameworks specifically addressing women’s employment issues. In Costa Rica, EUROsocial+ contributed to the development of the National Policy for Effective Equality between Women and Men in 2018-2030 by providing expertise and

¹⁹⁰ The Economist. 2021. The Latinobarometro poll. Democracy’s scorecard. The Economist October 9th 2021.

funding research on gender gaps. EUROsociAL+ also contributed to strengthening statistics with a gender perspective by providing support to the National Woman Institute (INAMU). The launch of EUROsociAL+ in 2016 has been associated with a major shift, with gender – more specifically, fight against genderbased violence and gender mainstreaming – becoming a pillar of the regional programme, which is reflected in the budget and deployed human resources.

A recently started regional programme impacting on human rights is EUROFRONT. It seeks to improve security, protect human rights and promote social and economic development at both the national and regional level in Latin America through increased efficiency in the management of four border crossings and by supporting the fight against human trafficking and migrant smuggling. Implementation delays, mainly due to political factors and conditions of participation of LAC countries targeted (e.g. Argentina, preferring to focus on obtaining specialised equipment rather than embracing a policy reform agenda)¹⁹¹, have been incurred. Interviews during the field phase will make it possible to assess incipient steps taken and progress achieved.

JC7.3 Application of democratic principles

The main programme for this JC is EUROsociAL, which has worked for more than a decade on *'institucionalidad democrática'*. Under this broad umbrella, the programme successfully facilitated the elaboration of three 'regional protocols' geared at promoting collaboration between the various actors of the justice system in charge of violence committed against women. It also worked on regional guidelines to fight corruption, improve access to justice and legal aid as well as access to information. The implementing agencies have put in place a whole system to track the projects at country level through a "ficha país" that document and monitor progress achieved for the various sectors, including justice and security.

EUrosociAL has been giving only limited attention to local authorities in the programme and their needs in terms of anchoring the RoL&AC in local democracy and governance systems. Yet this may be changing, with the recommendation provided by the 2021 mid-term evaluation of EUrosociAL + to invest more in "*territorial development*" as an increasingly common policy priority at regional level and an approach that could ensure a more bottom-up holistic and integrated approaches to fostering social cohesion (in all its dimensions) with local authorities acting as catalysts.

EQ8: Effects on wider EU external action goals

JC8.1 Peace, resilience and stability

As mentioned above, the core programmes considered (EUROsociAL, COPOLAD, EL-PACCTO) are all embedded in a wider vision of ensuring more stable, secure and inclusive societies as precondition for sustainable development in the region, for dealing effectively with global challenges (such as transnational organised crime) and to protect EU interests (e.g. in relation to drug trafficking). To varying degrees they integrate aspects of inclusion, rights and voice, particularly women. EL-PACCTO in particular focuses on comprehensive approaches to addressing challenges of impunity for transnational organized crime all along the penal chain. Also the Cocaine Route Programme and its successor, i.e. the Global Illicit Flows programme have managed to strengthen the overall collective action capacity of core agencies at various levels.

The indicator related to state building contracts is not relevant for this regional case study.

JC 8.2 Human rights and due diligence

Several components of EUROsociAL (also at country level) have focused on issues related to inclusive growth. The evaluation material available does not suggest that RoL&AC issues featured prominently in these projects. There is also no evidence at this stage of regional initiatives linked to transparency, predictability and judiciary certainty, amongst others through regionally stimulated reforms in commercial law.

Blending is an increasingly important instrument, reflected amongst in successive investment facilities for LAC. Available action documents on the Latin America Investment Facility (LAIF) for infrastructure development, which is in operation since 2009 and mobilized substantial funding, recognises the need to ensure that "*all projects financed from the EU budget will be aligned to the EU's principles in terms of environmental impact, gender equality, good governance and human rights*". However, this is not worked out in operational terms and the guidelines focus primarily on technical-financial aspects.

JC. 8.3 Natural resource management

Latin American countries are major global players on mineral raw materials. This applies to some of the most used metals such as iron, copper or aluminium, but also to precious metals and strategic raw materials. LAC countries are also well placed to be strategic suppliers of raw materials to the European industrial value chains. The sector lends itself well to applying cutting-edge technologies and offers a big potential for EU mining

¹⁹¹ Interview with EU official from INTPA

equipment and service providers or developers of infrastructure, such as renewable energy. All this makes it an interesting arena to explore the nature and modus operandi of EU support provided from a RoL&AC perspective, as the further development of the mining sector in LAC also requires legal frameworks and policies to increase accountability and transparency while improving the overall governance of the system. Key initiatives of the EU in LAC in this area include:

- The Joint Project on Responsible Business Conduct in Latin America and the Caribbean, implemented by the UN High Commissioner for Human Rights (OHCHR), the ILO and the OECD. This multi-actor programme is funded by the Partnership Instrument
- The “Win-win: Gender Equality” project, also funded by the Partnership Instrument and implemented by the UN Entity for Gender Equality and the Empowerment of Women (UN Women) and the ILO, focusing on enhancing the capacity of companies to deal with these issues more effectively.
- The EU Americas Partnership on Raw Materials.

Evidence collected (based on scarce material) suggests the RoL&AC agendas do not feature prominently in these various initiatives – though indirectly the programmes may contribute to enhancing the overall political and institutional environment for fostering a RoL&AC culture.

Another major regional programme concerns EUROCLIMA. The six thematic areas are all of a technical nature (e.g. water, food production, mobility) yet there is no specific reference to environmental governance or RoL&AC issues.

Overall assessment

The political partnership between the EU and Latin America/Caribbean has expanded over time into a wide range of areas where both continents share common interests, recurrently updated during high-level summits. The regional cooperation mirrors this evolution. During the evaluation period (2010-2021), the focus shifted away from supporting traditional development sectors and a broad governance agenda (CSP 2007-2013) to embracing issues of mutual interest including combatting drugs and transnational organized crime (MIP 2014-2020). The main regional programmes examined here (i.e. COPOLAD, El PacCTO, Eurosocial) have components touching upon RoL&AC matters - though often in a rather indirect manner.

In rolling out its regional cooperation, the EU demonstrated an ability to have context-sensitive and demand driven approaches to programming and implementation -which were adapted to changing political conditions in partner countries. The choice to rely for all programmes on the same implementation agencies from Member States enhanced relevance, responsiveness and effectiveness. However, it also contributed to diluting the protagonist role and visibility of the EU in policy/political dialogue -a weakness that is now being addressed. While dedicated EU staff are investing heavily in regional cooperation programmes, the human resource base and levels of expertise for effectively assuming all the required roles are too thin. This is not in line with the geopolitical ambitions of the EU and related desire to be a player rather than a payer.

The successive regional programmes generated over time a wide range of positive benefits in terms of i) capacitating national agencies; ii) establishing institutionalized mechanisms for peer-to-peer exchanges networking and learning; or iii) organizing a truly regional approach in combatting transnational organized crime (bringing police, law enforcement agencies and judiciary together). This institutional architecture was further reinforced through the elaboration of shared regional policy frameworks and manuals for evidenced public policymaking. The programmes created incentives for intensified collaboration between a growing set of institutions and actors in LAC and Europe.

Measuring results proved difficult considering the nature of the support provided (primarily institutional development) and the weakness of the theories of change and M&E systems used. Achieving transformational change depends on the national 'uptake' of regionally agreed agendas -a process hampered by deteriorating political conditions in several partner countries as well as by less than optimal linkages between the EU's regional efforts and the bilateral portfolio (where it still exists). The mainstreaming of RoL&AC agendas in other EU sectoral priorities (e.g. social protection, migration, employment policies) or investment/ blending facilities, has been limited.

Case study note – Myanmar

Introduction.....	115
Context	115
Political economy analysis	115
Overview of the EU support to RoL&AC	116
Strategy and implementation of EU support to RoL&AC	118
EQ1: EU strategic framework/institutional environment.....	118
EQ2: Responsiveness, ownership and flexibility	119
EQ3: Partnerships and coherence	121
EQ4: Choice of modality	122
Effects of EU support to RoL&AC.....	124
EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions	124
EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions	126
EQ7: Broader effects on RoL&AC culture, human rights and democracy.....	126
EQ8: Effects on wider EU external action goals	127
Overall assessment	129

Introduction

Remark: This case study note does not constitute a separate evaluation of EU support in the country or its situation with regard to RoL&AC. It presents country-related findings relevant to the overall assessed judgement criteria and indicators, and feeds into the main evaluation report of the Evaluation of the European Union support to Rule of Law and Anticorruption in Partner Countries to which it will be attached as an annex.

Context

The Republic of the Union of Myanmar is a parliamentary republic and is the second largest state in Southeast Asia. It is divided into 7 divisions of Myanmar proper and 7 states of the national minorities – Kachin, Karenni, Karen, Chin, Mon, Arakan and Shan States. The population of Myanmar is estimated at over 54 million, the largest ethnic group being the ethnic Burmese, the prevailing religion is Buddhism, and the official language is Burmese.

Serious and sustained human rights violations occurring during the long period of military rule gave rise to a generalised culture of impunity, leading in 1996 to the imposition of sanctions and the political and economic disengagement by the EU and other states (see 0 below). After decades living under this dictatorship, the people of Myanmar have little trust in the justice and law enforcement systems, and other rule of law agencies. Positive constitutional and legal changes after 2008 altered certain important formal relations within the system, initiated changes in the use and distribution of resources and opened the possibility for further change and provided entry points upon which the EU could subsequently build its programme of support.

Progressive movements towards democratisation occurred from approximately 2011, which gained momentum through to 2013, with the EU lifting its sanctions in April of that year, with the EU resuming cooperation in the rule of law sector in 2014.

Political economy analysis

Myanmar has a predominantly common law legal system, adopted in the late nineteenth and early twentieth centuries when the country was part of the British Empire. The principal sources of law are legislation; judicial decisions; and customary law dealing with personal law issues, such as marriage and divorce, adoption, succession, and property transfer of property.

The mechanisms and actors of Myanmar's justice system, comprised of institutions including the Union Attorney General's Office (UAGO), the police, the judiciary, the prisons, the legal profession, legal aid providers, and their relations with one another, remain embedded in historical power structures, with the law '*wielded as a tool by those exercising power, rather than a moderating or constraining influence*'¹⁹².

The overarching legitimacy of the Myanmar state justice system has long been disputed, in terms of its independence and jurisdiction. Military-led constitutionalism in Myanmar created '*a hierarchy of powers rather than a separation, shaping its justice system*'¹⁹³.

Myanmar has no Ministry of Justice, with the Union Office of the Attorney General (UAGO) exercising broad functions. The constitutional powers of the Office of the President to control all areas of government, except the military, extend to this Office and the financing of the judiciary. Constitutional separation of powers is also weak, with the President having the power to appoint the Chief Justice of the Supreme Court and other superior judges. Many of the highest judicial officials have military backgrounds with minimal experience or qualifications in the practice of administering justice to civilians and prefer to uphold government policy rather than provide oversight or protect rights.

Capacities of the judiciary, prosecutions, and courts themselves are severely limited by technical and resource constraints, in particular in the areas outside of the capital. The independent legal profession is technically and structurally weak, having devolved over many years to a low-status profession with poor training, and are reluctant to challenge the status quo.

Access to justice is problematic, given the constraints outlined above, but hampered by poor awareness of justice and human rights. These difficulties are compounded in remote areas, and for vulnerable groups, in particular women and children, the poor, and minority groups.

Myanmar's legal tradition is a unique combination of family customary law, codified English common law, and recent Myanmar legislation, however there is a lack of recognition of customary law and localised practices on which justice systems are based in more remote areas.

Law enforcement is provided by the Myanmar Police Force (MPF), an independent department under the Ministry of Home Affairs. It is comprised of six components: Headquarters, State and Division Police Forces, Special Departments, Training Centres, Reserved Units, and Police Battalions.

¹⁹² MyJustice II, Description of the Action, p.7

¹⁹³ Ibid. p.8

The military-civilian government from 2011 clearly intended to expand and remodel the MPF, and develop a less militaristic approach, with the armed forces (Tatmadaw) remaining responsible for external defence and counter-insurgency campaigns. The MPF's doctrine and training programs were subsequently revised to give greater emphasis to 'community-based policing' by unarmed officers working in close cooperation with the general population.

The MPF has encountered many serious challenges, however, notably related to its hierarchical and centralised structure, limited resources and capacity, professional culture, and community relations. Indeed, public confidence was a key area of concern in the period under consideration, with community's attitude largely one of fear and distrust. This had been fuelled by serious human rights violations committed by both the MPF and Tatmadaw, in particular in areas of ethnic conflict.

Corruption is well-entrenched in state institutions, with Myanmar's score on the Transparency International's Corruption Perceptions Index consistently low. In 2019, the country ranked 130 out of 180 assessed countries and had a score of 29/100. Despite this, Myanmar improved more than any country in the period between 2012 and 2018, increasing its score by 14 points.

Forms of corruption include petty and grand corruption, cronyism and clientelism, and through organised crime and illicit financial flows. Key sectors where corruption is rampant include the justice sector, law enforcement, and natural resource management.

In recent years, Myanmar has installed a framework for preventing and countering corruption, including the 2013 Anticorruption Law which aims to improve governance and promote government accountability, and which established the anticorruption commission (ACC) as Myanmar's primary anticorruption agency. The ACC is mandated to investigate claims of corruption, enforce the 2013 law, issue recommendations, and to request help from international organisations.

While the government was keen to demonstrate the benefits of the rule of law to Myanmar's population, there was disappointment regarding the pace, scale and scope of reforms and accountability relative to human rights. These has included the continued imprisonment of journalists and peaceful protesters, violent dispersals of demonstrations, and the use of repressive legislation to silence government critics. Parliamentarians and civil society organisations were subject to close control.

A military coup d'état occurred on 1 February 2021, when the democratically elected members of the country's ruling party, the National League for Democracy (NLD), were deposed by the Tatmadaw. International organisations, including the UN, ASEAN and EU called for dialogue from both sides, with the EU condemning the coup and urging the release of detainees. The US, UK and European Union have since imposed sanctions on military officials.

Opposition activists formed the Campaign for Civil Disobedience (CDM) and have helped organise strikes and mass protests against the coup, however these protests have been put down by the military with live fire, water cannons and rubber bullets. Unrest has spread, with the country now effectively in a state of internal armed conflict, with local militias known as People's Defence Forces (PDFs) having attacked military convoys and assassinated officials.

The military government has embarked on a brutal campaign of repression¹⁹⁴, which have been categorised as crimes against humanity by international human rights organisations¹⁹⁵. An estimated 1,500 people have been killed since the military regime came to power¹⁹⁶.

Overview of the EU support to RoL&AC

The EU strategic framework in Myanmar, and more specifically relative to RoL&AC, has undergone significant shifts in the period under consideration, linked directly to the evolving political context in the country.

In 1996, the Council of the European Union adopted a Common Position on Burma/Myanmar¹⁹⁷, in response to '*the absence of progress towards democratisation and the continuing violation of human rights*' in the country, which included *inter alia* an arms embargo, and the suspension of defence cooperation. Nevertheless, the Council on several occasions reiterated its desire to establish a meaningful political dialogue with the military government, known as the State Peace and Development Council (SPDC). The 2004 revised Common Position¹⁹⁸ opened the possibility for a more systematic approach to assistance, with the main policy objectives of the EU being support to *inter alia* national reconciliation, democracy and human rights.

At this time there was therefore no EC-Myanmar Agreement, and cooperation was governed by the 2006 Development Cooperation Instrument (DCI) under which Myanmar was eligible to participate in cooperation

¹⁹⁴ <https://www.hrw.org/news/2022/01/28/myanmar-year-brutality-coups-wake>

¹⁹⁵ <https://www.hrw.org/news/2021/07/31/myanmar-coup-leads-crimes-against-humanity>

¹⁹⁶ <https://www.hrw.org/news/2022/01/28/myanmar-year-brutality-coups-wake>

¹⁹⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31996E0635>

¹⁹⁸ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004E0423>

programmes. A key objective of the subsequent EC-Burma/Myanmar Strategy Paper (2007-2013)¹⁹⁹ was to 'foster the development and strengthening of a civil society in view of facilitating national reconciliation and a peaceful transition to democracy'.

Support to the rule of law and anti-anticorruption was not provided to Myanmar in the earlier part of the evaluation period (see 0 and 0 above, and 0 below). From 2014 onwards, as a result of the governmental transition, support was initially provided through the Instrument contributing to Stability and Peace (IcSP) to the security sector, and thereafter extended into the justice sector. Support to the RoL&AC sector was complemented by programmes relative to democracy and governance, peace and stability, civil society, and human rights (see also 0 below).

The principal programmes of support from 2014 to 2020, and which constituted the primary focus of this case study, are presented in Table 7.

Table 7 Overview of EU-financed interventions to the support of RoL&AC in Myanmar selected for the case study

D or C year	Title	Budget (m. EUR)²⁰⁰	Typology	Implementing partner
2013	Support to reform of the Myanmar Police Force in the areas of crowd management and community policing (MPF I)	9.0	Justice and Law enforcement	International Management Group
2016	Support to the Reform of the Myanmar Police (MPF II)	30	Justice and Law enforcement	FIIAPP
2015	Improving the Rule of Law in Myanmar (MyJustice I)	20	Justice, Governance and Democracy	British Council
2019	Deepening Access to Justice in Myanmar (MyJustice II)	19.8	Access to Justice	British Council
2015	Institutional Strengthening and Policy Dialogue, Myanmar (MyGovernance)	12.2	Governance	GOPA
Transversally				
2018	Durable Peace Programme (DPP)	12.0	Peace, resilience and security	OXFAM
2010-2018	EIDHR grants (confidential)	n/a	Human Rights	n/a

¹⁹⁹ https://eeas.europa.eu/archives/docs/myanmar/csp/07_13_en.pdf

²⁰⁰ Planned EU contribution.

Strategy and implementation of EU support to RoL&AC

EQ1: EU strategic framework/institutional environment

JC1.1 Clear, context sensitive and realistic

In 2012 the Council of the European Union suspended EU sanctions, which was followed by period of increasing engagement in response to further political and economic reforms, and in 2013 EU sanctions, apart from the arms embargo, were lifted altogether.

In 2013 the EU Foreign Affairs Council set out a Comprehensive Framework²⁰¹ for EU and MS policy and support for the next three years, pursuant to which the Joint EU Development Partners' Transitional Strategy for Myanmar²⁰² was prepared and agreed at the local level by the EU and thirteen Member States. The Joint Strategy focused EU support on six main areas, which included governance. EU and MS work in this area included the promotion of democratisation, support to rule of law, transparency and accountability, and capacity building of civil servants, with a commitment by the EU of EUR 8 to 12 million per annum.

The 2016 Council Conclusions on EU strategy with Myanmar/Burma²⁰³ and the 2016 Joint Communication to the European Parliament and the Council entitled 'Elements for an EU Strategy vis-à-vis Myanmar/Burma'²⁰⁴ constituted the foundation of EU policies relative to Myanmar. Both documents aimed at supporting rule of law and good governance, including the reform of the security sector, and through these the EU has established a regular political dialogue on these issues.

The Multiannual Indicative Program (2014-2020)²⁰⁵ provided EUR 96 million support to governance, rule of law, and state-building, which aimed to strengthen the legal and institutional capacity of the justice sector and law enforcement agencies; improve access to independent, impartial and transparent justice and legal aid, and improve law enforcement approaches based on international practices and respect for human rights.

These strategies and programming documents outlined the significant difficulties relative to the rule of law in Myanmar, but did not provide detailed sector analyses, which can perhaps be explained by the prolonged absence of cooperation with the EU. The cooperation framework emphasised however that the rule of law, in particular in the justice and security sectors, was a key governmental priority, and therefore an integral part of transitional processes, with the MIP highlighting that '*in light of the fluidity and unpredictability inherent to countries in transition, maximum flexibility should be ensured in order to allow for an appropriate and tailored response*' (p.2). It is observed however that, despite Myanmar having emerged from five decades of authoritarian military rule, issues of transitional justice were not explored in the strategy framework, including for interventions and approaches relative to peacebuilding, nor was this integrated directly into programme implementation (see also 0 below).

The need for dialogue and the role of civil society in overcoming constraints was addressed in the strategic framework but did not receive strong emphasis in subsequent programming documents, presumably since civil society was extremely fragile in the early transitional period, and hence baselines concerning its capacities were unknown.

JC1.2 Coherence with nature and goals of EU external action

In general terms, EU cooperation to RoL&AC in Myanmar was in line with the overarching EU strategic framework. In particular, it is aligned with the principles contained in the Lisbon Treaty (Article 21), which states that '*the Union's action on the international scene shall be guided by the principles which [...] seeks to advance in the wider world: democracy, the rule of law, [and] the universality and indivisibility of human rights and fundamental freedoms*'.

The New European Consensus on Development (2017)²⁰⁶ reaffirms the principles set out in Art. 21, and states that the EU '*will promote the universal values of democracy, good governance, the rule of law and human rights for all, because they are preconditions for sustainable development and stability, across the full range of partnerships and instruments [...] including through development action*'.

²⁰¹ https://eeas.europa.eu/archives/delegations/myanmar/documents/eu_myanmar/comprehensive-framework-for-eu-policy-and-support_en.pdf

²⁰² <https://europa.eu/capacity4dev/file/17895/download?token=cCwK4QI5>

²⁰³ <https://data.consilium.europa.eu/doc/document/ST-10482-2016-INIT/en/pdf>

²⁰⁴

https://eeas.europa.eu/archives/docs/myanmar/docs/join_2016_24_f1_communication_from_commission_to_inst_en_v5_p1_849592.pdf

²⁰⁵ https://eeas.europa.eu/archives/delegations/myanmar/documents/eu_myanmar/eu-multi-annual-indicative-programme-2014-2020_en.pdf

²⁰⁶ https://ec.europa.eu/international-partnerships/system/files/european-consensus-on-development-final-20170626_en.pdf

EU support was also in line with the EU policy priorities PEACE (peaceful and inclusive societies, democracy, effective and accountable institutions, rule of law and human rights for all) and PEOPLE (legal education) as well as with SDG 16 (Promote just, peaceful and inclusive societies).

The Council Conclusions on EU Support to Transitional Justice²⁰⁷ aim to *'ensure that transitional justice forms a vital component in the processes of any peace negotiations which the EU supports'*, however, as indicated above, integration of these issues was not directly supported.

Other EU frameworks that were relevant to EU cooperation in the RoL sector were the EU Strategic Approach to Women, Peace and Security (WPS)²⁰⁸, and the Gender Action Plan (GAP) 2016-20 (Objective 17 'Equal rights and ability for women to participate in policy and governance processes at all levels').

JC1.3 Conducive institutional environment

The EU generally provided an institutional environment, in terms of incentives, human resources, distribution of responsibilities and operational support, that was conducive for the implementation of its RoL&AC agenda.

The choice of implementing partners was considered to have been largely appropriate, and the quality and credibility of technical expertise was considered very high. Stakeholders emphasised that the choice of British Council for the two iterations of MyJustice was particularly commendable, since they had been operational in the country for a considerable period of time, and hence had established mutual trust with the EU and national institutions and civil society, combined with their demonstrated expertise in the sector and the country context.

Concerns were expressed by certain stakeholders regarding the breadth of programmes, in particular given the complexity and sensitivity of the RoL sector in Myanmar. MyJustice I for example was seen as unrealistic to some extent, which in turn risked dissipating strategic focus, even though adequate resources were available to implement activities. Similarly, an MPFI interlocutor stated that *'they merged in one project the parliament, accountability of the interior, civil society organisations, media [...] at the same time as the Myanmar Police Force'*.

A more restricted set of objectives and stakeholders; stronger sector analysis (see 0 below); and engaging national advisors in programmes at an earlier stage may have prevented some of these difficulties.

An important and consistent factor however in the achievement of results has been the strong engagement of the EU Delegation with programme planning and implementation, with one interlocutor stating *'I think something special has happened here, and I don't say that lightly. A large part of that has been the relationship with the EU. It's been a donor working-relationship the likes of which I've never experienced, so positive and facilitatory'*. Related to this, the Delegation's flexibility and strong sense of partnership contributed to leveraging programme results, with one interviewee stating that *'the EU has been able to show, in times of crisis and COVID, that it is a good partner to work with, and to respond and find solutions'*.

EQ2: Responsiveness, ownership and flexibility

JC2.1 Context, political economy and/or conflict analysis

EU strategy and programming was developed through analysis of contextual issues, and the existing national policy framework. Projects generally built on the achievements and lessons learnt from previous iterations of support in the rule of law sector and provided progressively more nuanced analyses of sector challenges.

Early support was provided directly in line with the national development strategy, which was contained in the Framework for Economic and Social Reforms (FESR)²⁰⁹, set out priorities that included peace building and the achievement of the MDGs, with an emphasis on strengthening good governance and transparency.

In 2012 Aung San Suu Kyi was appointed as chairperson of the Parliamentary Committee for Rule of Law and Tranquillity and approached the EU for support with training the Myanmar Police Force in crowd management and community policing. The MPF-I programme was developed following this request, notably through a specific EU scoping mission, which identified security sector deficits, including crowd management approaches that did not sufficiently respect human rights; absence of effective community, civil society and media outreach; outdated legal and institutional frameworks; and an absence of oversight mechanisms.

The EU-Myanmar Multi-Annual Indicative Programme (2014-2020) (MIP) observed that the justice system in Myanmar was widely regarded as inaccessible, with a persistent culture of impunity and lack of accountability. It noted that *'whilst some indications of change have been observed [...] these are modest improvements against the vast needs'*.

²⁰⁷ <https://data.consilium.europa.eu/doc/document/ST-13576-2015-INIT/en/pdf>

²⁰⁸ <https://www.consilium.europa.eu/media/37412/st15086-en18.pdf>

²⁰⁹ <https://www.resourcedata.org/dataset/rqi-framework-for-economic-and-social-reforms/resource/d099f34d-7efb-4b65-82f6-ab66fa95803c>

An early awareness of the risks related to volatility of the context was evident in strategy and programming documents. The MIP highlighted that EU development support in Myanmar *'will require coordinated support [...] in a comprehensive, consistent and synergetic manner'*, and stressed that *'without [...] necessary mechanisms for transitional justice [...] significant risks will remain'*. It warned that *'these political challenges risk spiralling into major social and developmental set-backs'*.

Challenges arose however in the earlier support, in particular in the law enforcement sector, as a result of inadequate analysis of sector constraints and stakeholder dynamics. As one stakeholder pointed out *'in transitional states, when the EU embarks on operations related to defence, the police, or justice, they should focus more on preparing the path before'*.

The MPF-I programme built on the EU's existing support to civil society and capacity-building and leveraged strong institutional and civil society will in the post-2015 context. However, by the time the programme commenced, the context had changed significantly, notably in senior leadership, which significantly diluted their level of engagement, having not participated in programme design.

In addition, neither consultations nor political economy analyses were conducted in programme development. As a result, the initial component aimed at engaging the Parliament in oversight of the police was not implemented, with one interlocutor stating that this component *'was more or less defunct from the start; it was thrown out [...] by the police, saying "this is not something we can work with"'*. Difficulties also arose from the outset as a result of basic misunderstandings, including the meaning and connotation of the term 'reform'. The programme subsequently undertook consultations with approximately 200 organisations to establish a baseline that was intended to underpin joint activities. These however never eventuated due to the MPF's reluctance to engage on the issues highlighted.

Programming documents for MPF-II provided a more nuanced assessment, indicating that *'although the intentions of the Myanmar authorities are clear, they lack concrete strategies how to achieve these goals'*. Low levels of public trust were highlighted, which the EU sought to address through support to community policing. Crowd management difficulties persisted, however the *'remarkable results'* of MPF-I were observed, despite difficulties with engagement. Nevertheless, support to the MPF continued to struggle, with stakeholders observing that its approaches were *'very top-down, without having local ownership, and also struggled with access'*.

Programming documents for MyJustice-I provided strong sector analysis and indicated that partners and beneficiaries had been engaged in programme design. They referred to the decades of authoritarian and military rule, the politicisation and militarisation in law enforcement bodies, and corruption within rule of law systems, and that, while there was a willingness to undertake reform, this was hampered by limited delivery capacity.

The political economy analysis did not provide however context-specific analysis of sector structures and politics; for example, it aimed to establish new community mediation networks, whilst failing to take into consideration the role of local administrators. Stakeholders also considered that it did not adequately highlight the importance of balancing support to the demand and supply sides in the justice sector, nor identify the most appropriate entry points. Engagement itself was often problematic, for example, numerous attempts were made to involve the Legal Aid Board, which initially demonstrated interest, however these efforts stalled over time.

The programme was therefore significantly redesigned on the basis of further sector analysis, in addition to which a survey conducted in 2017 provided a baseline of community attitudes to justice. One interlocutor stated that *'there's often a lot of resources spent on the political economy analysis, and then it's not acted on. MyJustice has been an exception, [they] have invested in analysis and research. The survey was really formative and has become a foundational piece of evidence on how other programming can move forward'*.

MyJustice-II was fully aligned with the Myanmar Sustainable Development Plan (2018-2030) (MSDP)²¹⁰, which prioritised justice and rule of law. It also took into account sector policy, including the 2015-19 Strategic Plan of the Union Attorney General's Office (UAGO), and the Judiciary Strategic Plan (2018-2022)²¹¹. Interlocutors however described these sector strategies as akin to 'wish lists' of activities, with little prioritisation.

Levels of political will and appetite for genuine reform were however highly variable and difficult to discern, with patchy areas of interest (for example transitional justice). While greater interest was demonstrated in the period immediately before the coup d'état, there was a sense that there was little interest in driving real sector change. Stakeholders consider that the EU needs to be more realistic about what can be achieved in terms of policy and reform, stating that *'we overestimate the ownership and the actual willingness of our counterparts. Financing agreements are signed, so we assume that the government is willing to do it'*.

²¹⁰ <https://www.switch-asia.eu/resource/myanmar-sustainable-development-plan-2018-2030/>

²¹¹ <https://www.myjusticemyanmar.org/judicial-strategic-plan-2018-2022>

JC2.2 Engagement with actors at different levels

The EU engaged with a very broad range of stakeholders and beneficiaries targeted by the actions, in particular with civil society, an approach that was highlighted as essential in the strategy documents outlined above.

The EU saw the justice and law enforcement projects as key entry-points for engagement with the new government and leveraged this to the extent possible to ensure policy dialogue (see 0 below).

Engagement with police was often undertaken in an informal manner, for example through a monthly breakfast meeting, in order to build trust, establish networks, and *'try to have a conversation, rather than attacking their way of working'*. However, stakeholders observed that there was little willingness at the higher levels of management to actively engage in reform.

A primary focus of the MyJustice programmes was engagement with, and support to, civil society organisations (see 0 below). Their initial focus was to work with communities, and less with legal service providers, however in the period immediately before the coup, there was increased engagement with providers in order to facilitate dialogue and anchor greater institutional change. After the 2021 coup, the programme's focus rapidly returned to supporting and reinforcing the Justice Centres and civil society.

This rapid and effective pivot was made possible not only through the programme's inherent flexibility (see 0 below) but was also in line with the overall EU strategic response to the crisis, pursuant to which engagement with civil society has been considerably increased, and through which the EU now channels all its support, aided by various UN agencies. Stakeholders emphasised the importance of trust-building in the sector, highlighting the importance of continued engagement throughout the crisis, with one stating that in the post-coup context *'it will take years to rebuild this trust at every level within communities'*.

JC2.3 Adjustment to changing conditions and new opportunities

Flexibility was a hallmark of EU cooperation in the RoL&AC sector in Myanmar in the period under consideration. Given the absence of cooperation in the country for a long period until 2014, and the ongoing volatile context, the EU was careful to embed flexible approaches into programming documents, and in the choice of modalities (see also 0 below). As a result, programmes were able to shift activities and approaches in line with changing circumstances, as indicated above.

The MyJustice programme was able to demonstrate considerable flexibility, with the British Council having passed a pillar assessment under the PAGO DA system and financed under a Contribution Agreement modality that allows implementation under the implementer's own rules (see also 0 below).

Combined with this, the intervention focused on legal pluralism, and adopted an 'adaptive programming' approach, which allowed it to shift course based on real-time developments. The Programme results framework therefore underwent a process of continual refinement, with a focus on that was 'happening' in real terms, since *'what we were measuring needed to encompass qualitative changes that weren't going to be captured by how many policy documents had been published. It was much more granular, hard to actually put your finger on if you weren't steeped in what the institutional cultures are like'*.

The Mid-Term Review of MyJustice-I confirmed that the programme utilised multiple approaches to identify and understand general justice needs, *'with efforts now underway to further understand and apply localised needs and gender and inclusion needs'*. It also found that the programme responded to changes in access to justice-related context dynamics, to ensure continued relevance of interventions and approaches, and that it regularly reviewed interventions to ensure consistency with its theory of change.

MyJustice II built strongly on lessons learnt, and *'was thoughtfully put together to think around institutions and policies in a system-wide manner, through civil society and a bottom-up approach'*. The programme was also highly selective in the formal engagements it undertook and the interlocutors it worked with. For example, an early draft MoU that was rejected as it was overly specific and did not provide adequate flexibility. Similarly, programme engaged with the Attorney General's Office as the de facto line ministry, with the absence of a formal governance structure having allowed greater freedom in the design and implementation of activities.

EQ3: Partnerships and coherence

JC3.1 Partnerships based on comparative advantages

Strategy, planning and programme design documents provided a reasonable analysis of potential partnerships, and identified interventions that could provide complementarities. They also outlined the sector and donor cooperation context.

MIP (2014-2020) for example outlined the donor coordination framework, which was guided by the 2013 Nay Pyi Taw Accord Action Plan for Effective Development Cooperation and set out how the government and development partners would work together.

Donor coordination within the broader governance sector was considerable, with EU taking a spearheading role. Cooperation consisted of a cooperation forum, a national committee, Sector Working Groups (including

a Rule of Law SWG), and a Development Partners Group. An informal DP Governance Reforms Working Group was created in early 2012, with sub-groups that included the rule of law and access to justice; human rights, civil society and media; and public financial management including anticorruption work. Donor support to Myanmar law enforcement agencies was coordinated in the Foreign Law Enforcement Community Group (FLEC) in which the EU played a significant role. Stakeholders observed that civil society representatives were involved in these processes, however it is unknown whether they consider that their views were genuinely incorporated.

Detailed analyses of international and national partnerships, and the reasons for their selection, were provided. Security sector support was provided by UNODC, the UK and the United States, Australian and Japanese aid agencies, ICRC, IOM, UNODC, UNDP, UNFPA and other UN organisations, and cooperation with these initiatives was specifically envisaged. In the justice sector, Denmark, USAID, UNDP, DFID, DFAT and JICA were identified as conducting activities at the national level with certain key institutions, with MyJustice indicating that it would *'engage with the same institutions but at the front-line service level, thereby complementing the actions of other donors'*.

Sector coordination was limited however; for example, in the justice sector this largely consisted of an annual meeting held by the Supreme Court. Nevertheless, the efforts and engagement in this regard were achievements in their own right, with one stakeholder stating that *'trying to establish some sort of rule of law sector coordination framework within government was ground-breaking'*.

Coordination and consultation with civil society, including local civil society, was a strong priority, guided by the Civil Society Roadmap, with a new Roadmap currently in preparation.

JC3.2 EU support to RoL&AC has been delivered in a coherent manner

EU support to RoL&AC has been delivered in a generally coherent manner, with programme approach and objectives generally aligned with EU policies and priorities in Myanmar, as indicated above, and programmes designed explicitly to complement other EU- and Member State-funded initiatives in the area of governance and rule of law. Notably strong potential synergies were evident between the security (MPF-I and MPF-II) and justice (MyJustice-I and MyJustice-II) sector programmes, however there was no evidence of such synergies having been achieved.

There was also considerable coherence between the successive phases of programmes, which was intended, in the case of MyJustice II, *'to not only deepen and consolidate progress made by the European Union (EU) and British Council but also continue to complement other development interventions in the justice sector'*.

Coherence can also be observed with the EU funded project *'Strengthening Policy Development to meet MDGs'*, which provided technical assistance to various line ministries, including the Ministry of Home Affairs (MoHA), to strengthen institutional and individual capacities. Similar support to the MoHA was provided under the *'Institutional Strengthening and Policy Dialogue Facility'* which commenced in the last quarter of 2015, and hence close coordination and synergies with this action were envisaged.

As indicated at 1.3 above, MyJustice-I was a component of the *'Strengthening Governance in Myanmar'* programme, with strong coherence between the separate components.

Programmes also complemented other EU programming in Myanmar, such as MyGovernance, STEP Democracy, and peace-related support, particularly as provided through the Joint Peace Fund (JPF).

The MyJustice-I MTR found that the EU-programme partnership encouraged two-way sharing of expertise, and that opportunities exist for greater alignment and coordination with other EU/member states programmes. Programming documents also observed that the MyJustice-II and the EU provided high-level justice sector coordination, which encouraged complementarity of interventions, and provided opportunities to support stronger coordination at the community level.

EQ4: Choice of modality

JC4.1 Mix of modalities

Project modalities were relatively limited in range, with the principal interventions implemented through indirect management with the British Council, FIIAPP, and IGM, as indicated at 1.3 above. In addition to the EU's bilateral assistance, Myanmar benefited from EU thematic programmes including the EIDHR, the Civil Society Organisations and Local Authorities (CSO-LA) programme, and the Instrument contributing to Peace and Stability. Modalities and implementation arrangements were discussed with partner institutions.

Stakeholders consider that the flexibility of main funding modalities (see 0 above) contributed significantly to the achievement of results, with one stating that *'the brilliant thing about both [projects] was this very new, very innovative contract. MyJustice I was one of the first ones that the EU had done. It allowed a sense of freedom and ability to be adaptive in our programming'*. Another called for this funding approach to be used more widely: *'The pillar-assessed PAGO DA model is fantastic. I would strongly recommend that this model be scaled up*

and rolled out elsewhere, particularly in areas of more sensitive work around justice and rights, and where contexts are very challenging and fluid’.

On the other hand, whilst the flexibility of PAGO DA (Pillar Assessed Grant or Delegation Agreement) benefited the MyJustice programme, stakeholders pointed out that it confers almost complete autonomy to the implementing partner, which in turn made it difficult for the EU to intervene when the MPF programme experienced early constraints.

Governance support also benefited from flexible modalities, and through a ‘sector perspective’ rather than a focus on the ‘source’ of funds, which allowed for considerable coherence and complementarity.

Secondary modalities were employed for the implementation of activities (grants under MyJustice, various service contracts, etc.). Sub-granting allowed a deeper penetration and engagement at the local level, and on specific issues, including gender-based violence, however in the same vein, it was felt that the Guidelines of Calls for Proposals could have had more stringent criteria.

JC4.2 Mutually reinforcing dialogue and programming

Policy dialogue activities were described in programming documents as forming ‘*a backbone of discourse and debate*’, linking events and creating synergies, pulling together key rule of law policy makers with representatives of civil society, practising lawyers, members of the judiciary and the leaders of RoL institutions from areas where programmes were implemented.

The various donor, sector and civil society coordination initiatives already described (in JC 2.2) provided opportunities and venues for policy and political dialogue.

As indicated above, the RoL programmes provided leverage to the EU to engage more strongly with the government, particularly in the early stages under consideration, when political will was relatively high, with one interlocutor stating that ‘*both of those programs were really important in that we were politically always discussing it. The Ambassador was always very much involved*’. Political dialogue was described as often becoming ‘*extremely heated and tense*’, expanding over several days, ‘*but at the end of these conversations the government always said ‘please continue to support us in these areas’*’.

Effects of EU support to RoL&AC

EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions

JC5.1: Core legal and administrative reforms

EU cooperation resulted in contributions relative to core legal and administrative reforms.

The 2016 Legal Aid Law is considered to have been a significant achievement, having established Myanmar's first state-sponsored legal aid system and expanded the right to counsel to key vulnerable groups, including the poor, children, women, the elderly and disabled, refugees, and certain victims of crimes and witnesses, and administered through state-sponsored Legal Aid Boards.

EU supported CSOs in their advocacy efforts to ensure the law's passage and, together with other international organisations such as the UNDP and USAID, has supported its implementation through partnership with the Union Legal Aid Board (ULAB) and other stakeholder institutions, including civil society organisations.

Interlocutors consider that the Legal Aid Law has inherent sustainability, despite the coup, since '*the military administration, won't strike it out and say that Legal Aid has no place anymore. That is a form of resilience, it can't just be removed at the stroke of pen*'. Nevertheless, the fragility of reform is demonstrated by the Myanmar government's amendment of the law in May 2021, restricting access to legal aid for certain categories of defendants and at certain key stages in the court process.²¹²

The MyJustice programme produced or supported high-impact formative research, including the 2017 survey described above (JC2.1), which provided powerful data that informed programme design and influenced policy development by the government, stating that 'policy and operational decision-makers are beginning to recognise the existence of plural legal systems'.

The MPF-I programme contributed to the formulation of a clearer and better suited police vision, legal framework and police doctrine/manuals, which considerably improved the administrative environment and to some extent the policy framework. The second MPF programme continued with these overarching institutional reforms, through the elaboration of the MPF Reform Strategy, by further building on documents prepared in MPF-I; a new system for Human Resources Management (HRM) and police management, including the revision of the existing regulatory framework; an action plan to improve the existing system of police training, building on existing documents; assistance for Community Policing (CP) through strategy development, and support for pilots; assistance for further improving Crowd Management (CM) through policy advice, operating procedures etc. (R2); set-up of the Project Management (PM) structure to ensure project management and coordination; and development of a comprehensive M&E system.

JC5.2: Strengthening of institutional architecture

EU support contributed to strengthening of institutional architecture of core RoL&AC institutions; indeed, this was a hallmark of their cooperation during the relevant period.

With the MyJustice-I programme the EU provided strong contributions to the justice sector framework, through inter alia the development of an evidence-based knowledge management information system, to support the development of rule of law institutions through policy dialogue; development of M&E frameworks supporting government lawyers' technical and English language capacities and measures to increase judicial efficiency and reduce case backlogs.

The MyJustice-I MTR found that justice service providers were being trained, including both formal and informal providers, with targets expected to be reached, however, it was considered that the improved capacity of justice service providers required further evidence, and that it would be challenging to achieve sustained knowledge and behaviour change. The MTR noted that CSO capacity development activities indirectly contribute to sustainability, but despite improvements organisational development needs remained.

The MyJustice-II programme built on these contributions to capacity-building, providing *inter alia* ongoing leadership and management strengthening, financial sustainability planning, development of professional standards and curricula for legal aid providers, and supporting law faculties. Support was also provided for civil society capacity development relative to access to justice (in addition to the development of the Legal Aid Law as described in JC5.1).

The MPF programmes also contributed to capacity building in order to increase police effectiveness; and provided support to engaging with different communities and fostering relationships built on mutual trust. Training support was also given to community policing and improving crowd management, and to the criminal investigation system. Interlocutors indicated that these interventions contributed to increase police effectiveness, for example relative to improved crowd management (see discussion at 0 below). Interlocutors also observed that the Covid-19 pandemic provided an opportunity for the MPF programme to give support

²¹² <https://www.icj.org/myanmar-amendments-restrict-legal-aid-for-thousands-of-detainees/>

through the community policing component to *inter alia* conducting arrests and interviews in the Covid context. This was highly appreciated.

The Programme also contributed to the development of updated manuals and protocols, which were negotiated, established, sanctioned and approved by the police hierarchy, and used extensively in practice; it would appear unlikely that these elements would have been expunged following the coup.

JC5.3: Progress in justice systems and anticorruption frameworks

EU support contributed to progress in national justice systems, with MyJustice described as having been ‘a *ground-breaking and very successful programme, by many measurements.*

Some examples of contribution to progress in the justice sector included:

- Building and expanding upon existing legal aid centres;
- Developing a mobile paralegal support service;
- Scaling up of community-based dispute resolution;
- Supporting pilot Government’s Legal Aid offices, and roll-out of the new Legal Aid system;
- Improving access to both formal and informal justice systems, through broad support to the implementation of the Legal Aid Act, and in particular to ULAB, as well as to other legal service provision providers, including specialised civil society organisations. This ensured a significantly improved degree of access to justice for a broad range of vulnerable groups, notably those defined in the Legal Aid Act as outlined above, but in particular women and children. This contributed to the provision of legal representation, support and advice to approximately 17.000 persons.
- Improving legal awareness and literacy in selected communities.

The factors that contributed to these results included:

- Problem-driven, locally-led approaches, powered by evidence, ‘provided a strong framework for rolling out delivery, as well as for pausing for reflection on problematic areas’;
- Building relationships at both high and local levels;
- Informed, adaptive navigation of Myanmar’s dynamic and unpredictable environment;
- Public engagement on social issues through mainstream information and communication platforms.

Stakeholders also highlighted the need for sustained interventions in the RoL sector if sustainable change is to be seen, with one stating that ‘*programs that tend to have a more substantial impact tend to be the ones that have a longer duration*’.

The MyJustice-I MTR found that justice centres are reaching more townships and people, and that more people were using MyJustice supported services. It also found that government buy-in to the MyJustice approach and research findings indicated progress in policy engagement and on-going influence. EU programming and progress documents for MyJustice II indicated that ‘*MyJustice is now firmly established as a leading and influential voice in justice sector reform and is widely recognised for taking a multidimensional and politically astute approach to improving access to justice in Myanmar*’.

Interlocutors consider that the Programme achieved significant results at the local level, working with the local administration on alternative dispute resolution, including innovative work with ethnic armed organisations. It also contributed to supporting interaction between the formal justice system and the legal profession, active retraining of lawyers, and embedding their partnership with civil society. Interlocutors also consider that many of the benefits of support to lawyers continue, including the networks created, stating that ‘*a lot of it is still happening. It’s just happening quieter*’.

Interlocutors consider that the key achievement and legacy of the MyJustice programme is its support to Justice Centres, which are still operational, in particular since they are subject to considerable demand. A significant added value of the Centres is their potential to stimulate further demand for justice reform. It was noted that ‘*they’ve actually been able to expand the network of Justice Centres in the post-coup period*’.

The EU did not provide direct support to anticorruption efforts, since this was not a strong EU priority in the country. Some training was provided to lawyers through MyJustice, which contributed to exposing corrupt practices within the judiciary.

Additional support to transparency and oversight was provided to PFM in the Governance programmes, and *directly with Parliament through the Public Accounts Committee*. Some stakeholders observed small positive changes in the government’s approach to corruption issues in the period before the coup, but this has re-emerged as a major problem. Some EU-supported projects have addressed specific themes, for example transparency in government procurement, however this sector is being addressed by the World Bank. The local private sector has not emerged as a significant vector for change, with business associations being largely ignored.

EU stakeholders indicated that corruption issues would be addressed by the civil society sector for the foreseeable future, with linkages to transparency, accountability, and participative processes.

EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions

JC6.1 Legal safeguards, checks and balances

EU support did not address legal safeguards and checks and balances to ensure the independence and impartiality of the judiciary in Myanmar in the relevant period, since programming was not directed towards the judiciary directly but rather the broader functioning of the justice sector. Interlocutors were unable to provide the reasons for this, nor was it discussed in programming and strategy documents. Nevertheless, however the rationale was certainly related to the utility of doing so, given the inherent lack of independence of the judicial sector, with its powerful links to the military, even as the country moved towards democracy.

JC6.2 Oversight institutions, non-state actors and the private sector

EU support contributed strongly to empowering non-state actors and oversight institutions to play a role in strengthening RoL&AC processes. As mentioned elsewhere, civil society was largely involved in programme implementation, and in coordination mechanisms.

The overall strategy was that support to civil society in the justice sector would bring about increased demand for reform, which would in turn pressure institutions to bring about change. There is some evidence that this approach has brought about lasting changes of attitudes within civil society and justice sector actors (see discussion at 0 and 0).

The MyJustice programme documentation indicated that *'the reform process has opened up the space for Civil Society Organisations to work, but they need support and skills to deliver on effective civil society engagement in a number of areas such as advocacy, research and service provision'*. The programme leveraged this entry point, through the establishment of community safety committees, where representatives of the rule of law institutions, CSOs and the communities were to come together to discuss and identify issues affecting safety and security. Support was also provided to CSOs for policy-oriented advocacy, monitoring and documentation of effective results, and the development of financial sustainability models.

Other forms of civil society engagement included partnerships with society organisations, research organisations, think tanks, and international NGOs. One interlocutor stated that *'the Programme made inroads into the state's civil society space in a way that others have never done before. At least not on that scale, and not in the field of access to justice'*.

The MPF programmes also anticipated providing support to improving the relations between police and civil society and the media, and to establishing liaison mechanisms, however ultimately there were limited activities in this regard. As indicated above, the international and local private sector was not targeted by EU support and did not emerge as a significant entry point for change.

EQ7: Broader effects on RoL&AC culture, human rights and democracy

JC7.1 Promoting a RoL&AC culture

EU support contributed significantly to promoting a RoL&AC culture, notably in terms of institutional and community awareness, and active discussion of, key rule of law issues.

A fundamental emphasis of the MyJustice programme was on 'development communications', using alternative and innovative development communications approaches to start conversations about the rule of law and access to justice'.

The MyJustice-I MTR found that the programme engaged partners to deliver community-level awareness raising, *'already exceeding the programme target in terms of reach'* but observed that there was limited evidence of knowledge change at that time. The evaluation also recommended a deepening of the engagement, and to provide greater focus on vulnerable groups.

MyJustice-II also targeted multi-media campaigns, which were to be accompanied by participatory methodologies, and which aimed at *'creating conversations to shift social and cultural understanding'*.

This focus by MyJustice on public engagement and overall visibility was considered an enormous achievement, comprising *inter alia* a Facebook campaign that interacted with 22 million people, public concerts, an art exhibition and well-known television series, which is considered by stakeholders to have significantly increased public awareness of rule of law issues. These activities are considered by stakeholders to have been a catalyst to the effectiveness of the Programme's work, who suggest that these approaches could be replicated elsewhere, stating that it was *"a really powerful demonstration that something different is possible, which in the justice space was pretty hard to do"*.

While the MPF programmes also aimed to improve police liaison with the media, with a view to improving transparency and public accountability of the MPF, unfortunately there was no uptake by national institutions.

JC7.2 Fostering human rights

EU support to human rights was the 'golden thread' of their contribution to rule of law in Myanmar, and was mainstreamed in all the programmes examined, in terms of issues addressed, target groups, and approaches adopted.

In the current post-coup context, it is difficult to assess whether this support resulted in real changes in the human rights situation of communities and individuals, and whether RoL and other institutions have adopted genuine and sustainable 'rights-based mindsets'.

The results observed of the MyJustice programme are nevertheless indicative of human rights impacts at the national, and more particularly local, level. The shift of focus towards more vulnerable members of the community, in particular relative to access to justice and awareness-raising of rights and justice issues, would have compounded these effects.

While the MPF programmes struggled with engagement, there were clearly contributions to rights issues, notably relative to the crowd control and community policing components, with one interlocutor stating that '*I think we have certainly planted some seeds, especially at the lower levels [of police]*'.

A strong initial result of the programme was gender inclusiveness in workshops and training, however this tapered off towards the end of the Programme period. While the MPF final evaluation stated that the gender approach could have been stronger, stakeholders challenged this finding.

Stakeholders agree that there is likely to have been some 'internalisation' of key policing procedures and approaches within the MPF, notably relative to crowd management, however this is difficult to measure, and the subject of considerable debate given the excesses of certain officers in the immediate aftermath of the coup. Indeed, the programme generated considerable controversy, not only within Myanmar but also in the international media²¹³ and amongst EU Member States, relative to a perception that EU support contributed, albeit indirectly, to police abuses.

However, stakeholders observed that the police response to protests was not as violent as it has been in the past, with one interlocutor stating that "*The experts responsible for crowd management did excellent work, which was then seen in the first couple of weeks after the coup, when the police behaved exactly the way they should, negotiating with protesters and taking down the pressure*".

Whilst this is clearly an unreliable indicator of impact, it does provide anecdotal evidence that EU support may have contributed to some level of harm reduction.

JC7.3 Application of democratic principles

The military *coup d'état* of 1 February 2021 brought about the evisceration of the democratic structures that had been established in the previous progressive years, through the support of the EU and other donors, and the indomitable will of the Myanmar people.

While there is little direct evidence of EU contribution to the application of democratic principles through its support to the RoL&AC in Myanmar, there is a strong belief that EU support developed an awareness of such principles that is now manifest in the community resistance to the military coup, with one interlocutor stating that '*people are resisting for the first time in decades, I think something has changed*'.

Or, as another interlocutor put it:

'This work won't be lost. These military takeovers are cyclical, and the work that we're continuing to do with civil society continues to feed the democratic spirit. Saying 'we continue to support you' is important. There are people on the street, they're not lying down, they're moving forward. I think that's what we've achieved. We've laid the foundation for when the country goes back to democracy'.

EQ8: Effects on wider EU external action goals

JC8.1 Peace, resilience and stability

In addition to the destruction of democratic structure, as indicated at 3.3.3 above, the coup d'état also unravelled many years of effort towards peace and stability in the country, and which was indeed the overarching objective of initial support provided under the IcSP, as the country transitioned towards democracy.

It is considered that, despite the challenges throughout the period of cooperation under consideration, the EU support contributed to improved conditions for peace and resilience. For example, the MyJustice-II programme conducted research and documentation of justice mechanisms and processes in conflict-affected areas, and exploration of processes potentially applicable to advance peace and reconciliation efforts. The programme also sought to '*carve out new terrain among justice sector engagement by expanding programming in conflict-*

²¹³ <https://www.theguardian.com/world/2021/feb/11/eu-provided-crowd-control-training-to-myanmar-police-units>

affected areas, particularly in relation to the operations and experience of EAO-administered justice mechanisms, both in terms of their fairness and potential for inclusion in broader peace and justice reform efforts’.

The issue of transitional justice is addressed at 2.2.1 above.

Interlocutors also referred to the EU’s contribution to resilience and stability, in particular through its support of civil society, with the view that many of these gains will remain, stating that *‘they are still there, and they are still doing this, and they are still risking their lives on a daily basis; there is a whole group of civil society organisations and networks that have emerged’*.

‘All of the political upheaval has seen a strong, vibrant civil society emerge, and that remains to this day. We have a strong service providers around legal aid, and we have organisations that are able to monitor and document the situation and advocate for change. And now at a time of crisis, you see this system being quite resilient’.

JC8.2 RoL&AC for functioning markets, trade and private sector development (compliant with human rights and due diligence)

There is little evidence that EU support has contributed to RoL&AC frameworks that consolidated an enabling environment for markets, fostered inclusive private sector development and facilitated trade and investment in compliance with human rights and due diligence principles.

Improvement of these elements through rule of law interventions tend to be focussed on, for example improving the legislative framework relative to contract and private international law and streamlining procedures and reducing bottlenecks in civil and commercial courts, in order to encourage business and investor confidence. The interventions did not focus directly on these areas of the justice systems.

Equally, while opportunities and donor initiatives existed relative to transparency and anticorruption to engage the multi-national and national private sector, and thereby ensure the appropriate conditions for sustainable and rights-compliant trade, however these were not targeted by the EU support under consideration.

Nevertheless, some indirect impacts may be inferred through the interventions that aimed to strengthen the courts more generally.

JC8.3 Natural resource management

EU support to RoL&AC in Myanmar did not address natural resource management through its rule of law programming, despite historical linkages between European multinational investment in the sector and its partnerships with the previous military regime, and associated serious human rights abuses, in relation to which accountability has proven elusive, and which could have been an objective of EU support relative to transitional justice.

However, as indicated at 3.4.2, support to the justice sector and law enforcement agencies may have had indirect impacts on this area, for example through improved case-handling, and improved police protocols and investigative techniques and capacities, in order to ensure enforcement of resource management laws.

Overall assessment

Stakeholders emphasised that the choice of British Council for the two iterations of MyJustice was particularly commendable, since they had been operational in the country for a considerable period of time, and hence had established mutual trust with the EU and national institutions and civil society, combined with their demonstrated expertise in the sector and the country context.

An important and consistent factor however in the achievement of results has been the strong engagement of the EU Delegation with programme planning and implementation, with one interlocutor stating *'I think something special has happened here, and I don't say that lightly. A large part of that has been the relationship with the EU. It's been a donor working-relationship the likes of which I've never experienced, so positive and facilitatory'*. Related to this, the Delegation's flexibility and strong sense of partnership contributed to leveraging programme results, with one interviewee stating that *'the EU has been able to show, in times of crisis and COVID, that it is a good partner to work with, and to respond and find solutions'*.

The programme was therefore significantly redesigned on the basis of in-depth and on-going sector analysis, in addition to which a survey conducted in 2017 provided an essential baseline of community attitudes to justice. One interlocutor stated that *'there's often a lot of resources spent on the political economy analysis, and then it's not acted on. MyJustice has been an exception, [they] have invested in analysis and conducting primary research. The survey was really formative piece of research, and has become a foundational piece of evidence on how a lot of other programming can move forward'*

Flexibility was a hallmark of EU cooperation in the RoL&AC sector in Myanmar in the period under consideration. The MyJustice programme was able to demonstrate considerable flexibility, with the British Council having passed a pillar assessment under the PAGoDA system and financed under a Contribution Agreement modality that allows implementation under the implementer's own rules (see also 0 above).

Combined with this, the intervention focused on legal pluralism, and adopted an 'adaptive programming' approach, which allowed it to shift course based on real-time developments. The Programme results framework therefore underwent a process of continual refinement, with a focus on that was 'happening' in real terms, since *'what we were measuring needed to encompass qualitative changes that weren't going to be captured by how many policy documents had been published. It was much more granular, hard to actually put your finger on if you weren't steeped in what the institutional cultures are like'*.

The Mid-Term Review of MyJustice-I confirmed that the programme utilised multiple approaches to identify and understand general justice needs, *'with efforts now underway to further understand and apply localised needs and gender and inclusion needs'*. It also found that the programme responded to changes in access to justice-related context dynamics, to ensure continued relevance of interventions and approaches, and that it regularly reviewed interventions to ensure consistency with its theory of change.

Stakeholders consider that the flexibility of main funding modalities (see 0 above) contributed significantly to the achievement of results, in particular the PAGoDA model. One stated that *'the brilliant thing about both [projects] was this very new, very innovative contract. MyJustice I was one of the first ones that the EU had done. It allowed a sense of freedom and ability to be adaptive in our programming'*. Another called for this funding approach to be used more widely: *'The pillar-assessed PAGoDA model is fantastic. I would strongly recommend that this model be scaled up and rolled out elsewhere, particularly in areas of more sensitive work around justice and rights, and where contexts are very challenging and fluid'*.

Interlocutors consider that the key achievement and legacy of the MyJustice programme is its support to Justice Centres, which are still operational, in particular since they are subject to considerable demand. A significant added value of the Centres is their potential to stimulate further demand for justice reform. It was noted that *'they've actually been able to expand the network of Justice Centres in the post-coup period'*.

One interlocutor indicated that the Programme made inroads into the state's civil society space *'in a way that others have never done before. At least not on that scale, and not in the field of access to justice'*. EU support also contributed significantly to promoting a RoL&AC culture. A fundamental emphasis of the MyJustice programme was on 'development communications', using alternative and innovative development communications approaches to start conversations about the rule of law and access to justice'.

This focus by MyJustice on public engagement and overall visibility was considered an enormous achievement. Comprising *inter alia* a Facebook campaign that interacted with 22 million people, public concerts, an art exhibition and well-known television series, which is considered by stakeholders to have significantly increased public awareness of rule of law issues. These activities are considered by stakeholders to have been a catalyst to the effectiveness of the Programme's work, who suggest that these approaches could be replicated elsewhere, stating that it was *"a really powerful demonstration that something different is possible, which in the justice space was pretty hard to do"*.

Case study note – Nigeria

Introduction.....	131
Context	131
Political economy analysis	132
Overview of the EU support to RoL&AC	132
Strategy and implementation of EU support to RoL&AC	133
EQ1: EU strategic framework/institutional environment.....	133
EQ2: Responsiveness, ownership and flexibility	134
EQ3: Partnerships and coherence	136
EQ4: Choice of modality	137
Effects of EU support to RoL&AC.....	139
EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions	139
EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions	142
EQ7: Effects on RoL&AC culture, human rights and democracy	144
EQ8: Effects on wider EU external action goals	146
Overall Assessment and Lessons learned.....	147

Introduction

Remark: This case study note does not constitute a separate evaluation of EU support in the country or its situation with regard to RoL&AC. It presents country-related findings relevant to the overall assessed judgement criteria and indicators, and feeds into the main evaluation report of the Evaluation of the European Union support to Rule of Law and Anticorruption in Partner Countries to which it will be attached as an annex.

Context

The country has gone through two general elections and a change in administration over the last 10 years. Box 9 presents key political events during the evaluation period.

Box 9 Key political events

- **May 2010** – President Umaru Yar'Adua dies after a long illness. Vice-President Goodluck Jonathan, already acting in Yar'Adua's stead, succeeds him.
- **March 2011** – Vice-President Goodluck Jonathan wins presidential elections.
- **March 2015** – Muhammadu Buhari wins the presidential election, becoming the first opposition candidate to do so in Nigeria's history.
- **February 2019** – General elections held after last-minute delay of a week, with incumbent president Muhammadu Buhari re-elected.

The **agenda for reforms** in the judiciary, law enforcement and anticorruption (AC) has been slow in delivery, in part because of inadequate planning and management capacity and in part because of inertia / resistance for reforms. Various inter-ministerial and inter-agency coordinating committees were set up in 2007-2009, then in 2015 (notably the Federal Justice Sector Reform Coordination Committee's (FJSRCC)) to establish an agenda for reforms in the justice sector and AC. Similarly, the AC agenda has come under the Presidential Advisory Committee against Corruption (PACAC) and other working groups.

The **main achievements** over the evaluation period were i) the enactment of the Administration of Criminal Justice Act (ACJA) in 2015, (after a legislative process of over 10 years), and ii) the adoption of a National Anticorruption Strategy (NACS) in 2017.

The latest PEFA for Nigeria (federal, 2019) points to limited progress in strengthening public finance management over the years, with the country receiving 22 D/D+ (including for financial data integrity, procurement, external scrutiny and audit) ; 5 Cs; 4 B/B+ and no As.

As summarised by the RoLAC project action document back in 2017, *“The fight against corruption and the advancement of criminal justice reforms have been hampered by a complex combination of factors, including lack of political commitment and institutional will; outdated/incomplete/absent legislative and policy frameworks; capacity and resource constraints; limitations in terms of strategic planning; and insufficient coordination among the numerous agencies involved in both fighting corruption and the criminal justice sector. The lack of policy attention to prevention, including social norms and practices, has also reduced the effectiveness of anticorruption measures”*.

The **main challenges** to strengthening RoL&AC in Nigeria are as follows:

- Ambivalent political commitment at the top and a complex federal system and institutional landscape (with 14 AC agencies²¹⁴), leading to repeated deadlocks, poor inter-agency coordination and “mixed performance” amongst 36 states.
- Powerful vested interests and party politics / elections, detracting attention from essential reforms and prevented RoL&AC agencies to take remedial actions.
- Very slow pace of reforms (including in Public Finance Management (PFM)) and weak implementation capacities.
- Strong regional and security dimension, with Nigeria being used as platform for trans-national organised crime (including drug trafficking) and rise of Boko Haram in the north-east of the country (which corruption in the defence and security sectors has contributed to)
- Link with social norms, with high population distrust in the state institutions, starting with the law enforcement agencies, which are perceived as corrupt. In October 2020, the #End-Special Special Anti-Robbery Squad (SARS) 2-week protest against policy brutality turned violent, when Nigerian soldiers killed unarmed protesters.

²¹⁴ The 2014 RoL project identified 14 Anticorruption agencies: The Bureau for Public Procurement (BPP), the Bureau of Public Sector Reform (BPSR), the Code of Conduct Bureau/Tribunal (CCB/CCT), the Economic and Financial Crimes Commission / Nigerian Financial Intelligence Unit (EFCC/NFIU), the Independent Corrupt Practices (and Other Related Offences) Commission (ICPC), the Public Complaints Commission (PCC), Special Control Unit on Money Laundering (SCUML under FMC&I), and the Technical Unit on Governance and Anticorruption Reforms / Inter-Agency Task Team (TUGAR/IATT).

- Endemic and systemic corruption, from briberies to high-level corruption, with corruption rife in oil sector / public procurement/ criminal justice sector.
- Access to (formal) justice beyond the reach of the poor, with the population preferring to use informal dispute resolution mechanisms.

More context analysis (highlighting any developments) can be found in the response to the Evaluation Questions.

Political economy analysis

The literature points to three major findings on political economy in Nigeria:

- The **electoral campaigns** in 2014-15 and 2018-19 have come to detract attention from essential reforms, with some law enforcement and AC agencies seen to “*avoid engagements that could have political undertones with untold consequences*”.²¹⁵
- **Nigeria is trapped into a collective action problem.** In this context, supporting champions within government (as duty-bearers) may not lead to expected changes. Instead, the actions of individuals and organisations are likely to be seriously constrained by Nigeria’s pre-existing structural environment /status quo, which “*is both incredibly flexible and responsive. It is able to respond to, and absorb, both internal and external shocks, as well as to manage and balance diverse interests and cleavages based on ethnicity, religion, regionalism and economic interest. It is apt at using a continually changing combination of coercion (including the political manipulation of conflict) and consent (built upon patronage politics and the misallocation of oil revenue)*”.²¹⁶
- Because of vested interests, there is **strong resistance to changes within the justice sector and law enforcement.** By deliberately under-funding the judiciary and police, the Nigerian state, has indirectly contributed to deeply-engrained issues of corruption and nepotism in the criminal justice sector. “*The Nigerian criminal justice system has been plagued by several problems particularly issues relating to prison overcrowding, unlawful detention, corruption, extra-judicial killing, and human rights abuses. These violations have in turn diminished public trust in the criminal justice system, especially the police force*”.²¹⁷

Further analysis on political economy can be found in the response to the Evaluation Questions.

Overview of the EU support to RoL&AC

RoL&AC has remained central to the EU’s strategy over the evaluation period, building from one early intervention under the 9th European Development Fund (EDF). The EU is the largest donor in this sector since the UK-funded project, Justice for all, ended. The main projects assessed in this case study are presented in Table 8.

Table 8 List of main interventions

D or C year	Title	Budget (mEUR) ²¹⁸	Typology	Impl. partner
2012	Support to the Justice Sector in Nigeria	12.6	Justice (system)	UNODC
2012	Support to Anticorruption in Nigeria	11.5	Anticorruption	UNODC
2017	Support to Rule of Law and Anticorruption in Nigeria (RoLAC)	24.0	Anticorruption and Justice (system)	British Council

For ease of reference, the two projects implemented by the United Nations Office on Drugs and Crime (UNODC) under the 10th EDF are referred to as ‘10th EDF RoL&AC projects’; the project implemented by the British Council since 2017 is referred to as ‘11th EDF RoLAC project’.

These projects represent a small proportion (5%) of EU’s total committed envelope, worth EUR 677million (initial commitment) under the 10th EDF, and EUR 512 million (initial commitment) under the 11th EDF. At the same time, the EU has maintained the same level of commitment over the years, at EUR 24 million for each EDF.

This case study also draws examples from other projects that were identified as having components related to justice, law enforcement, and/or AC. These projects are:

²¹⁵ British Council, Progress Report 2020, RoLAC

²¹⁶ Mid-term Evaluation of EU Support to Anticorruption in Nigeria, 2015, extract from DFID Drivers of Change analysis

²¹⁷ Kpae, G. (2018): The Political Economy of Criminal Justice System Reform in Nigeria (2000-2009). See also Osasona, T. (2020): The Political Economy of Police Corruption in Nigeria.

²¹⁸ Planned EU contribution

Table 9 List of additional interventions

D or C year	Title	Budget (mEUR) ²¹⁹	Typology	Impl. partner
2012	Fighting drugs and related organized crime in Nigeria (DOC)	34.5	Justice (law enforcement)	UNODC
2012	Administration Agreement with World Bank: Support to State and Local Governance Reform Programme (SLOGOR)	59.5	Governance (other)	World Bank
2017	EU Trust Fund: Enhancing state and community level conflict management capability in North Eastern Nigeria (MCN)	21.0	Peace, Resilience & Security	British Council
2018 (& previous phases)	Support for Criminal Justice Responses to Terrorism and Violent Extremism	8.1	Justice (system)	UNODC

In addition, three other projects are cited in the analysis– the UN/EU Spotlight Initiative, the 11th EDF ‘Agents for Citizen-Driven Transformation’ project, and the Instrument contributing to Stability and Peace (IcSP)-funded ‘Support to counterterrorism through a prison-based de-radicalisation programme’ project.

Strategy and implementation of EU support to RoL&AC

EQ1: EU strategic framework/institutional environment

JC1.1 Clear, context-sensitive and realistic engagement strategies

Promoting RoL&AC has remained central to the EU’s strategy of engagement with Nigeria, as captured in the two National Indicative Programmes (NIPs –2008-13, and 2014-20) and, more recently the 2021-27 Multi-indicative Programme. **In the two NIPs, the EU provides a brief but convincing rationale for supporting RoL&AC in Nigeria.** Continuous support to the AC agenda in the NIP 2008-2013 is justified on the basis that *“corruption remains one of the country’s key development issues both in terms of mismanagement of the considerable public funds at its disposal and in terms of negative image, impairing its ability to attract foreign investments and expertise”*. In the justice sector, the NIPs highlight the need to enhance the functioning of the judiciary, improve the access of the poor and marginalised groups to the justice system and improve prison conditions. **Under the 2021-27 Multi-annual Indicative Programme (MIP), support to RoL&AC falls under the governance, peace and migration pillar.** This pillar links rule of law with the question of conflict and violence and articulates different entry points to RoL&AC, with some specific reference to gender equality, human rights, transparent and accountable public finances and the fight against money laundering.

With PFM support, the main entry points to preventive AC have remained implicit and assumed – rather than explicit and articulated. Under SLOGOR, AC is not an explicit objective, but, key informants considered that EU support to strengthen the legal PFM framework, support PFM transparency (notably with external audit) and establish an automated State Integrated Financial Management System (SISMIS) is important to prevent public finance mismanagement (including corruption / public finance embezzlement). **In parallel, the 10th EDF and 11th EDF RoL&AC projects have increasingly turned their attention to strengthening public procurement as a key preventive AC measure.** More specifically, the 11th EDF RoL&AC covers three so-called hotbed of corruption: public procurement, the extractive and corruption in the justice sector.

A number of general principles can be recognised as (implicitly) characterising the EU’s strategy to support RoL&AC in Nigeria. These are:

- **Promoting a sector-wide approach** in recognition that all problems are inter-linked and that actors on the preventive side and along the criminal justice chain need to work together to achieve results.
- **Concentrating resources**, working with a limited number of focal states chosen for their proven commitment to reforms (see EQ2 for more analysis)
- **Supporting both state institutions and non-state actors** (including the media), the latter’s role being to *“monitor abuse”*²²⁰ in the justice, prison and AC sectors, participate in the national debates and raise public awareness.
- **Promoting the rights of the most vulnerable groups.**

In addition, EU’s objectives have become more explicit, more specific, and somewhat sharper over the years. The NIP 2008-13 mostly presents RoL&AC as two separate stand-alone objectives focusing

²¹⁹ Planned EU contribution

²²⁰ Country Strategy Programme and NIP (2008-13)

respectively on the judiciary and AC. The NIP 2014-20 switches its focus on promoting accountability and transparency (including in the justice and security sector). With the MIP 2021-27, the objectives put a stronger focus on inclusiveness; the fight against impunity and protecting the rights of the most vulnerable people. Preliminary actions were selected in the NIP 2018-13, but those ended up not being carried over in the 9th EDF projects. In the ensuing NIP/MIP, the choice of activities is – rightly so – made during project formulation.

EU's strategic approach to supporting RoL&AC in Nigeria provides a good illustration of what EU can do when this support is explicit and costed. This strategy has also evolved to align with the global agenda, with resource mobilisation, the link with conflict and violence receiving increased attention over the years (see JC1.2). Yet, as found in other countries and regions, **the link between AC and the poverty reduction agenda seems somewhat incomplete.** While the EU NIP/MIP put a strong emphasis on equal and fair access to justice for all, in contrast, they do not seek to identify and focus on the perceived or known levels and forms of corruption that hit the population the hardest (see JC2.2).

JC1.2 Coherence with the evolving nature and wider goals of EU external action

The EU's support to RoL&AC in Nigeria has been coherent with the evolving nature and wider goals of EU external action. There is a close articulation with EU's human rights and gender equality agenda. The EU specifically aims at facilitating access of the poor and marginalised groups, including women and children, to justice.

The link with the EU's security agenda is also strong. Following the #EndSARS protest against policy brutality in 2020, the EU has put more emphasis on the link between rule of law, security sector (police) reforms, and the risk of conflict and violence. In various communiqués²²¹, Nigeria and the EU share their concern about drug trafficking in the region and its linkages with organised crimes such as human trafficking, money laundering, corruption and terrorism. The EU Delegation (EUD) is responsible for some of the regional projects for West Africa, dealing with the region's organised economic crimes. (see West Africa case study note).

JC1.3 Conducive institutional environment

Because of Nigeria's reputation, the EUD (but also its delivery partners, see JC4.1) have found it hard to attract staff. **This has affected all sections of the delegation, but more particularly the regional section and the governance section, which have been under-staffed.**

Staff at the EUD are highly qualified and experienced and evidently strongly committed to achieving results. Working with delivery partners, significant resources have been allocated to developing sophisticated M&E and reporting systems. **The M&E framework and reporting requirements for the RoL&AC projects, which were extremely weak under the 10th EDF, improved significantly under the 11th EDF as a result.** The 11th EDF RoLAC project combines a mix of quantitative and qualitative indicators, including through the use of regular expert assessments and awareness surveys.

As shown in the NIPs and subsequent programming, EU's RoL&AC support has received adequate attention and resources. The **institutional links with Brussels**, however, appear less strong than with other related issues – such as gender and human rights, where the EUD staff tend to have a more open communication with Brussels, as they are tasked to translate the EU Gender Action plan and Human Rights Action Plan into the Nigerian context.

EQ2: Responsiveness, ownership and flexibility

JC2.1 Context, political economy and/or conflict analysis for ownership and feasibility of RoL&AC support

EU support is based on a good overview of the Nigeria context, covering both key developments and key challenges pertaining to the criminal justice sector and AC. **At a strategic level, the EU (at least implicitly) recognises that political commitment at the top is key to fighting impunity and corruption effectively; its approach is to focus on the low hanging fruits, while keeping the momentum going and space for dialogue and engagement with stakeholders open.** This approach seems appropriate in a context like Nigeria where there have been several attempts to reform the justice sector, but efforts have generally not been matched by the political commitment and resources required for comprehensive and sustained reforms over the last ten years. Similarly, successive administrations have publicly renewed their pledge to fight corruption, yet failed to take convincing actions.

At programming level, EU support is mostly based on a credible set of risks or assumptions, including low government commitment, resistance to changes, political interference, and the unwillingness of key agencies to cooperate. There has been some exception: for example, it was **wrongly assumed that the**

²²¹ 2008 EU-Nigeria Communique; 2021 Dialogue communique

NACS would soon be adopted, with all key stakeholders firmly behind it, under the 10th EDF. The **understanding of – and positioning towards – the local context seemed to improve under 11th EDF** – with a recognition that some ‘indeterminable factors’ can never be fully anticipated or controlled. This is a welcome move from the previous UNODC projects, which had (naively) put forward largely unconvincing risk mitigation strategies to address entrenched political economy issues.

EU’s focus on ownership can also be found in the selection of “reform-minded” focal states.²²² EU support stretched to more than ten states (in part for political reasons) under 10th EDF, but, under the 11th EDF, the RoLAC project and SLOGOR only operated in five states respectively (with some support also given at federal level). As such, **with the country counting 36 states, EU’s approach to RoL&AC in Nigeria is highly concentrated geographically.**

There is little evidence elsewhere to show that a political economy lens was used to justify some design choices. In some cases some priority issues (such as access to justice for vulnerable groups) were adopted, not only for their relevance but also for their non-controversial nature, but in other cases, issues (such as fighting corruption in the criminal justice sector) appear to have been selected, without first considering the likely resistance to changes that they would face (see JC6.1 for more analysis). **Under the 10th EDF, activities were criticised for being ‘boiler-plate’ materials rather than activities that had potentials to drive changes.** EU support also rightly aims at promoting inter-agency cooperation, but analysis on the main **drivers and barriers to inter-agency cooperation** has been lacking.

An implicit part of the EU strategy has been to create champions through its long-term engagement. As put by one key informant, it is hoped those benefiting from their training will one day be promoted to top leadership, and, in so doing, join a growing mass of pro-reformers. This approach consisting of ‘identifying champions’ (or more generally drivers of change) comes with some limitations, however, in a context like Nigeria, where the political and institutional landscape is constantly shifting,²²³ and, where any actions from reform-minded individuals and organisations are likely to be thwarted by the status quo situation (see section 0).

Finally, the EUD (and its delivery partners) recognise that they operate in a very fluid environment and that, **to be useful, a context / political economy analysis needs to be constantly reviewed and re-interpreted to take on board recent developments and adjust project directions accordingly.** The 11th EDF RoLAC project provides a good example of context analysis being conducted on a regular basis to inform the project’s directions (see JC2.3). More informally, the EU and its delivery partners are also regularly reviewing their range of local partners, (in part also for due diligence purpose) verifying the profiles of their newly-appointed leaders.

JC2.2 Engagement with actors at different levels in delivering RoL&AC support

EU support is firmly grounded in a sector-wide approach, allowing all actors along the criminal justice chain and AC agencies to play their part – and work together – around selected issues. This approach has compelled the EU and its delivery partners to engage with all key state actors and some key non-state actors at federal and state level.

From a design point of view, this sector-wide approach requires a careful balancing act to ensure that resources are not spread too thinly and that the engagement with all actors remains meaningful. **In Nigeria, the lack of consensus (if not rivalry) amongst actors adds another challenge: building shared ownership and coalition around a common agenda.** Linked to this challenge is the **principle of alignment with the government’s agenda:** in the criminal justice sector, the ACT Act provides a clear enough roadmap to prioritise support at federal and state level, but the NACS is too broad in nature to ensure a shared ownership of reforms.

For a large part the EU and its delivery partners have been listening to stakeholders and been responsive to their needs. As put by one key informant, their tactic during delivery has been to *“bend (inasmuch as possible) and not drop the ball”*. But there have also been some difficulties: **Because of early (top-down) design decisions, time and resource constraints, and frequent staff turn-over, it is still frequent for stakeholders to report back that they were not (or not sufficiently) consulted.** Because of pressure to catch up with delivery and a poorly functioning governance structure, the UNODC under 10th EDF ended up taking some unilateral decisions. Justice sector reform action plans were drafted in focal states, with hardly any participation from the local authorities, and as such, were seen as UNODC-owned.

Stakeholder consultations improved under the 11th EDF. During formulation, consultations were broadened to include Civil Society Organisations (CSOs). **During delivery, CSOs and beneficiary agencies appreciated**

²²² Other criteria have included the geographical balance, the size of the population (Lagos, Kano), the presence of CSOs, and continuity/synergy with past and ongoing donor support.

²²³ This explains, in one of SLOGOR aide-memoire, the stated preference for states, like Yobé, which are known for their ‘governmental stability’ where the elected authorities / successive administrations are from the same party and hence show continuous commitment to the agreed policies and processes.

their participation in the project steering and technical committee, which they saw as a useful forum to express their opinions. Some areas of support, however, were clearly inherited from previous projects (notably from the former DFID Justice for all project), and during the field visit, some beneficiary agencies considered that they had not been consulted early enough before activities of relevance to their mandate were planned.²²⁴ The EU at times pushed the delivery partner to hold more consultations and adjust its activities (within the limitation of the project's Description of Action), to respond to stakeholder priorities. Yet as put by an interviewee this consultative approach also comes with *“a risk that the project ended up funding ‘window-dressing’ activities, if the partner institution is not genuinely committed to reforms”*. While inclusive of state and non-state partners, the governance structure also posed some difficulties, first, because the large number participants made it difficult to take decisions; and, second, because the Federal Ministry of Justice (FMoJ) (the project's natural partner) – unhappy with the committee structure (chaired by the Ministry of Planning) – limited its participation during meetings (see JC4.2).

JC2.3 Adjustment to changing conditions and new opportunities

Adjustments to changing conditions and new opportunities have mostly taken place at project level. The EU conducted a (light) mid-term review of its overall support in 2017 but no recommendations were made in relation to RoL&AC. There is no indication to show that the EU considered suspending its support to Nigeria after condemning the #EndSARS violence (see section 0 and JC4.2).

Projects responded to setbacks and/or opportunities with different agility / responsiveness. In the case of SLOGOR, the original choice of Anambra, as a focal state, became increasingly less convincing, in view of the limited progress made by the state authorities. Yet the decision to stop funding in Anambra only came towards the end of the project, after the World Bank and EU teams tried – to no avail – to resolve the situation with the authorities.²²⁵ EU support under 10th EDF adjusted to positive developments, namely the enactment of ACJA in 2015 and the adoption of the NACS in 2017, simply by proposing new activities. Other opportunities to promote faster changes (notably after the 2015 elections) were not seized. In contrast, **EU support under 11th EDF followed a relatively successful adaptive management approach.** Despite being over-stretched, the team – helped by the project management structure and a sophisticated monitoring and evaluation system (see EQ1) – was able to take quick decisions and adjust to new contextual elements. As such, in 2020 the EU gave its approval to extend the project to a fifth reform-minded state, Edo, and activities were also adjusted to address some backlashes.²²⁶ The RoLAC project responded to the **COVID-19 situation** well, with the pandemic also presenting new opportunities for the new programme (notably around procurement).

EQ3: Partnerships and coherence

JC3.1 Partnerships based on comparative advantages

In Nigeria, the EU is greatly appreciated for its visible and continuous engagement on rule of law, AC and human right issues. Only 2-3 EU Member States provide development cooperation to the country, and, outside the UK – traditionally the main EU Member States (before Brexit) that supported justice reforms in the country – only Sweden and the Netherlands provide some limited support to RoL&AC. The country is also benefiting from EU Member States (EU MS) global / regional programmes, notably the Germany-funded Police reform programme (implemented by GIZ). Other development partners are the UNODC (criminal justice and AC), the World Bank (procurement) and private foundations (Mac Arthur foundation, Ford Foundation)

Notwithstanding its comparative advantage and experience, the EUD has maintained a relatively low visibility and profile. After the UK support ended in 2017, the EU did not attempt to become the lead agency. Until 2017, the UK was leading an informal donor coordination working group on justice reforms. This forum served to discuss major justice reform initiatives, challenges encountered in implementation, or to share information about projects. But meetings remained irregular. This **informal working group was not handed over to another agency**, however, and information on donor-funded initiatives in the country have since mostly been shared on a bilateral, informal, basis. While reviving a sector working group may not be needed, given the relatively limited number of donors involved in this field, opportunities for synergy are likely to have been missed. This includes support to the police, support to ACJA implementation at state level, and support to CSOs.

²²⁴ Under SLOGOR, not enough stakeholder consultation took place during project formulation. As a result, this project faced a lot of hostility at the start.

²²⁵ The project was also locked into some activities under other components. It then took time produce a final assessment with a final set of recommendations.

²²⁶ Some backlashes faced (and identified) by the 11th EDF RoLAC project have included the electoral period; the delayed appointment of AC agency heads; the country's disqualification to Egmont, the lack of engagement from the National Judicial Council (NJC) (see JC6.1), and from 2020 the Covid pandemic, which severely curtailed project implementation, as partners shut down offices or scaled down significantly.

After UNODC stopped being the EU's main contracting partner for its RoL&AC projects (see JC4.1), **the EU did not retain a special relationship with the UN agency at a strategic level.** This is despite UNODC being a key strategic partner for the government. The UN agency has good access to decision-makers, and, in 2022, with the Ministry of Justice launched a Country Strategic Vision covering five priority areas, including rule of law, corruption, terrorism, and organised crime. The document was the result of extensive consultation, including with development partners, amongst them, the EU. Conversely, the **Spotlight Initiative** to eliminate violence against women and girls illustrates well the importance of working in partnership with UN agencies (in this case as delivery partners). This initiative was able to convene high-level policy dialogues (with the Presidency, Governors' Forum, National and State Parliamentarians)

The risk of duplication in the justice (and AC) sector seems to have been largely avoided. As explained in an independent mapping exercise²²⁷, *“given the large size of the sector, the sizeable needs in all facets of reform, and the largely limited funding envelope provided by donors, there are limited examples of overlap or duplication of efforts across donor programmes”*. A lot of the coordination is done through project implementers and – to some extent – the partner organisations, which are expected to receive and coordinate their donor funding. Coordination in the sector was rated as sufficient to good by most stakeholders interviewed.

JC3.2 RoL&AC support delivered in a coherent manner

The EU and its delivery partners are evidently working hard to ensure EU RoLAC support is delivered in a coherent manner. Examples of good complementarity – and sharing of good practices – were found between RoLAC, EU Trust Fund Managing Conflict Nigeria (MCN), and the Spotlight initiative. That the same delivery partners are used to implement some of these projects also helps. The gender and **human right liaison officer** at the EUD (who is sitting with the governance team) also ensures that all projects funded through the EDF and thematic instruments provide a coherent approach to promoting human rights.

While the links between the EU/EU MS country programmes in the region and EU regional programmes are a bit more tenuous (see west Africa case study note), **the dual role of the EUD in Nigeria, also representing EU cooperation with ECOWAS, has helped to ensure a coherent delivery of RoLAC support in the country.**

In line with the EU anti-fraud policy, the EUD has followed due diligence and other safeguard mechanisms for all its projects in a satisfactory manner. In fact, it is still common for EU partners to complain that EU rules are too cumbersome and that more flexibility is needed. Some irregularities were nonetheless reported with some UNODC projects, which, according to extracts from the 2015 EU verification assessments, failed to use the UNODC's internal control procedures adequately.

A main source of concern when it comes to coherence in delivering RoLAC support in Nigeria is the link with the global fight against corruption. An adviser to the Nigerian president recently stated *“there are no thieves without receivers. Without safe havens for looted funds, Nigeria and Africa will not be corrupt”*²²⁸. While the adviser was specifically referring to the London financial city, the international donor community (including the EU) is accused of double standards in this area. Conversely, Nigeria shows that the international community – and more specifically the EU (through the use of its high-risk third countries) – can exert pressure on a country to adopt international norms and standards. The government for example promptly took action to address Nigeria's disqualification from the Egmont Group (see JC5.1). In 2019, the EU Commission listed Nigeria on its list of high-risk third countries with strategic deficiencies in anti-money laundering and counter financing of terrorism.²²⁹ This led to intense consultations, with Nigeria taking actions to address EU's concerns and to be removed from the list, which the EU ended up doing²³⁰. This example shows how effective international 'name and shame' mechanisms can be.

EQ4: Choice of modality

JC4.1 Right mix of modalities for RoL&AC support

The EU's implementation approaches have evolved over the evaluation period. In the first part of the evaluation period, the EU delivered its main RoL&AC support through UNODC, despite some early warning signs that the UN agency lacked sufficient capacity on the ground.²³¹ Under the 11th EDF, the EU switched to

²²⁷ DCAF/ISSAT (2016): Mapping of development partner support to justice and security sector reform in Nigeria.

²²⁸ Finance uncovered (2021): Nigerian anticorruption tsar tells Boris Johnson: 'There are thieves and there are receivers, London is most notorious safe haven for looted funds in the world today'.

²²⁹ EC (2019): Press release. European Commission adopts new list of third countries with weak anti-money laundering and terrorist financing regimes.

²³⁰ In March 2019, the EU council rejected the EC's expanded list, which included jurisdictions not included on the Financial Action Task Force (FATF) list (including Nigeria)

²³¹ UNODC remained the main delivery partner for the 10th EDF (and still ongoing) 'Response to drugs and related organized crime in Nigeria (DoC)' project. In contrast to the 10th EDF RoL&AC projects, this project has performed well (see JC5.2).

the British Council as its main delivery partner. Direct contracting was made possible thanks to Nigeria being on the EU's crisis declaration list. This choice of delivery partner worked well, all the more so because the project team ended up recruiting many staff that had been involved in prior justice/AC programmes in Nigeria. Also under the 11th EDF, the choice of the World Bank for the SLOGOR project led to some important delays. While the World Bank offers strong expertise and professionalism, they rely on service level agreement with state partners (and with it the establishment of project implementation unit) to conduct their activities.

This shows the somewhat **limited choice that the EU is facing when selecting their delivery partners in RoLAC**. In addition, while bilateral state agencies such as the British Council are well placed to manage the projects effectively, they do not carry the same clout as the UN and other international organisations, which remain the key interlocutors for the government. During the field visit, some government officials in occasions questioned the choice of private contractors as delivery partners – noting their tendency to “*act like donors*”.

Concerning the mix of modalities, the country's high fiduciary risk largely justified the EU's decision to move away from decentralised management (i.e. with the National Audit Office), and mostly work through international organisations and private contractors. This means that at present, 0% of EDF budget is spent through country systems. **The high fiduciary risk also largely justified EU's decision not to provide budget support at federal level.** The EUD has at times suggested that budget support could be piloted at State level, but this has not been taken forward.²³²

By and large, there is a good mix of different instruments (EDF, IcSP, EUTF, EIDHR) in the RoLAC and associated portfolio. This coherent portfolio is only made possible thanks to the continuous efforts of EUD staff and their delivery partners to ensure their projects complement each other and are used in line with the priorities of the NIP. As mentioned before, some projects are run by the same delivery partner (RoLAC and MCN with the British Council) which helps. The position of EUD as main interlocutor for ECOWAS also helps to make the link with the regional projects (see west Africa case study note).

JC4.2 Mutually reinforcing political/policy dialogue and programming

Successive heads of delegation and heads of cooperation and their respective teams were said to work well together, as recently shown during the preparation of the Ministerial dialogue and human right dialogue. The EU Delegation in Nigeria resumed its high-level dialogue with the Nigerian government after a four year gap in November 2020. The Nigeria-EU local human rights dialogue also resumed in 2020. In addition, the EU has committed to stepping up its dialogue with CSOs as key partners since the establishment of a CSO engagement roadmap. A first dialogue between CSOs and EUD is planned for 2022.

The 2022 high-level events have provided an opportunity to discuss a broad range of topics and, importantly, send strong signals of EU's commitment to promoting universal values. In the final communiqué of the seventh Ministerial, both parties reinstate their shared values and commitments to promoting human rights, democracy, the rule of law and transparency. The fight against corruption, the links between rule of law, human rights and security, are all explicitly mentioned. A roadmap (confidential) was subsequently signed between the two parties, highlighting specific commitments, mostly related to development and economic cooperation.

In addition, the seventh Ministerial dialogue was organised shortly after the #EndSARS protests – with the final communiqué compelling both sides to “*reiterate the importance of respecting human rights, including the right to peaceful demonstrations and freedom of expression within the context of law and constitution*”. **The EU's decision to reinstate these annual events is therefore meaningful.**

While covering important RoL&AC issues, these two events have remained somewhat detached from EU's programming cycle. The EU did not consult with its key partners (government, civil society, delivery partner) prior to the events. None of the stakeholders met during the field visit – from civil society to state institutions and delivery partners – appeared to know much the 7th ministerial dialogue. A similar observation was made under 10th EDF, with the final evaluation of the RoLAC projects noting that “*full use was not made of the insights gained by the project team to support EU-Nigeria political dialogue*”.

Conversely, programming has proved little effective to facilitate policy / political dialogue. All project documents stress the importance of political/policy dialogue with relevant stakeholders at the highest levels to ensure progress/performance. In practice, however, their governance structure has not been effective in facilitating discussion on policy and strategic issues. This is in large part explained by the poor attendance of Ministers and their permanent secretaries in the steering committees meetings. Under the 11th EDF RoLAC project, this situation was compounded by the very large number of participants, and the difficult relationship with the Ministry of Justice (the project's natural partner) following the nomination of the Ministry of Budget and National Planning (as National Authorising Officer for the EU) as chair.

²³² The World Bank provides some form of budget support at state level (including Yobé) under its State Fiscal Transparency and Accountability and Sustainability project.

EUD staff appear to have good access to key decision-makers: The examples shared by EUD staff during the field visit show that these bilateral meetings have been the most valuable when exploring future support, opening new doors, or addressing specific issues. Yet, **these meetings mostly happen on an ad hoc basis, when needs arise.** They alone are not sufficient to ensure structured policy dialogue.

Effects of EU support to RoL&AC

EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions

JC5.1: Core legal, regulatory, and administrative reforms promoting RoL&AC

The contribution of the 10th EDF RoL&AC projects to legal and policy reforms at federal and state level has been positive but relatively limited. According to the UNODC end-project evaluation, the 10th EDF UNODC RoL project was a key facilitator in the ratification of ACJA in 2015. The level of the project's contribution to this long-awaited legal reform remains hard to ascertain, however, given the initially poor performance of the project. At state level, the project also helped to establish state justice sector reform committees but this is unlikely to have led to tangible or lasting results, given the low level of ownership. (see JC2.1). Similarly, the 10th EDF contributed to a limited extent to the adoption of the NACS in 2017 (the last year of the project) by supporting two UN Convention against Corruption (UNCAC) gap analysis and the work of the working group in charge of finalising the NACS. Elsewhere, the UNODC RoL&AC projects successfully supported the development of new five-year strategy and pro-bono legal services guidelines for the Legal Aid Council of Nigeria (LACON); and, the domestication of the NACS and that of the procurement bill in two focal states (Adamawa and Anambra).

During the field visit, key informants were asked to identify what they considered to be the EU's main contribution to lasting results under **11th EDF ROLAC**. This, combined with a documentation review, confirms that the project made **good progress in supporting criminal justice reforms at federal level and in the five focal states and some progress in supporting key policy/practice changes in AC, in particular with regards to AC preventive measures.**

The project's contribution to capacity building is discussed in JC5.2 and access to justice is discussed in JC5.3. Under the 11th EDF, the EU further contributed to the adoption and implementation of the ACT Act and other related legislation at federal and state level²³³; as well as the adoption of new practices by justice service providers at state and federal level – with examples including enhanced case management practices and systems, and, new guidelines on sentencing, custody management, access to court oversight visit, plea bargain, and the introduction of non-custodial measures etc.

Concerning AC, EU support under the 11th EDF also supported the adoption of AC strategies in three states. The project also facilitated the passage or amendment to **Public Procurement Laws** in four states.²³⁴ Other changes in AC legislation – that receive project support (including through CSO advocacy) – **failed to receive presidential assent, after being passed by parliament.**²³⁵ The main reasons given for these set-backs are all linked to political economy factors, including inter-agency rivalry and vested interests amongst member of parliament.

As such, the main contribution of EU support under the 11th EDF was related to the establishment of **preventive AC measures**. Many of these measures existed already but needed additional support to be rolled out to all Ministries, Departments and Agencies (MDAs). These include the roll-out of functioning AC and Transparency Units (ACTUs) in all MDAs (federal and state) and the roll-out of Ethics and Compliance Score Card (ECSC) to 280 MDAs (federal and state) by the Independent Corrupt Practices Commission (ICPC). Another landmark contribution from the project (in addition to supporting the adoption of revised procurement laws in focal states) has been the work carried out with the Bureau of Public Procurement (BPP) to develop and launch the **Nigerian Open Contracting Portal (NOCOPO)**, with 173 MDAs now making their procurement information available on NOCOPO (see EQ6 for more details). Other improved practices supported by the project have included the development of **Code of Conduct Bureau (CCB)'s Online Asset Declaration System** [and revision of its Code of Conduct for Public Officers in Nigeria (which include the requirements for asset declaration)]. The project also provided some support to ICPC and training to conduct **Corruption Risk Assessments**.

²³³ Specifically, the project contributed to the passage into law of i) ACJ Act in Kano and Adamawa States, ii) the Penal Code Law in Adamawa State and iii) the Nigerian Correctional Services (Prisons) Act and the Police Act at federal level.

²³⁴ The project also made a small contribution to the new FIU Act through targeted technical assistance, although the main driver for passing this law was Nigeria's disqualification to the Egmont group.

²³⁵ This included a new Proceeds of Crime Bill, the Mutual Legal Assistance in Criminal Matters bill, and the federal audit bill.

The extent to which these measures have been effective in pushing MDAs to comply to preventive AC measures is discussed in JC5.3.

Notwithstanding some important delays, **SLOGOR** also contributed to the adoption of improved procurement regulatory framework (legislation, regulation and standard bidding documents) in four states; it also supported practice changes by the Offices of Auditor General (federal and state) with the launch of public audit forum. Another achievement by SLOGOR concerns the adoption of SISMIS – a digitized and integrated platforms for public financial, human resource and payroll management – in four states. There have been concerns, however, over its use and sustainability (unless more support is provided) and, as with any e-government initiatives, the link with AC remains difficult to demonstrate (see JC5.3 for more analysis)

While appearing somehow eclectic and low level, the above achievements must be understood in a context where the RoLAC reform agenda (at federal and state level) remains a colossal undertaking. Nigerian criminal justice and AC sectors reforms involve the three branches of government (legislative, executive, and judicial) at both federal and state, playing central, and sometimes parallel, roles in terms of policy-making, legislation, litigation and adjudication. Various federal and state institutions and agencies are also involved in law enforcement, implementation and service delivery. The lack of clear division of roles between the presidency and legislature has often been a cause of deadlocks. Nigeria's federal character also means that any laws and strategies have to be domesticated by all 36 states in order to be applicable at state level. This means that the pace and choice of reforms have varied from state to state. For example, given the delay in passing the ACJA bill at the Federal level, some states enacted the bill already before 2015.

JC5.2: Strengthening of institutional architecture of core RoL&AC institutions

There is limited evidence to show that the 10th EDF RoL&AC projects contributed to strengthening the capacity of the beneficiary institutions. The 10th EDF DOC project, also managed by the UNODC, appears to have fared much better on this front. With this project, the National Drug Law Enforcement Agency (NDLEA) -and to less extent other agencies – has benefited from continuous support from the EU since 2013. When the EU support started, the NDLEA was still a small entity, and EU contribution to building its capacity has been significant, although the project faced some difficulties in getting agencies to sign a memorandum of understanding to strengthen their cooperation.

With 11th EDF RoLAC, there is a general consensus that the project had “a clear influence on the justice sector and anticorruption reforms in Nigeria and that in most states, the project contributed to major changes in policies, legislation and change management.”²³⁶ For the most part, the technical assistance and training that the project provided to agencies/stakeholders (in group or individually) was deemed both relevant and useful. As a result, there is good evidence to show that the project contributed to building individual and organisational capacity. Many practice changes introduced with the support of the project (as listed in JC5.1) were immediately put into practice, allowing the individual agencies to strengthen their operations and become more effective in line with their mandate. For example, in the justice sector, there is evidence to show that EU support has made the court system more efficient – as shown by the improved timeliness of criminal trials: The time of awaiting trial person averages 489 days in the focal states (against 670 days in non-focal states).

There are some variations in results, however, much to do with the type of support provided and, more importantly, level of leadership / ownership of the beneficiary agencies. In AC, ICPC has been one of the agencies that benefited from EU support the most, in part thanks to its strong leadership and ownership of the project activities.

In addition, strengthening inter-agency cooperation – another key element of strengthening the institutional architecture – has remained challenging. In the criminal justice sector, the institutional set-up – namely the FJSRCC and state justice sector reform committees (the project's main interlocutor) which are inter-ministerial and inter-agency coordinating committees – has enabled the 11th EDF RoLAC project to support cooperation between key actors with a role in ACJA implementation. Joint training was deemed particularly useful to ensure a sharing of experience, lessons, and best practices. There were, however, still cooperation challenges between key justice actors, notably the police, magistrates and prosecutors, at a more operational level. With regard to anticorruption, the 11th EDF RoLAC continued to face some difficulties in promoting stronger inter-agency cooperation. Some progress has been made over the last 10 years in rationalising the AC institutional landscape (with NACS helping); the lead AC agencies with a mandate to prosecute and/or recover assets (Economic and Financial Crimes Commission (EFCC), ICPC, CCB) have also strengthened their cooperation; and there is good evidence of the project facilitating intelligence sharing between the agencies (including with the Nigerian Financial Intelligence Unit (NFIU)). Other AC agencies, however, have still struggled to get the full cooperation of others. Plans for a NACS-wide inter-agency protocol have not materialised. As a result, the Nigerian AC institutional landscape remains fragmented, and, while some of the main AC agencies are perceived as effective, others still lack capacity and resources.

²³⁶ RoLAC Mid-term review.

Elsewhere, SLOGOR's contribution to (preventive) AC has been mostly concerned with its support to the Auditor General at state level. In addition, there is also some (implicit) expectation that the project's support to SISMIS could help reduce human interface, and in doing so, reduce opportunities for collusions. At the time of project closure, however, substantially more training / capacity building was needed at the end of the project to ensure the system would be operational – with state administration still relying on paper work (used alongside electronic records).

JC5.3: Progress in justice systems and anticorruption frameworks

Improved access to justice

EU support has come with a strong emphasis on improving access to justice for women, children, and persons living with disabilities. The 11th EDF RoLAC project's expert assessment confirms that access to justice for women, children and persons with disabilities has improved at federal level and in selected focal states, thanks to the project's support. More specifically, the project has combined support to various key actors, starting with LACON (which also received some support under 11th EDF – see JC5.1), the Nigerian Bar Association (NBA) and CSOs to provide legal aid to the target population in the focal states. In total, the project reports that roughly 24,000 women, children, persons with disabilities and other vulnerable persons were able to access justice through the project; with 14,000 having their rights protected through a legal process (i.e. prosecution of a case, civil hearing, protection order, etc). Through setting up networks and joint training, the project has also contributed to harmonising practitioner's practice.

The project has also made a positive and significant contribution to promoting the rights of vulnerable groups and making Sexual and Gender Based Violence a national issue, by working with the local authorities and CSOs to strengthen compliance to the relevant provisions (see JC5.1 for the list of relevant provisions) and provide services to the victims. The establishment of Sexual Assault Referral Centres (SARCs) in focal states has been identified by key informants (and the mid-term review) as one of the project's greatest achievements. The establishment of SARCs has also been supported by the EU's MCN project in the north-east of the country. In contrast with the 11th EDF RoLAC project, the MCN project uses a community-based approach and engagement with traditional and religious leaders, dealing with the traditional justice system.

While progress has been made, the country still faces a number of challenges on this front: Sexual and Gender Based Violence cases (based on evidence received from SARC) are not making much progress in court; the risk of stigmatisation of the victims in their communities is also high. The project's expert assessment in Year 4 for component 2 (improved access to justice) concludes: *“The current level of access to justice for women, children and persons living with disabilities (PWDs) in RoLAC programme locations has improved [...] even though the justice system is still slow in most of the focal states and women and PWDs still find it hard to access justice because of the existing realities of patriarchy and other issues like location of the courts, the language of the court and the attendant cost of justice. [...] preferring to resort to other justice system such as the Hisbah. [...] However, the impact of RoLAC project in the states have contributed tremendously in supporting access and dealing with the challenges that have for long plagued the justice systems.”*

More effective AC

There is relatively good evidence that RoLAC support has improved the capacity, and – to some extent – effectiveness of AC efforts at the national and sub-national levels over the years. The fight against corruption in Nigeria, however, remains constrained, by issues of adequate funding, autonomy, limited inter-agency cooperation and lack of political will.

As confirmed during the interviews, visible success on the AC preventive side will require a shift in mentality within public administration. The introduction of such tools as the ECSC and ACTU performance index, has not yet yielded to robust data on ACTU performance. According to the ICPC, these tools have raised MDAs' awareness on their need to comply to ethics and integrity requirements. Yet, according to the 11th EDF RoLAC project's independent expert, there is still a *“lack of political will on the part of the government to compel compliance by some key MDAs”*. Concerning PFM, there is still some way to go before the authorities feel compelled to address the recommendations made by the Auditor Generals in their reports (with support from SLOGOR at state level). CSOs in Nigeria have argued that effective preventive actions require more public / external oversight through public access to data. Example of such work (as supported by the project) is given in JC6.2.

On the prosecution side, as of end-2021, the targets – proportion of corruption convictions compared to prosecutions for relevant agencies – was largely achieved: EFCC: 98% (milestone is 35%); ICPC: 36% (32%) and CCB/T: n/a (20%). There has also been some significant progress in asset recovery, although the value of assets recovered fluctuates a lot from year to year (see Table 10). While used as an outcome in its

logframe, the 11th EDF RoLAC project's contribution to these statistics appears relatively modest, in view of the range of project activities and other more substantial contribution factors elsewhere.²³⁷

Table 10 Value of asset recovered

	2017	2018	2019	2020	2021
EFCC	508.6bn	107.4bn	n/a	30.43bn	315.0bn
ICPC	248m	2.58bn	13.69bn	68.13bn	82bn
CCB/T	n/a	n/a	n/a	n/a	n/a

Source: British Council, 2020 Progress Report, RoLAC

A main challenge to AC is that some agencies still face political interference: While there have been cases of investigation and prosecution of politically high-profile cases over the years, intimidation has also continued to take place. For example, the NFIU recently reported that it is facing 'illegal' pressure from politicians and senior government officials. When found guilty of corruption, top government officials often end up being acquitted.

In the absence of a visible shift, Nigeria is still perceived as one of the most corrupt countries in the world today. Mr Buhari's government has recently rejected the results of Transparency International's corruption perception index²³⁸, criticising the organisation for failing to account for a rise in convictions and increased transparency measures across government.²³⁹ Nonetheless, Nigerian citizens – and the business community abroad – continue to identify corruption as one of the most pressing problems afflicting their country, alongside security and health issues. As pointed out by CSOs during the field visit, it is telling the Nigeria's Corruption Perception Index has deteriorated in every year since 2016 – notwithstanding the adoption of the NACS in 2017. Perceptions that the situation was improving – on the back of various promises made to rid Nigeria of corruption, after the 2015 elections – have hence been short-lived.

EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions

JC6.1 Legal safeguards, checks and balances ensuring the independence and impartiality of the judiciary, and functioning of AC agencies

EU support to Nigeria comes with good intent to address the risk of corruption in individual agencies, in particular with law enforcement. Enhancing the accountability and integrity regime for the Judiciary, MoJ, Police and the Prison service was an output target in the 10th EDF RoL&AC project. The 11th EDF RoLAC project was more ambitious and selected 'corruption in the justice sector' as one of the three hotbeds of corruption that the project would seek to address.

This support has typically included training and technical assistance to strengthen the agencies' compliance to ethics and integrity. Both the 10th EDF and 11th EDF RoLAC projects provided some joined training on ethics and integrity. Under the 11th EDF, this specifically included training lawyers on the code of professional conduct and ethics. Agencies benefiting from this training included the NDLEA – the main partner of the EU DOC project. Based on NDLEA Code of Conduct and the laws of Nigeria, the DOC project has also helped to develop a law enforcement ethics and integrity course and training manual in 2018.

This support, however, has remained scattered and ad hoc and EU's ambitions to push for some structural changes in this area have not been met – in large part owing to the limited appetite from partner agencies. For example, the 11th EDF RoLAC project planned to support, amongst others, the implementation of the National Judicial Council (NJC) judicial policy, NBA Code of Conduct, and other relevant actions falling under the NACS and Justice Sector Reform Teams that address corruption in the criminal justice sector. The project however quickly faced difficulties engaging with the criminal justice sector on AC issues, starting with the NJC and NBA that have a core mandate in this area (the NJC is responsible for all issues of discipline of judges). As reported in the 2020 progress report, "*This may not be unconnected with the integrity and accountability challenges that rocked the judicial sector. [...] In 2020, the head of the nation's judiciary, the Chief Justice of Nigeria, was tried for false declaration of assets. This also coincided with the time the programme was negotiating engagements with the NCJ [National Judicial Council] and NBA, [...] who 'instantly became more reticent' to engage with the*

²³⁷ The progress in asset recovery is linked to the work of PACAC, increased use of Non-Conviction Based approaches to Asset Recovery since 2016, combined with support from the World Bank under the StAR and Global Forum on Asset Recovery Initiative.

²³⁸ Transparency International' corruption perception index ranked Nigeria at the 149th place (for a total of 180 countries) in 2021, against 143rd place (for a total of 183 countries) in 2011.

²³⁹ Financial Times (2020): Nigeria makes anticorruption moves amid criticism over progress.

programme". As a result, the project could only provide limited support in this area, mostly training and support early step to develop court users' complaints mechanisms in selected states.²⁴⁰

During the field visit, many key informants stressed the utmost importance of addressing accountability and integrity issues in the judiciary and law enforcement when supporting criminal justice reforms. The prevalence of bribery in this sector remains high. As put by one informant, the phrase "*a good lawyer knows the law; a great lawyer knows the judge*" bears a strong resonance in Nigeria. The issue of nepotism and corruption in the police is also well-known and well-documented.²⁴¹ Some of the main obstacles to fighting corruption in this sector include nepotism, low salary and political interference, and for the judiciary, a lack of effective oversight and complaint mechanism. In addition, the NBA was said to be divided and lacking independence. During the field visit, there was some positive signs that the NBA could become more engaging on this issue in the future, having benefited from training under the project.

Finally, support in this area has also links with the EU's strategic priorities on human rights. The EU's 2021-24 Nigeria human right and democracy country strategy include an objective to "*integrate human rights and the respect of International Humanitarian Law in the conduct of security forces (including police) at different levels (from strategic to operational) and strengthen the issue of the protection of civilians in their operations*". This is further discussed in EQ7.

JC6.2 Empowered role of oversight institutions, non-state actors and the private sector in strengthening RoL&AC processes

See EQ4 for support to oversight institutions (auditor general) as part of AC architecture.

The EU has contributed positively to building the capacity of non-state actors to demand for essential RoL&AC reforms and hold the government to account (including in relation to PFM). This contribution has gone well beyond financial and technical support. It has also consisted of facilitating CSO-government engagement; supporting (on the supply side) government transparency and the use of open data; and more recently, with the ACT project, supporting an improvement in the regulatory framework for CSOs.

The 10th EDF UNODC AC project provided small grants to 10 CSOs under the Grant Scheme, leading to some CSO capacity building, awareness raising, and, citizens participation in relation to AC. **But there is limited evidence to show that these small grant initiatives led to lasting results.** Support to CSOs continued under 11th EDF RoLAC project as a stand-alone component, through a combination of grants²⁴², direct support (non-grant) to CSO advocacy actions, and capacity building / mentoring support for smaller CSOs. In addition, the project also trained journalists in covering AC stories and supported a social media campaign to raise public awareness. This impact on 'culture' is further discussed in JC7.1.

With this support, federal and state CSOs were able to engage with the authorities to advocate for the implementation of provisions from the **Violence Against Persons Prohibition Act (VAPP); the Child Rights Act (CRA) and Person with Disability-related legislation.** The project also supported CSO advocacy for the implementation of the Anti-torture Act by law enforcement agencies (including police) (see JC7.1), and advocacy for increased government transparency, through the implementation of the Freedom of Information (Fol) Act; public scrutiny of the Auditor General reports²⁴³ and the use of online open data platforms, such as *opennigeriastates.com* and *NOCOPO*. Elsewhere, CSOs and the media have called for the information collected on the CCB's online asset declaration to be made public.

Beyond financial support, one of the greatest benefits of the 11th EDF RoLAC project, as acknowledged by all CSOs interviewed, has been the opportunity it gave them to regularly 'come to the table'. The joint CSO training, participation in the Steering Committee and other RoL&AC mediated platforms have enabled CSOs and media to strengthen their links, and, importantly, regularly meet with MDAs. These platforms were identified as one of the main added-values of the project: they would not have existed without EU support.

In addition, more recently, under the ACT project (also implemented by the British Council), the EU has started providing support to strengthen the CSOs internal governance and systems and **improve the regulatory framework for CSOs at federal and state level.** This included some advocacy work in the National Assembly (under the leadership of Policy and Legal Advocacy Centre (PLAC)) to amend the Companies and Allied

²⁴⁰ The component was also used to support the implementation of the Freedom of Information Act at federal and state levels (see JC6.2).

²⁴¹ See for example Kwaja, C. (2020): Policing, Police and the Feasibility of Their Reform in Nigeria

²⁴² In total, the project funded 17 grants to CSOs, amounting to Naira 1,2 billion. The project has also provided 44 grants to journalists, leading to 39 investigative products being developed/published.

²⁴³ Complementary to the 11th EDF RoLAC project (with BudgIT), a main incentive behind the state decision was to meet the Disbursement Linked Indicator for the performance-based grant component of the World Bank States Fiscal Transparency, Accountability and Sustainability Programme.

Matters Act, 2020, and its controversial clause, which provides for the arbitrary suspension of trustees and appointment of interim managers for CSOs.²⁴⁴

Finally, in parallel, the project (with BPP) has also pushed the federal and state authorities to commit to enhanced public finance transparency, notably in the area of procurement with the RoLAC-supported NOCOPO (see JC5.1). Elsewhere, the 11th EDF RoLAC project has also supported the adoption and implementation of the Fol Act, by supporting both state and non-state actors.

Notwithstanding the above, **enhanced opportunities for CSO-MDA engagement have not led to as many policy/practice changes as expected** This reflects both ambitious project targets under the 11th EDF RoLAC project and the reality on the ground. Some CSOs are hoping that their relationship with MDAs is sufficiently well-established to sustain their engagement with state actors, when EU support ends. Some like the PLAC and the Civil Society Legislative Advocacy Centre (CISLAC) offer expertise that government is lacking.

Yet **the quality of CSO engagement with the authorities will ineluctably vary with i) time, ii) locations, and iii) the choice of topic.** At times, the environment in which CSOs have been operating has been highly political, if not hostile. According to the 11th EDF RoLAC project's independent experts, engagement with the authorities was particularly tense in the aftermath of #EndSARS protest in Lagos state. In contrast, managing the pandemic was said to have led to closer collaborations and improved relations between CSOs and MDAs in Kano state. The results in Year 4 also show that CSOs did have a voice when advocating for access to justice for women, children and persons with disabilities, but that their demand for specific actions from criminal justice providers, or AC Agencies have often been ignored. Similarly, according to the British Council 2020 Annual Report, fifty-five Fol requests were recorded between February and June 2020 across RoLAC focal states, but very few were responded to.

The same pattern – increased activism / engagement but no policy / practice change – can be found in the area of public finance scrutiny with 11th EDF RoLAC and SLOGOR. While SLOGOR was successful in encouraging focal states to hold public events, there is no evidence to show this led to remedial government actions. Similarly at federal level, in the absence of the new Audit law, CSOs are unable to put effective pressure on the government to respond to the Office of the Auditor General's audit queries.

EQ7: Effects on RoL&AC culture, human rights and democracy

JC7.1 Promoting a RoL&AC culture among public/private actors and society

The EU has provided support to CSOs and the media to raise public awareness about the importance of rule of law, and with it, the threat posed by corruption and other forms of impunity. Key informants have reported that awareness has been rising thanks to 11th EDF RoLAC. The CSO public awareness campaigns on promoting the right to justice of children, women (in particular when dealing with gender-based violence), and persons with disabilities have been identified as the main achievement. This included success in raising the awareness of the federal and state authorities. The 11th EDF RoLAC project has also provided grants and mentoring support to journalists to publish investigative stories. Importantly, the RoLAC project has also made increased use of social media. This has included the #HerStoryOurStoryNG campaign, which has reached millions of followers. The Anticorruption Day has also remained a key event used to raise public awareness on the ills of corruption.

There are still some challenges, however, in getting civil society to demand transparency and accountability in the criminal justice and AC sector. Social norms and culture in the country, especially with regard to the fight against corruption, are well entrenched. In Nigeria, many citizens are cynical and have lost faith in the current government, and it can be difficult to get citizens on board to advocate for changes. The examples of investigative journalism leading to / contributing to the arrest and prosecution of corrupt government officials remain far and few between. As such, there is a genuine risk that AC public awareness campaigns backfire, if the target audience perceive commitment made by the authorities as having no weight.

More specifically, there is a widespread acceptance of corruption as a fact of life in Nigerian society, especially when dealing with public officials.²⁴⁵ While some recent data²⁴⁶ point to a slight decline in the

²⁴⁴ Legist (2022): CSOs Prepare for Senate Public Hearing on CAMA Amendment.

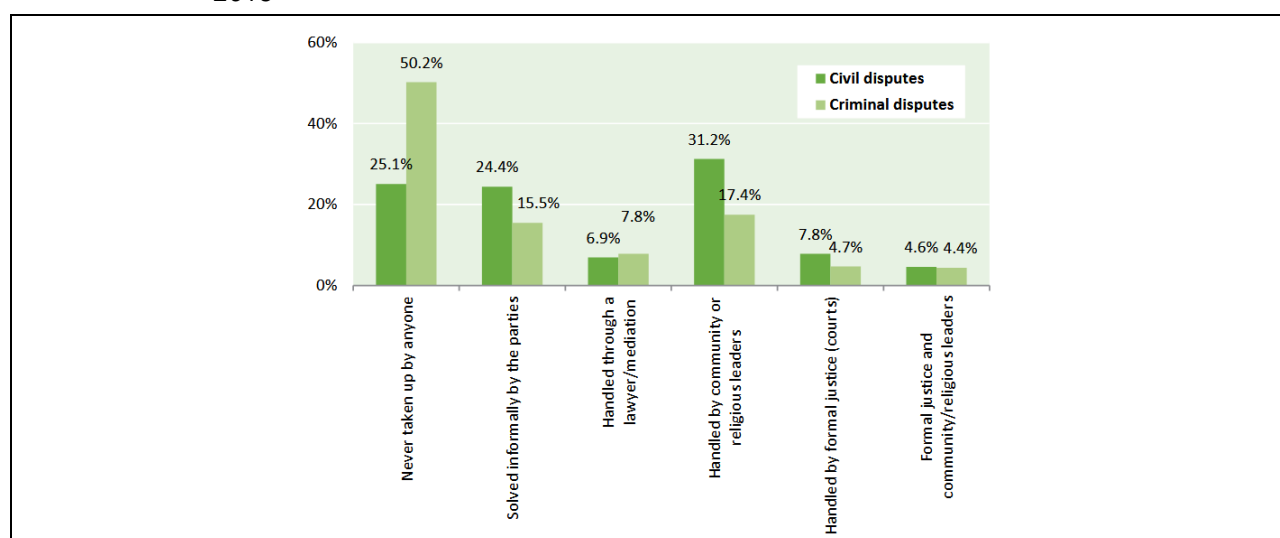
²⁴⁵ According to the 2019 UNODC/NBS survey, bribery in the private sector continues to be much less prevalent and frequent than in the public sector.

²⁴⁶ See nationwide surveys focusing on 'corruption as experienced by the population' carried out under the leadership of the National Bureau of Statistics with support from the UNODC (2016 2019).

prevalence of bribery²⁴⁷, trends and patterns vary from state to state²⁴⁸ and the propensity to pay remains high. Vote-buying and nepotism also remain widespread.²⁴⁹ As put by one interviewee during the field visit, “*the Nigerian population has been dis-incentivised by the ills of corruption, which in turn have come to pervert the country’s societal values*”. This, combined with fear of intimidation, explain why only a handful of CSOs are willing to engage forcefully on the AC debate in the country.

The population has limited trust in the law enforcement and criminal justice system. When asked about their opinion on whether the formal justice system effectively protects the rights of every citizen, almost half of Nigerian adults (44%) disagree, while 48% agree and 8% do not have an opinion.²⁵⁰ This explains the large percentage of dispute resolution mechanism taking place outside formal courts, as shown in Figure 3.

Figure 3 Access to dispute resolution mechanisms when faced with a civil or criminal dispute, Nigeria, 2016



Source: UNODC (2017). *Corruption in Nigeria*.

In Nigeria, cultural norms and values also tend to differ from state to state. But, according to informants, this has not always been reflected in the choice of project activities. As put by one interviewee during the field visit, there is still some expectation amongst donors (including the EU) that CSOs and media – as civil society representatives – should reach out to the local population on specific topics. This can be at times difficult, if the topic fails to attract traction from the local population and local authorities alike. The choice of activities is hence best derived from an early local consultation process, involving local CSOs, media and traditional leaders, in each focal state. As put by the same interviewee, “*when you take them [local population] along, it is easier to get their support for advocacy*”.

JC7.2 Using national RoL frameworks and international standards to foster human rights

EU RoL&AC support in Nigeria comes with a strong emphasis on human rights. In addition to addressing gender equality and promoting the right of vulnerable groups (see JC5.4), the EU has provided support to law enforcement agencies to strengthen their practices in line with international human right standards. For example, RoL&AC support (under 10th and 11th EDF) has provided some training and technical assistance support to improve the practices of state and federal police during investigation and custody. These enhanced practices are in line with the ACJA provisions. This included support to oversight visit in police stations and prisons by magistrates and support for statement taking rooms. The 11th EDF RoL&AC project has also provided advocacy, training on the **Anti-Torture Act 2019** – an area of support that gained relevance with the police violence during the #EndSARS protest.

In addition to its work with the police, EU’s support to CT and improving carceral conditions is also strongly linked to EU’s commitment in promoting human rights. According to the world justice project²⁵¹, transforming

²⁴⁷ According to the 2019 UNODC/NBS survey, out of all Nigerian citizens who had at least one contact with a public official in the 12 months prior to the 2019 survey, 30.2% paid a bribe to, or were asked to pay a bribe by, a public official. against at 32.3% in 2016.

²⁴⁸ Three out of the country’s six zones (North-East, North-West and South-West) have recorded decreases in the prevalence of bribery since 2016; three (North-Central, South-East and South-South) further increases.

²⁴⁹ According to the 2019 UNODC/NBS survey, 21% of the adult population of Nigeria reported that in the last national or state election they were personally offered money or a favour in exchange for their vote; while almost half of all public sector applicants in Nigeria are still hired as a result of nepotism, bribery or both.

²⁵⁰ UNODC (2017): *Corruption in Nigeria*. Bribery: public experience and response.

²⁵¹ World Justice Project (2020): *Rule of Law Index Nigeria*.

Nigeria's courts and prisons to adhere to the ACJA remains a colossal undertaking. Of particular urgency on the criminal justice front is the epidemic of pretrial detention, which delays justice and contributes to overcrowded prisons. More than two-thirds of people detained in Nigeria have yet to receive a trial. The Nigerian Prison Service (subsequently renamed Nigeria Correctional Service (NCS) in 2019) benefited from human rights training under the 10th EDF RoL&AC project. The NCS also received support to de-radicalisation in the prisons (ICsP funded), although the project performed poorly because of weak ownership from the then Nigerian Prison Service. The 11th EDF RoL&AC project has supported the new NCS department in charge of administering non-custodial measures in Nigeria. With support from the CSO grantee, Prisoners Rehabilitation and Welfare Action, guidance for non-custodial measures and prison supervision were developed. Non-custodial measures are intended to reduce overcrowding in pre-trial detention and prison.

Notwithstanding these activities, there is conflicting evidence about any EU's lasting contribution in this area. Governed by a military regime until 1999, the national police force and prisons are still today highly militarised, with cases of human rights violations by prison officials and the police not uncommon. Human Rights Watch²⁵² lists amongst significant human right abuses, arbitrary detention, torture, life-threatening prison condition, and serious acts of corruption. Although the government has taken some steps to investigate alleged abuses by police, including the SARS, and awareness of human right standards seems to have increased, impunity remains a significant problem, due to the absence of effective oversight mechanisms and systems of professional accountability. **That the EU publicly condemned the security forces' use of violence during the #EndSARS protest – calling for those responsible of abuses to be brought to justice and held accountable – provided a strong signal to the authorities (and public).** It also shows, however, that there is a long way to go before police behaviour changes. The #EndSARS protests are also a direct reminder of citizens perception that police cannot be trusted. At the same time, some project assessments (UNODC CT, and 11th EDF RoL&AC) shared the view that EU support has helped raising police awareness on human rights.

JC7.3 Using the RoL to foster application of democratic principles

Implemented under the 11th EDF, the **EU Funded Programme “Support to Democratic Governance in Nigeria” (EU-SDGN)** aims to contribute to the reinforcement of democracy in Nigeria through building strong, effective and legitimate democratic institutions, by focusing on electoral reforms. This project includes support to the Independent National Electoral Commission; the National Assembly; political parties; media and CSOs. In February 2022, the electoral act was passed into law, which CSOs and the media heralded as a victory.

EQ8: Effects on wider EU external action goals

JC8.1 Peace, resilience and security

The EU's support to RoL&AC has strong links with the peace and security agenda, both at a strategic (see EQ1) and at operational level. Nigeria has over the years had to deal with problems of insecurity, particularly those brought on by Boko Haram which has been linked to the Islamic State and other terrorist organisations. Furthermore, in Nigeria, the link between rule of law and peace and security is equally concerned with the human right abuse by security forces, the risk of social unrest, and the rise of local vigilante groups. As shown during the #EndSARS protest, the cycle of violence finds its root in the local population's unaddressed grievances, and their lack of trust in state institutions due to corruption, neglect and abuse of office by public officials

At an operational level, some EU ongoing support focuses on strengthening state and community level conflict management capability in North Eastern Nigeria (the MCN project). This project's main entry points to RoL&AC are its support to **strengthening community level conflict management mechanisms (working with traditional rules) and addressing gender-based violence** (see JC5.4). A past EU project also focused on supporting Criminal Justice Responses to Terrorism and Violent Extremism. According to the final evaluation of the UNODC CT project, EU support has made a positive contribution to capacity building, yet, also notes, the wide gap between the theoretical knowledge acquired by the training participants and the actual conditions in which they conduct their investigation and prosecution work. Since then, **the second phase of this UNODC project, which started in 2018, has provided more in-depth and practical training and mentoring to all actors involved in fighting terrorism** (including investigators, security officials, prosecutors, legal advisors, defence counsel and judges). Its support to inter-agency cooperation led to the successful review and strengthening of over 1,500 terrorism case files. The establishment of a UNODC field office in Maiduguri contributed to these achievements.

²⁵² Human Rights Watch. Nigeria website, <https://www.hrw.org/africa/nigeria>

JC8.2 RoL&AC for functioning markets, trade and private sector development (compliant with human rights and due diligence)

Plans to support strengthening the work of civil / commercial courts, in particular in relation to property and intellectual property rights, were mentioned briefly in the 10th EDF NIP but did not materialise. It is not known why.

JC8.3 Natural resource management

Patronage politics and the misallocation of oil revenue have been identified as key root causes behind Nigeria's status quo and slow progress in strengthening RoL&AC. The EU has started supporting the National Extractive Industry and Transparency Initiative (EITI) as part of its 11th EDF RoLAC project, after extractive industry was selected as a priority. The EITI's mission is to promote understanding of natural resource management, strengthen public and corporate governance and provide the data to inform greater transparency and accountability in the extractives sector. The scope of the project support evolved in the first years of partnership, to avoid duplication with other donor-supported activities. The focus of the project is to support stakeholder roundtables (including with CSOs) to disseminate and build some buy-in for the EITI audit findings and recommendations and build the capacity of the extractive industry fraud investigation unit of AC Agencies (ACAs).

Results have been disappointing so far. According to the project M&E framework, the number of actions taken towards the implementations of EITI recommendations lagged behind, with only 2 actions taken, against a targeted 4. This lack of progress was explained by EITI 's avoiding engagements during the election period (2018-19). The Midterm Review also questions the relevance of the project's support for this already well-funded initiative.

Overall Assessment and Lessons learned

Promoting RoL&AC has been at the centre of EU's engagement in Nigeria. In addition to providing support in two consecutive EDFs, the EU has mainstreamed RoL&AC issues in the peace and security sector and there has been a close articulation with human right and gender equality – two of the EUD's cross-cutting issues. The EUD development cooperation and the political section have also worked jointly to integrate RoL&AC in high-level summits with the authorities.

One main characteristic of EU support has been its targeted, sector-wide approach, working with all relevant actors on selected areas of intervention, at federal level and in a handful of reform-minded states. This approach has raised the question of how effective stakeholders' consultation can be (given limited resources), and what is required to ensure continuous relevance and shared ownership over agreed objectives, in a country context that is multi-layered, complex, rife with rivalry, and constantly shifting.

The EU's position (especially in recent years) has been to be responsive and flexible, through a close monitoring of the context and adapting to new opportunities and/or local priorities, while maintaining pressure on the authorities (including through support to CSOs) to press ahead with the necessary reforms.

At the same time, the EU (following the UK's departure) has mostly left it to delivery partners to coordinate their actions with others, limiting opportunities for joint messaging with other key strategic actors, starting with the UNODC. More could have also been done to make political / policy dialogue and programming mutually reinforcing.

Concerning results, the EU's main legacy is to be found in the adoption of new policies and legislation; and, evolving practices used by AC agencies and criminal justice actors at federal level and in selected states. Its continuous support to CSOs (including the media) and justice for all initiatives have also been largely effective, although there are concerns that results may not be sustained after EU support ends.

The question remains as to whether EU support can credibly contribute to more effective criminal justice and more effective fight against corruption in the country, in view of the many obstacles associated with poor governance, limited inter-agency cooperation, and lack of political will. The criminal justice is perceived by the population as corrupt and the EU's attempts to promote integrity within the institutions that benefit from its support have been inconclusive. Equally problematic is the institutions' awareness yet limited compliance to human rights standards. On the AC front, preventive actions will also require a shift in mentality within the public administration to become effective.

The EU's approach, consisting of remaining engaged in the long-term while promoting the rights of the vulnerable population, seems appropriate. There is a need, however, to ensure that organisations and individuals are made more fully accountable for their actions, not just in their use of EU funds but also in their commitment to fighting impunity, starting from 'within'.

Case study note – Philippines

Introduction.....	149
Context	149
Political economy analysis	149
Overview of the EU support to RoL&AC	150
Strategy and implementation of EU support to RoL&AC	151
EQ1: EU strategic framework/institutional environment.....	151
EQ2: Responsiveness, ownership and flexibility	153
EQ3: Partnerships and coherence	156
EQ4: Choice of modality	158
Effects of EU support to RoL&AC.....	160
EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions	160
EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions	162
EQ7: Broader effects on RoL&AC culture, human rights and democracy.....	162
EQ8: Effects on wider EU external action goals	163
Overall assessment	165

Introduction

Remark: This case study note does not constitute a separate evaluation of EU support in the country or its situation with regard to RoL&AC. It presents country-related findings relevant to the overall assessed judgement criteria and indicators, and feeds into the main evaluation report of the Evaluation of the European Union support to Rule of Law and Anticorruption in Partner Countries to which it will be attached as an annex.

Context

Philippine society is both diverse and homogeneous, and the country has a long democratic tradition, a vibrant civil society and a free press. However, it has a history of high inequality in the distribution of its resources and of internal armed conflicts. In the first quarter of 2021, the poverty rate was assessed as being at 23.7%, compared to a 21.1% poverty rate in 2018. The long history of internal conflict can be directly linked to these high rates of poverty, the lack of economic opportunities, and compromised rule of law.

The Philippines is Asia's oldest democracy, with a bicameral system. Analysts consider that, while there have been various attempts to reform the Constitution, what needs to change is the legislation underpinning or implementing certain constitutional provisions. For example, during the early years of the Duterte administration, a call for federalism was initiated but was never realised, due to the long and tedious processes involved, and the lack of public support. Federalism was seen as a solution to providing better services to the populations, as well as lasting peace in Mindanao.

There are 81 provinces divided into 1,540 Municipalities (or towns), and 67 chartered cities in. Within each municipality there is a sub-division into Barangays (or villages); there are 42,046 Barangays. It has a large public sector marked by a proliferation of agencies, weak governance, and functional duplications and overlaps between agencies. Reform of the sector would however entail genuine decentralisation, concerted anticorruption measures, and civil service streamlining.

Despite formally decentralised authority, the system remains highly centralised in reality, compounded by concentrations of power, with analysts considering that *“there is no dispute that the Philippines’ fundamental problem is the concentration of power and wealth in Imperial Manila. And both sides of the federalism debate agree that the only way to break this up is to establish a robust decentralised governance framework”* (PEA 2020).

However, these local structures provide considerable informal power, and *“can be used to distribute patronage and to eliminate competitors, which makes these supposedly elected posts highly attractive to those aiming to monopolise wealth accumulation”* (PEA 2020).

Political economy analysis

The empirical evidence of family domination of key political posts is strong. There are 163 families who control the majority of senate, house of representatives and governorships at national and provincial levels, with this dominance extending down into local areas.

Violence is one weapon used by numerous political dynasties to maintain control and is linked to the pattern of extrajudicial killings that have gripped the country for decades. The cycle of control and informal abuse of the formal system is generalised and is intended to serve and sustain the interests of the elite.

The Arroyo government (2001 – 2010) embarked upon a comprehensive series of reforms, however there were considerable delays in implementation, due to protracted decision-making procedures, lack of political will, political in-fighting, corruption and the lack of a professional civil service. The Government's attention focused more on political survival, and reform policies did not provide clear prioritisation of the strategies, policies and programmes they contained, in terms of the resources needed to implement them.

The population lacks confidence in the elected government and in its political institutions, which in some sectors of an otherwise dynamic civil society undermines attempts to achieve substantial reform.

The country has not achieved sufficient economic progress over the past decades to substantially reduce poverty, due mainly to an inefficient economy, widespread corruption, and weak rule of law.

Lack of good governance, in particular bribery and corruption, threaten sustained growth and have bred vicious circles of poverty and underdevelopment. In the 2005 Transparency International Corruption Index, the Philippines ranked 117th among the 159 countries surveyed; in 2021 it was ranked 117th of 180 countries. Effective enhancement of the main features of good governance, transparency, accountability, participation and predictability, require sustained GoP commitment and action-oriented implementation supported by a proactive private sector.

The protection afforded formally by the three arms of government established by the constitution is not provided in practice, and the independence of rule of law institutions, including the judiciary, is under constant threat. The most high-profile, recent incident in this regard was the impeachment of Supreme Court Chief Justice Maria Lourdes Sereno through an obsolete process known as *quo warranto* proceeding, for non-declaration of her statement of assets and liabilities. Independent analysts consider that the removal of the Chief Justice

may have cleared the path for control of the Supreme Court. EUD's Justice Programme managers expressed some concerns about this event, not only because of the process followed, but also because the Chief Justice had been pressing forward a Justice Reform Plan, which the EU was interested in supporting.

Other examples of interference include the removal of an independent Ombudsman and Election commissioner, which was also considered by analysts to have tampered with horizontal accountability mechanisms. The retirement of several Supreme Court Justices in 2017 exacerbated concerns that the court would become stacked with President Duterte's nominees. By the conclusion of Duterte's term in May 2022, the government had appointed 12 out of 14 justices in the Supreme Court.

Human Rights

Throughout the evaluation period, UN Treaty Bodies were concerned by various patterns of human rights violations, notably the lack of measures to investigate and prosecute extra-judicial killings (EJK), enforced disappearances (ED) and other crimes committed by State security forces and agents, which created a situation which was "*conducive to a culture of impunity*" (Strategy Plan 2007 – 2013). Other human rights concerns relative to the rule of law have included the imposition of the death penalty on minors, and ill-treatment and abuse and severe congestion in places of detention.

While the human-rights record of the Duterte Government may appear to represent a deterioration of the situation, independent analysts point out that the human rights record of the post-Marcos governments was also questionable, including relative to EJK/ ED.

While current human rights concerns largely arise from EJK's associated with the Duterte's "War on Drugs", they also include the pattern of removal of rule of law actors as described above, the detention of an outspoken opposition leader on drugs charges, and a variety of actions against activists and opposition media.

Overview of the EU support to RoL&AC

Under the Development Cooperation Instrument (DCI) an indicative allocation of € 130 million was earmarked for the Philippines for the period 2007-2013. These resources were supplemented by projects and programmes financed under the regional programmes for Asia and various thematic programmes.

EC cooperation for the period 2007-2013 focused on helping the Philippines meet its MDGs, by supporting a more equitable access to services and sector-wide approaches, including the rule of law; and other actions providing support to inter alia peace, security and governance.

The MIP 2007-2010 represented 46% of the total envelope for the Philippines (approximately € 61 million), while the MIP 2011-2013 represented 54% of the total envelope for the Philippines (approximately € 69 million). The non-focal sectors for the latter included support to good governance, and cross-cutting issues including human rights issues and gender.

Under MIP 2014-2020 out of a total budget of EUR 95 million, an indicative 29% was allocated to support strengthening the rule of law through legal and judicial reform. The MIP provided for EU support to rule of law and governance reforms in justice sector institutions, as mentioned in the Philippines Development Plan (PDP) 2011-2016 and working towards a sector-wide approach led by the Philippine Government.

The PDP envisioned reform relative to inter alia strengthening oversight bodies; more effective case resolution; enhancing the integrity and competence of legal sector actors; improving access to justice; promoting alternative dispute resolution; and improving justice sector coordination.

Specific EU assistance was provided to Bangsamoro under the MIP 2014-2020, to ensure that new institutions were linked to the national system, and respected international law and standards, with a special focus on the rule of law. The EU also aimed to pay particular attention to encouraging "woman- and child-friendly justice" for victims, witnesses and perpetrators of crimes. Furthermore, a strong emphasis was placed on the crucial role of civil society in upholding and promoting the rule of law.

Previous support

There was considerable pre-existing support to rule of law in the Philippines, dating back to 2003 with programmes on border management, anti-money laundering, corruption, access to justice, and criminal justice.

The SP 2007 – 2013 built on support to governance, which was addressed by two separate projects: "Access to justice for the poor" and "Prevention of corruption", which were considered by the EU to be very relevant, but which suffered from implementation delays.

Table 11 Overview of EU-financed interventions to the support of RoL&AC in the Philippines selected for the case study

D or C year	Title	Budget (mEUR) ²⁵³	Typology	Implementing partner
2009	EPJUST I – EU Justice Support Programme	1.1	Rule of Law and access to justice	Private Sector, International and local CSOs
2011	EPJUST II – Justice for All Philippines	7.4	Rule of Law and access to justice	Private Sector, Government of Philippines
2014	GOJUST I – – Justice Sector Reform Programme	15.2	Rule of Law and access to justice	UNOPS, EU MS (Spain and UK)
2020	GOJUST II – – Justice Sector Reform Programme	18.0	Rule of Law and access to justice	UNOPS, EU MS (Spain and UK)
Transversally				
2019	Support to Bangsamoro Transition (SUBATRA) in the Philippines	20.9	Peace and security	UNOPS, EU MS, Private Sector
2019	Civil Society Organisations as actors of Governance and Development Work in the Philippines	1.0	Governance and democracy	CSOs
2015	Empowered Civil Society Participation in Monitoring Judicial and Quasi-Judicial Bodies Towards Enhanced Integrity of the Justice System	1.0	Justice and Democracy	Private Sector
2019	Mindanao Peace and Development Programme (MINPAD) in the Philippines	21.0	Peace, Resilience & Security	EU MS and Int. CSO
2017	Empowered human rights defenders for the protection and defence of all human rights for all and in the fight against impunity in the Philippines	0.6	Human Rights	CSOs
Other interventions				
2015	EU support to the implementation of the Comprehensive Agreement on Bangsamoro (Philippines)	5.1	Peace and Security	UN and Int. CSOs
2020	Mindanao Peace and Development Programme (MINPAD) in the Philippines (2020)	6.0	Peace and Security	Int. CSOs
2017	Support to the implementation of the Government's New Peace Roadmap for Mindanao, the Philippines	3.9	Peace and Security	Int. CSOs
2018	Supporting the resilience of the Mindanao Peace Process, the Philippines	7.1	Peace and Security	Int. CSOs
2015 & 2019	Consolidating CSO Networks for Citizens' engagement towards participatory and accountable governance for poverty reduction (CCCE PAG-PR) phase 2	1.4	CSOs support and governance	CSO
2017	Revenue Enhancement by Strengthening and Optimising the Utilisation of Resources and CSO Engagement in Local Governance (RESOURCE Gov Phase 2)	0.6	CSOs support and governance	CSO
2011	Support to Local Government Units for more effective and accountable PFM in the Philippines	6.6	CSOs support and governance	Philippine Government Private Sector

Strategy and implementation of EU support to RoL&AC

EQ1: EU strategic framework/institutional environment

JC1.1 Clear, context sensitive and realistic

The EU strategy framework outlined the significant difficulties relative to the justice sector and corruption in the country, however in the EU-Philippines Country Strategy Paper 2007-2013, which provided the strategic basis of cooperation in the early part of the period under consideration, rule of law and anticorruption were not

²⁵³ Planned EU contribution.

specifically mentioned as specific objectives, with democracy and human rights referred to as “*likely themes for EC support*”, and that the intended approach was to “*leverage projects to facilitate sector support*”.

Nevertheless, the essential strategic direction was iterated and expanded in successive MIP (see JC 1.2 below), which prioritised the RoL and AC sectors.

It is evident that much of the EU’s strategy, allocation of resources and overall approach was contingent for a number of years on the outcomes of the Peace Process in Mindanao, which would clearly have had an influence on the overall strategy. With the establishment of the Bangsamoro Autonomous Region, the EU successfully pivoted its focus, providing various levels of support to the transitional government, including in the rule of law area.

The strategy framework set out a clear assessment of multiple levels of risk, including relative to economic, political and social instability, and lack of progress in the peace process, together with poor donor cooperation, a lack of sector-wide approaches and poor government leadership, support for reform and counterpart funding. Rather than establishing firm assumptions, given the contextual volatility, strategy documents spelt out varying scenarios, with outlines of potential responses for each.

The need for dialogue and role of civil society in overcoming constraints was clearly enunciated in the EU’s strategic framework, with EU cooperation consequently aiming to boost opportunities for multi-stakeholder engagement.

Policy frameworks provided a fairly cursory examination relative to the means of achieving and measuring results; this aspect was however provided in the specific programme designs.

JC1.2 Coherence with nature and goals of EU external action

The EC-Philippines Strategy Paper 2007-2013²⁵⁴ emphasised that the EU’s cooperation objectives in the Philippines were in line with Treaty of Lisbon’s objectives for external cooperation, notably relative to developing and consolidating democracy and the rule of law and encouraging respect for human rights and fundamental freedoms²⁵⁵.

It also highlighted its alignment with EU objectives as laid down in other applicable documents, and specifically the Commission Communication “*Europe and Asia: A Strategic Framework for enhanced partnerships*”²⁵⁶; and the Commission Communication “*New Partnership with South East Asia*”²⁵⁷, relative to the protection of human rights and the rule of law, through intensifying dialogue and cooperation in specific policy areas, including justice and home affairs, and mainstreaming of these issues.

The Strategy Paper 2007-2013 indicated that certain justice and home affairs issues were being addressed through regional EC cooperation with the Association of Southeast Asian Nations (ASEAN) and the Asia-Europe Meeting (ASEM).

The EU introduced justice and rule of law themes into policy dialogue with the Philippines at the 4th EU-SOM (Senior Officials Meeting) in 2005, and agreed on further consultations and cooperation, in particular in the fields of security and justice.

Independent external evaluations concluded that EU support was relevant and consistent with the wider goals of the EU Country Partnership Strategy in the Philippines for this period, and noted that human rights, gender, and governance were identified as cross-cutting issues.

In 2012, the EU and the Philippines concluded a Partnership and Cooperation Agreement (PCA)²⁵⁸ with the intention of broadening and deepening their relationship from one mainly focused on trade and development, to include broader political dimensions, as well as security and human rights.

EU cooperation for the period 2014-2020 focused on two priority sectors, which were intended to have “*significant impact on inclusive and sustainable growth*”, notably the strengthening the rule of law through judicial and legal reform, with reference to DAC codes 15130, 15160 and 15210²⁵⁹.

The MIP reiterated the link between good governance and development, emphasising the provisions of the Agenda for Change “*which calls for a more prominent inclusion of its different dimensions in EU partnerships [...] In particular, the rule of law, with an adequate justice system which enforces it, is a key pre-condition for [...] development through a two-pronged function. Firstly, [...] by promoting business and investment.*”

²⁵⁴ https://eeas.europa.eu/archives/docs/philippines/csp/07_13_en.pdf

²⁵⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12007L%2FTXT&qid=1649752390657>

²⁵⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52001DC0469&from=en>

²⁵⁷ <https://op.europa.eu/en/publication-detail/-/publication/6135d562-7a7e-4530-94e7-321134a376c0>

²⁵⁸ https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_12_775/IP_12_775_EN.pdf

²⁵⁹ https://eeas.europa.eu/sites/default/files/mip20142020-programming-philippines-20140825_en.pdf

Secondly, [rule of law] is fundamental to empower[ing] people, [...] to participate in the development process. It is [...] an essential tool for the fulfilment of social, economic and cultural rights”²⁶⁰.

The Philippine Development Plan 2011-2016²⁶¹ focussed on inclusive growth and good governance and was aligned with the EU’s Agenda for Change. Similarly in line with the Agenda for Change, a rights-based approach was to be applied in EU support across the chosen priority areas, with a focus on poor and vulnerable groups. It is also observed that the EU’s support to the rule of law is in line with the EU Human Rights and Democracy Country Strategy, which is agreed by all EU Member States.

JC1.3 Conducive institutional environment

The EU generally provided an institutional environment, in terms of incentives, human resources, distribution of responsibilities and operational support, that was conducive for the implementation of its RoL / AC agenda.

The engagement of implementing partners with a long history of cooperation in the rule of law sector for successive iterations of programmes (for example the British Council) has proved to be fundamental in ensuring continuity of engagement, having established mutual trust with the EU and national institutions and civil society, combined with their demonstrated expertise in the sector and the country context.

Concerns were expressed by certain stakeholders relative to the number of beneficiaries identified in programme design, in the case of GOJUST II in particular, however this large pool of stakeholders underwent a form of natural attrition, with the programme focusing in practice on a more focused and committed set of institutional partners.

Concerns were also expressed regarding the breadth of programmes, and range of issues addressed, in particular given the complexity and sensitivity of the RoL sector in the Philippines. One interlocutor stated for example that EPJUST II *‘had too many objective results, with all these different outputs, and all very ambitious, to cover the whole gamut of the justice sector’*.

Nevertheless, it is considered by the evaluators that these ‘broad brush’ approaches were consistent with what was clearly identified as the need for multi-sector engagement, as described at 2.2.2 below.

Stakeholders referred consistently to the Delegation’s direct support to programmes and projects, with their flexibility and strong sense of partnership having contributed to leveraging programme results and complemented their mutual efforts relative to policy and political dialogue (see also 2.2.2 below).

EQ2: Responsiveness, ownership and flexibility

JC2.1 Context, political economy and/or conflict analysis

In general terms, programme design was strongly context-sensitive, with rigorous analysis of the broader political, and more specific sector, strengths and constraints. An independent Political Economy Analysis was prepared in 2019-20, which provided detailed and nuanced insight into the country’s social, political and institutional history, sector and stakeholder considerations, the donor landscape, and opportunities (and potential ‘red zones’) for EU cooperation.

EU sector analysis, at both the strategic and programming level, highlighted the constraints of uneven areas of progress. Some improvements were observed relative to judicial independence and efficiency of the legal framework, noting that *“the Government made good governance, with the rule of law as its cornerstone, the overarching theme of its development agenda along with the fight against corruption”* (MIP 2014 – 2020).

Indeed, considerable optimism was expressed towards the end of the evaluation period, with analysis observing that *“with a committed administration, a Chief Justice in office for the next 18 years, and a forthcoming Comprehensive Peace Agreement, political conditions are now well in place to undertake a wide-scale reform of the justice system and address fundamental rule of law deficiencies in Mindanao”*.

EU analysis observed that the Government’s commitment was also evidenced by the increase in the budget of the justice sector institutions, which was particularly significant for the Department of Justice (DOJ) and its agencies. Nevertheless, it was noted that there was little progress regarding violence and organised crime, and the reliability of police services.

From 1998, the country’s percentile rank in the World Bank’s Worldwide Governance Indicators for the Rule of Law was within the lower half, with a score of 39 out of 100 in 2012, which was close to its 2004 level (see also (see also 3.1.1 below for the current WGI ranking).²⁶² Indicators in the following 5-year period showed both modest gains and some backsliding.²⁶³ According to the 2012/2013 World Justice Project Rule of Law

²⁶⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0637&from=EN>

²⁶¹ <https://nro3.neda.gov.ph/wp-content/uploads/2013/10/Philippine-Development-Plan-2011-2016.pdf>

²⁶² <https://databank.worldbank.org/source/worldwide-governance-indicators>

²⁶³ <https://governance.neda.gov.ph/worldwide-governance-indicators-2018/>

Index, the country continued to score relatively poorly placed 72 out of 97 countries for criminal justice, 59th relative to fundamental rights, and 63rd relative to corruption²⁶⁴ (see also 3.1.1 below for the current WJP Index ranking).

The EC-Philippines Strategy Paper 2007-2013 was designed to be fully in line with the priorities outlined in the Philippine's Medium-Term Development Plan (2004-2010)²⁶⁵, which provided a 10-point development agenda, including rule of law (Ch. 21), and anticorruption (Ch. 17). Good governance and rule of law were also priority issues of the Aquino administration and were well enshrined in the PDP (see s.2.1.2 above).

The PDP was complemented by sector plans and policies, including the Department of Justice Development Plan 2011-2016²⁶⁶; the Justice Sector Coordinating Council Strategic Plan 2012-2016, which addressed institutional capacity and sector coordination issues; and the Judiciary Development Program (JDP) of the Supreme Court.

EU programme design was highly responsive and relevant to the priorities outlined in the PDP, however, EU analysis observed that, while the strategic framework for rule of law reform was being established on the basis of principles and priorities identified through sound problem and needs analysis, “*implementation-wise, action plans fall short from being credible working documents*” (MIP 2014-2020). The Philippine Development Plan 2017-2022²⁶⁷ built on the objectives of the previous PDP and aimed to ‘*pursue swift fair and humane administration of justice*’, with access to justice and protection of human rights identified as ‘*fundamental outcomes*’.

At the programmatic level, EU support was directly aligned with identified sector needs and priorities.

The **EPJUST I Programme**, funded under the Instrument for Stability (IfS)²⁶⁸, aimed to contribute to the eradication of EJK/ED in the country (see discussion at 2.2.3 below). It was comprised of five components encompassing *inter alia* capacity-building for security and prosecution agencies and the Commission on Human Rights; grants to CSOs; and the establishment of a National Monitoring Mechanism (see JC 3.1 – 3.3 for a fuller description of the Programme and its effects).

The **EPJUST II Programme** aimed to address key obstacles to justice accessibility and enforceability “*by aligning its expected results to [...] the priorities identified in stakeholder-specific reform programmes*” (EPJUST II Action Document). Best practices from EPJUST I were directly integrated into its approaches, with the Programme aiming to “*promote inter-agency coordination and at contribute to the development of multi-stakeholders integrated strategies on access to justice and the fight against impunity*” (EPJUST II Action Document).

Programming documents responded to major weaknesses in the sector, including the need for comprehensive and coordinated approaches within the justice sector; institutional and structural problems; lack of judicial independence; corruption; and inadequate communication mechanisms. These in turn fuelled overarching threats to the rule of law in the country: “*lack of access to justice, and a pervasive culture of impunity*” (EPJUST II Action Document).

EU analysis highlighted ongoing grave problems relative to ELK/ED, stating that “*although there has been a significant decrease of cases since 2007 when the issue started to attract increasing international attention, this traumatising scourge remains as acute a problem as before and perhaps the most symbolic evidence of the failures of the criminal justice system*” (EPJUST II Action Document).

The **GOJUST I Programme** focused specifically on further implementation of the PDP I relative to the rule of law sector, with programming documents having provided a detailed analysis of ongoing constraints, supported by firm, quantitative and qualitative evidence. Further, the programme conducted a comprehensive justice needs survey, complemented by a more qualitative study, which analysed the issues raised, and which was utilised to define the scope of its own grant-making facility (see also 2.4.1 and 3.1.1 below). In addition, the programme conducted a civil society consultation process relative to access to justice for vulnerable groups. These qualitative data-collection and analysis initiatives also then fed logically into the design of subsequent programmes, including GOJUST II and SUBATRA.

JC2.2 Engagement with actors at different levels

There is strong evidence that EU-supported interventions engaged with a broad range of rule of law actors, at many different levels, although these groups and the quality of engagement varied significantly over time, in line with the prevailing political and institutional environment.

²⁶⁴ https://worldjusticeproject.org/sites/default/files/documents/WJP_Index_Report_2012.pdf

²⁶⁵ <https://static1.squarespace.com/static/56aec2aa76d99c5d803d91b5/t/57466c94f8baf3649a5fc993/1464233218124/Medium+Term+Development+Plan+2004-2010.pdf>

²⁶⁶ [https://www.doj.gov.ph/files/devplan/DOJ%20Development%20Plan%20\(2011-2016\).pdf](https://www.doj.gov.ph/files/devplan/DOJ%20Development%20Plan%20(2011-2016).pdf)

²⁶⁷ https://pdp.neda.gov.ph/wp-content/uploads/2021/12/122421_Updated-PDP.pdf

²⁶⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1717&from=EN>

Whole-of-sector, multi-stakeholder and multi-sectorial approaches were prioritised in the development and implementation of programmes, as evidenced throughout this analysis. In particular, significant weight was given to the involvement and consultation of civil society actors in the design and implementation of interventions. For example, the MIP 2014-2020 indicates that, given the central role of civil society in building democratic culture, “*and their remarkable strength in the Philippines*”, the EU also aimed to play an enhanced and more strategic role through their active engagement (see also 3.2.2 below).

The period under consideration was marked by highly fluctuating levels of EU cooperation with the GoP, which in turn impacted on the degree and quality of engagement at the sector and institutional level, in particular since EU cooperation, rule of law and human rights issues were of the utmost sensitivity in the early period of the Duterte government.

EU supported programmes however also experienced inherent difficulties relative to engagement, linked *inter alia* to the very hierarchical nature of national institutions, which in turn impeded support to and hence progress with the reform agenda. Certain EU interlocutors expressed the need to reassert more direct engagement with national stakeholders, rather than delegating this responsibility primarily to implementing institutions.

Engagement with the Supreme Court of the Philippines – one of the most important entry points to the justice sector – was highly variable, having been exceptionally strong in the early EPJUST programme, but waning in the wake of serious challenges to their independence.

As indicated above, certain interlocutors considered that the beneficiary pool was overly broad, with one stating that ‘we should have really targeted what we’re doing, instead of being so scattered. We were working with everybody, but we should have spent more time working with the court, for example. We should have been more focused, with maybe just three main objectives’.

Despite these constraints, EU-support RoL programmes were able to forge important partnerships at the national and local level, and indeed several EU interlocutors welcomed this breadth of focus, stating ‘*bringing all these people together was good. It had its benefits; it really established our presence in the field, and it federated all these people under the one umbrella.*’

Indeed, this diversity was, in the view of the evaluators, an essential component of the multi-stakeholder approaches described above, which was consistent with the strategic analysis of sector challenges that had guided programming. EU interlocutors indicated that these sector-wide approach could be strengthened even further.

Feedback provided in interviews also confirmed the quality of this cooperation, which facilitated enormously the programmes’ results, and the importance of bringing stakeholders to work together in a fraught sector context. This in turn contributed to institutional ownership, particularly relative to interventions that aimed to localise justice services.

The active, visible and high-level involvement of the EU Delegation was also a factor in fostering engagement and partnership, by tangibly demonstrating commitment to reform and transitional processes. One interlocutor stated, for example, that partners were ‘*highly impressed*’ that the Head of Delegation flew to a regional GOJUST II and SUBATRA event.

JC2.3 Adjustment to changing conditions and new opportunities

In general terms, EU programming exhibited considerable responsiveness to the country and sector context, and to the needs of beneficiaries.

The EPJUST I programme was financed under the Instrument for Stability, in response to a “*situation of crisis or emerging crisis*”. The Programme was therefore in itself a strong example of EU responsiveness to dire rule of law and human rights conditions that had emerged in the country.

There was also reasonable responsiveness and flexibility embedded in the EU strategy framework; for example, the EC-Philippines Strategy Paper 2007-2013 stated that, given the uncertainty posed by the Mindanao Peace Process, “*the possible need for a revision of the strategy is therefore not to be excluded*”.

EU programming documents also demonstrated responsiveness to the shifting context and needs, integrating lessons learnt and best practices from previous iterations of justice sector support. EPJUST II for example specifically drew not only on lessons learnt from EPJUST I, but also on those of the previous justice sector programme “*Improving Governance to Reduce Poverty: Access to Justice for the Poor*”²⁶⁹ (2006-2008), and identified a number of factors that were of particular importance in this regard, notably the need to identify appropriate executing partners; the advantage of embedded technical assistance; the importance of having complementary Technical Working Groups; the need to ensure buy-in for the implementation of necessary

²⁶⁹ Focusing on women and children, the programme implemented in 5 provinces successfully managed to i) decentralize the information, education, and communication mechanism of the judiciary; ii) strengthen the administration of the Barangay Justice System; iii) raise awareness within law enforcement agencies, the prosecution, and the judiciary; and iv) review the legal protection framework for the poor and disadvantaged.

reforms; the importance of developing performance assessment frameworks; and the need to ensure sustainability.

Stakeholders confirmed that programmes built on each other, and shifted to emerging needs, for example a specific component in GOJUST I providing support to the Justice Sector Coordinating Council, which was focused on decongesting the court system. One stakeholder stated that GOJUST II in turn *'brought together a lot of threads that had been left somewhat open with previous support to justice and was a lot more holistic. The EU is really learning and trying to respond to those needs and trying to see where gaps are and how they can be filled.'*

Stakeholders also referred to the flexibility demonstrated by the EU with the arrival of Covid-19, which, after consultation with implementing partners and grantees, allowed interventions to divert funds towards emerging priorities arising from pandemic context.

Considerable responsiveness is evident also in the SUBATRA project, which has a structure and strategy that is directly aligned with needs in the shifting transitional context, including support to the Bangsamoro Attorney General's office, to oversight committees in Parliament, and to the creation of a Sharia court.

The continuity of EU support, and the ability of programmes to pivot or build on momentum, were cited as significant factors of responsiveness, and have allowed cooperation to spring back after challenging periods of cooperation, with one stakeholder observing that the EU was *'starting anew, but definitely not starting from scratch'*.

EQ3: Partnerships and coherence

JC3.1 Partnerships based on comparative advantages

Donor landscape and coordination

Overseas Development Assistance in the Philippines is regulated by the ODA Act of 1996 and is defined as a loan or a grant *"administered to promote sustainable social and economic development and welfare of the Philippines"*. The National Economic and Development Authority is mandated under the Act to conduct an annual review of all projects financed by ODA and identify causes of any difficulties.

According to the EU, total ODA in 2017 amounted to EUR 720 million, or 0.26 percent of GDP, with aid from EU member states of EUR 101 million. The PEA conducted in 2019 concluded from this that the EU's assistance therefore *"does not figure as a major player in this context. What this means is that the EU does not possess any leverage with the GoP, at least as far as its grant aid programme is concerned. This needs to be kept in mind when developing aid strategy"*.

EU strategy and programming documents identified coordination as being the main requirement to bring about long-term sustainable reforms in the rule of law sector.

Coordination mechanisms included Consultative Group Meetings (CG), which provided an exchange forum for donors, government and other stakeholders; monthly EU/ MS coordination meetings; and various thematic coordination mechanisms.

Sector and donor coordination initially took place in the framework of the Philippines Development Forum Working Group on the Rule of Law, which was the primary mechanism for ensuring coordination of support and facilitating substantive policy dialogue. The PEA indicated that it provided *"a useful forum to exchange information, raise issues of concern, and discuss Government's priorities for the future"*.

The Supreme Court led a Donors' Coordination Group for the justice sector; however, this has lapsed in recent years.

The Justice Sector Coordination Council (JSCC) established in 2010 is *"a unique system to improve coordination among justice sector agencies and identify and address issues of mutual interest both at political/policy and technical levels through its different working groups"*. While initially conceived as a coordination mechanism, it quickly revealed the need to develop a sector-wide programme of reform. The intention was to institutionalise this, which it was considered would *"greatly facilitate policy dialogue with the Government and coordination amongst donors"*.

The EU provided direct support to the effective functioning of the JSCC, as a result of which it has been progressively institutionalised and is now supported by the government through a 'convergence budget' aimed at facilitating coordination, which interlocutors consider having been a significant achievement.

The JSCC anticipated the participation of civil society organisations, however certain interlocutors indicated that *'this has not always been the case'*. Nevertheless, civil society has been engaged in other coordination mechanisms, and participated in programme steering committees.

In addition to direct support to the JSCC, EU programmes focused on other forms of coordination within and between justice sector agencies, for example between the Department of Justice, Department of the Interior and Local Government, and the courts, which signed memorandum of agreement to institutionalise coordination, promote the new sector-wide justice sector strategy, and to support the coordination of 'Justice

Zones'²⁷⁰. These are areas whose establishment and functioning has been supported by the GOJUST programmes, and where local justice sector actors work together to identify and address common problems (see also 3.1.3 below).

Complementary support to the rule of law sector

The EU-Philippines Strategic Paper 2007-2013 provided an outline of donor commitments and initiatives in the preceding period, with major donors being Japan, WB, ADB, AusAid, USAid, and EU Member States, in particular Germany, Spain, Belgium and the Netherlands. The US was highlighted as the most important security, political and economic partner for the Philippines.

China was observed however as an increasingly important donor in the Philippines, especially on infrastructural projects, and was considered a challenge for donor coordination, since it did not participate in coordination efforts.

EPJUST II programming documents indicated that while EU Member States did not support the justice sector, several other international donors implement important complementary and mutually reinforcing programmes or projects.

The most comprehensive and strategy-oriented was considered the *Governance in Justice Sector Programme* of the ADB, which supported government priorities: fiscal autonomy, resource management, and financial accountability; institutional integrity; institutional efficiency; access to justice; and increased delivery through alternative dispute resolution (ADR).

The *Judicial Reform Support Programme* was supported by the World Bank through improving case adjudication and access to justice; enhancing institutional integrity; strengthening institutional capacity; and support for the reform of the judicial system.

The UNDP played a key role in judicial reform and implemented several capacity-building programmes with various justice institutions. USAID supported small-scale projects to reinforce small-claim courts, as well as the Barangay Justice System. The Canadian International Development Agency *Justice Reform Initiatives Support (JURIS)* Project addressed court delays through the promotion of ADR.

The EU was by far the most important development partner in the reform of the justice system. However, it was observed in the MIP that USAID works mainly with the judiciary, whereas the EU engages with the full spectrum of justice-related stakeholders “*which gives it a unique position to promote and support a sector-wide approach in reforming the sector*”.

GOJUST programming documents identified only two main donors involved in justice sector support, the EPJUST II programme, and the USAID *Judicial Strengthening to Improve Court Effectiveness (JUSTICE)*. The ADB also supported a technical assistance programme to strengthen the capacity of justice sector actors, in partnership with USAID.

In October 2020, the Philippines and the UN established the Joint Programme on Human Rights²⁷¹, which aims to address concerns raised by the UN Human Rights Council and other human rights monitoring bodies, in particular those relative to the rule of law, with associated Roadmap was launched later that year²⁷².

JC3.2 EU support to RoL&AC has been delivered in a coherent manner

In 2003, the Philippine Government requested the World Bank to establish a multi-donor trust fund for Mindanao, to which the EC and other donors, including some MS, agreed to contribute ‘*under appropriate conditions*’. In July 2005, the Mindanao Trust Fund (MTF) was established, with an overall objective of contributing to peace and development in the Philippines, with the ‘governance and institutions’ sector priority including the reinforcement of justice and rule of law capacities.

The MIP 2014-2020 indicated that it “*will be reviewed in 2016 and revised as part of the joint programming process with Member States*”, presumably to ensure coherence with member state priorities and interventions during a particularly tumultuous period relative to the Mindanao peace process.

The Civil Society Oversight project was an EU grant contract (EUR 990,000) which aimed to strengthen the capacity of CSOs, in particular regional and local groups, to exercise oversight of judicial bodies’ performance; to establish a nationwide network and system for monitoring such bodies; and to strengthen their capacity to participate in reform processes in the justice sector. In addition to this, the EU provided a number of grants to CSOs under the EIDHR, many of which addressed a number of RoL concerns (see 2.4.1 below).

²⁷⁰ The GOJUST programmes supported the development of Justice Zones, which are areas where local justice sector actors work together to identify and address common problems.

²⁷¹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/264/91/PDF/G2026491.pdf?OpenElement>

²⁷² <https://philippines.un.org/en/166140-phl-un-and-partners-endorse-roadmap-accelerate-implementation-human-rights-joint-programme>

There is strong evidence of cross-pollination between various interventions, for example sharing of investigative and legal expertise (supported by GOJUST) and civil society (supported by EIDHR). In addition, meetings have been conducted by the GOJUST II and SUBATRA technical assistance teams.

EQ4: Choice of modality

JC4.1 Mix of modalities

EU support to the rule of law in the Philippines was provided through a range of funding modalities, notably through instruments including the IfS and the EIDHR, but also through the EU-Philippines Small Projects Facility, which provided indirect support to the rule of law sector through the Dialogue on Governance, which focused on reform efforts and the advancement of good governance, and on enhancing the participation and capacities of non-State actors in such reforms.

EU support was provided through service, supply, works and grant contracts, and implemented largely under indirect management. Support was also provided through political and policy dialogue (see 2.4.2 below).

Early strategy and programming documents referred to the possibility of shared management and possibly budget support, with the EAMR 2014 indicating that *“EU has successfully passed the message to the Government of the need to develop all required elements to adopt a sector-wide and long-term reform strategy allowing to begin budget support in 2016 after the next elections.”* These modalities ultimately did not eventuate, due to the volatility of the post-election cooperation context.

Document review indicates that certain modalities were demand-driven and strategic, for example the Country Strategy Paper indicated that *“this distinctive tool (Strategic Project Facility) will also be used as a vector to promote dialogue both with the Philippines authorities and with its vibrant civil society, including social partners, on issues such as human rights and labour standards, which will help to enhance EC visibility”*.

The support provided under the EIDHR provided considerable coherence with the RoL sector programming, with some synergies observed, as indicated above.

A grant facility integrated within the GOJUST II programme has allowed an additional depth and breadth of support to rule of law issues, including relative to political and policy dialogue. It has also allowed the programme to shift from support to the supply to the demand side in the justice sector. The facility has supported several ground-breaking initiatives, for example the establishment of a clinical legal education programme mandated by the Supreme Court, which has a focus on vulnerable groups and in particular, women and girls. A series of ‘partner grants’ have encouraged the government to submit projects in partnership with civil society organisations. A third component of the grant mechanism was allocated purely to civil society.

Certain difficulties were noted by interlocutors in the implementation of these modalities, in particular relative to the selection and subsequent implication of the principal departmental or institutional partner. This led *inter alia* to confusion regarding the procedural and financial legal regime applicable, which resulted in the implementing agency assuming this role to some extent, for example relative to procurement.

As a result, UNOPS was engaged under a service contract for logistical, procurement and fund management purposes, however a period of adjustment was necessary for the agency to better align with the requirements of the project, which required numerous, relatively small disbursements.

JC4.2 Mutually reinforcing dialogue and programming

EU strategy and programming documentation stressed the overall importance of policy dialogue. The Country Strategy Paper for example indicated that *“EC assistance will be provided wherever possible through sector policy support, so as to ensure effective policy dialogue, enhance Government ownership and co-ordination with other donors while keeping transaction costs low”*. It also indicated that sector activities were designed to be coherent with and complementary to EU strategic objectives, and *“form part of the policy dialogue with the Philippines.”* Further, it stated that *“(EC) dialogue with GoP is good and healthy”* and that *“the Delegation has reinforced the dialogue with MS on development cooperation”* while *“bilateral dialogue with multilateral institutions is on an operational level”*. There was however no specific analysis of the strategic value level and degree of policy dialogue in the rule of law sector.

The independent evaluation of EPJUST II found however that the project *“clearly underpinned the dialogue between the EU and the GoP in the area of governance and human rights”*. EU EAMR also highlighted the importance of policy dialogue in achieving results in the justice sector. EAMR 2013 noted in particular that the EU *“has advocated for important reforms of the justice system to make it more accessible and efficient [...] EU has constantly engaged the Government on the need [...] to get away from short-term, uncoordinated, and piece-meal efforts, and achieve sustainable impact. As a sign of the strengthened role of the EU in policy dialogue on the rule of law, high-level officials from the DOJ indicated their willingness to take over the co-chairmanship of the PDF rule of law working group”*.

EAMR 2014 indicated that *“the high-level visibility launch of the Justice Zones [...] was a result of policy dialogue and joint reform efforts”*. EAMR 2015 noted that the GOJUST programme *“allows better policy*

dialogue on the rule of law” and that “the EU has successfully passed the message of the need to adopt a sector-wide and long-term reform strategy allowing to begin budget support in 2018 after the next elections”. Whilst not directly targeted towards the rule of law sector, as indicated above, the Small Projects Facility proved to be an appropriate tool to support small, innovative and visible projects in areas of strategic importance, and importantly provided a strong conduit for dialogue. As indicated above, the GOJUST II grant facility also provided strong support to political and policy dialogue at the sector level, through direct engagement and support of civil society on specific rule of law issues, and the facilitation of government/ civil society partnership. As indicated earlier, EU-Philippine political dialogue was stalled for approximately 18 months when the Duterte government came into office. Despite this challenge, rule of law interventions continued, with programmes focusing on engaging directly with institutions, and on issues that are less politically charged, such as decongesting courts and reducing Prosecution Service backlogs, initiatives that were ‘*enormously appreciated*’. EU interlocutors indeed found the programmes a ‘*useful instrument to engage with the government*’, by creating practical lines of communication.

Given the difficulties of direct political dialogue, interlocutors pointed to the importance the EU’s use of ancillary vectors to raise their concerns, for example through statements to the UN Human Rights Council, and leveraging the Philippine’s commitments to the EU’s Generalised Scheme of Preferences Plus (GSP +), which provides developing countries with economic incentives to pursue sustainable development and good governance, including respect of the rule of law and human rights. A civil society interviewee stated that the EU “*has a more political voice right now, but we can sense that there is a more careful approach*”.

Civil society also pointed to the important role of the European Parliament, which issued in February 2022 the *Resolution on the Recent Human Rights Developments in the Philippines*²⁷³, which *inter alia* called for the adoption of the Human Rights Defenders Protection Bill, currently pending in the Senate. One interlocutor affirmed that ‘*when we are lobbying with legislators, we are reminding them that the EU is providing support to us. It gives us a form of legitimacy.*’

The EU-Philippines Partnership and Cooperation Agreement established a Sub-committee on Good Governance, Human Rights and Rule of Law, which met for the first time in early 2021²⁷⁴, and will provide an essential forum for dialogue and action on a range of sensitive issues, including the Anti-Illegal Drug Campaign, and the death penalty.

These recent developments are clearly the result of consistent and uncompromised dialogue by and through the EU on serious rule of law and human rights issues, and which has given civil society renewed confidence. One representative stated that ‘*the EU has stood its ground the best way they can. They have been listening. They have been very receptive, very supportive. The EU has honestly been a refuge*’.

²⁷³ https://www.europarl.europa.eu/doceo/document/RC-9-2022-0097_EN.html

²⁷⁴ <https://www.eeas.europa.eu/eeas/eu-philippines-joint-press-release-following-first-sub-committee-good-governance-rule-law-and-en>

Effects of EU support to RoL&AC

EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions

JC5.1: Core legal and administrative reforms

Support to core legal and administrative reforms was not a primary focus of EU interventions, but rather intertwined with, and to some extent inevitable outcome of, the sector-wide approaches that were adopted. Support to civil society was critical in this regard, in particular relative to advocacy for reform of the legislative and policy framework, for example EPJUST I provided support to civil society to advocate for the strengthening of the Witness Protection, Security and Benefits Act, and related programme²⁷⁵ (see also 3.2.2 below).

Civil society interlocutors also referred to the support provided by the EU relative to other advocacy efforts, which resulted in the passage in the House of Representatives of the Human Rights Defenders Protection Bill, which they described as a *'significant achievement in itself.'*

Contributions to the legal environment are continuing with the SUBATRA programme, which is providing capacity-building of government lawyers relative to the drafting of key legislation, and support to the implementation of a regulation that obliges barangay authorities to have a stronger role in combating gender-based violence.

A number of specific interventions provided both direct and indirect support to administrative reform. For example, the GOJUST I programme supported the institutional coordination mechanism, and developed a medium-term expenditure framework and performance assessment framework, as key elements of a reform agenda.

Other developments to which the EU contributed included the insertion in the Philippine Development Plan of a budget for justice integration at the local level, including relative to Justice Zones, as described at 2.3.1 above, and access to justice; and the development of institutional strategic plans. The justice needs survey, analysis and consultation – referred to at 2.2.1 above – were also utilised at the institutional and sector level to inform policymakers.

JC5.2: Strengthening of institutional architecture

EU support to the rule of law sector in the Philippines contributed to significant effects on institutional frameworks and capacities.

However, during the early part of the period under consideration, capacity-building efforts experienced certain institutional challenges. EPJUST I had difficulty engaging with Office of the Ombudsman, and some national partners were “overwhelmed” by programme demands, indicating early absorption constraints.

Nevertheless, EU reporting described real successes and results in the programme’s work with security agencies, with the provision of technical equipment and IT; technical training (database management, criminal investigation); development of investigation and crime scene manuals and kits; development of curricula for in-service and initial training. Furthermore, many of the earlier difficulties were resolved as cooperation in the sector progressed, with EPJUST II making significant contributions to capacity-building and awareness-raising. EAMR 2011 considered that, amongst several major achievements, the programme strengthened capacity of the police in investigating techniques to address ELK/ED and strengthened cooperation between the Government and civil society.

The independent evaluation of the EPJUST II programme found that it responded well to the capacity building needs of public institutions, and that the long-term strategic needs of key actors, namely the judiciary, the DOJ, and the Department of the Interior and Local Government (DILG), were well-addressed and coordinated. It also found that the Programme responded directly to the paradigm shift required in the Philippine National Police (PNP) to become a community- and service-oriented agency, and addressed capacity building, such as crime investigation techniques. The independent evaluation also found however that institutional capacity development results were *“a mix of both success and failure, mostly depending on whether or not the issue of sustainability was considered and built into the program design”*. It also found that the Programme focused more on immediate or medium-term training needs of institutions.

The GOJUST programme aimed to increase the efficiency and effectiveness of the formal justice system, and therefore focused on enhanced operational coordination between institutional stakeholders, and improved management capacity. The GOJUST programme’s development of a medium-term expenditure framework and performance assessment framework was considered by the EU to be *“key elements of a reform agenda to move away from short-term, uncoordinated, and piece-meal efforts, and achieve sustainable impact”*.

The EAMR 2019 observed that *“the agenda for strengthening coordination between justice agencies has regained momentum. This has led to a revival of the Justice Sector Coordinating Council (JSCC) with important*

²⁷⁵ <https://www.doj.gov.ph/witness-protection.-security-and-benefit-program.html>.

key decisions having been made. These developments have the potential of moving to further deepen reforms in the criminal justice sector”.

The programmes ensured mobilisation at the international and regional level on a range of rule of law and anticorruption issues, for example hosting of the Conference of Lawyers in Asia & the Pacific V (COLAP V)). Contributions were also made to developing capacities of national and regional human rights institutions and CSOs, and to the development of long-term institutional and sector strategy.

Interlocutors consider that capacities were raised at multiple levels through the competencies of ‘*very effective technical assistance teams*’. For example, support to the Prosecution Service provided support to automation, the development of best practice guidelines and manuals, and complementary capacity-building relative to human resources and financial management.

Nevertheless, they also observed that considerable gaps still exist relative to implementing capacity building programmes, to ensure effective investigation and prosecution.

JC5.3: Progress in justice systems and anticorruption frameworks

As indicated at 2.2.1 above, both the WJP Index and WGI indicate steady backsliding in indicators relative to the rule of law, in particular since the arrival of the Duterte government.

Despite the considerable political and sectorial constraints, however, there is significant evidence that EU support contributed sustainably to progress in national justice system frameworks and functioning.

It is important to note that the EPJUST I programme built on the very significant results of EU support to the Supreme Court regarding the development of the highly innovative Writ of Amparo²⁷⁶, to allow victims of ELK/ED to seize the Court directly, rather than solely through the prosecutorial apparatus. The EU also contributed to bringing the issue of ELK/ED and impunity into public discourse through a large multi-stakeholder conference in 2007.

The EPJUST I made significant contributions to halting widespread ELK/ED in the country and fighting cultures of impunity. It supported the direct legal representation and assistance of victims and others, notably through a “meta legal” approach, which saw the issue of ELK/ED from a national perspective, with lawyers pooling resources and knowledge, creating a pool of lawyers to respond rapidly to incidents.

This was linked to the development of multi-sectorial Quick Reaction Teams, supported by several projects, which developed mechanisms, processes, and the systemisation of responses to serious incidents, described as “one-stop assistance centres” composed of both government and non-government stakeholders in areas with the highest incidence of ELK/ED. Civil society and other interlocutors indicate that these mechanisms continue to function highly effectively.

Nevertheless, the combined impact of these efforts was strong, with decreased overall number of ELK/ED; increased numbers of cases filed with the Prosecutor’s Office; increased number of investigations and intelligence reports, and improved quality of evidence as reported by prosecutors. The MIP 32014-stated that the EPJUST I “*contributed to significant achievements and has enabled the deepening of the relation of trust*”.

Building on this cooperation, EPJUST II was launched with the threefold objective of increasing accessibility, fighting impunity, and enhancing accountability of the justice system. EU documentation states that EPJUST II had broader impacts on access to justice, accountability, transparency, good governance, as well as targeted support relative to gender and indigenous rights.

The independent evaluation of the programme considered that the programme’s support to the Justice Sector Coordinating Council (JSCC) as a coordination mechanism of the justice sector, consisting of the Supreme Court, the DOJ, and the DILG was “*the most successful structural improvement in the justice sector*”. It observed that under the guidance of JSCC, the pilot Justice Zone in Quezon City achieved substantial institutional improvement in the criminal justice sector. The evaluation also found that the major achievements of the Programme were having “*provided a timely response to the urgent call for a better justice system*” and enhancing cooperation and communication among justice sector institutions. It found that the programme substantially contributed to the institutionalisation of a sector-wide approach in dispensing justice, and “*planted the seed for promoting access to justice across different sectors of Philippine society*”. The evaluation also observed that consideration of long-term continuity and sustainability was consciously incorporated in the design and implementation of various interventions.

Numerous factors contributed to the effectiveness of EU support to the justice sector. EU analysis considered that multi-stakeholder and multi-sectorial approaches, and providing continuity of ownership within institutions, particularly the police, was key to these successes.

Furthermore, EPJUST I leveraged the cultural importance of religious organisations in the country, by supporting multi-faith initiatives. It ensured holistic approaches to ending impunity, for example through the provision of parallel legal and psycho-social support, and trust-building exercises.

²⁷⁶ <http://hrlibrary.umn.edu/research/Philippines/The%20Rule%20On%20The%20Writ%20Of%20Amparo.pdf>

The EPJUST II evaluation found that the major positive factors influencing the achievement of results included: collaboration with existing national and local institutional structures to advance sector-wide reform; professional and efficient technical support; and technical support covering both the hardware and software. Factors that negatively impacted the outcome included; the decentralised financial management model; political transition and change of leadership in partner agencies; the programme's ambitious scope; and limited timeframes for implementation.

Interlocutors pointed to the significant achievements of EU support to the justice sector. This included the establishment of Justice Zones, as outlined above, which combined the efforts of the Department of Justice, the DILG, and the Supreme Court, and which were described as '*an excellent, excellent idea*'.

Other important achievements included building construction to enhance the delivery of justice services; provision of 'one stop' justice services, where users can process legal documentation; and online monitoring and visitation modalities for prisoners in Quezon City, which contribute to the prevention of torture. GOJUST II has also contributed to significant results, for example the establishment of community policing and paralegal training programmes, which continue to be implemented.

Support to anticorruption efforts, as indicated earlier, was not a focus of EU support, and indeed were not a government priority since they have, in the words of a civil society interlocutor, '*taken a backseat because they have been overshadowed by the campaign against criminality*'.

Nevertheless, EU support indirectly addressed issues of transparency at several levels, for example through support to *inter alia* case-management and other automation of legal sector services.

Interlocutors described however various constraints to the progress that was facilitated by EU support, in particular the decline of what they described as the 'judicial activism' displayed by the Supreme Court in the earlier period under consideration, where a number of innovative measures were developed and implemented with EU support. In addition, stakeholders described a failure on the part of certain authorities to build upon – or even continue – the substantial benefits provided by programmes, for example relative to some community policing initiatives.

EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions

JC6.1 Legal safeguards, checks and balances

EU support did not directly target legal safeguards and checks and balances to ensure the independence and impartiality of the judiciary. Nevertheless, a strong focus of support has been the Supreme Court, for which the strengthening of their independence, capacity, credibility and visibility has been an implicit objective.

JC6.2 Oversight institutions, non-state actors and the private sector

EU support contributed significantly to empowering civil society actors to play a role in strengthening RoL&AC processes, however there was considerably less engagement with oversight institutions, and there is no evidence of private sector involvement.

Civil society grants, under the EIDHR and the grant-making facilities referred to at 2.4.1 above, had a specific rule of law focus, engaging the judiciary, lawyers and paralegals, and providing legal consultation and case conferences at the provincial level. Certain projects created sanctuaries and other protection mechanisms, not only for victims, witnesses and whistle-blowers, but also for lawyers and judges who had been placed at particular risk in their pursuit of ELK /ED cases.

Strategic support to faith-based organisations, as described above, as well as to academia, were important factors that contributed to the effectiveness of programmes.

Civil society actors, for their part, confirmed the impact of EU support on their work and overarching objectives. They referred to their ability '*to broaden our network and help us in terms of confidence-building with civil society*'; and to '*really engage government, from the legislative to the judiciary to the executive, in terms of strengthening the rule of law*'; and

Some organisations were however uncomfortable with the level of support provided to government agencies, particularly during the latter period under consideration, with one representative stating that '*in principle, we cannot commit to that kind of project, because the human rights victims that we work with do not have much confidence yet in the DILG, and with the DoJ*'.

EQ7: Broader effects on RoL&AC culture, human rights and democracy

JC7.1 Promoting a RoL&AC culture

EU support contributed to some extent to promoting a rule of law culture among public actors and society at large. For example, the EPJUST I programme supported the essential role of public and institutional

awareness-raising, with a focus on outreach to rural and isolated areas. This included numerous audio-visual outputs, an innovative open photography competition, and a media campaign that resulted in the release of the “Morong 43”.

EU documentation indicates that the programme was widely praised and had considerable successes in shifting mind-sets and keeping the issue high on the agenda, by providing a neutral platform for parties to address very sensitive issues.

Interlocutors confirmed that communications and outreach – and hence support to a rule of law culture – was an essential part of their approach, with one programme implementing agency indicating that *“we had a [large] budget for communication, and we used every euro of it! We did videos, we posted training videos on the internet, we did all kinds of things. It was just great, what we did. And it was country wide.”* It is uncertain however to what extent these initiatives contributed in real terms to increasing awareness of RoL issues.

JC7.2 Fostering human rights

The importance and timeliness of the EPJUST I Programme cannot be overstated, having provided a rule of law response to an extreme human rights problem. The 2020 PEA Report stated that the programme *“transformed the issue from being an ideological struggle into a strictly legal and criminal issue”*.

The EPJUST II evaluation also found that the programme specifically responded to the needs of disadvantaged groups, such as indigenous people, women and children, Muslim minorities, the poor and near-poor, and the victims of EJK/ED. It noted that, in most cases, the needs of these disadvantaged groups were responded to indirectly, as end beneficiaries, who would ultimately gain from the results of the Programme’s capacity building and institutionalisation interventions in duty-bearer agencies.

Civil society interlocutors were unanimous that the EU has made significant contributions to the human rights context in the Philippines through its support to the rule of law, with one organisation stating that *‘the EU has been a very strong ally with civil society and have been a source of solidarity. The human rights community has been very thankful for the support of the EU as a collective, but also certain EU members’*.

Interlocutors were able to point to concrete and historical outcomes of this support. The most significant success story related to the conviction of the former Major-General Jovito Palparan in 2018 for enforced disappearances, and other serious human rights violations. This was described as an *‘emblematic case of collaboration between victims’ families, civil society, and the EU and the international community’*.

Support was also provided to the development of a national monitoring mechanism on human rights; increasing CSOs lobbying capacities in UN human rights mechanisms. Considerable direct support was provided to the Philippine Commission on Human Rights, in particular regarding to enhancing their partnerships with civil society. EU commitment to the national human rights institutional framework has been continued through SUBATRA, with support to the institutionalisation of the Bangsamoro Human Rights Commission.

Interlocutors emphasised that these contributions have had very real impacts, with one confirming that through EU support *‘we were able to protect the lives of many human rights defenders’*.

JC7.3 Application of democratic principles

There was no direct support to democratic principles, however these can be inferred from the EU’s support of civil society in the RoL sector, which has had flow-on benefits in terms of overarching capacities.

EQ8: Effects on wider EU external action goals

JC8.1 Peace, resilience and stability

There was no direct support to peace, resilience and stability, however these can be inferred from the EU’s support of civil society and institutions in the RoL sector, which has had flow-on benefits in terms of overarching capacities, and to the transitional context in Bangsamoro. See the totality of comments relative to the SUBATRA programme (outside the scope of the current evaluation), which addresses these issues in a transversal manner.

JC8.2 RoL&AC for functioning markets, trade and private sector development (compliant with human rights and due diligence)

This is largely addressed at 3.3.2 above, however there is some evidence that leveraging the Philippine’s commitments to the EU’s GSP + has provided trade and other economic incentives to pursue development and good governance, including respect of the rule of law and human rights, and will continue to produce positive effects.

JC8.3 Natural resource management

There was no direct support to natural resource management, however some benefits may be inferred from the EU's support of civil society, which may have had flow-on benefits in terms of overarching capacities.

Overall assessment

The EU strategy framework outlined the potential entry points, risks, and challenges relative to the justice sector and corruption in the country, which was contingent in the early years under consideration on the outcomes of the Peace Process in Mindanao. The need for dialogue and the role of civil society in overcoming constraints were emphasised. EU support was in line with its objectives for external co-operation relative to democracy, the rule of law, and human rights, and was consistent with the *EU Country Partnership Strategy in the Philippines* and the *Partnership and Cooperation Agreement*.

The engagement of implementing partners with a long history of cooperation in the rule of law sector was fundamental in ensuring continuity of engagement. Concerns were expressed relative to the range of beneficiaries and the scope of programmes; however, ‘broad brush’ approaches were consistent with the clear need for multi-sector engagement.

The Delegation’s flexibility and partnership contributed to leveraging programme results, and complemented policy and political dialogue efforts.

Strategic analysis and programme design were strongly context-sensitive, with rigorous dissection of political and sector strengths and constraints, including the varying degrees of governmental and institutional commitment. Considerable flexibility was demonstrated by the EU with the arrival of Covid-19.

EU programmes were highly responsive, integrating lessons learnt and best practices from previous iterations, and shifting to emerging needs, and were relevant to the priorities outlined in the Philippine Development Plan and various sector plans and policies, including the need for comprehensive and coordinated approaches, improved access to justice, and countering a culture of impunity for grave human rights violations, in particular extra-legal killings. Certain programmes conducted sector needs surveys and consultations, which were utilised to define the scope of activities, ensure access to justice for vulnerable groups, and inform the design of subsequent programmes.

Interventions engaged with a broad range of rule of law actors, although the quality of engagement varied significantly over time. Whole-of-sector, multi-stakeholder and multi-sectorial approaches were prioritised in the development and implementation of programmes. However, EU engagement with stakeholders fluctuated strongly as a result of the political context. Nevertheless, programmes facilitated qualitative national and local partnerships, which contributed to institutional ownership. The active, visible and high-level involvement of the EU Delegation was also a factor in fostering engagement and partnership.

The continuity of EU support, and the ability of programmes to pivot or build on momentum, allowed cooperation to spring back after challenging periods of cooperation.

EU strategy and programming identified coordination as the main requirement to bring about long-term sustainable reform in the rule of law sector. Coordination mechanisms included Consultative Group Meetings, the Philippines Development Forum Working Group on the Rule of Law, the Supreme Court Donors’ Coordination Group, and the Justice Sector Coordination Council (JSCC). The EU provided direct support to the JSCC, as a result of which, it has been progressively institutionalised and is now supported by the government. EU programmes also focused on inter-agency coordination. While other international donors implemented complementary and mutually reinforcing interventions, the EU was by far the most important development partner in justice sector reform. Complementary programmes supported by the EU included the Civil Society Oversight project, and grants to CSOs under the EIDHR. There was also strong evidence of cross-pollination between the various RoL interventions.

EU support to the rule of law in the Philippines was provided through a range of funding modalities, including through the IfS, the EIDHR, and the EU-Philippines Small Projects Facility. Support was provided through service, supply, works and grant contracts, and implemented largely under indirect management, and was also complemented by political and policy dialogue. Early possibilities of shared management and budget support did not eventuate, due to the volatility of the post-election context. Support provided under the EIDHR provided considerable coherence with RoL programming, and the grant facility under the GOJUST II programme allowed additional scope of support. Certain difficulties arose in the implementation of these modalities, in particular relative to the applicable procedural and financial regime.

EU-supported RoL programmes underpinned policy and political dialogue between the EU and the GoP in the area of governance and human rights. Despite cooperation challenges, rule of law interventions continued, with programmes engaging directly with institutions, and focussing on less-contentious issues, which helped to create lines of communication. The EU also used other vectors to raise concerns, for example through the UN Human Rights Council, and by leveraging the EU’s Generalised Scheme of Preferences Plus (GSP+) and resolutions of the European Parliament. The EU’s consistent dialogue on rule of law and human rights issues has given civil society renewed confidence.

Support to legal and administrative reform was intertwined with the sector-wide approaches that were adopted, with support to civil society being critical in this regard, in particular relative to advocacy for reform. Support to administrative reform included improving coordination mechanisms, expenditure and performance assessment frameworks, and the development of institutional strategic plans.

EU support also contributed to significant effects on institutional capacities but was hampered by absorption and other constraints. Positive results were observed through the provision of equipment; technical capacity-building; development of training curricula; and awareness-raising. Programmes also focused on enhanced operational coordination between stakeholders, and improved management capacity. Contributions were also made to developing capacities of human rights institutions and CSOs. EU support contributed sustainably to progress in national justice system frameworks and functioning, building on and continuing the very significant results of EU support to fighting ELK/ED and related impunity, for example through the development of multi-sectorial Quick Reaction Teams, as well as broader impacts on access to justice, accountability, transparency, good governance, gender and indigenous rights. Support to the JSCC and Justice Zone has significant impacts in the justice sector. The effectiveness of EU support was achieved through multi-stakeholder and multisectoral approaches, continuity of ownership within institutions, leveraging multi-faith initiatives, and holistic approaches to ending impunity. Support to anticorruption efforts was not a focus of EU support, however transparency issues were indirectly addressed, for example through support to automation of court services.

EU support did not directly target judicial independence and impartiality, however strong support was provided to the Supreme Court, an implicit objective of which was to strengthen their independence, capacity, credibility and visibility. EU support contributed significantly to empowering civil society actors to play a role in strengthening RoL&AC processes, through *inter alia* the EIDHR and grant-making facilities, however there was little engagement with oversight institutions, and no evidence of private sector involvement.

EU support contributed to promoting a rule of law culture through public and institutional awareness-raising, with a focus on outreach to rural and isolated areas. This included audio-visual material, a photography competition, and a media campaign that contributed to the release of the “Morong 43”.

EU support to the legal sector provided a rule of law response to the extreme human rights problem of EJK/ED and cultures of impunity, as well as to the needs of disadvantaged groups, such as indigenous people, women and children. Important historical outcomes were observed, including the conviction of the former Major-General Jovito Palparan in 2018. Support was provided to human rights institutions, including the Philippine Commission on Human Rights, and also contributed to protecting the lives of human rights defenders. While there was no direct support to democratic principles, peace, resilience and stability, and natural resource management, contributions can be inferred from the EU’s support of civil society and institutions in the RoL sector.

The effectiveness of EU support was facilitated by a number of factors, including: engagement of implementing partners with long experience in the rule of law sector; continuity of support to institutions; faith-based initiatives; and holistic, multi-stakeholder, multi-sectorial and flexible approaches. It was also observed that sector needs surveys and consultations helped to define the scope of activities and informed the design of subsequent programmes. Further, while the fluctuating political context created challenges for EU cooperation, these were countered through: high-level engagement by the EU Delegation; direct engagement with institutions; focusing on less-contentious issues; and use of external leveraging (UN Human Rights Council, Generalised Scheme of Preferences Plus, European Parliament etc.). Finally, EU support contributed to significant historical outcomes regarding ELK/ED and impunity and protected the lives of human rights defenders.

Case study note – Sahel (regional case study)

Introduction.....	168
Context	168
Political economy analysis	169
Overview of the EU support to RoL&AC	169
Strategy and implementation of EU support to RoL&AC	170
EQ1: EU strategic framework/institutional environment.....	170
EQ2: Responsiveness, ownership and flexibility	172
EQ3: Partnerships and coherence	174
EQ4: Choice of modality	176
Effects of EU support to RoL&AC.....	177
EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions	177
EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions	181
EQ7: Broader effects on RoL&AC culture, human rights and democracy.....	182
EQ8: Effects on wider EU external action goals	183
Overall assessment and lessons learned	184

Introduction

Remark: This case study note does not constitute a separate evaluation of EU support in the country or its situation with regard to RoL&AC. It presents country-related findings relevant to the overall assessed judgement criteria and indicators, and feeds into the main evaluation report of the Evaluation of the European Union support to Rule of Law and Anticorruption in Partner Countries to which it will be attached as an annex.

Context

The constant degradation of the security situation in the Sahel between 2010 and 2022, and related political instability, strongly challenged the overall rule of law dynamics. Consequently, the Sahel case study, its scope, as well as geographic and time coverage are particularly complex. It can only present a few key highlights of the support provided by the EU to different levels of rule of law in this changing, volatile context where authoritarian rule, illegal and illegitimate forms of leadership and their associated religious, political or criminal interests are on the rise. The emergence of new stakeholders, primarily Russia, and the increasing reject of Western approaches by elites also contribute to this change of paradigm that challenges the implementation of democracy and human rights notably.

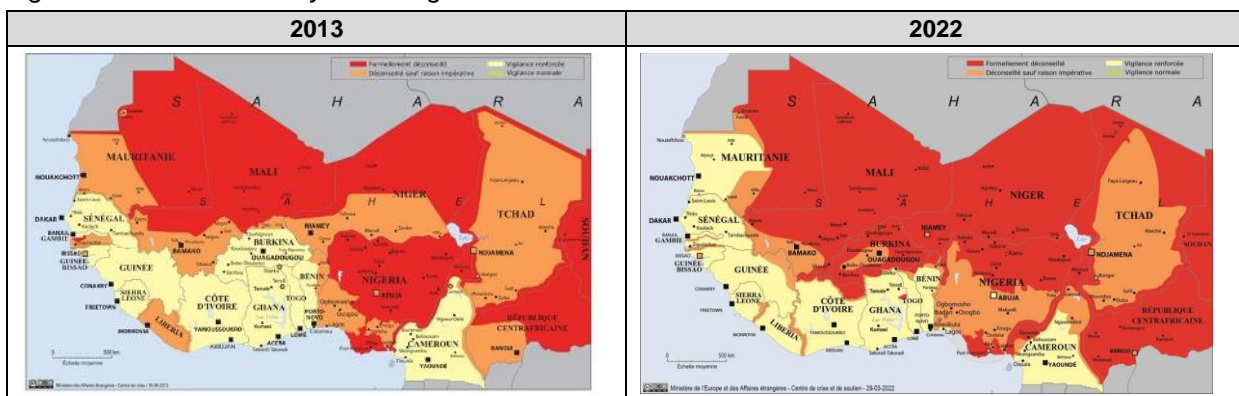
The complexity of the Sahel case is further increased by the general weakness of overall governance and limited respect for human rights in the region. In particular, the lack of legitimacy of institutions and of their administrative coverage in huge territories (often inhabited by nomadic and sedentary groups) challenges any attempt to strengthening the rule of law. The coverage of public services, including for justice and security, remains very limited (not to mention their quality and resources), especially for the most marginalized groups. Rampant corruption and collusion of the elites with illicit networks also strongly affect the rule of law and legitimacy of the national administration. In the areas they control, some armed groups, of mixed endogenous and foreign nature, maintain some form of security and a more disciplined system of rules that contribute to gain some level of tolerance or adhesion by the communities. The flow of arms and combatants from Libya deepened existing fragilities of the region. Indeed, in territories where borders are largely lines on paper maps more than actual delineations of States and nations, administration and control of these territories depends rather on the ability and adhesion of the population to some form of social contract than on the actual enforcement of governance.

Since 2010, key events in the region include notable four military coups (two in Burkina Faso and two in Mali). Various military and security missions (UN, EU, ECOWAS, France) to mitigate the inability of States to deal with the worsening security situation have been deployed, often as a last emergency effort to avoid further chaos. The first of these missions started in Mali in 2012, as a French response to the rapid advancement of Jihadist groups towards the capital Bamako. A UN peacekeeping mission, MINUSMA started in June 2013 to complement this support. An EUCAP mission, EUCAP Sahel, operates mostly in Niger and in Mali. A first attempt at peace in Mali occurred in 2013 with the Ouagadougou agreements and was further consolidated in the Alger agreements (2015). However, these agreements were only signed with parts of the armed groups and the emergence of new local groups since then (such as for example Front de Libération du Macina) continue to threaten the security in the heart of Mali's territory.

In 2014, the five countries, Mali, Niger, Burkina Faso, Chad and Mauritania launched the G5 Sahel (headquartered in Nouakchott), which includes a joint military force operating in the different countries and is meant to provide a platform for capacity building, information sharing and the monitoring of (religious) extremism.

Two maps produced by the French MFA (Figure 4) illustrated the increase of insecurity in the region, notably in Mali, Niger and in Burkina Faso. The red zones now include Niamey and are close to the capitals in Mali and Burkina Faso, with some attacks having taken place within 100km from Ouagadougou.

Figure 4 Insecurity in the region



Source: MFA France

The increased insecurity in the region is tantamount to a worsening humanitarian situation. Over the past 10 years, more than 2.5 million people have fled war in Burkina Faso, Mali and Niger – 2021 alone shows more than 500,000 IDPs – and the number of persons in need of humanitarian assistance evolved from 24 to 29 million. For 2022, it is estimated that 35 million Sahelians (one out of three) will need humanitarian assistance. The international response, in the first place of the European Union and Member States, has been significant, both at the political / strategic level and in terms of funding. Since 2017, the portfolio of the Alliance Sahel tripled and included over 1,200 projects for a value of EUR 26.5 billion in 2021. Frequent international summits aim at further ensuring the mobilization and coordination of international donors.

Political economy analysis

In comparison to other conflict affected areas such as DRC, the case of Sahel is interesting through its efforts for using a regional approach, strategies and structures to handle the crisis. This originates from an earlier French Strategy for the Sahel and regional inter-ministerial meetings.

Local governance mechanisms and resilience capacities of the communities are almost non-existent, while the State administrations proved largely dysfunctional, in part to their structural lack of accountability and tendency to clientelism. Some efforts to improve communities self-defence mechanisms have taken place in Burkina Faso, mainly with the goal to better manage security threats and avoid a DRC-type of scenario in which self-defence forces would break their allegiance and affiliation to community leaders in pursuit of a war economy harmful to the local population.

Overview of the EU support to RoL&AC

The inventory of interventions in the Sahel covers a total of 375 contracts. Among those, the evaluation reviewed mainly the data available on the state building and budget support contracts as well as national justice programmes, a central element to Rule of Law in the three countries. The analysis of the general documentation and external information available on the EU funded interventions in the area were also central to the review.

Table 12 Overview of EU-financed interventions to the support of RoL&AC in the Sahel selected for the case study

Domain	Dec n°	Intervention	Country benefiting	Planned amount (EUR million)	Dec. year
Justice	22762	Programme d'Appui à la Justice et à l'Etat de Droit II (PAJED II) in Niger	Niger, various		
Justice	23846	Programme d'Appui à la Politique Nationale de Justice (PA-PNJ) in Burkina Faso	Burkina Faso, various	4.8	2013
Justice	41595, 23652	Programme d'appui au secteur de la justice au Mali (PAJM)	Mali, various		2013
Justice	38436	Construction de l'Appareil de l'Etat (SBC II) FED 11 Niger	Niger		2016
Peace, resilience & security	24692	Contrat d'Appui à la Consolidation de l'Etat du Mali	Mali	215.0	2013
Peace, resilience & security	38388	Contrat d'Appui à la Consolidation de l'Etat du Mali 11 ^{ème} FED	Mali	180.5	2015
Peace, resilience & security	40072	SBC III Mali 11 ^{ème} FED	Mali		2018
Peace, resilience & security	37936	SBC Burkina Faso 11 ^{ème} FED	Burkina Faso		2015
Peace, resilience & security		T05-EUTF-SAH-NE-06 - Appui à la Justice, Sécurité et à la Gestion des Frontières au Niger	Niger	90.0	2016
Peace, resilience & security	42209	Appui budgétaire pour la mise en œuvre du Programme d'Urgence Sahel (PUS) étendu du Burkina Faso	Burkina Faso		2019

Strategy and implementation of EU support to RoL&AC

EQ1: EU strategic framework/institutional environment

JC1.1 Clear, context sensitive and realistic

The EU's engagement strategy in governance and Rule of Law in Burkina Faso, Mali and Niger has clearly identified challenges of the contexts and taken into account the risks associated with sectoral engagement, as evidenced by the respective chapters in the NIPs. The justification for engagement and the choice of rule of law as a focal sector also reflects on the national and regional contexts, including ongoing plans for reform by the governments and the limitations posed by the security situation in the region. The NIPs (Burkina Faso, Mali, Niger) contain an articulated set of objectives and expected results or each of the latter, objectively verifiable quantitative indicators are proposed, together with the source, in clearly specified results frameworks. The level of use of those frameworks as monitoring tools remain unclear.

The overall portfolio on rule of law evolved over the years to adjust to the changes in context. Annual action plans evolved over the years to adjust to the political cycle of the country notably including by showing a specific attention to democracy, and support to elections notably. Interventions on the RoL are traditionally mostly at the national level through the EDF and budget support, which is coherent with the inherent nature of justice, public financial management, or more general budget support / state building projects largely under the responsibility of national institutions. Interventions involving new types of stakeholders also increased over the year, such as the support to decentralization with a stabilization perspective, notably. A geographical level, given the evolutions of the insecurity dynamics, interventions targeting specific areas increased over the years, notably for stabilization purposes.

The number of interventions through different instruments limits the clarity of a regional strategy to address cross-border and regional challenges related to Rule of Law, in first place security. The number of interventions is significant – over 350 contracts identified – and include a number of actions out of the EDF with some articulation at the regional level, notably with the most recent instruments. Cross-border challenges relate to organized crime and cross-border trafficking at the regional level funding sources of armed groups. They have been addressed by several recent instruments. At the regional level, interventions take place with the G5 Sahel, or with regional instruments such as the EUTF, which includes both national and regional levels types of interventions, or with IcSP projects mostly oriented to peacebuilding. Inter-ministerial and regional approaches were initiated before the 2012 conflict²⁷⁷, in the field of justice – with the creation of specialized judicial pole -, security intervention and investigation forces with inter-ministerial units and customs. Those specialized judicial poles against organized crime notably in Burkina Faso, while stakeholders, including prosecutors highlight the weaknesses of judicial police and their ability to investigate and collect evidence that can lead to prosecutions. Those dynamics contribute to fuel non-state armed groups, including terrorist ones, notably drugs.

The overall strategic framework is formalized at the regional level and evolved over the decade to consider the limitations identified in the project implementation. EU Sahel strategies drafted in 2014 and in 2021 are noticeable. They articulate security and development objectives acknowledging their interrelations. The recent changes highlight an increased attention to accountability and responsibility of the states.

²⁷⁷ French project (JUSSEC), and French strategy for the Sahel of 2008.

Table 13 Key objectives of the EU Sahel strategies

Priorities EU Sahel Strategy 2011	Priorities EU Sahel Strategy 2021
Security / development link; Role of regional cooperation; Capacity building of public authorities; Role of economic development; Preventing and countering violent extremism and radicalization: help build the capacity of societies to counter extremism; provide marginalized social groups, in particular young people vulnerable to radicalization, with basic social services and economic and employment opportunities; assist States and legitimate non-State actors to develop and implement strategies and actions to combat these phenomena.	A civil and political upsurge emphasizing both short-term stabilization and long-term prospects for social, environmental and economic sustainable development, beyond the military effort; Promotion, protection and respect of all human rights. Security sector reform; Mutual accountability; Primary responsibility of States; Emergency support and its humanitarian assistance; Response to immediate and root causes; Inclusive approach; Approach adapted to each context; Basic public services; Governance and rule of law.

JC1.2 Coherence with nature and goals of EU external action

The interventions in the Sahel are coherent with EU broader policies, in the first place EU Consensus for Development, as flagged in the EAMR, since the five Ps that constitute the basis of the EU cooperation (Peace, Population, Prosperity, Planet, Partnerships) and the commitment to Sustainable Development Goals. They are mentioned in the key strategic and programmatic documents. Interventions on migration management relate to the international standards and approaches set by La Vallette and Rabat process. The specific strategies developed in the countries on gender or human rights for example are linked to the overall global EU strategies and action plans. The integration of EU interests also appear in the core documents of the delegations. In Burkina Faso for example, specific objectives of the cooperation in 2020 mention explicitly EU role and interests, with four objectives :

10. Prevent the country from falling into instability and lawlessness;
11. Strengthen the role and influence of the EU in the region;
12. Defend the economic interests of the EU;
13. Promote political dialogue and economic diplomacy.

The overall approach in the Sahel is also coherent with the EU policy on external relations of 2016, promoting an integrated approach. This integrated approach covers several elements that are reflected in the interventions in the Sahel, and apply also to the approach to rule of law, since this is closely related to stabilization:

- Multi-dimensional, with policies and instruments oriented for results in various sectors for a comprehensive approach to the conflict. The EU has deployed a number of instruments that can be complementary and considers the political nature of any intervention in the country.
- Multi-phase, acting at all stages of the conflict cycle (prevention, mitigation, compensation for the consequences of the conflict, stabilization), with objectives of immediate support in the case of emergency and humanitarian assistance, including food insecurity and access to water, as well as support to specific groups of vulnerable, such as refugees in the first place, to institutions building / strengthening and structuring economic sectors. This also ensures the continuity of complementary dynamics.
- Multi-level, acting locally, nationally, regionally and to some extent globally. The cooperation strategy in Palestine covers to various extent a priori these different dimensions, but initiatives in with Israeli stakeholders in relations to the Palestine cases do not appear clearly in the cooperation interventions.
- Multilateral, involving all actors present in a conflict and necessary for its resolution. The Joint Strategy is a strong step to streamline the approaches of the EU, Member States (MS) and associated donors, from a cooperation perspective mostly, given the lack of progresses on the peace process.
- A systematic commitment to the security dimension of conflicts, the reconstruction of the social contract and inclusive governance, as well as the breakdown of the war economy, which also implies significant synergies between humanitarian action and development. In the context of Palestine, the governance component is central, as well as efforts to support basic human rights.

The strategic and programmatic frameworks focus on stabilization and contribution to the peace process, as the main objective in the region. Alger agreements of 2015 concerning Mali were a key step forward in that respect but covered mostly the Kidal region, while insecurity threats escalated in the Centre region of the country, expanding to neighbouring areas except Mauritania. EU supported the monitoring of the

Alger agreements but the key objectives, DDR and decentralization did not progress fully, with constant reshuffling of the armed groups and political dynamics.

Different roadmaps have been established following the different forum and summits to mobilize stakeholders around this objective.

JC1.3 Conducive institutional environment

Frameworks and entities multiplied over the years, along with the instruments dedicated to address the Sahel crisis and with a strong support from the EU and some Member States.

- G5 Sahel, launched in 2014 with five Member States and a secretariat based in Nouakchott as an institutional and coordination framework for peace, security and development in the region, notably with the creation of a dedicated military force. Mali declared its withdrawal on 15 May 2022;
- Coalition pour le Sahel, a strategic framework created after the Pau Summit in January 2020 by the Head of States of the same countries than the G5 Sahel;
- Partenariat pour la Paix et la Stabilité dans le Sahel / Partnership for Peace and Stability in the Sahel, P3S, launched after the Biarritz Summit in August 2019;
- Alliance Sahel, a platform for the coordination of all EU, Member States and like-minded donors' projects, mostly regarding development intervention.

At the EU level more specifically,

- EUTF, European Union Trust Fund for Africa, as an emergency fund to complement existing financial instruments and finance interventions to address root causes of migration and support peace and security. The fund disbursed 4,9 billion euros all over Africa.
- EUCAP Sahel, dedicated to support to security and defence forces in Niger and Mali mostly.

At the political level, there is a Special Envoy to the Sahel, in contrary to the Great Lakes for example.

The overall structure of the cooperation also adjusted to provide the required expertise. To strengthen the expertise on peace and security in the delegation, specific units have been implemented, the Regional Advisory Coordination Cell, RACC, at the country and regional levels to increase capacities on security and defence in the Delegation.

At the project level, some delegations would welcome additional support in some cases, notably when drafting new types of projects never tested in the country such as budget support in new sectors in Burkina Faso, or in the choice of the management modalities, or in the implementation of the EUTF.

EQ2: Responsiveness, ownership and flexibility

JC2.1 Context, political economy and/or conflict analysis

The EU approach mentions the interlinkages of the continuum security and development and the need for multi-sectorial, multilevel interventions, supported by assessments and analyses at different levels. There are obviously numerous conflict analyses and situation assessment on the Sahel, and the EU played a key role in supporting and engaging with civil society. EU indicates notably that a specific conflict analysis was commissioned in 2021. The new instrument, NDICI, also emphasizes the role of the conflict analyses in the programming. In the different sectors and projects, there are numerous more specific assessments, whose overall capitalization remain a bit uncertain, notably in terms of general repository / library of studies and research undertaken as part of the EU interventions. The development of national strategies results also from a collective approach between stakeholder at the national level. In some cases, joint analysis of the causes of instability, such as the Prevention and Peacebuilding Assessment by the Government, the World Bank, United Nations and European Union, was the basis of the government five years strategic plan in 2021. At regional level, G5 Sahel contributes to increase the exchange and have a common and shared understanding of the challenges.

Serious political instability in the region obviously limits the results of the projects. There were for example four governments in Mali in 2015 – 2016 following the coup. The political challenges to ensure the performance remain also quite significant, in terms of political will, or potential interferences. The new strategy for the Sahel highlights an increased attention to accountability and ownership by the States. The interlinkages between politics and conflicts dynamics do not appear directly tackled from the data collected.

Political dialogue has been key throughout the evaluation timeframe, notably on the strategies and approaches for stabilization, G5 Sahel, and through a monitoring and support to the implementation of the Peace agreement in Mali, but also in the different sectors, notably when the EU plays a lead role. Political dialogue also was key in the different phases of the budget support and related reforms. The different coups obviously disrupted this continuity with more or less significant suspension of the official dialogue with the authorities, including also in the case of trouble related to the elections.

JC2.2 Engagement with actors at different levels

The evolution of the Sahel strategies highlights the evolution towards an increased attention to elite buy-in and accountability, while political changes at national and international levels affect the long term cooperation dynamics. The contributions provided by the countries remain quite limited in the different interventions, while political leverages decrease with the increased influence of new stakeholders such as Russia. Obviously, there are strong concerns with the implementation of the new instrument, NDICI, which will change the partnerships and ownerships dynamics in the country and on which national stakeholders have not been consulted.

A recurring challenge in the cooperation, involvement of high level officials is still uneven and challenging, while contacts at technical levels are a more reliable basis. Stakeholders indicate regular contacts with their counterpart at the technical level in the different sectors, in relations to the project implemented. This is not always with the involvement of high level officials that would ensure the commitment of the administration and the institutionalization of the approach though.

The interventions included support at different levels using different entry points required depending on the dynamics on the ground, but starting from an institutional angle. The EU targeted national and decentralized level with a regional approach and support to local governance. This diversity of entry point is of particular relevance since acceptance in some areas is a key challenge, notably when armed groups have a strong influence or when the communities don't recognize the legitimacy of the State institutions. There is a diversity of stakeholders involved in the institutions building projects, with efforts to streamline the civil society engagement but a focus on distinct capacity building by institution more than an integrated approach to rule of law, case management, and penal chain.

The EU supported decentralization, as a strategic entry point and funding directly to authorities at local level. The interventions at the Conseil Regional in Mali. This highlights potential for interventions on rule of law at the local level, in order to bridge the gap between the citizens and the State administration, supports its acceptance in some cases and increase citizen representation in the decision making, or ensure a first level of administration when the national authorities are less legitimate. Specific indicators on decentralization have also been included in state building contract in Mali notably.

Attention to inclusivity appears more clearly in the new strategy but remains insufficiently addressed. The focus on the integration of marginalized groups remains key, notably concerning groups that are limitedly integrated in the administration or those with a significant legacy of abuses and discrimination, since this constitutes a significant driver for enrolment in armed groups. The integration of nomadic groups with specific dedicated approaches seems to remain limited, given the differences in livelihoods, except through agro-pastoral approaches. Peul marginalization in particular, and their representation throughout the interventions implementation is a longstanding structural issue hampering the social cohesion and appears to be still insufficiently tackled, despite the different efforts on mediation and dialogue, conflict mitigation and peace and social cohesion promotion.

JC2.3 Adjustment to changing conditions and new opportunities

The EU adjusted with new instruments but is ensuring some continuity in the support provided. The state building contract ensured some continuity in the budget support and institutional capacities in the three countries, despite the fragility of the countries, and the increased security threats, as well as political changes. This illustrates the role of state building contracts in complex circumstances with weakened institutions to maintain legitimacy of the governance system while it is challenged by the armed groups and the population. The budget support has been interrupted in Mali following the last coup though. In Niger, budget support represented over EUR 590 million between 2016 and 2021, around three quarters of the overall assistance through the NIP, and the structure of SBC evolved towards an increased share of variable tranches – linked to reforms, but those variables tranches got suppressed in 2020 with less leverage effects on the public policies then. The EUTF also provided additional funding to complement and adjust to the change of situation.

The EU approach was based on the implementation of a nexus approach linking security and development, control of the territory and access to basic services. The cooperation evolved towards an increasingly integrated approach, out of working in different complementary sectors for the same objective. In Mali, multisectoral interventions covering security, governance and basic services in targeted locations in the Centre started with promising results in the pilot in terms of increased perception of security. This aims to create some stability/ security poles.

The adjustment of the cooperation also faces the challenge of the balance between national and local level interventions with more granularities and to overcome the limitation of an institutional top down approach in a context where State coverage and administration reduces and is not able to fulfill its duties. Sequential and targeted approaches in time and local approach, notably in the justice sector would appear relevant according to interviewees, while keeping some anchorage at national level for general reforms.

Some discrepancies appear also between the planning timeframe of the project and the rapid change of context, notably when the funding agreements is too specific and can hardly be modified (for example Appui à la Réconciliation et la Résolution de Conflit au Mali (ARCOMA) in Mali in 2015). Obviously, the EU adjusted also to COVID with specific support plans in the different countries.

EQ3: Partnerships and coherence

JC3.1 Partnerships based on comparative advantages

The EU played a lead role in triggering convergence across Member States and supporting coordination in the country more generally. In Mali, Niger and Burkina Faso, the EU plays a key role in the national coordination mechanisms, on the political dialogue side or in thematic groups, notably on justice and security. In the three countries, the EU and Member States implemented joint programming with some good efforts for convergence. In the three countries, EU and MS designed TEI that includes rule of law, under different TEI titles, but the details of the division of work is not very clear at this stage. Noticeably, the EU increasingly use the cooperation agencies and related structures of the Member States as implementing partners, considering also that not all Member States have the relevant structures and this mostly concern Germany, France, Spain, Belgium.

Table 14 Overview of the Teams Europe Initiative covering Rule of Law

	<i>Mali</i>	<i>Burkina Faso</i>	<i>Niger</i>
Title	Répondre à la crise au Mali – Stabilisation de zones affectées et prévention dans les zones vulnérables	Inclusion for Stability	Governance, Peace and Rights
Objectives	Stabilization in affected areas and prevention in vulnerable areas; Recovery of the country's sovereignty; Restoring development.	Country stability; Prevention and management of local conflicts; Strengthening of good governance; Support fair access to social services to build resilience; The Team Europe Proposal aims at social cohesion and population resilience.	1. Strengthening the position and the voice of the EU and its MSs in the dialogue and in the coordination: <ul style="list-style-type: none"> with the government with the international partners (UN and its agencies, other multilateral and regional actors) 2. Strengthening the trust in the State and its policies by the local population with the aim of: <ul style="list-style-type: none"> Consolidating lasting peace and an enabling environment Creating and developing decent and sustainable economic activities
Activities	Strengthen Security and restore Peace (budget support and technical assistance); Recover of the country's sovereignty; Governance and Social Services; Development (Local authorities, agricultural production and livestock).	Dialogue and trust; Prevention and management of local conflicts; Access to natural resources; Access to quality basic social services; 1. Pillar 1: Prevention and management of local conflicts 2. Pillar 2: Equality in access to basic social services 3. Integrated territorial approach: local, integrated and multisectoral 4. Synergy and complementarity with the TEI2 - Green Deal for youth 5. Contribute to the National Economic and Social Development Plan 2021 – 2025 (PNDES-II) axis 1 “Consolidation of resilience, security, social cohesion and peace” and axis 3 “Consolidation of sustainable	At the national level: Good governance, rule of law and quality public services everywhere; At the territorial level: Support for the emergence of secure centres of stabilisation, recovery and development in 3-4 departments under strong demographic pressure and influx of refugees and displaced people.

	<i>Mali</i>	<i>Burkina Faso</i>	<i>Niger</i>
		human development and solidarity”.	
Members States	9, Belgium, Czechia, Denmark, France, Germany, Luxembourg, Netherlands, Spain, Sweden	10, Austria, Belgium, Denmark, France, Germany, Italy, Luxembourg, Netherlands, Spain, Sweden	8, Belgium, Denmark, France, Germany, Italy Luxembourg, Netherlands, Spain,
Other Members	AFD	AFD, EIB	AFD

Despite those efforts, some challenges remain on donor coordination. In Mali for example, TEI allowed for MS to be all around the table and map all ongoing projects to have increased weight on public policies. However, according to EAMR, political dialogue is often lost though because of dispersion of the donors despite the huge volume of funding. There are multiple projects to the same services with different cultures and approaches and no coordination. Malian partners are requested to be involved in several programmes, with human resources challenges, sometimes paid, sometimes not, and in some cases the targeting is done fast. Opportunities through groups of dialogues / thematic groups declined because of irregular meetings and not really a mutual accountability framework anymore. In addition to the joint programming exercise, development agencies of some of the Member States (French and German) have their own strategies and facilities.

The regional frameworks implemented also aim to support coordination and complementarity with uneven results. Alliance Sahel contributes also to support the coordination but the website is not always clearly updated though. For example, in May 2022, on governance / justice by the EU, the database included the SBC contract in Mali only, two projects in Niger on migration and civil society and two projects in Burkina Faso on border management and governance & development. At an organizational level notably, there is no counterpart for the Alliance Sahel in the country administration, in Mali notably.

The diversity of the EU support and its long-term structuring approach with large volumes of funding. The added value of the EU consisted notably in the ability to mobilize funds relatively rapidly and use new instruments such as the EUTF for rapid action, complementing longer term approaches of the EDF. In Mali, the EU gained in credibility and legitimacy owing to the SBC, which is a considered as a reference and had results.

In terms of complementarity and synergies between the EU and Member States, there is some articulation between pilot initiatives by MS and further expansion at the EU level. For example, there are numerous synergies between projects of Member States and those funded by the EU, and the first EU strategy for the Sahel actually capitalized on the 2008 French Strategy for the Sahel handled by the SGDSN under the Prime Minister.

While joint actions and partnerships take place with other traditional organizations, there is still no clear approach or visible evolution to engage with non-traditional donors. Partnerships exist with other development partners, regional and global actors, notably the United Nations and the World Bank, IMF while the G5 Sahel, in which the EU plays a major role, also attracts funding from various donors, including Arabic countries. Partnerships and exchanges with non-traditional donors remain quite limited. Political initiatives are not visible to date to create common approach related to the increased influence of Russia in Mali, and possibly in other neighbouring countries

JC3.2 EU support to RoL&AC has been delivered in a coherent manner

Considering rule of law in the broad sense out of specific justice and budget support projects, the complexity of the Sahel context and the multiplicity of projects with various timeframes, levels (regional, national, local), instruments and beneficiaries, and often creating new entities, makes difficult a clear overall plan for the implementation of the strategy and monitoring of progress. Some EAMRs flag the efforts to ensure coherence and complementarity between the different interventions of the EU national portfolio, and the nexus approach also contributes to strengthen coherence. Despite the existence of strategies, and country level partnership agreements, there is no clear action plan at regional level related to the strategic objectives with correlated projects of the different instruments. The NIP is at national level and covers mostly EDF funds, while additional short term and more flexible instruments are used. As such, first the overall intervention and approach is not clearly readable. Besides, the synergies and complementarities between the projects are quite limited, not to mention cross-fertilization and contribution to joint results that would be monitored. Initiatives in the key sectors appear quite scattered, with the lack of a clear regional perspective despite some example of projects covering several countries (Gar-Si, UIS) creating new institutions that overlap with existing structures, or projects covering specific geographical areas on several countries such as Liptako Gourma. This extends obviously to neighbouring countries to the Sahel, despite the regional dynamics at stake on trafficking and crimes. For example, there is no real correspondence between projects in Mali and actions in Mauritania, Morocco or Libya.

This lack of a clear operational framework leaves space to opportunistic approaches based on funding opportunities by the implementing partners, for example, the open calls for project in the EUTF and competition for funding by Member States.

EQ4: Choice of modality

JC4.1 Mix of modalities

There was an obvious use of mix of modalities given the large number of contracts and interventions on different sectors, around a core structure, since core rule of law interventions remain by large under budget support / state building contracts and EDF. The number of contracts on rule of law is particularly high in the Sahel as mentioned above, and was deployed through a broad diversity of instruments and modalities, notably EUTF, IcSP and related instruments. The inventory mentions over 350 contracts in the three countries since 2010. The processes for the allocation and monitoring of the budget support and SBC appear consistent, with a follow up on the specific indicators. SBC II in Mali for example was not pursued since it was linked to the law against illicit enrichment. Some challenges occurred in some cases, Mali notably, to include security indicators in the SBC, while support to security through budget support is rather innovative. Challenges in the disbursement of variable tranches also occurred in Niger. Budget support was often completed with technical assistance, then mixing modalities for the support. The different components of the SBC contracts also allowed to cover both stabilization and development objectives.

The different financial instruments allow to act at different levels and to adjust to the change of the context, building on the EDF as a structural base for medium term interventions and adding specific thematic funding or such as the IcSP and the EUTF, both acting at various levels, national or regional. In some cases, the EUTF allowed to go out of the capital and compensate for the limited state coverage and over concentration and centralization in the capital that the EDF. The EUD were anchor point for the EUTF projects but there are challenges for the ownership of projects decided at the HQ, at regional level, or covering different countries. This said, some EAMR mentions that there has never been a project on which EUD gave a negative advice.

JC4.2 Mutually reinforcing dialogue and programming

There has been frequent political dialogue at the highest level on the Sahel with international head of state, in first place to support the creation of the G5 Sahel, and subsequent international fora, with the drafting of joint declaration and roadmaps that refer to rule of law. For example, the 2019 Action Plan of the Partnership for the Sahel drafted from the Biarritz G7 Summit flag. It led to the creation of the P3S, Partnership for Security and Stability in the Sahel. Furthermore, the summit in Pau in January 2020 reaffirmed the objectives of stabilization, re-establishing State sovereignty, finding a solution to the Libyan crisis that fuels the conflict in the Sahel, and establishing the Coalition pour le Sahel (see above). The G5 Sahel N'Djamena summit in 2021 also highlighted the need to go beyond the security response and call for a political and civilian redeployment of the administration and basic services. The significant investment of the EU, notably with the state building contracts directly relate to such international political processes initiated after the first coup in Mali in 2012. This said, the level of progress towards this objective appears quite limited and there is no clear and consolidated mapping of the evolution of the administration and basic service coverage, out of some data at the sectorial level, with the intrinsic paradox of institutional top down solution to tackle grassroots dynamics and the lack of legitimacy of dysfunctional administration.

In the country, the political involvement of the EU is visible at various complementary levels. The EU played a key role in the general coordination mechanisms, such as Troïka groups which leads political dialogue between the States and the Financial and Technical partners, with the limitations related to the sudden change of government / coups in some countries. The EU also supported the Peace Agreement Monitoring Committee in Mali with involvement in the monthly coordination meetings and funding of the Committee through the ICSP notably, while progress remains quite limited overall. At the sectorial level, the EU also plays a key role in the political dialogue to ensure the progress of the planned reforms and strengthen the collaboration, in relation to stabilization objectives notably. In some cases, for example Mali in 2016, seven joint meetings of dialogue with all the relevant ministries took place for the follow up of the SBC. The level of granularity depending on the specific sectors, the timeframe and in the three countries is not really visible though. Obviously, the political constraints remain with the institutional instability and turnover of politicians, or lack of political will / interest to promote some responses.

Political approaches to the non-State armed groups are particularly visible as part of the peace process in Mali, with signatories groups to the Alger agreement, while a political approach with other key armed groups is less visible or non-existent. This said some recent forms of dialogue between the armed groups and traditional leaders in some areas in Burkina Faso appear to be opportunities that the de facto government is willing to promote.

Effects of EU support to RoL&AC

EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions

JC5.1: Core legal and administrative reforms

As the main donor in the countries, the EU has a key contribution in the reforms on governance and rule of law in the different countries especially with the key role also of the Member States. This is emphasized by the fact that administrative reforms are linked to the budget support and state building contracts. For example, for SBC II in Mali indicators included reform of public finances, decentralization, follow up of the report of the internal and external control bodies.

The three countries conducted voluntary SDG reviews in 2018 / 2019. In the three countries the EU projects are linked to the national development plans, which include rule of law²⁷⁸, sectorial strategies and related action plans when they exist in the different sectors, for example in Niger the National Policy on Justice and Human Rights, the 2017 National Policy on Transitional Justice and the 2016 National Human Rights Policy in Mali. The EU also played a role in the drafting of those plans and strategies.

In Niger also, the budget support targeted border management and this led to the drafting of the national policy on migration and action plan. The country passed a law for the creation of the specific anticorruption entity, “Haute Autorité de Lutte contre la CorruptiOn et les Infractions assimilées (HALCIA)” and adopted a reform plan on public finances management, as well as a national strategy on internal security. In Niger, the implementation of the National Justice and Human Rights Policy comes along a ten-year implementation action plan for the period 2016 – 2025. Between 2012 and 2015, several laws were passed for the fight against corruption, the illicit trafficking of migrants, terrorism, trade and that on the code of civil procedure expected since many decades. Institutional reforms have been initiated with the creation of a National Agency for Legal Assistance (ANAJ), the National Commission for Coordination for the Fight against Human Trafficking (CNLCTP) and the National Agency for Fight against Human Trafficking (ANLTP).

In Mali, despite the constant political and security turmoil, the government passed several laws during the decade: in 2011, the law on judicial organization, in 2013, the creation of the specialized judicial pole against terrorism and organized crime (also implemented in Burkina Faso and Niger), the creation in 2015 of the Central Office against illicit enrichment²⁷⁹, a law against illicit enrichment in 2014, a law against money laundering and terrorism financing in 2016. Several other reforms were planned, on the Status of the Conseil Supérieur de la Magistrature notably and national penal policy. In addition, the Government adopted the Planning Law on Internal Security (LOPSI), which aims to correct the dysfunction and inadequacy of the security sector and to enable the security forces to better ensure the protection of people and their property and to participate in the defence of territorial integrity for the period 2017-2021. As part of securing administrative and travel documents, the Government has introduced the NINA card (National Identification Number) and the biometric passport. Also, the Ministry of Security and Civil Protection (MSPC) has developed an Integrated Security Plan for the Centre Regions (PSIRC Mopti and Ségou) to consolidate several strategic axes of the national policy to fight against insecurity and terrorism. In addition, the EU contributed to the revision of several new laws since 2018, but they have not been adopted, for example on the justice fees.

Burkina Faso passed a specific law against corruption in 2015, a law against money laundering and financing of terrorism in 2016, a law on infractions related to external financial relationships, a 2018 law on the creation of the National Committee of fight against drug²⁸⁰. Several policies are involved in the scope of SDG16. These are: the Policy “Administrative and local governance” sector policy, the “Justice and human rights” sector policy Human Rights”, the National Decentralization Policy, the National Strategy for Civil Status and National Homeland Security Strategy.

In relation to budget support, in Burkina Faso, the EU contributed to a plan for the reform of public finances to respond to recommendations of key evaluations in the sector (PEFA, PIMA, TADAT and

²⁷⁸ In Burkina Faso, SDG 16 is axis 1 of the PNDES “reforming institutions and modernizing administration” of the PNDES with expected effects which are: (i) democracy, human rights people, justice and peace are strengthened; (ii) security and civil protection are reinforced; the defense is reinforced; (iii) access to accurate information is ensured for all; (iv) regional and international cooperation is improved; (v) public administration is effective and efficient.

²⁷⁹ Ordonnance n°2015-032/PRM du 23 septembre 2015 portant création de l’Office Central de Lutte contre l’Enrichissement Illicite

²⁸⁰ loi 004-2015/CNT du 3 mars 2015 portant prévention et répression de la corruption au Burkina Faso, à la loi N°016-2016/AN du 03 mai 2016 relative à la lutte contre le blanchiment de capitaux et le financement du terrorisme, à la loi N°015-2016/AN du 03 mai 2016 portant contentieux des infractions à la réglementation des relations financières extérieures au Burkina Faso, à la loi N° 60-2009/AN du 17 décembre 2009 portant répression d’actes de terrorisme et son modificatif N° 084-2015/CNT du 17 décembre 2015, à la loi n° 025-2018/AN du 31 mai 2018 portant Code Pénal, du le décret n° 2017-1157/PRES/PM/MSECU/MS/MJDHPC/MINEFID du 30 novembre 2017 portant création, attributions, composition et fonctionnement du Comité national de lutte contre la drogue

soon MAPS). A specific decree has been passed on the evaluation of the performance of public administration in 2017²⁸¹. The EU also supported the Stratégie nationale de modernisation de l'administration publique (SNMAP) 2021-2025 and a first three years action plan (PAT) 2021-2023. In Niger, the EU also contributed to an ambitious plan of reforms on PFM, including implementation of programme budget, increased control and transparency in resources management, and revenue mobilization. The budget support also contributed to the implementation of the National Development Plan (PDES) with reforms in health, justice, security, migration, business environment. The intervention through the SBC contributed to maintain macro-economic and budget stability more than leverages on reforms.

The strategic framework increased with in some cases a multiplication of strategies on interrelated topics (for example in Burkina Faso), radicalization, social cohesion, violent extremism, under different formats, notably with G5 Sahel umbrella.

Some evaluations flag nonetheless the challenges in the implementation of the planned reforms and a focus on administrative reforms in the context of fragile states affected by growing instability (Niger for example). The holistic approach of the planned reform and of the EU programme also implies risk of dispersion and reduced impact, not to mention the ownership challenges.

The EU contributed to support the digitalization of the justice and anticorruption institutions (Mali, Niger). The level of funding did not necessarily progress though. In Niger, the share of the Justice Ministry decreased and does not amount to 1% for a decade of the total budget. Some anticorruption institutions' funds increased though, like OCLEI in Mali. In Mali, a key component of the peace process was the transfer of resources as part of decentralization, which materialized to a certain extent but has not been fully executed.

JC5.2: Strengthening of institutional architecture

The EU contributed to increase the coverage of the planned justice map in the different countries, in terms of infrastructures and capacities of the stakeholders. The EU also supported organizational performance of the rule of law institutions, notably justice, through digitalization and IT system.

In Mali, progress cover the change to programme budget in 2018 and increased IT system connection of the relevant stakeholders.

The EU contribution included building / renovating 11 jurisdictions and prisons. The EU contributed to improve living conditions in prisons on human rights notably (with a prison bakery for example and training of the guards), as well as the building of a prison out of Bamako, and discussion on alternative sentences. However, there are issues in the maintenance of the facilities and functioning of the Court. The PAJM contributed to build the capacities of the magistrates. In relation to the SBC, between 2015 and 2016, the trial delay for civil cases in the high courts has been reduced to 40 days, but the same period for criminal cases has increased from 120 to 129 days.

In Mali, the interventions included access to justice through mobile courts hearings / *audiences foraines*, protocol design and implementation including in areas affected by the insecurity. A project on paralegals in the centre of the country (Projet d'appui à l'Accès des populations aux Droits et à la Justice pour renforcer la lutte contre l'impunité au centre du Mali – PARAJIUE) also concerned villages / rural communities and benefited over 36,000 people since July 2021. Specific support targeted women access to justice and included also psychosocial assistance. An EU project supported a unit to fight against human trafficking with impressive results in Bamako and weekly dismantlement of trafficking networks (29 international networks in 2021 and 9 in 2022 between January and April) and released 677 victims in 2021 and 238 in 2022.

In Niger, the EU contributed to the national justice and human rights policy and its action plan, which included IT system and an increase in the number of inspection of the prisons, including 20 courts in seven regions, the creation of the "Agence Nationale des Alternatives à l'Incarcération et de la Réinsertion" (ANAIR). 27 Tribunaux d'instance / Instance Courts have been created, since 27 departments have been created to bridge the gap between administration and the citizens. The ratio judge / population in Niger was one for 50,000 inhabitants in 2020, while the benchmark would be 1 for 20,000. The share of the justice budget is under 1% and tends to decline while the overall state budget increases. COVID affected the justice and as such overpopulation in prisons did not reduce.

In Burkina Faso, additional courts were built in Fada N'Gourma and in Koupela, as well as in Pô, Ouaga II and Boulssa. The SDG review highlights slight progresses in terms of access to justice through a decrease of the average distance to a court for the population from 60.3 km in 2015 to 59 in 2017. Justice aid for vulnerable people through a dedicated fund also increased, supporting from 63 people in 2016 when it was launched to almost 300 in 2018.

The EU contributed also to increase coverage of the security forces through building of a number of facilities for police / gendarmerie for security forces, in the different countries, as well as in capacity building of the services, including creation of new entities replicated in the different countries, such as

²⁸¹ n°2017-0625/PRES/PM/MFPTS du 18 juillet 2017

GAR SI and UIS, which complement existing institutions, notably inter-ministerial institutions already in place such as Service Central de Lutte contre le Terrorisme (SCLCT) in Niger or Office Central des Stupéfiants (OCS) in Mali. The capacities to conduct investigation remain limited though, given the challenges to collect evidence and to cover the different terrains and special investigation units affiliated to the G5 Sahel Joint Force mostly address the cases identified by the Joint Force, than an ability to investigate in a proactive manner. In a context of such military operation, the defence force play a role in the judicial chain and their capacities in that respect remain key.

In Mali, the piloting of integrated approach to security and development also shows some potential for results, in Kona notably, with a perception of increased security by the population.

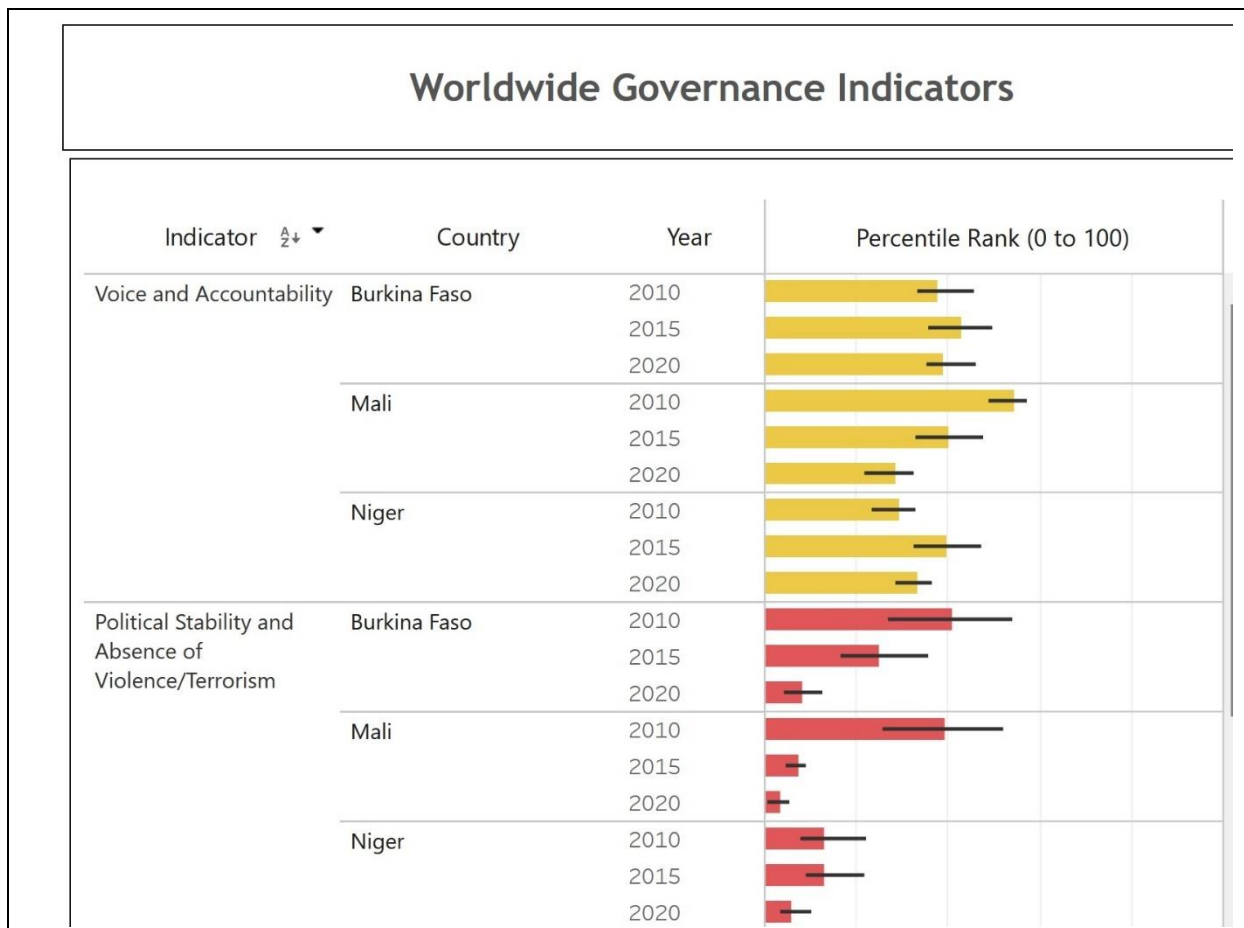
Still, in vast part of the territory of those different countries, the rule of law institutions have limited access and justice is given by Jihadist / local shariah justice, which is a substitution to compensate the lack of justice system.

Regarding the capacities of the different countries to produce data, some outputs are noticeable, notably the yearly reports of the General Controller (Bureau du Vérificateur Général) and of OCLEI in Mali, but they don't really relate to EU support. The statistics cell of the Ministry of Justice received some support by the EU but no progress is visible. In Burkina Faso, a key component of the budget support was directed to the statistics department at the Ministry of Finance with a number of activities to improve macroeconomic forecast.

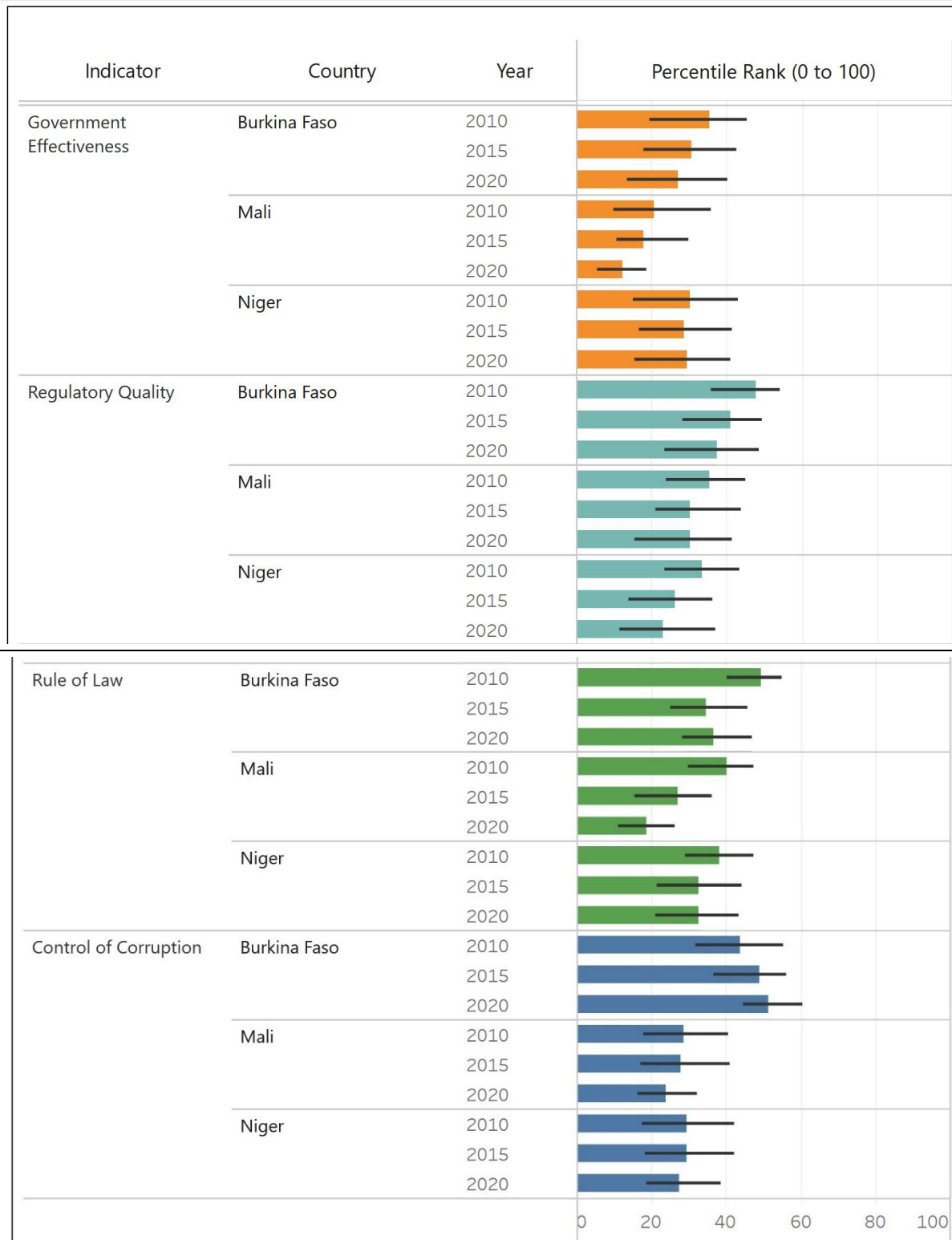
JC5.3: Progress in justice systems and anticorruption frameworks

Overall, the rule of law and control of corruption did not improve in the three countries, with the exception of the control of corruption in Burkina Faso.

Figure 5 Worldwide Governance Indicators



Worldwide Governance Indicators



Source: World Bank 2021

The anticorruption barometer highlights the degradation of the situation between 2015 and 2019 in the three countries, including the number of people who had to pay bribes. This is in particular the case in Mali, despite the efforts undertaken to support and the different types of support provided to the different institutions, in particular to security forces.

Table 15 Anticorruption barometer

	2015 - Percentage of people who thought corruption increased in the previous 12 months	2015 - Percentage of public service users paid a bribe in the previous 12 months	2019 - Percentage of people who thought corruption increased in the previous 12 months	2019 - Percentage of public service users paid a bribe in the previous 12 months
Mali	31%	18%	60%	21%
Burkina Faso	28%	11%	28%	16%
Niger	44%	10%	62%	23%

Source : Transparency International

The interventions maintain some distinction between modern justice and traditional system, more than articulating both systems. The involvement of national level religious and community leaders does not really appear from the general reporting on the countries, but is reflected in the approaches of the G5 Sahel notably, or specific projects related to religious dynamics.

Overall, there are a number of projects funded by the EU dedicated to peacebuilding at local level, that involve traditional leaders. However, customary and community based justice does not appear clearly in the large national projects related to RoL, oriented to top down institutional support. Some studies exist on the subject, notably recently from AFD / Alliance Sahel. With the ethnical patchwork that composes the Sahel, and the specificities of each community, including tensions between communities, such aspect could be further assessed, notably given the challenges for the State deployment.

At another level, in terms of structuring of endogenous mechanism, an interesting aspect – out of EU direct support – is the formalization of local defence mechanisms in Burkina Faso notably with the law of January 2020, n°002- 2020/AN for the institution of Volontaires pour la défense de la Patrie (VDP). There is no direct EU intervention on such community approach to security, which also appear in the other countries notably Mali with the different community based self defence mechanisms that transformed into armed groups.

A specific point in the Sahel relates to the role of armed groups in security and justice, and the implementation of an alternative normative framework that concern an increased part of the population and may find some level of adherence by marginalized communities. There is no specific study on their legitimacy and enrolment process, in relation to rule of law, that would also seem to fuel the national programming.

EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions

JC6.1 Legal safeguards, checks and balances

EU supported AC institutions, in Mali and to a lesser extent in Burkina Faso notably. The development and results of some AC institutions in the trouble context of the Sahel countries are particularly noticeable, despite institutional limitations.

Through budget support, and other donors, in Mali, the Office de Lutte contre l'Enrichissement Illicite OCLEI has been established in 2017, with an increased budget allocated by the State from FCFA 1.2 billion in 2017 to FCFA 2 billion now. The organisation also faces human resources challenges. This relates progress in the regulatory framework also included the law against illicit enrichment the despite strong reluctance of the Civil Servants Trade Unions on the publishing to actually implement it. The number of declarations received decreased drastically nonetheless between 2018, with 629 declarations, and 2020 with only 80 declarations, although new authorities have to declare their assets based on the law. components of the budget support were not funded because of the limited publications of assets declarations. The Constitution in Mali does not include a Cour des Comptes / Revenue Court though, and internal control departments in the institutions remain quite weak. The EU supported the general controller and revenue account section at the Supreme Court, which is the institution in charge of role related to a Revenue Court to some extent.

A partnership between OCLEI and CENTIF led to 12 cases in particular. OCLEI 2019 report highlights significant results concerning high official and the exploitation of cases referred to by a green line. The yearly Verificateur General reports / General Controller shows also some results with, in 2014 16 verifications for a total of 72,97 milliards de FCFA of irregularities identified, and flagging issues in several key institutions. In 2020, 22 verifications took place, including at the Primature.

The level of internal and external control represented a weak point of the SBC II, although the 2016 PEFA identified this as a weaknesses.

In Burkina Faso, the EU is a partner of the Revenue Court and the Autorité Supérieure de Contrôle de l'Etat et de Lutte contre la Corruption (ASCELC). The EU provided support through three funding instruments. A direct grant which included the development of a framework to measure corruption, capacity building of the controller as well as anticorruption strategies. Budget support included indicators on audits of ministries and institutions, digitalization of the asset declaration and judicial support. The new budget support programme

also includes specific indicators related to corruption and institutional capacity building through partnership with the institution of a Member State. The EU also supported the Parliament for the control of executive but the January 2022 stopped the budget support discussion.

A specific project, Présimètre, also contributes to strengthen accountability to the citizen through digitalisation and IT solution, with support to 13 organisations of the civil society, citizen capacity building, alert network. In 2020, 13 committee anticorruption have been put in place in different directions under the General Finance Inspectorate (Inspection Générale des Finances). The RENLAC project also focused on increasing the demand for accountability by the citizen through an anticorruption platform²⁸² (64 cases reported as of April 2022), and implementation of 22 citizen committees, with 313 complaints recorded in the field and 131 administrative actions against health and education structures. A EU Chamber of Commerce was also put in place to strengthen further the engagement with the corporate sector.

In Niger, the SBC also contributed to support structures of control and an increase number of missions of control, notably with dedicated grant to HALCIA, Haute Autorité et Infractions Assimiliées and to the Cour des Comptes / Court of Auditors in 2020. This contributed to implement the national strategy against corruption and related action plan, as well as the control plan of the organization. seven mission control between 2020 and July 2021 allowed to recover over 30 million FCFA on fiscal revenues and over 800 million FCFA on non-fiscal revenues. The EU also supported the CENTIF, Cellule Nationale de Traitement des Informations Financières, with EUTF funds to build capacities, conduct awareness raising on the dedicated law²⁸³, draft and pass decrees of application on the law, draft and implement guidelines for the companies and organizations, and strengthen investigation, notably in relations to smuggling of migrants.

The different interventions of those institutions also include sensitization and awareness throughout the country, notably since they function partly based on the cases reported. Stakeholders mention that since 2010, the role of media, and civil society increased. They are more outspoken and on the field, they do sensitization and denunciation to the justice / OCLEI.

In several countries (Mali, Burkina Faso), the ability to identify and raise cases of frauds related to Ministry of Defence and purchase of military equipment is particularly noticeable given the influence of the military institutions in the current context. Military justice in Mali handled 30 cases in that respect, including one involving a former Prime Minister.

In the different countries, along with the increased military operations by various stakeholders (national armies, MINUSMA, G5 Sahel Joint Force), the EU also supported military justice, with the objective also to ensure a judicial approach to military operations and respect of international laws.

EQ7: Broader effects on RoL&AC culture, human rights and democracy

JC7.1 Promoting a RoL&AC culture

As mentioned above, the EU is the main actor promoting RoL/ AC culture among the stakeholders in the country, and as such played a key role in fostering rule of law principles in the societies of the different countries. The involvement of civil society is noticeable at various levels, through the integration into programming (for example, Burkina Faso with the RENLAC) or specific support and grants affiliated to the EU dedicated Civil Society roadmaps in the countries. Participatory governance remains key to build citizen coalition in the Sahel.

The support to national institutions has been coupled in associated sectors with support to local governance and creation of committees at the local level on various topics, in some cases with limited coordination, and risks of duplication, and without a clear strategy at national level on how to approach community based and grassroots level governance and resilience mechanisms.

Projects include a number of assessments on the specificities of the sectors, which adds to more general analyses such as the gender profile. They are not always clearly capitalized upon notably in a general repository or remain too general to be used.

Involvement and capacity building of the media is frequent with dedicated projects, with frequent radio programmes to raise awareness and sensitize the population, notably on rule of law, and to contribute to bridge the gap between the administration and the population. This is also a good approach to target a broad audience when access to some areas of the territories is more and more challenging.

JC7.2 Fostering human rights

The different interventions undertaken as part of the Rule of Law portfolio integrate human rights perspective and also support the dedicated national plans in that respect. The question of the right of minorities /

²⁸² www.veenem.bf

²⁸³ Loi N°2016-33 du 31 octobre 2016 relative à la Lutte contre le Blanchiment des Capitaux et le Financement du Terrorisme

marginalized population, in first place Peul groups does not appear directly but a number of interventions are oriented to support social cohesion and dialogue at the community level. This had not been fully anticipated though since security decreased in the Center of Mali because of human rights exactions by armed forces (see Human Rights Watch report). The G5 Sahel has a conformity framework to ensure compliance of the Joint Force with human rights. International humanitarian law

JC7.3 Application of democratic principles

The EU supported the elections in the different countries in various ways, through electoral observation, civic education, support to institutions. They happened rather successfully in the different countries but irregularities still happen (Mali 2018), bringing challenges of legitimacy and highlighting also some limitation in the institutional framework / electoral management. Recent events shows that the dynamics created by those types of support do not allow for real structural changes, in a context of heightened institutional fragility related to the security challenges and numerous populations displacements in most of the countries.

EQ8: Effects on wider EU external action goals

JC8.1 Peace, resilience and stability

Obviously, security and defence interventions have been a major investment by the EU and other donors and given the context, was a core priority with the objectives to reconquest State coverage and at a second level to strengthen rule of law. The areas under control of armed groups have grown, as such the contribution of rule of law to increase security does not really appear and the linkage between security and justice is mostly broadly speaking that security – in compliance with human rights and justice - would be followed by increased rule of law at this stage. The interventions dedicated to stability come from multiple instruments (EDF, ICSP, EUTF) but are hardly consolidated in a common framework with global targets and a joint monitoring process.

EU interventions on the conflict fronts are numerous in the Sahel with interventions at various levels. Specific support concerned the articulation of military interventions with justice in the case of arrests, notably with the specialized investigation units of the G5 Sahel, and the monitoring of Alger peace agreement in Mali. The operationalization of the Joint Force of the G5 Sahel, headed in Bamako, was a key component covering several hundred millions euros. Interventions also covered support to specific areas such as Mali Centre region, Liptako Gourma or border areas in the different countries. The EU supported also development and governance secured poles with the objectives to support an integrated approach in Mali. The EU developed specific stabilization approaches through dedicated plans and funds, highlighting also the interrelations between the different levels of interventions at security and development levels, in Mali notably.

Specific attention was paid to the training on human rights for the units deployed and supported but this seems to remain insufficient notably in relation with the human rights abuses legacy of the armed forces towards certain categories of the population, fuelling the armed groups, and reports on exactions against civilians by specialized NGOs. Those exactions contribute to justify enrolment to armed groups, which represent partly the interest of sole communities, notably in Mali and Northern Burkina, with then a component that relates to civil war in the conflict.

A major challenge is the representation of the different social groups in the administration and in first place in the armed forces, notably the Peuls and other marginalized or nomadic groups. The progress and possibility of support remain limited given the sensitivity of the subject and political dynamics around it. To some extent, the challenge also lies in the integration of nomadic groups into the different services and coexistence of livelihoods. Efforts to bridge the gaps between the administration and the communities through mobile public services are particularly noticeable in that respect.

Community level interventions also supported local governance, peacebuilding mechanisms, social cohesion intra-inter communities, in particular between cattle-breeders and farmers, prevention of radicalization and resilience as a way to mitigate the effects of the crises and reduce the vulnerabilities of the communities.

At a political level, challenges related to impunity and linkages between the elite and some illicit networks that contribute to the instability of the area and to the weak governance, do not appear clearly tackled, but cases have been identified and reported.

JC8.2 Human rights and due diligence

The support to the business environment does not clearly appear given the context but the overall public financial management reforms contribute to develop more transparent process. In some countries, the support to Chamber of Commerce also appears in Burkina Faso. In Mali, the EU gave a grant to Conseil des Investisseurs Européens au Mali, which offered a platform to discuss with European companies. However, European based companies, and their potential leverage effects in promoting good practices in the countries, are not directly mentioned in the different reports consulted. Neither appears the role of the trade unions, professional associations, or some categories of economic stakeholders who could also support rule of law in the countries.

JC8.3 Natural resource management

The role of natural resources in the context of the conflict in Sahel is key, takes different forms and increased over the recent years with the gold rush in artisanal mine sites in the three countries. Results to mitigate the role of natural resources in fuelling insecurity have been limited with insufficient efforts compare with the needs. This is in particular the case for what concerns the governance aspect of natural resources. A significant share of the revenue generated by the natural resources exploitation comes from the informal sector, and new forms of exploitation such as artisanal mines sites exploded rather recently along with the insecurity and institutions are not equipped yet to fully cover and address this type of activities (no specific institutions dedicated to artisanal mine sites, regulations of the workers, or even mine police compare with DR Congo for example).

Some aspects appear in the programming though, notably related to EITI. Niger reintegrated EITI in 2020. In Mali, budget support indicators included some components related to IETI compliance. There are several types of support related to artisanal mining, but mostly to mitigate the negative effects and risks of the exploitation than to set up a governance system to regulate the sites apparently at this stage. Some projects addressed artisanal mining such as « Support for the establishment of integrated systems to protect the human rights situation at traditional gold mining sites » / « Appui à la mise en place de systèmes intégrés de protection de mécanismes de la situation de droits humains sur les sites d'orpaillage traditionnel » in Burkina Faso in relation to the country human rights strategy 2016-2020 and killings by armed groups in some sites (150 people in Solhan in June 2021 for the control of the site).

The challenges of management and control of explosives used in mine sites seem also insufficiently tackled according to specialists, while they are correlated with the increase use of explosive device (IED) by the armed groups.

At another level, several EU funded projects (PREDIP for example) address the governance of the transhumance roads, which remain a key source of instability / conflict between farmers and cattle breeders, through regional or national level interventions. Instability and lack of access to certain areas also limit the actual interventions, and the transhumance flows are also affected by insecurity or hardly respected in relations to the limited capacities of the administration, and insufficient structuring and performance of the local committees responsible. The challenges to address such issues from a national angle highlights the role also of grassroot / community based approach on those issues.

Finally, in the context of climate change that affect , some EU interventions are noticeable in relations to water management at an institutional level, with the support to the National Water Strategy in Burkina Faso for example. Several other strategies have been supported in the environment sector but remain limitedly implemented. Management and administration of protected areas remain notably key since they often constitute safe haven for armed groups, in Burkina Faso again notably.

Overall assessment and lessons learned

The EU plays a pivotal role in external assistance to the Sahel, remaining the region's primary donor and playing a catalytic role in strengthening justice, human rights and security. The EU acts at different levels of intervention, from the support to national dynamics to the assistance of overarching regional initiatives. While EU support has only a limited ability to tackle structural and conjunctural challenges to the rule of law and the underlying political dynamics, it has nonetheless achieved some operational results and contributed to a more robust legislative and strategic framework.

The EU plays a central role in promoting a modern and positive concept of rule of law. This is challenged by the realities of fragile contexts in which the capacities of stakeholders do not allow building on functional dynamics. Burkina Faso and Mali are particularly affected by insecurity and have experienced several coups that further put into question the possibility for direct institutional support. As a consequence, the perspectives of support do not seem very promising for the years to come. Multisectoral integrated interventions at local level show some potential and the dynamics associated with the launch of new rule of law institutions may well lead to direct results.

Despite several strategic frameworks, EU's portfolio of interventions and instruments has been very diverse and the overall cooperation tissue quite complex. From it, a multitude of projects and new entities have been created, all with specific objectives and timeframes but with limited prospects of capitalisation or insertion into existing structures. This has limited the visibility and piloting of different interventions and has not enabled EU to see progress on its regional strategy. In the majority, EU support has aimed to build institutional capacities and to achieve results on the judiciary, notably with regards to investigating and tackling the underlying dynamics related to organised crime that fuel armed groups as their illicit financial sources of revenue. More traditional support to institutions in the area of rule of law (mostly justice) is severely hampered by the political turmoil in the region. A major challenge has been to strike a balance between ensuring an integrated and structured approach as a short-term response to immediate risks and the development of a long-term strategy to deal with the overarching problem posed by illegitimate types of government.

To a certain extent, the case of Sahel shows reverse dynamics to the DRC case. While DRC is at a more advanced stage of conflict in which the challenge lies in rebuilding institutions, the challenge for Sahel is to reverse the negative trend of weakening institutions under pressure by conflict dynamics. In both cases, the integrity and extent of State authority remains difficult for various reasons but mainly related to the fact that a significant share of State territory is in control of armed groups. In this context, significant parts of the population are not accessible through the administration any more or are internally displaced. Approaches based on local communities and local governance are therefore essential in an attempt to reconstruct linkages between population and institutions.

Case study note – Vietnam

Introduction.....	187
Context	187
Political economy analysis	187
Overview of the EU support to RoL&AC	188
Strategy and implementation of EU support to RoL&AC	190
EQ1: EU strategic framework/institutional environment.....	190
EQ2: Responsiveness, ownership and flexibility	191
EQ3: Partnerships and coherence	193
EQ4: Choice of modality	194
Effects of EU support to RoL&AC.....	196
EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions	196
EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions	198
EQ7: Broader effects on RoL&AC culture, human rights and democracy.....	199
EQ8: Effects on wider EU external action goals	200
Overall assessment and lessons learned	201

Introduction

Remark: This case study note does not constitute a separate evaluation of EU support in the country or its situation with regard to RoL&AC. It presents country-related findings relevant to the overall assessed judgement criteria and indicators, and feeds into the main evaluation report of the Evaluation of the European Union support to Rule of Law and Anticorruption in Partner Countries to which it will be attached as an annex.

Context

Vietnam ca. 1975 was a desperately poor country characterised by an unproductive, overpopulated agricultural sector, and depleted in capital and manpower by decades of war. Initiating a theme that would play out repeatedly in following years, 5-10 years after China's transition to market socialism under Deng (conventionally dated to late 1978), in 1986 at the 6th Party Congress, Vietnam initiated the era of Doi Moi ("Renovation"), a series of market-based reforms which unleashed decades of strong foreign direct investment (FDI) and export-based economic growth. Vietnam was a key participant in what the World Bank termed the East Asian Economic Miracle, a miracle credited to reasonably strong solid education system, reasonable gender equality, and a reasonably equitable distribution of income and wealth. Playing a role, as well was the rapid fertility decline that throughout the region, as in Japan before it, left the country with a (temporarily, over the demographic time span) reduced population dependency ratio and households with increased resources to invest, particularly in the human capital of their children. Trade relations with the West flourished as Vietnam exploited its comparative advantage in the form of an educated, disciplined, and cheap labour force. This comparative advantage was leveraged by globalisation, the lengthening of supply chains made possible by rapidly evolving information and transport technology. These developments were capped by Vietnam's entry into the World Trade Organisation in 2007 and signature of the EU-Vietnam Free Trade Agreement in June 2019.

While there were limits, sometimes not entirely clear, on dissent, freedoms of association and expression, it is not wrong to speak of a Hanoi Spring during Doi Moi. An ill wind blew ca. 2010 when China, concerned about the emergence of an active society, initiated a series of clampdowns affecting organisations working in seemingly safe areas as diverse as women's rights and HIV-AIDS. At the 18th National Party Congress in 2012, concerns with gross inequality, universal corruption including within the party, and public dissatisfaction, the leadership instituted a massively publicised campaign against corruption at all levels, imprisoning or executing dozens. Since the early 2010s, NGO activism, dissent, freedom of information, and artistic expression have been ruthlessly suppressed and patriotic themes laden with Communist themes have been promoted. A distinctly nationalist, anti-Western theme began to pervade national and international policies, the message being that the West would never again prevent China from taking its rightful place on the international stage.

That cold wind reached Vietnam in 2016 with the 12th Party Congress, which saw the adoption of a harder line towards dissent and a further shrinking of an already-constrained space for civil society. Since then, multiple bloggers and writers have been imprisoned and independent journalists have been assaulted with impunity. The term "civil society organisation" is convoluted into a Party-friendly term having to do with social groups. The term "human rights defender" cannot be used at all. Only missing has been the strident nationalism (with heavy military overtones ambition) that have characterised the Chinese experience.

The same Party Congress saw the initiation of an anticorruption drive, which has been pursued with vigour ever since. According to the 2020 Provincial Governance and Public Administration Performance Index (PAPI) opinion survey, the previous five years saw substantial improvements in public perceptions of corruption. This may be due to a decline in petty corruption while high-level corruption continues. Long-term trends in the Transparency International perceived corruption index and the World Bank's Ease of Doing Business index suggest modest long-term improvements. However, there is still broad agreement that corruption in Vietnam is endemic and a significant deterrent to foreign companies wishing to operate there.

Political economy analysis

Any discussion of political economy needs to be conditioned on the incentives of and challenges faced by the protagonists. The Government of Vietnam (which is so close to being the Party, and we will use the terms interchangeably) needs to ensure more equitable distribution of the fruits of progress to the population, and it is a difficult population, deeply split between urban and rural and containing dozens of ethnically and linguistically distinct groups, many economically and socially disadvantaged relative to the majority (appx. 85%) Vietnamese population. It must manage dissent while not overly alienating the young, Westernised, creative and entrepreneurial class. It must consolidate its role as the deliverer of progress. It must do all these things without alienating its international partners, and especially the Western ones to whom it owes its trade-based prosperity. As always, it must look over its shoulder at China, a major source of foreign investment as well as traditional enemy. Moreover, the Party is not a monolithic block, it consists of conservatives, moderates, reformers, and rent-seekers. The conservative bloc has predominated since the 12th Congress, but leadership is ageing. External observers characterised the 2021 13th Party Congress, where Nguyen Phu Trong (age 73)

obtained an unprecedented third term as General Secretary, as an attempt to balance factions while maintaining the two principal foci of crackdown on dissent and anticorruption. As an indication of the cautious path being followed, the average age of the 13th Politburo, at 63, is actually two years older than the average age of the 12th.

The EU and Vietnam share one central interest – closer relations and the integration of Vietnam into the international system. The MIP 2014-2020 stated that the overall strategic objective of the EU in Viet Nam was “to further develop political, economic and cultural ties and to increase the visibility, understanding and presence of the EU in the country.” With the EU Indo-Pacific Strategy as background the MIP 2021-27 was more expansive:

“The EU interest in increasing its influence in the country sees EU – Viet Nam relations in an ascending phase. No other country in South East Asia is party to as many agreements with the EU, notably the EU – Viet Nam Framework Agreement on Partnership and Cooperation (PCA), the EU – Viet Nam Free Trade Agreement (EVFTA), the forthcoming EU– Viet Nam Investment Protection Agreement (EVIPA), the EU– Viet Nam Forest Law Enforcement, Governance and Trade Voluntary Partnership Agreement (FLEGT-VPA), and the Framework Participation Agreement (FPA) for the participation of Viet Nam in EU crisis management operations. Moreover, in a context of an accelerating geopolitical and geostrategic shift to the region, the EU formulated its own Indo-Pacific Strategy. These agreements are the cornerstones of the EU’s relationship with Viet Nam, offering a wide range of areas for engagement, in which the Team Europe approach has a potential for leverage and transformative influence.”

At the same time, the EU recognises Vietnam’s poor performance on human rights. This sets up a conundrum for EU Cooperation in that it must promote economic and commercial relations while remaining true to European values and maintaining credibility with European civil society and international human rights organisations. Faced with calls for sanctions to be imposed under the FTA, the EU has argued forcefully that dialogue in the context of cooperation and in venues such as the EU-Vietnam Human Rights Dialogue is preferable to sanctions. The EU has consistently spoken out when particularly blatant human rights violations have occurred.

The political economy of Rule of Law (RoL) in Vietnam deserves some attention. Unique among case study countries, Vietnam’s conception of RoL is grounded in Confucian concepts, based on the assumption that human beings are basically good, with a resulting emphasis on shared community solutions to problems when they arise. Laws are applied to those who fall outside the social norms. This sets it apart from the Western Legalist tradition, in which human beings are constructed as likely to offend, as a result of which codified laws and strict punishment for breaking them are required to maintain the social order. At the same time, the Confucian RoL approach contains the seeds of a jurisprudence harsher than the Legalist, because through some acts and behaviours individuals demonstrate that they are not worthy to be considered members of a community sharing common values.

Also unique among case study countries, Vietnam adheres to a Communist construction of the RoL. It would be reckless – and ultimately destructive to cooperation – to underestimate the internal consistency and logical strength of this construction. Central to the Communist view of RoL is that both the law and the party are expressions of the will of the people; this dooms, from the start, any attempt to achieve the European ideal of an independent judiciary. (At the same time, there is strong acceptance that, in purely private matters, judges should be impartial.) Since the Party must act in accordance with the law and judges interpret the law, judges are apparently independent – but they are, in effect selected and vetted by the Party. It also manifests itself, as in other Communist or post-Soviet systems, in a pronounced inequality of arms between prosecution and defence, with the latter often reduced to merely pleading in mitigation. A strong sub-text, contributing to the wide powers granted law enforcement and the prosecution, is that the people have enemies (which leads to the overreach of the prosecution in post-Soviet legal systems). Another is official doctrine that socialist development comes first and RoL follows, a view diametrically opposed to the view of the EU and the international development establishment generally, that RoL is an essential pre-condition for economic development. Underlying all is a Confucian view of the law, which distrusts formal legal process and lawyers in particular. Despite requiring an extremely difficult *studium*, law is not a highly prestigious or highly paid profession in Vietnam. At the same time, the situation is dynamic, if slow moving. Vietnam profits from a strong academic legal establishment that is fairly free to debate. It is also increasingly infused with scholars who have received training in America, Europe, and the Antipodes. With the growing presence of foreign businesses and the strong flow of FDI, international law firms have emerged or set up offices, staffed with lawyers who are earning international salaries.

Overview of the EU support to RoL&AC

The essential framework for EU cooperation with Vietnam over the reference period was the Partnership and Cooperation Agreement (signed 2012, entered into force 2016), which aligned EU strategic objectives with the national Socio-Economic Development Plan (SEDP, 2011-2020). After long negotiations, EU-Vietnam cooperation was capped when the two parties signed a Trade Agreement and an Investment Protection

Agreement on 30 June 2019. Under the MIP 2014-2020, the EU committed EUR 320 million to supporting Vietnamese economic development. Noting that among Vietnam's development challenges was a "governance deficit," one of the focal sectors identified was Governance and Rule of Law.

This represented a shift in the EU's cooperation strategy in Vietnam. RoL and Anticorruption (AC) are virtually absent from the strategic framework set forth in the CSP 2007-2013. The focus is on support for the 2006-2010 SEDP, with strong orientation towards economic growth and poverty reduction, the latter including a focus on health sector reform. Democracy and human rights concerns are mentioned, but only in passing; e.g., the problem of discrimination against ethnic minorities. There is no reference to the centrality of RoL/ AC to foreign investment and economic growth. As a result of the MTR of the CSP (i.e., review of the MIP 2007-2010), as well as the 2009 Country Strategy Evaluation, a significant change is observed in the MIP 2011-2013. This is the addition of an Additional Action to support improved implementation of legal and judicial reforms and governance reforms more generally, which includes the Justice Partnership Programme (JPP, 2010-2015) aiming to strengthen justice sector state institutions; to build up the Vietnam Bar Federation (VBF) in order to strengthen the legal profession, and to enhance the capacity of NGOs to contribute to awareness of rights, access to justice and judicial reforms. JPP was co-financed in the amount of EUR 18.7 million by the EU, Denmark, Sweden.

This shift in strategy in the MIP 2014-2020, in which Governance and Rule of Law was identified as a full-fledged focal sector, responds to a consolidation of economic progress and realisation that further progress, as well as addressing worsening disparities, required increased attention to governance issues. The main vehicle for EU RoL support was the Justice and Legal Empowerment Programme (JULE, EUR 15.6 million), which in turn consisted of two components. The first, managed by UNDP and under which UNICEF and UNODC also operated, consisted of building the capacity of a range of justice institutions to implement legal reforms. Justice Initiative Facilitation Fund (JIFF) built on the eponymous initiative under JPP and aimed to strengthen NGOs' ability to promote awareness of and access to rights and justice, with emphasis on ethnic minority rural populations. JIFF was managed by Oxfam.

On the AC front, the Public Financial Modernisation Programme (PFMO, EUR 13.7 million co-financed by EU, Swiss State Secretariat for Economic Affairs, and GIZ) extended over essentially all of the evaluation period (albeit with significant delays in some elements) and consisted of two capacity building components. One targeted the State Audit Office, the second the Ministry of Finance, in the first case to bring public audit practices; in the second to bring state budget planning and implementation up to international standards.

In assembling a convenience sample of actions to inform this case study, the three projects above were obvious choices and are designated "Priority 1" projects in the list below. A substantial amount of the EU's programme also consisted of stand-alone civil society projects, some under JIFF, some under instruments such as EIDHR, some under open calls for proposals. In selecting projects for attention, weight was assigned to those dealing with rural land rights and responsible forestry (somewhat to the exclusion, e.g., of support for freedom of association, women's rights, etc.). The explanation is that one reason for choosing Vietnam as a case study country was the fact that there was strong support for RoL in natural resource management.

Table 16: Main interventions reviewed

D or C year	Title	Budget (mEUR) ²⁸⁴	Typology	Implementing partner
2014	EU JULE – EU Justice and Legal Empowerment Programme in Vietnam (D-37404)	13.15	Justice (system)	CSO and UN agency
2009	Viet Nam – Justice Partnership Programme JPP (D-20529)	5.74	Justice (system)	CSO & private sector companies
2013	EU Public Finance Modernisation Programme in Viet Nam (EU-PFMO) (D-24371)	5.48	Governance (PFM)	EU MS (France & Germany)
2014	Non-State Actors Promoting Budget Transparency (C-354252)	0.58	Governance (democratic)	CSO – STICHTING OXFAM NOVIB
2015	Promoting land rights for ethnic minority people in Vietnam(C-366276)	0.52	Human Rights	CSO – CARE DANMARK FONDEN FOR FRIVILLIG U LANDSBISTAND
2019	Restoring ethnic minorities' rights to customary land (C-411988)	0.45	Governance (other)	CSO – CISDOMA
2019	Secure land rights for all – Giving ethnic minorities a voice (C-411897)	0.45	Governance (other)	CSO – HELVETAS INTERCOOPERATION GGMBH

²⁸⁴ Planned EU contribution

<i>D or C year</i>	<i>Title</i>	<i>Budget (mEUR)²⁸⁴</i>	<i>Typology</i>	<i>Implementing partner</i>
2020	Integrated sustainable landscape management in the Central Highlands of Viet Nam through deforestation-free jurisdiction (C-418423)	5.0	Governance (natural resources)	UN agency – UNDP
2019	Promoting forest governance and legal timber trade through the EU-Vietnam Free Trade Agreement (C-413943)	0.6	Governance (natural resources)	CSO – Centre for Sustainable Rural Development (SRD)
2019	Enhancing grass-root CSOs engagement in monitoring REDD+ programmes in Vietnam (C-411843)	0.46	Governance (natural resources)	CSO – Institute of Sustainable Forest Management and Forest Certification
2013	Promoting the participation of the Central Vietnam VNGO-FLEGT Network in the FLEGT-VPA processes (C-314949)	0.34	Governance (natural resources)	CSO – COOPERATIE ICCO UA
2013	Increasing capacity of CSOs and SMEs to implement FLEGT requirements (C-316088)	0.4	Governance (natural resources)	CSO – NEPCON FMBA

Strategy and implementation of EU support to RoL&AC

EQ1: EU strategic framework/institutional environment

At the same time, while there was engagement across a broad spectrum -- from land rights to gender to child justice to civil society empowerment to building the capacity of the legal profession to bringing budget and audit practice up to international standard -- there was a lack of overall strategy, and no sense of how, in a highly variable RoL&AC geography, big-picture success was to be identified. Somewhat perversely, the fact that there was no sector reform strategy that lent itself to defining a monitoring framework with verifiable benchmarks, the Government of Vietnam was able to essentially pick and choose. It was in the driver's seat – a perhaps justifiable position given the strategic and economic importance of Vietnam to Europe and the strength (relative to other EU cooperation partners) of the national executive partner. Vietnam's importance has been reflected in a strong EUD, strong EEAS support from Brussels, and strong involvement of other DGs (e.g., Trade) and the European Parliament, as well as European civil society.

JC1.1 Clear, context sensitive and realistic

The EU's engagement strategy in governance and Rule of Law in Vietnam as spelled out in MIPs has recognised the centrality of the issue (I-1.1.1) to EU-Vietnam engagement and been fully cognizant of and informed by the one-party governance regime in the country, as well as the prevalence of corruption (I-1.1.2). It has reflected the priority given by Government to integration into the international economy, with its need for international investment and trade ties. It has also been sensitive to the fact that, concerns aside (human rights, civil society, etc.), Vietnam is nearly universally regarded as a development success story, as well as a regional counterweight to China. It has negotiated successfully the troubled waters between commitments to RoL&AC and European commercial and strategic interests

Strategic documents are bimodal -- ambitious on what is to be achieved, granular on the actions to be implemented and results to be produced, but weak on drawing the link between the two (I-1.1.3). The MIP 2014-2020, in which governance and rule of law is fully emergent as an EU priority, is informative in this regard. The overall objective is:

“To promote democracy, strengthen governance and rule of law and enable the business environment by building accountable and transparent institutions that are responsive to citizens' rights, and that promote access to justice, participation and a conducive business environment.”

This is broken down into three specific objectives, each of which is broken down into expected results. But this is simply an exercise in disaggregation at the strategic design stage; the assumption being that, if the expected results are achieved by actions implemented, they will naturally add up to specific objectives and, in the next stage, the overall objective achieved. There is a lack of overall strategy, particularly with respect to synergies between the components and how failure to achieve results in one area would impede progress in others.

Both major RoL projects, JPP and JULE, as well as the JIFF component and its follow-on, contain results frameworks complete with indicators of success.

JC1.2 Coherence with nature and goals of EU external action

The MIP 2014-2020 puts EU's RoL&AC cooperation in the context of EU policies (I-1.2.1). It sets forth the ambition to expand the EU's original economic development / poverty reduction agenda as Vietnam has

progressed. The MIP 2014-2020 explicitly identifies “the remarkable experience” of the EU and its MS in governance and Rule of Law as a unique source of value added in its cooperation with Vietnam. In general, however, European values-talk is absent; perhaps out of a sense that this would be inappropriate and counterproductive in the Vietnamese setting.

Peace and security, while important in the EU’s broad engagement with Vietnam, are not major concerns of the cooperation engagement (I-1.2.2). However, interviews pointed out that security figures prominently on the EU Vietnam is, indeed, very high ranking on the security dimension. It was not included as part of the MIP, but it is covered by other elements of EU – Vietnam partnership (like FPI). An example of strengthened cooperation in this area is the signing of the Framework Participation Agreement (FPA) between the EU and Viet Nam in October 2019. Transparent and equitable natural resource management has been an area where limited cooperation was possible, through FLEGT (on responsible forestry) and due to GoV’s concern over rural discontent, much of it having to do with land and natural resources. The EU would have been more than eager to cooperate on RoL cooperation to strengthen the private sector and develop opportunities for European businesses and investors; unfortunately, this ran into the barrier of deep reluctance to adopt European-style independence of the judiciary. At the level of commercial disputes, there is no level playing field. As a result, international businesses continue to characterise Vietnam as an extremely difficult country to work in.

Perhaps because Vietnam is a country at peace, “peace” does not occur in any way meaningful to RoL&AC in the MIP 2014-2020. Nor does “security,” but Vietnam scores very high in international indices of security. “Resilience” occurs only in the context of natural disasters. Peace and security are, by contrast, covered in the Asia Regional MIP 2014-2020.

There is no evidence that external action in RoL&AC was adjusted to reflect unfolding developments within the EU (I-1.2.3). Based on interviews, in policy and political dialogue at high level, Vietnamese interlocutors are prepared to interjecting intra-EU issues of RoL&AC into discussions; i.e. the “People who live in glass houses” argument.

JC1.3 Conducive institutional environment

Vietnam’s importance as a partner has been reflected in a strong delegation (I-1.3.1), including personal attention of the Head of Mission to cooperation and public statements of protest against the suppression of democracy and human rights advocates; strong EEAS support from Brussels, and strong involvement of other DGs (e.g., Trade) and the European Parliament, as well as European civil society (I-1.3.2). Explaining this high level of engagement are Vietnam’s importance as a trade partner, its role as a regional counterweight to China, and keen European concern over human rights and the authoritarian nature of the Vietnamese state. However, while Vietnam may be of importance from the EU perspective, it depends on the willingness of the partner country, which has blocked one RoL&AC project with an internationally-respected but Government-disfavoured NGO.

EQ2: Responsiveness, ownership and flexibility

JC2.1 Context, political economy and/or conflict analysis

EU documents reviewed contain realistic analyses of limitations imposed by the one-party state, and equally realistic analyses of where progress can likely and likely not be made (I-2.1.1). The general framework that has formed EU-VN cooperation in RoL&AC is the broadly accepted supply-and-demand one – promoting demand for RoL&AC through awareness raising and capacity building and promoting supply through legislative reform and capacity building for implementation. Across all levels of reform, implementation lags behind adoption of reform agenda, and with some exceptions (such as rural access to justice) there is no clear strategy now to clear the roadblock. The dilemma at this point of the reform process is that boosting supply without boosting demand is a waste of money and boosting demand without boosting supply will lead only to frustration and a troubled cooperation relationship. The MIP 2014-2020 enumerates “profound challenges” on both the supply and demand sides, in the way of establishing a RoL (along European lines) state.

These analyses do not so much affect the results frameworks – which remain rather generic – but they well inform the assessment of risks and the reporting of successes and failures, including the derivation of lessons learnt. “Theories of change” in the full sense of the term do not figure in the documents reviewed.

The EU put in place a Civil Society Roadmap in 2014, and by 2018 (when the Roadmap was revised and updated), stated that it had engaged with a wide range of civil society organisations in project design, formulation, implementation, and evaluation (I-2.1.2). However, based on the 2018 EAMR, this was largely in the areas of trade support and energy. EIDHR grants are cited, but in the safe area of GBV. Reading between the lines, the limitations of the EU’s engagement with civil society can be seen, even in what could be a relatively safe area such as trade. In 2021, the European Domestic Advisory Group under the FTA officially protested that GoV had failed to permit the formation of a Vietnamese counterpart group of “independent, representative organisations” to meet and discuss implementation of the FTA. The goal of GoV was clearly to

avoid any possibility that independent civil society organisations would receive a forum in which to criticise the FTA or call for action to address deficiencies.

The episode exemplifies that, as the EU attempts to involve all relevant actors, it is constrained by the limits set by the Party, whose relationship with independent civil society is fraught and generally intolerant.

The private sector, in the form of Eurocham, has also been involved in EU support. One academic analysis has concluded that private sector organisations engaged in the context of FTAs appear satisfied with information sharing, whereas non-governmental organisations are ambitious to have actual policy impact, an aspiration that would place them at odds with Government.

The EU has fully exploited dialogue on difficult issues, with some success such as the reduction in the number of capital offences, although this is likely due to many factors and sources of pressure, not just the EU. Other areas, notably human rights defenders and freedom of expression, remain off-bounds to constructive discussion, although the EU invariably protests when particularly blatant human rights violations occur. Important to the success of EU engagement has been the fact that official doctrine on RoL is well developed and the academic legal establishment is both of high quality and relatively free to think and express itself.

The main fora for policy dialogue identified are the annual Vietnam Development Forum, MUTRAP and Arise+ (for trade and trade-related assistance, respectively), the annual Human Rights Dialogue, in various ad hoc fora (e.g., the Legal Forum in 2018 under JULE) and in Steering Committees of the various projects being implemented (I-2.1.3). Most dialogue under the latter will likely be operational and technical in nature.

Policy and political dialogue have sought, with some success, to establish a shared agenda in the area of RoL&AC. As EU representatives stated, the EU has more dialogue platforms and opportunities on RoL and human rights than the Member States, a tangible source of value added. That success largely consists in the mutual agreement that significant progress is possible in access to justice, particularly for the rural population, and with an emphasis on victims of GBV and members of ethnic minorities. This shared agenda has been made possible by the fact that Government is aware of widened disparities and the threat of dissatisfaction leading to unrest in the countryside. This openness has allowed the EU, through JIFF, to engage with community-level NGOs, but a broader shared agenda on independent civil society is well beyond the reach of any dialogue.

So, too, is a shared agenda on death penalty, which is, as GoV is aware, broadly supported by the population in the belief that it is necessary to preserve the security that is one of the Party's strongest claims to legitimacy. Independence of the judiciary, as discussed elsewhere, is not an area in which for ideological reasons, there is common ground.

On AC, the word "corruption" barely appears; it is rather implicit in all cooperation documentation related to PFM. In PFMO project documentation consulted and, when it does, it occurs in such anodyne settings such as government reporting on anticorruption progress being identified as a monitoring tool (e.g., in the logframe). As it is common knowledge that Government has been engaged for some years now in a high-profile offensive against corruption, this suggests that, while actions such as strengthening the State Audit Office under PFMO have obvious anticorruption aspects, the AC agenda is not one that has emerged from EU-GoV dialogue. The Anticorruption Dialogue is reported in the 2014 EAMR to be being phased out, merged into higher level fora.

JC2.2 Engagement with actors at different levels

The EU has engaged with actors at a number of levels in the area of RoL&AC, ranging from high-level political leadership to Ministries to mass organisations (essentially INGOs) to academic institutions to international, national, and community-level NGOs (I-2.2.1). No evidence has been found on regional-level engagements to promote nationally-led RoL&AC processes, but the natural regional fora would be ASEAN and the Asia-Europe Meeting. Both are consensus fora, and absent a political or security crisis, could not be counted on to initiate RoL&AC processes.

The EU has devoted attention to identify and develop national independent NGOs as partners in its RoL work (I-2.2.2). Civil society engagement in the context of shrinking space has been exemplary. Of particular importance, common ground (safe areas) between the EU and Party have been identified; e.g. Access to justice for ethnic minorities and victims of GBV. While Government has suppressed civil society at every turn, the EU has succeeded in engaging and strengthening where possible. This includes strengthening the Vietnam Bar Federation, although this can hardly be considered an independent organisation.

Civil society involvement with AC is dangerous territory because of the overlap with the watchdog function, effectively a state monopoly. Development of national NGOs, down to the local level, has been particularly suitable in the area of access to justice because large parts of this lie in common ground shared by the EU and GoV. There has been significant capacity building of national NGOs. Vietnam has a reasonably strong academic research establishment, heavily dependent on Government, but with a decent degree of latitude. The EU has supported the Vietnam Lawyers Association in its provision of legal aid (more accurately called advice in most cases). This is a generic action, and one whose effectiveness is limited in a country where the

practice of law (outside commercial law relevant for international trade and investment) is under-valued and under-paid; however, it has contributed to both supply of and demand for justice at the local level.

The existence of liberal-thinking Party champions for RoL&HR at national level (I-2.2.3) cannot be ruled out, but beyond indications that there are progressive and conservative factions within the party, cannot be confirmed. Party is a .

JC2.3 Adjustment to changing conditions and new opportunities

The EU has adapted well to emerging Government priorities, such as rural access to justice. Its reaction to the unfavourable environment post-2015 has consisted essentially of seeking common ground in cooperation activities and frank political and policy dialogue to denounce flagrant human rights violations. The EU has been forthright in stating, in the face of international civil society criticism, that it sees dialogue, not sanctions, to be the preferable course of action under the PCA and FTA. Interviews have repeatedly stressed that Vietnam is evolving quickly, more quickly than the Party leadership, and a pickup in progress will only occur through replacement. There are factions within the Party. The younger generation, not only within the Party but within government and society more broadly, is increasingly international in orientation; its elites are commonly Western-educated, and Vietnam has not come close to China in attempting to indoctrinate, through a combination of propaganda and limitations on access to Western media, its educated class.

The gradual shift from a programme concentrated on economic growth and poverty reduction to one with a significant governance and Rule of Law component (I-2.3.1) has been described above under EQ 1. This can be easily traced in the three MIPs covering the evaluation period (2007-2010, 2011-2013, 2014-2020). The programming cycle makes for an inherently iterative approach, and lessons derived from JPP and its associated JIFF were incorporated into the formulation of JULE and its JIFF.

No formal theories of change have been found (I-2.3.2). There do exist, however, formal JPP, JIFF, and JULE Results Frameworks. There has been no major transition in Vietnam; there has been, rather, a complicated trend mixing economic success, closer integration into the world economy, as typified by FTA; concern over emerging disparities and the potential for popular discontent, growing concern over corruption, and worsening government intolerance of independent critical views.

In political terms, what is seen is the “China lag.” What China does, EU officials interviewed observed, Vietnam follows with the five- or ten-year lag. Thus, the Chinese tightening on corruption has been followed by a Vietnamese one; China’s authoritarian turn with the accompanying clampdown on dissent and criticism has been followed by a Vietnamese one. The EU has responded with policy and political dialogue, perhaps increasingly tense, while continuing to pursue the underlying objective of trade, investment, and regional security relations.

The European Parliament and EUD have been forthright in condemning human rights abuses, e.g., arrests and prison sentences aimed at bloggers / journalists and what are likely government-sponsored violent assaults on critics (I-2.3.3). At the same time, European and international NGOs have condemned the EU’s failure to take steps under the FTA to sanction abuses. One academic article argues that the presence of the EEAS and the separation of negotiations on trade and human rights have weakened the position of the European Parliament and NGOs. The European Commission’s position is that further dialogue will be more productive than sanctions.

EQ3: Partnerships and coherence

JC3.1 Partnerships based on comparative advantages

It is difficult to address this indicator credibly, as the terms “partner” and “partnership” have been so overused in development discourse as to have little meaning left (I-3.1.2). It is, however, evidence that, as EU MS are decreasingly active in Vietnam, the EU has established itself as the leader in RoL&AC. Still, there are many donors overall present in the country. Donor coordination is well developed and the EU plays a leading role in coordinating cooperation of remaining Member States. No evidence related to comparative advantage has emerge. However, persons interviewed identified the fact that the EU speaks with one voice for 27 countries as a major source of clout and value added. As a donor darling, Vietnam is a difficult country in which to establish division of labour. There is no joint programming. To the extent that the term is a highly variable one, the EU has established meaningful partnerships with Government agencies, notably MoJ and MoF, Vietnamese civil society, and major international implementing agencies, including international and MS NGOs.

There have been only two uses of the terms with teeth found in document review (i.e., keyword search). One has been the EU’s desire for partnership with civil society in Vietnam, which does genuinely reflect comparative advantage. The other, more suspect, has been in describing the relationship between the EU and JULE implementing agencies UNDP, UNICEF, and UNODC. The second example is stretching the term somewhat, as the relationship between the EU and the partners actors is ultimately that of financing and implementing agencies, albeit one that, by alliance and alignment of views, sets a strong basis for policy dialogue. The EU

has also, through long-term relationships, formed partnerships with major Government actors, notably MoJ and MoF.

Vietnam, as a major economic and strategic player, is a “donor darling” and division of labour, while functional on a sector level, is difficult to achieve overall in the prevailing competitive environment (I-3.1.1). Early in the evaluation period the EU sponsored a useful MS donor mapping and promoted joint analysis. Towards the end of the evaluation period the EU admitted that joint programming was not practical, even though a number of major MS donors (notably Denmark, Sweden, and Spain) had phased out of the country as it developed. According to the EUD, of 20 MS with diplomatic presence, about half had cooperation programmes.

The term “value added,” closely related to comparative advantage, hardly occurs in documents consulted (I-3.1.3). The EU is the major donor for RoL&AC, and it serves an important role in donor coordination. As stated above, EU representatives interviewed expressed the view that this has helped the EU, with its weight, to engage in policy and political dialogue more robust than that of the MS. The international civil society view, that the EU should have exploited its FTA leverage more vigorously, has been discussed elsewhere; but the FTA as a venue for EU pressure on RoL, sufficiently exploited or not, is an obvious source of the EU adding value beyond the reach of the MS.

JC3.2 EU support to RoL&AC has been delivered in a coherent manner

According to discussions with the EUD, budget support was not used in RoL&AC due to lack of a suitable national strategy to support (see discussion under EQs 4 and 5). No evidence has been found of EU support for security sector reform in Vietnam (I-3.2.2). There are potential RoL&AC overlaps, however, as the major SSR issue in the country, and one which has attracted public scrutiny and caused some embarrassment for the Party, is the deep involvement of the military in economic affairs. In EU support for the MoJ and State Audit Office, the military budget was off bounds, although there are some signs of increasing transparency in recent years. Both EUD interviews and documents reviewed suggest that donor coordination is well developed in Vietnam and the EU plays a leading role in coordinating cooperation of Member States (I-3.2.3). Whether that coordination extends more broadly to EU and MS strategic and commercial interests, which sometimes differ, is to be doubted.

EQ4: Choice of modality

Conditions for CSOs implementing projects are difficult and have worsened significantly in the form of burdensome tax and administrative requirements. Some areas, such as freedom of expression and human rights, are out of bounds, but the EUD has joined European civil society and the European Parliament in condemning human rights violation when they have occurred. However, both CSO-LA and EIDHR were used, topics covered in the latter including freedom of artistic expression, death penalty, LGBT+, gender, land rights, and ethnic minorities. Consultations with civil society regarding the design of calls for proposals were described by the EUD as “discreet.” There is no evidence of complementarity or synergies between Asia regional and bilateral cooperation.

JC4.1 Mix of modalities

Budget support was not used for RoL&AC in Vietnam (I-4.1.1 and I-4.1.2). The reason given by EUD officials is that, although there was in place a Justice Reform Strategy 2005-2020, there was no accompanying monitoring framework that would have lent itself to budget support. The JULE Action Document also draws attention to the fact that the Justice Reform Strategy lacks a monitoring framework. For involvement of various levels see JC 2.2. See also JC 2.1.

No credible evidence of complementarity or synergies between Asia regional and bilateral cooperation has been found (I-4.1.3). EIDHR and CSO-LA have been used throughout the evaluation period, but without a list of projects financed, it is difficult to speak of synergies. However, based on an inventory of interventions it seems safe to say the EIDHR and CSO-LA have contributed generally to the EU’s efforts to strengthen civil society in Vietnam, with particular regard to RoL, democracy, and human rights.

Conditions for CSOs implementing projects are difficult, as evidenced by onerous reporting requirements and recent harassment of the local Transparency International affiliate. Themes covered in EIDHR calls included freedom of artistic expression, death penalty, LGBT+, gender, land rights, and ethnic minorities. Consultations with civil society regarding the design of calls for proposals were described by the EUD as “discreet.” EUD concerns expressed included the relevance of global calls to Vietnam and the possible overlap between EIDHR and CSO-LA

JC4.2 Mutually reinforcing dialogue and programming

This has already been discussed under JC 2.1. Policy and political dialogue was intensely used at all levels (I-4.2.1) and the EU has sought whenever possible to involve Vietnamese civil society. The Vietnam Development Forum, the Human Rights Dialogue, and Ministerial level dialogue in RoL&AC have contributed to the effectiveness of the bilateral cooperation programme and vice versa. The EU has sought whenever

possible to involve Vietnamese civil society despite obstacles faced. Synergies within the cooperation programme itself have been discussed under JC 4.1. It is safe to say that high-level dialogue, at the level of the Vietnam Development Forum, the Human Rights Dialogue, and at Ministerial level in RoL&AC, has contributed to the effectiveness of the bilateral cooperation programme and vice versa (I-4.2.2). Reductions in the number of death penalty offences and signature of the FLEGT Voluntary Partnership Agreement may be examples. International civil society has, however, been harshly critical of the Human Rights Dialogue. As discussed also under JC 2.3, the EU has shown great reluctance to impose sanctions or take concrete steps regarding its cooperation programme in response to Vietnamese human rights violations (I-4.2.3). The position of the Commission and EEAS, contrary to that of the Parliament and European civil society, is that existing dialogue processes are the better avenues for change. The EUD has, however, added its voice to that of the Parliament in publicly condemning human rights abuses, especially well-documented and well-publicised incidents.

Effects of EU support to RoL&AC

EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions

Support to improved budget planning and implementation, and especially to digitalisation, in the MoF has strengthened that institution's ability to identify corruption. Public access to budget information has increased, although there remains the problem of the budget of SOEs in which the military is involved. Despite ample capacity building and training provided to the State Audit Office, that organisation is still inactive in the area of management audit, the process by which inefficient and corrupt public programmes are identified and addressed.

JC5.1: Core legal and administrative reforms

Particularly after adoption of the new Constitution in 2013, Vietnam has engaged in an active programme of reviewing legislation in place and revising when necessary (I-5.1.1). The EU supported the MoJ to review and revise legislation; e.g., through TA and training; TA and training were provided, as well, to the State People's Court, State People's Procuracy, and Vietnam Bar Federation. A good example of outcome is the State Procuracy revision of the Criminal Procedure Code.

Revisions have been done under the umbrella of the Legal System Development Strategy to 2010 with a Vision to 2020. The second legal reform document is Communist Party Resolution No. 49-NQ/TW 2005 providing for a Judicial Reform Strategy for the Period 2005-2020. The overall objective of the Judicial Reform Strategy (JRS) is: "Building a capable, ethical, healthy, strong, democratic, strict, fair and justice-protecting judiciary, as well as ensuring that the judiciary will be modernised on a step-by-step basis to serve the Socialist Fatherland of Viet Nam and its people and that the judicial activities, among the adjudication plays the key role, will be highly efficient and effective." Important to any understanding of the RoL in Vietnam is understanding that the view of the Party is that socialist development will lead ineluctably to increased RoL, including human rights. In other words, development comes first and RoL follows, not the other way around as donors argue.

However, it is evident from the JPP Final Evaluation and documents related to JULE that the objective of the EU and other donors has not been so much to put in place core legal reforms as it has been to ensure that those aspects of the Government-led reform process that are consistent with donor goals are effectively implemented. To put it differently, the legal reform strategy of the Vietnamese State is clear, and aligned with the socialist conception of RoL. While not all aspects are consistent with European and international standards, there were and are nonetheless promising entry points for the EU. Common ground has been found in areas which serve Government's need to ensure that ordinary people receive tangible benefit from the extraordinary economic progress that has been accomplished. These were especially connected with access to justice for disfavoured groups (e.g., women and ethnic minorities), including strengthening the legal aid system, and reducing inequalities. Significant, the main counterpart agency for JPP was not the Central Judicial Reform Steering Committee (CJRSC), the group steering and coordinating legal reform, but rather the Ministry of Justice, Supreme People's Court, and Supreme People's Procuracy, responsible for implementing it. This underscores the extent to which legal development in Vietnam follows government strategy, with the EU and other donors stepping in to support those aspects of it that are consistent with their own values and objectives.

The EU has provided capacity building to four institutions – MoJ, State People's Court, State People's Procuracy, and Vietnam Bar Federation – which have strengthened their ability to carry out needed reforms (I-5.1.2). In all institutions, new skills were gained by staff. It was possible to introduce concerns regarding international standards, as in the TA provided to SPP for amending the Criminal Code. Since the major input of the JPP project was TA and training, the evaluators judged that there was not, strictly speaking, a need for government finance to fill a gap once donor support ceases. However, they noted, as well, that none of the institutions was well-equipped to plan and implement training and human resource development policies going forward. Sustainability per se of TA and capacity building is not a major issue since skills gained are in many cases transferrable; however, none of the institutions supported has a strong human resources development plan. The EU's attempt to support human rights reform at the State Audit Office was judged a failure by the team who evaluated the project, for multiple reasons but in particular because of the reluctance of leadership to tackle human resources issues. Ministries, responsible for policy reform, are frequently open to new models and approaches. The agencies actually responsible for implementing are far more set in their ways. This was clearly the case in AC with MoJ and SAV; in a completely different context not covered by this case study, it was true of Ministry of Labour, Invalids, and Social Affairs (MoLISA), responsible for social protection policy, and Vietnam Social Security (VSS), responsible for actually implementing various programmes.

The same expressed concern that the VBF was not financially viable, in part because membership contributions were not well developed as a source of revenue. Capacity was also built at NGOs through Component 3 but, not surprising, the evaluators expressed doubt that these would be financially viable if donor support were to cease.

Under the 2013 Constitution, human rights are recognised in name, but are tightly constrained (I-5.1.3). International human rights standards and conventions are not referred to and all rights are subject to domestic

legislation. At the same time, the EU has been able, through its TA, to introduce some aspects of international rights into Vietnamese law; for example, strengthening the role of lawyers in legal proceedings and building the capacity of the State People's Court to publish judgments. In general, the EU has used a light hand, appropriately in the view of the JPP evaluators, lest the reform ownership of beneficiary institutions be lost. Through EU cooperation, Vietnamese lawyers have been exposed to international standards and practice, even when it may not be possible to domesticate them in Vietnam.

No evidence specific to mutual recognition of judgments, mutual legal assistance, extradition, etc. has been found. The international business community continues to perceive the legal system as opaque and capricious.

JC5.2: Strengthening of institutional architecture

Based on evidence presented above, there has been some EU contribution to improved planning and management capacity, particularly at MoJ and in the VBF (I-5.2.1). At the same time, as the evaluation of JPP pointed out, this is providing a foundation for a more efficient and equitable justice system, it is not addressing the nitty-gritty problems of case management, backlogs, enforcement of judgment, etc. Two areas in which the most progress on dealing with these day-to-day practicalities may have been made are access to justice for victims of GBV, an area of true Government concern, and in the area of juvenile justice, where a system of juvenile courts has been put in place and there is slow progress on changing attitudes towards children who offend.

Based on the documents reviewed, the JULE project is largely oriented towards access to justice, with the emphasis on disfavoured groups, and does not focus on improving day-to-day operation of the justice system.

No evidence relevant to EU support for a systemic, integrated approach to strengthen RoL&AC institutions, particularly in terms of fostering interagency cooperation and linkages with relevant regional and international actors and processes, has been found (I-5.2.2). A Google search for justice system data on Vietnam suggests that the availability of data is very poor (I-5.2.3).

JC5.3: Progress in justice systems and anticorruption frameworks

Vietnam has made great progress in strengthening the legal aid system, most recently with the Legal Aid Law of 2017, and the MoJ has improved the institutional setup for legal aid at all levels (I-5.3.1). These reforms were all strongly supported by the EU, and the World Bank has also recently begun support in the area. At the same time, in the August 2020 identification document for its project Improved Delivery of Legal Aid for the Poor And Vulnerable the Bank acknowledged that there persist serious problems in access to justice for poor people in general, and in the legal aid system itself. These problems are multiple – laws are poorly drafted or overlap, giving rise to confusion, the country is under-lawyered, court costs are expensive, and the justice system is heavily geared towards criminal law, with which very few citizens will have contact during their life, instead of administrative law, which is much more likely to affect their daily lives. GBV lies in ground genuinely shared by the EU and GoV. EU cooperation, through JPP but even more strongly through JULE, has been heavily oriented towards ensuring access to justice for victims of GBV (I-5.3.1). Regarding the specific area of access to justice for victims of GBV and child-friendly justice, no statistics on the number of victims of GBV seeking legal redress, whether through restraining orders or prosecution, have not been found. A study recently published by the Ho Chi Minh National Academy of Politics depicts a pessimistic picture of access to justice for GBV victims in practice.

It is reported that informal or traditional justice systems, especially those involving local elders in mediating disputes, play an important role in Vietnam, and they might be supposed to be particularly relevant to family disputes (I-5.3.2). However, keyword searches on “informal” and “traditional” in JPP and JULE documents reviewed, nor does a Google search.

Popular faith in recourse to the formal justice system is low. No evidence has been found that EU support improved the efficiency of the justice system; e.g., reducing case backlogs and improving enforcement of judgments. However, interviews with all stakeholders identified concrete improvements in access to justice in three areas: for members of ethnic minorities, often in remote, mountainous regions, for victims of GBV (but see caveat above), and in the area of juvenile justice, where a system of juvenile courts is slowly coming into being and attitudes are changing. That said, the low level of most VLA members, not all of whom are lawyers, as well as the large numbers of beneficiaries served according to project reports, indicates that the actual level of legal service provided is low, more in the nature of advice than representation. Reasons identified in interviews for low effective legal representation include lack of lawyers, expensive court fees, confusion as to what the law is, and overall distrust in the legal system.

EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions

JC6.1 Legal safeguards, checks and balances

When the Justice Reform Strategy speaks of strengthening the judiciary, it does not refer to its independence (I-6.1.1): “Building an ethical, healthy, strong, democratic, strict, fair and justice-protecting judiciary, as well as ensuring that the judiciary will be modernized on a step by step basis to serve the Socialist Fatherland of Vietnam and its people and that the judicial activities, among which adjudication plays the key role, will be highly efficient and effective.” As discussed at other points two foundations of judicial dogma in Vietnam are (i) that the Rule of Law follows as socialist development is achieved and (ii) law expresses the will of the people, and that will is embodied in the Party. The European notion of Rule of Law requiring independence of the judicial branch is foreign. There have been hesitant steps, however, for instance the extension of the tenure of judges under the 2014 Law on Judges. EU cooperation has engaged far more with access to justice than with independence of the judiciary. However, there is emphasis placed on the impartiality of the judiciary. However, the principle that the judiciary should be impartial is accepted. This is achievable in private, civil, and administrative law (for example, juvenile justice and family law reform have incorporated the principle that the welfare of the child comes first). In criminal law, the broad power of the prosecution makes impartiality essentially impossible. In major commercial disputes, moreover, international players continue to complain that justice is far from impartial.

With EU support, the Vietnam Bar Foundation has, according to its Director as well as JULE staff, progressed on ethical standards and monitoring lawyers’ behaviour.

Apart from successfully strengthening capacity at the MoF, EU efforts to strengthen the functioning of AC institutions has not yielded results, as the attitude of Government is clearly that it is dealing with its corruption in its own way, at its own pace. The State Audit Office, despite years of support, is reported yet to carry out a single serious management audit to detect corruption in public programmes.

Measures of perceptions of corruption are mixed (I-6.1.2). The long-term Transparency International Corruption Perception Index shows a generally improving trend since 2011, as does the World Bank’s Control of Corruption Index since 2005. Annual scores of these aggregate indices for recent years are, however, quite “choppy,” and it is probably the long-term trends that display more credibility. Perhaps more interesting is the UNDP-sponsored Provincial Governance and Public Administration Performance Index, is constructed on the basis of an extensive opinion survey. In all components (including petty corruption like bribing school officials, bribing health workers, etc.) survey results indicate a clear worsening of public confidence in the system up to roughly 2016, followed by steady improvement through 2020. This may indicate that the recent anticorruption drive is having some results.

No public opinion results specific to the justice sector have been found. However, evidence presented in the GAN Integrity risk and compliance portal depict a bleak picture, with corruption and unfairness of the justice system reported to be widespread among the public and businesspeople in particular. While the trends cited above are favourable, it needs to be remembered that Vietnam is still regarded by citizens and international business people as a corrupt country.

JC6.2 Oversight institutions, non-state actors and the private sector

Relatively little evidence has been collected on transparency and accountability (I-6.2.1). According to the Ministry of Finance access to information, esp. budget transparency, have improved under EU support, with the exception of anything having to do with the military or their SOEs. At the same time, there has been progress on transparency, notably the 2018 Law on Access to Information.

World Bank data suggest that after declining steeply between the 1990s and 2005, accountability improved thereafter, albeit with declines in 2017 and 2018, which were followed by improvements in 2019 and 2020. Transparency International has hailed the 2018 Law on Access to Information as a major victory in the fight for transparency.

Donors including the EU have consistently supported an expanded role for civil society, in areas as diverse as labour rights and work conditions, forestry, and budget transparency. Despite slow progress, CSOs remain tightly constrained in what they can do, and the watchdog function, if it is carried out at all, is carried out with much caution.

No evidence relevant to multi-actor coalitions supporting data production as well as to engaging transparency-related processes has been found (I-6.2.2). A potentially tool for accountability is private sector self-policing via Corporate Social Responsibility (CSR). Large multinational firms operating in Vietnam have been under intense scrutiny from international NGOs, and particularly trade unions back home, as a result of which rights-based international CSR is well developed in Vietnam (I-6.2.3). National CSR is, by contrast, still in embryonic stage, not least because the vast majority of Vietnamese firms are SMEs, and this does not include the large portion of the workforce that is in the informal sector, working independently without a labour contract. What

CSR exists is largely of the paternalistic variety, company picnics and the like, interpret it more in terms of charity, loyalty, community spirit, etc. than rights.

EQ7: Broader effects on RoL&AC culture, human rights and democracy

JC7.1 Promoting a RoL&AC culture

While sociological and cultural analysis per se do not figure in EU strategic documents (e.g., MIPS), these depict clearly the social and cultural, as well as political, context in which RoL&AC cooperation operates. Evidence of this has been presented in assessing JC 2.1 (especially I-2.1.1) and JC 5.1 (especially I-5.1.1). Much of the analysis in the country case study has consisted of pointing out that the European and Vietnamese RoL&AC cultures, while there are points of overlap, are far from one and the same. The EU has recognized the difficult situation of vulnerable and marginalized groups such as victims of GBV, disabled persons, and ethnic / linguistic minorities, as well as the fact that the Vietnamese government shares its concerns. The EU's programme recognizes the Confucian origins of the concept of Rule of Law in Vietnamese society and how it has been melded with Communist ideology. As examples of the first, the EU recognizes a generalised distaste for lawyers (and lawyering, with its indispensable adversarial dimension), and the resulting need for a supply-demand approach at grassroots level, as well as broad popular support for the death penalty. What is never discussed explicitly, but is internalized in the EU's strategic approach, is a deep analysis of the prevailing institutional culture. The EU's engagement with Vietnam reflects confidence that, while slow and incremental, significant progress in directions consistent with European values has been made in the past and will continue to be made in the future.

Evidence on EU engagement with civil society has been presented in assessing JCs 2.1 and 2.2 (especially I-2.1.2 and I-2.2.2), JCs 4.1 and 4.1, and JC 6.2. Strengthening civil society and giving it greater voice despite the constricted space within which it operates has been one of the EU's main strategic dimensions in Vietnam. There has been some engagement with European businesses operating in Vietnam. No evidence has been found regarding EU engagement with Vietnamese media and the Vietnamese private sector.

JC7.2 Fostering human rights

The indicators under this JC do not adequately address the general question of how effectively the EU has fostered human rights, but this difficult question has been posed throughout this case study. Given Vietnam's importance as a strategic partner (certainly in trade, but in broader aspects of the Indo-Pacific strategy, as well) the EU has tread carefully in the area of human rights. Official doctrine is that human rights, like RoL, follow socialist economic development; they do not precede it, a clear divergence from European liberal values. On the positive side, and drawing freely from all the JC assessments, the EU has condemned egregious human rights abuses when they are public, it has used the annual Human Rights Dialogue, as well as lower-level dialogues, to address human rights (as well as introducing them into the Vietnam Development Forum), and it has supported civil society, notably using EIDHR..

To the great frustration of European and international civil society organisations, the EU has made a strategic decision to tread carefully. Vietnam is a major trade partner, by almost any metric a development success story, and a regional counterweight to China. The EU has explicitly stated that dialogue is preferable to sanctions and that the FTA offers ample opportunities, which are being exploited, to prod Vietnam on human rights issues.

Gender aspects of access to justice have been a major aspect of the EU's RoL&AC support, and evidence is presented in assessing JCs 4.1 and 4.1 (I-4.1.3 and I-4.2.3), and 5.1 (I-5.1.1, I-5.1.2), and 5.3 (I-5.3.1). In addition to women, particularly victims of GBV, EU access to justice support has targeted the disabled, migrants, ethnic/linguistic minorities, children, and the aged.

Finally, and making the EU's predicament difficult, there is, in Vietnamese Communist Party doctrine, a well-developed and articulated theory of human rights according to which these, like RoL, develop naturally with socialist economic progress. It is easy for the Party to characterise critical individuals and NGOs as anti-social, outside the community tent and playing an unconstructive role. This conception of human rights (like the conception of Rule of Law) also re

JC7.3 Application of democratic principles

From a European perspective, and one which the EU has not hesitated to express, the situation regarding freedoms of expression, assembly, and association is dire. This has given rise to the dilemma discussed in assessing JC 7.2; in common language whether, to go easy or get tough, both with likely unpleasant consequences. As has been discussed throughout this report, the EU response has been to look for entry points under the Justice Reform Strategy, access to justice being the most prominent of these, and to rely elsewhere on dialogue rather than sanctions; again to revert to common language, to favour the carrot to the stick.

An index indicative of the situation is the Freedom House Political Rights Index, which has remained unmoved at its weakest level throughout the evaluation period.

EQ8: Effects on wider EU external action goals

JC8.1 Peace, resilience and stability

Most important from the standpoint of peace, resilience, and security, EU cooperation in Vietnam helped to lay the groundwork for the EU Strategy for Cooperation in the Indo-Pacific, adopted in September 2021. All actions examined have given an important place to inclusion, rights, and voice. Ethnic minorities have been a significant focus, as has gender and the rights of women and children. This has been justified, not on grounds of peace, resilience, and security; but rather on European values. However, since the EU's access to justice support derives in part from the need to support the rights of ethnic minorities in remote regions, and since there have been incidents of violence in this context, EU support may be interpreted as contributing to peace. This was of significant concern to the Party, which grounds its legitimacy in significant degree on maintaining peace and security in a highly diverse country that experienced decades of war. The downside of security in Vietnam is that Government often resorts to highly undemocratic means, including human rights violations, to maintain it. The fight against impunity has not been a strong feature of the EU's programme and, in fact, there were problems in that area over the evaluation period, specifically, assaults on journalists that were likely Government-sponsored. EU support to democracy and human rights has been described under EQs 6 and 7.

While there are persistent limits on the accountability of Party structures, the Party has displayed awareness that it governs at the behest of the Vietnamese people. The fight against impunity has not been a strong feature of the EU's programme and, in fact, there were problems in that area over the evaluation period, specifically, assaults on journalists that were likely Government-sponsored.

JC8.2 RoL&AC for functioning markets, trade and private sector development (compliant with human rights and due diligence)

EU support has addressed aspects of the investment and commercial climate such as legal certainty, judicial independence, and enforcement of judgments. As Vietnam is a regional economic powerhouse and a major trading partner of the EU, much EU support to RoL in the country has been explicitly oriented towards improving the investment and commercial climate, including aspects such as legal certainty, judicial independence, and enforcement of judgments. However, international business climate surveys (World Bank Ease of Doing Business, Heritage Foundation Economic Freedom) reveal that firms continue to see Vietnam as a difficult environment to work in, with none of the problems just alluded to being effectively addressed. EU cooperation did, however, score a major success in the area of responsible natural resource management (discussed below). As Vietnam is a major exporter to Europe in areas as diverse as clothing and fish products, Corporate Social Responsibility (also discussed under EQ 7) and labour standards have been aspects of EU cooperation with Vietnam. Contributing to this has been the activism of European civil society and labour organisations, and the constructive engagement of the European private sector (e.g., European Chamber of Commerce).

JC8.3 Natural resource management

A number of EU projects implemented by national and international NGOs concerned responsible forestry. Long negotiations resulted in the coming into force of the Voluntary Partnership Agreement-FLEGT in June 2019, a major step forward. However, EU support appears from interviews to have had more to do with usufruct than with preventing traffic of illegally logged trees from Cambodia and Laos through Vietnam. Vietnam is now working on the necessary legal and regulatory reforms necessary to implement it. There does not appear to have been support in the area of responsible mining (essentially coal mining in the case of Vietnam). An emerging area of EU interest is coffee cultivation, where overuse of pesticides and poor soil management are serious environmental problems threatening a major industry.

Overall assessment and lessons learned

EU support for RoL and AC in Vietnam should be judged a qualified success. In the first case, the qualification is that some areas of particular concern to the EU have been largely off-bounds, although EU support has increased national awareness (certainly professional; to some extent popular) of international standards and good practices. This resulted largely from TA and training under JPP and JULE. EU support for AC under PFMO has had good success in bringing the MoF up to international standard; it unfortunately failed, for reasons at project and institution level, to significantly mobilise the State Audit Office in a more effective fight against corruption. Anticorruption is an ongoing operation in Vietnam, and one to which Government is highly committed, but it is equally committed to defining corruption as it sees it and tackling it as it wishes to. The idea of empowering civil society to serve an AC monitoring and oversight role is a non-starter given the repressive stance of Government, which prevailed throughout, and hardened in the second part, of the evaluation period.

By far the best practice of the EU in Vietnam has been in identifying common ground where reforms can be designed and implemented. This was very much the case in the JPP and JULE projects. Often cited throughout this case study is access to justice for victims of GBV and for ethnic minorities in remote and mountainous regions. The first represents a fundamental human rights issue recognised by Government. The second has become a source of political concern, as here were high-profile cases of protests, including ones that became violent, regarding land appropriation. It is precisely in preventing and suppressing insecurity of this type that Government grounds its legitimacy. While the response has been mute -- the Vietnam Lawyers Association is weak, its members essentially just provide awareness raising and counselling and there have been only a handful of actual court cases and Vietnamese civil society is far from undertaking strategic litigation. However, the fact that EU has supported a broad offensive in the area is significant. The same can be said of forestry management (more concerning the usufruct of ethnic communities than talking illegal industrial logging per se). Vietnam's agreement to a FLEGT VPA is a significant step forward, and the EU and Vietnam have also identified sustainable coffee cultivation (a major source of pollution and land degradation) as a welcome area of cooperation.

Opinions will differ on the effectiveness of EU engagement in democracy and human rights, and the important question is that of the proper comparator – Vietnam today versus Vietnam ten years ago, Vietnam today versus comparator countries today (or even Vietnam versus comparator countries today as opposed to Vietnam versus comparator countries ten years ago; the relative change metric), or any of those comparisons under two alternative sets of conditions: Vietnam with actual EU cooperation support and hypothetically without EU cooperation support? Vietnam today is arguably less democratic and less in line with Western conceptions of human rights than it was ten years ago. But Vietnam's regression has not been as spectacular as that of China or, at least because of the lack of imperial ambition, it is less stridently nationalistic. There has been no hint, in EU-Vietnam political dialogue, of the mutual incomprehension, bordering on rancour that characterised the April 2022 EU-China Summit. EU support, both through cooperation strictly speaking and through broader policy and political dialogue, has limited damage and led to isolated examples of progress, a concrete example being the reduction in the number of capital offences. In any of the comparative exercises described above, and keeping in mind the global and, most importantly Chinese, slide into authoritarianism, EU cooperation and political engagement have strengthened human rights and democracy in Vietnam.

An important lesson learned in this country case study is that success breeds success. Vietnam is a widely recognised economic success story; the Party has delivered economic growth and is attempting to address the inequality that has grown precisely in accordance with Kuznets' Law that income inequality increases in the early stages of economic development ; then, having reached a peak, begins to decline as progress is consolidated. The EU's work was made easier by the fact that the international presence in Hanoi, both in the form of UN agencies (notably UNDP, UNODC, and UNICEF in the areas covered by this case study), other donors including MS, and international civil society (British Council and Oxfam being most important in the cooperation programme reviewed here) is strong. Similarly, national partners are reasonably strong and, in their dealing with international partners, disciplined. Most important, while the prevailing policy for RoL reform over the evaluation period, the Justice Reform Strategy, was hortatory and lacked a monitoring framework, in any broad area, Government knew its specific priorities for support and communicated these to the partners. Where problems occurred, and this is something the EU could have anticipated better in its anticorruption work, is that the agency designing the policy (MoF in this case) and the agency implementing it (SAV in this case), have different incentives that result in them being more or less enthusiastic about change. This goes far towards explaining observed gaps between policy reform and implementation, and not just in AC.

Case study note – West Africa (regional case study)

Introduction.....	203
Context	203
Political economy analysis	204
Overview of the EU support to RoL&AC	204
Strategy and implementation of EU support to RoL&AC	206
EQ1: EU strategic framework/institutional environment.....	206
EQ2: Responsiveness, ownership and flexibility	207
EQ3: Partnerships and coherence	211
EQ4: Choice of modality	213
Effects of EU support to RoL&AC.....	215
EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions	215
EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions	218
EQ7: Effects on RoL&AC culture, human rights and democracy	219
EQ8: Effects on wider EU external action goals	220
Overall assessment	220

Introduction

Remark: This case study note does not constitute a separate evaluation of EU support in the country or its situation with regard to RoL&AC. It presents country-related findings relevant to the overall assessed judgement criteria and indicators, and feeds into the main evaluation report of the Evaluation of the European Union support to Rule of Law and Anticorruption in Partner Countries to which it will be attached as an annex.

Context

This case study focuses specifically on EU's support to prevent money laundering and fight Transnational Organised Crime (TOC) in West Africa. This requires a good enough understanding of the context, starting with the root causes of illicit and illegal trade in the region; the links with security and peace issues; as well as the role and mandate of regional organisations, namely Economic Community of West Africa States (ECOWAS) and West Africa Money Laundering Group (GIABA).

TOC in west Africa is **multi-faceted** – from cigarette and oil smuggling, drug and human trafficking, to cybercrime, and money laundering – from small scale local operations to large trans-regional operations – and – from small-time smugglers and local warlords to terrorist organisations²⁸⁵ and global criminal networks (e.g. Latin America criminal network in cocaine trade). It is also **fluid** and changes quickly in response to the environment (including crack-downs) and market opportunities.

There is a strong link between criminal trafficking (drug and arms) and security issues in the region but more of a **grey area** between informal smuggling (tobacco, commodity) and the local, and mostly informal, economy. In this context, smuggling activities can be perceived as legitimate and the dividing line between informal and criminal business remains blurred in the eyes of local population and by those involved²⁸⁶. In addition, illicit trafficking routes have existed in the Sahel region for **centuries**.

There are also strong connections between organised criminal networks and **corrupt officials** within the state apparatus (customs, police, but also with the port authorities and local authorities). For example, the West Africa Commission on Drugs (WACD) in 2014 determined that **corruption at the top** is facilitating drug trafficking across the subcontinent. It found that traffickers were able to connect easily with people of influence by both creating and using informal social networks to access or co-opt the formal security apparatus where necessary.

Low levels of **financial inclusion** are a major contributor to the enabling environment for criminal economies and Illicit Financial Flows (IFFs) in West Africa, with cash-based transaction and other informal solutions (such as the hawala) being used for transfers related to criminal activity. This in turns reduces the efficacy of Financial Intelligence Units (FIUs).

In this context of impunity, corruption and patronage networks, and strong political, social and economic ramifications, **support to law enforcement – through drug seizure and arrest of criminals – has been increasingly acknowledged as insufficient** to generate results. According to the OECD (2018), such an approach can also cause harm.²⁸⁷

At the same time, **regional approaches are essential**, as differences between states create opportunities for criminal economies to develop and move to new countries or subregions. Given regional interdependencies and the transnational nature of the flow, ECOWAS countries need to work together on common strategies, policies, legislation, taxation and subsidy regimes.

West Africa is only one part of a global supply chain (in particular for the cocaine and heroin trafficking). Achieving results in combatting criminal economies also requires support and action by transit and destination countries, including OECD member countries.

Specifically related to the region's capacity in Anti-Money Laundering /Counter-Terrorism (AML/CT), the description provided in early project documents provides a useful start / baseline: 10 years ago, it was

²⁸⁵ It is increasingly reported that organised criminal groups are trafficking in multiple commodities. Terrorist organisations have traditionally used extortion, robbery and looting, kidnapping activities to finance themselves, but many have now been associated with illicit trafficking. It is also increasingly reported that organised criminal groups are trafficking in multiple commodities.

²⁸⁶ Most of the trafficking and informal trading is by individual clans of many different tribes, but primarily the Tuaregs and the Toubou people...for smugglers, the product doesn't matter as much as the fee. A person could be smuggling cigarettes one day and switch to drugs or weapons the next. And while jihadists aren't driving the goods themselves, the drivers still have to go.

²⁸⁷ "when seeking to intervene in criminal markets, it is important to consider that all flows – including development assistance – can have an impact on incentives and vested interests. [...] An IFF response strategy that applies heavy-handed, punitive measures to marginalised groups – for example, those whose livelihoods depend on subsistence activities – is likely to be counterproductive and will only increase criminal groups' social collateral within their host populations. It is particularly important for international efforts to ensure that all actions and rhetoric strive to "do no harm" in the context of these complex and contingent realities." (source: OECD 2018, Illicit Financial Flows, The Economy Of Illicit Trade In West Africa)

considered that “most FIUs [were] relatively new and not fully operational; there [was a] strikingly low conviction rate in the region; there [was] also the need to reinforce the capacity of authorities to handle criminal asset; the low level of regional cooperation [was] a major obstacle when investigating ML cross-border cases.” Progress on this front is analysed further in our response to the Evaluation Questions.

A key (and now well-established) driver to promote changes in relation to AML/CT is the compliance rating and grey / black lists used by the Financial Action Task Force (FATF) and FATF-Style Regional Bodies (FSRBs) (including GIABA based in Dakar, Senegal) and **the EU** as well as incentive to be admitted to the FIU Egmont Group. A major disincentive to being put on the grey / black list is that the countries have no longer access to international financial markets. Countries put on the grey list are eligible to receive additional support if they commit to an action plan. Three ECOWAS countries (Mali, Senegal, Ghana) were listed under FATF in 2021, bringing the total number to four (with Burkina Faso). Ghana was subsequently removed from the grey list in June 2021. GIABA has also been put on the grey list as a regional FATF.

Political economy analysis

The 2018 OECD study²⁸⁸ offers a useful framework to look at the negative impact that IFFs have on five areas crucial to development (physical, societal, economic, environmental, structural/governance), starting from three questions: i)

1. Where is the good sourced, and is there a local market?
2. **Who are the actors and networks involved?**
3. Where are the IFFs earned and invested?

The second question is an important political-economy consideration that examines the underlying agency and incentives associated with the given activity: who is involved (e.g. public, private, entrepreneurial or criminal interests; regional, communal, or even faith-based actors), how heavily invested they may be in the activity, and the extent of their control and influence. The OECD study uses this framework to analyse certain types of IFFs in the region, including cocaine trafficking (involving Colombian drug cartels (see Latin America case study note).

In practice, however, conducting a cartography of actors and networks involved in the region’s TOC requires **regular (if not daily) access to intelligence**. The fluid and complex environment in which illegal and illicit trafficking takes place, makes it challenging to uncover the links between corruption, money laundering, and TOC. This is best carried out by law enforcement and other agencies (rather than development actors), through coordinated actions at a domestic, regional, and global level. Research organisations (some involved in EU projects) can also help.

Overview of the EU support to RoL&AC

The **EU strategic and programming framework** for fighting money laundering and TOC in West Africa is articulated in the Regional Indicative Programmes (RIP) and falls within their strategic objectives to strengthen governance and stability (RIP 2007-13, 10th European Development Fund (EDF)) and **peace and security (RIP 2014-20, 11th EDF)** in the region. The documents highlight the severe situation of fragility and conflict in the region, which has also seen new emerging challenges linked to organised crime (human & drug trafficking; money laundering and terrorism). The same documents also provide an overview of ECOWAS’s role and its conventions with regard to mediation, electoral monitoring, small arms control program, drug prevention and fight against drug trafficking.

The **sampled interventions** are listed in Table 17. They cover EU support to AML and the fight against TOC. Due to time constraints, EU support to maritime security in the Gulf of Guinea is excluded.

For EU Support to ECOWAS Regional Action Plan on illicit drug trafficking, related organised crime and drug abuse in West Africa (subsequently referred to as **EU support to ECOWAS fight against drug trafficking and abuse** (no acronyms available), this case study specifically focuses on support to ECOWAS drug unit and the component of the United Nations Office on Drugs and Crime (UNODC) project focusing on law enforcement, but the overall design of the project is also commented upon²⁸⁹.

West Africa Police Information System (WAPIS) (Phase 3), totalling EUR 27 million (with another EUR 3 million under Phase 1 and EUR 8 million via the EUTF funder Phase 22), is by far the largest intervention in financial terms, followed by West African Response to Organised Crime (OCWAR)-T (with GIZ).²⁹⁰

²⁸⁸ OECD (2018) op. cit

²⁸⁹ The other project components are concerned with Result 2: Harmonised information on drug abuse epidemiology and data collection are available. And Result 3: Good practices on drug prevention and treatment are identified and disseminated.

²⁹⁰ OCWAR-T has four components: Component 1 “Criminal Investigation”; Component 2 “Small Arms and Light Weapons (SALW) Control”; Component 3 “Prevention of Trafficking In Persons (TIP) and protection of victims”; and Component 4

Table 17 Overview of EU-financed interventions to the support of RoL&AC in Nigeria, selected for the case study

Decision title	C year	End year	Title	Budget (mEUR) ²⁹¹	Impl. partner
Anti-money Laundering activities in West Africa (AML-WA) (IcSP)	2012	2016	Anti-Money Laundering Activities In West Africa (Ghana, Nigeria, Senegal) & Cape Verde.	1.8	FIIAPP
SAMWA – Strengthening anti-money laundering capacities in West Africa (10th EDF RIP)	2015	2019	Strengthening anti-money laundering capacities in West Africa (SAMWA) – Components 1 & 2	2.1	GIABA
	2017	2019	"Turning Up the Pressure: Tackling money laundering through multistakeholder approaches in ECOWAS countries"	0.5	Transparency International
EU support to ECOWAS fight against drug trafficking and abuse - Support to ECOWAS Regional Action Plan on illicit drug trafficking, related organised crime and drug abuse in West Africa (10th EDF RIP)	2014	2019	Support to ECOWAS Regional Action Plan on illicit drug trafficking, related organised crime and drug abuse in West Africa	11.7	UNODC
	2015	2019	Support to ECOWAS Drug Unit Advocacy, monitoring and coordination capacity	3.3	ECOWAS
WAPIS – West Africa Police Information System (11th EDF RIP)	2017	Ongoing	West Africa Police Information System Programme (WAPIS 3) + <i>previous phases</i> .	27.7	INTERPOL
OCWAR – West African Response to Organised Crime (cybercrime, trafficking, money laundering and financing of terrorism) (11th EDF RIP)	2018	Ongoing	Fight against organised crime in West Africa: Combatting all types of trafficking (OCWAR-T)	19.4	GIZ
	2019	Ongoing	Organised Crime: West African Response on Cybersecurity and fight against Cybercrime (OCWAR-C)	7.5	Expertise France
	2019	Ongoing	Organised Crime: West African Response to Money laundering and the financing of terrorism (OCWAR-M)	6.8	Expertise France
	2021	Ongoing	Appui institutionnel au GIABA	0.8	GIABA

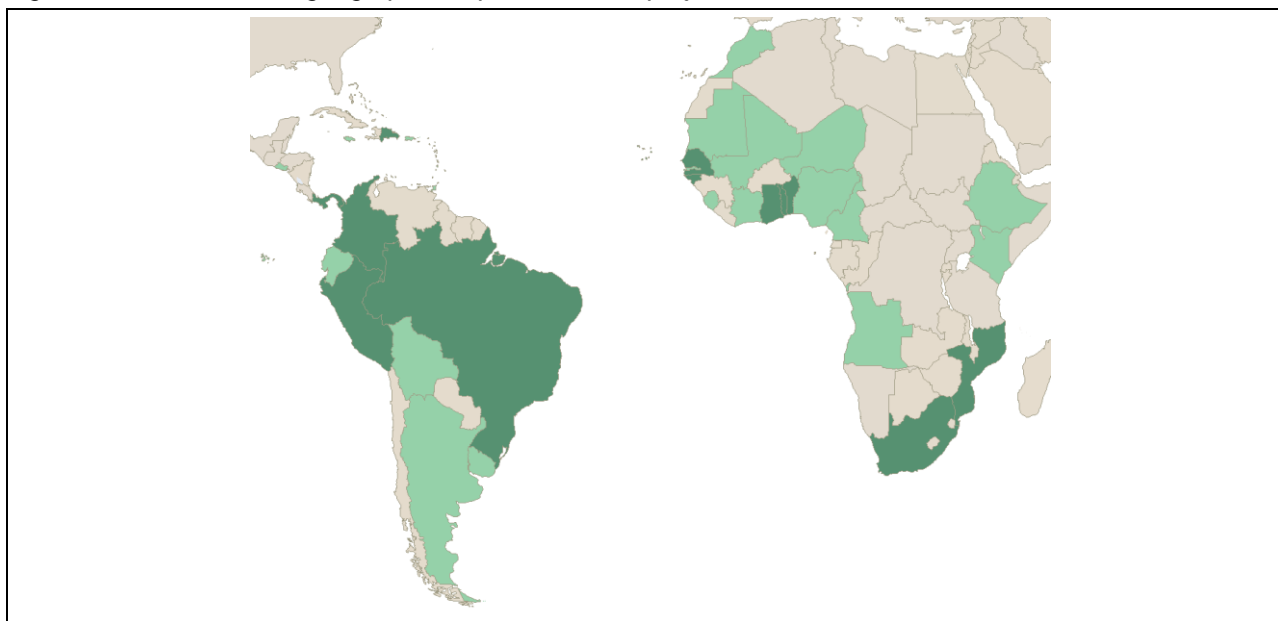
The case study also contains some reference to some of the EU global umbrella programmes (funded by the Instrument contributing to Stability and Peace (IcSP), which support AML and the fight against TOC globally (see Figure 6). These are:

- The ICsP Cocaine Route Programme (CRP) (2009-13, 2014-18), whose objective is to enhance the capacity of law enforcement agencies and judicial authorities in third countries along the 'cocaine route' for international cooperation. The programme has been allocated to eight self-standing projects in Africa and Latin America and the Caribbean, including AML activities in West Africa (AML-WA) and WAPIS I and II.
- Since 2020, the Global Illicit Financial Flow (IFF) Programme, which encompasses its eight component projects: AIRCOP, COLIBRI, Cocaine Route Monitoring and Support (CORMS), Countering Firearms Project, **CRIMJUST**, EU-ACT, iARMS and SEACOP.

"Knowledge base, legal foundations and independent oversight mechanisms" with four designated implementing partners; International Centre for Migration Policy Development (ICMPD), Mines Advisory Group (MAG), United Nations Development Programme (UNDP) and UNODC

²⁹¹ Planned EU contribution

Figure 6 Current geographical spread of CRP projects



Source: CRP project document; dark shading indicates more than one active project.

Strategy and implementation of EU support to RoL&AC

EQ1: EU strategic framework/institutional environment

JC1.1 Clear, context-sensitive and realistic engagement strategies

Over the evaluation period, the RIP and their portfolio has evolved to reflect mounting peace and security issues in the region, with some threats (cybercrime²⁹², maritime security, counter-terrorism) receiving more attention. The increased focus on AML/CT also reflects the evolving global AC agenda – with links increasingly relevant to EU priorities both at home and externally.

The rationale for supporting the fight against ML and TOC appears strong, not only in view of the security challenges in West Africa, which are numerous and include terrorism, drug and human trafficking, but also in view of the need for stronger regional cooperation to tackle these transborder security threats (see section 0). The main intervention logic behind EU support is that support to the harmonisation of strategies and approaches and a stronger regional coordination will benefit ECOWAS Member States (MS) by helping to increase the effectiveness of their national responses.

The EU's initial response to fighting TOC in the region narrowly focused on law enforcement. This approach has evolved over the years, based on lessons learnt and recommendations that future programming should expand from purely front-line law enforcement and concentration on drug seizures, to support to post-seizure investigations and the judiciary.²⁹³

As pointed out in the OECD study,²⁹⁴ **development cooperation in this area tends not to take into account some key drivers and enablers to TOC in the region**, in particular i) the involvement of corrupt government officials (including police, customs etc); ii) the region's low financial inclusion, iii) the permissive culture around smuggling, which has provided a main livelihood for local clans/leaders and the local population for centuries, and iv) (increasingly) the lack of state presence in conflict areas. The issue of border management is also overlooked. **EU support falls in this category.**

From a programming point of view, however, EU's approach makes sense and is realistic. Some of these root causes are best addressed through complementary national and regional interventions, including in the Sahel region, focusing on livelihood, governance and state-building issues. Yet this link is rarely made in the strategic and project documents.

Uniquely, the 10th EDF EU support to ECOWAS fight against drug trafficking and abuse has a dual focus on drug trafficking and drug prevention in the region. This is seen as a positive shift towards a more coherent approach in the project documents. This approach has not been carried over by the EU under its

²⁹² The region has been experiencing an increase in cybercrime, both in number and impact, with this form of scam quickly evolving from fee fraud into sextortion, coercion, blackmail, harassment and many other forms of violence.

²⁹³ See for example the MTR of CRP (2013)

²⁹⁴ OECD (2018) op cit.

support with OCWAR-T, however, and with Africa being mostly a transit region for cocaine and heroin trafficking, the focus on drug prevention – while relevant to the welfare of local population – has only limited relevance to fighting TOC in the region (the main topic of this case study).

JC1.2 Coherence with the evolving nature and wider goals of EU external action

The EU strategic and programming framework for fighting ML and TOC in West Africa has direct links with the EU security agenda, which recognises the linkages between internal and external security issues. This includes i) the EU Agenda on Security and the new Security Strategy (2020-25), which seeks to tackle evolving threats (including cybercrime) and protect Europeans from terrorism and organised crime, including human and drug trafficking; ii) the EU Drug Strategy and Action Plan (from 2005-12 to 2021-25), which has one component focusing on international cooperation. and (iii) the recently-approved EU Agenda for tackling organised crime (2021-15);²⁹⁵ This link with the EU's peace and security agenda reflects what is commonly referred to as 'securisation of development aid'. EU MS are also encouraged to ratify the United Nations Convention Against Transnational Organised Crime (UNTOC).²⁹⁶

The EU strategic and programming framework for fighting money laundering and TOC in West Africa also responds to joint commitments made by the African Union and European Union under the 2015 Joint Africa EU Strategy and the main pillars of Africa-EU Partnership.²⁹⁷ The 2015 EU-African Valetta Action Plan for human and sustainable management of **migration** includes as a priority the fight against human trafficking.

Co-signed with the ECOWAS Commission, **the RIP has also a specific component on promoting (ECOWAS agenda for) peace and security in the Sahel**, which falls under the EU integrated Sahel Strategy and its action plan.

JC1.3 Conducive institutional environment

The responsibility for coordinating the sampled RIP projects is shared across EU Delegations (EUD) in Cote d'Ivoire, Nigeria and Senegal, as follows: Strengthening anti-money laundering capacities in West Africa (SAMWA) and OCWAR-M (Senegal), and WAPIS (Cote d'Ivoire), EU support to ECOWAS fight against drug trafficking and abuse, OCWAR-C, and OCWAR-T (Nigeria).

Although coordination between the three EUDs has worked well, limited staff capacity – most notably – in the EUD in Senegal and Cote d'Ivoire has remained a challenge. Compared to the EUD in Nigeria, these two delegations only have a national mandate and hence rely on their country teams to oversee the projects. In contrast, the EUD Nigeria holds a dual national (with the government) and regional mandate (with ECOWAS) and hence has one officer fully dedicated to the regional projects.

The other EUDs in the region are expected to be the “eyes and feet on the ground” for the regional projects and their delivery partners. While some efforts have been made to involve them in a more systematic and structured manner (e.g. share of workplans etc), the EUDs in the region also have limited time and resources to be involved. This is especially the case for EUDs that don't provide support in this area in their country programmes. As a result, a lot of the diagnosis / coordination works falls under the responsibility of the delivery agencies (see JC3.1).

The EU's institutional environment has not been conducive to learning. Information sharing between the IcSP-funded global projects and the West Africa RIP projects has remained limited. None of the stakeholders interviewed on the RIP projects knew about the IcSP CRP and its successor, the Global IFF umbrella programme. Opportunities for learning from previous support have also been missed. For example, no information (or institutional memory) could be found for the ICsP-funded AML-WA. More discussion on learning can be found in JC2.3.

EQ2: Responsiveness, ownership and flexibility

JC2.1 Context, political economy and/or conflict analysis for ownership and feasibility of RoL&AC support

Selected programmes/projects (CORMS under the Global IFF programme, and at its infancy, OCWAR-T, Transparency International SAMWA) include a research component that is used to generate in-depth context analysis. But the evaluation team could not find any specific example of political economy analysis being carried out during formulation or delivery of the projects. As mentioned in section 0, there are strong limitations to conducting political economy analysis in this area.

²⁹⁵ Other policy documents reviewed by the team included include the EU action plan against migrant smuggling (2021-2025) and EU's ML /CT agenda (2018). These documents principally focus on promoting EU-wide cooperation.

²⁹⁶ EU (2020): Opening statement on the occasion of the Tenth Session of the Conference of the Parties to the UNTOC.

²⁹⁷ EC: Africa-EU Partnership Website

The EU and its delivery partners show an overall good understanding of the problems that they are trying to solve. Most delivery risks associated to the projects focus on issues of ownership, which can be unpacked as follows:

- **Limited capacity to convene and coordinate regional efforts** from the regional bodies, ECOWAS and (to a lesser extent) GIABA. Specifically, there is evidently a gap between ECOWAS's very broad mandate and its limited capacity, and the lack of a more precise strategic vision within ECOWAS has also been identified as a constraint. As a result, the organisation has been at times unresponsive – or poorly prepared – to EU requests. This is in large part explained by the lack of prioritisation (with *“every decisions becoming politicised”*, according to one informant), the limited number of technical staff and, more importantly, the disjointed and highly hierarchical structure of the organisation, where departments work in silo and *“everything is referred to upwards”*.
- **Limited buy-in from the ECOWAS MS and/or their agencies**, to participate in regional projects that deal with sovereign, sensitive, issues, as often shown by their reluctance to share information. A project document, for example, mentions *“several national counterparts at operational level overtly reject[ing] management by a regional body (ECOWAS).”*²⁹⁸
- **Ambivalent and shifting political commitments at national level.** The project documents note in particular the sustainability challenges associated with the ECOWAS MS' commitments to allocate sufficient funding to fight money laundering and ToC – commitments that are rarely (or unevenly) met.²⁹⁹ In addition, political commitment fluctuates with the electoral cycle and with the change in leadership in the countries' Ministries, Departments and Agencies.

Typically, the main risk mitigation put forward to address these issues has been to align to the priorities and mandates of ECOWAS and other regional bodies; carry out some stakeholder consultations (see JC2.2); and seek high-level political support. In addition, some projects have put particular emphasis on the need to work around consensual issues and show rapid results in order to promote (shared) ownership. Another avenue to strengthening ownership has been to rely on an emulation approach, both at a regional and global level.

Specific examples of such risk mitigation strategies are given in Box 10.

Box 10 Approaches to promoting ownership in regional projects

Aligning to regional priorities and mandates:
The projects have overall responded well to ECOWAS established priorities³⁰⁰: WAPIS also sought additional buy-in from law enforcement authorities within the framework of the West African Police Chiefs Committee (WAPCCO).

Seeking high-level political support:
As explained in WAPIS, political buy-in is key and the programme needs to be supported at political level: *“Law enforcement agencies are always willing to acquire new tools, but the efforts, including in human resources and in budget, required by the Programme's implementation will only come if the Programme is supported at political level.”* To achieve this, EU support to ECOWAS fight against drug trafficking, WAPIS and now OCWAR-T all planned to **further institutionalise ECOWAS MS commitments** through the signature of Supplementary Acts. The Supplementary Acts have the advantage of strengthening already existing commitments from MS, without requiring all MS to sign into it before it becomes effective.

WAPIS also acknowledges the need to identify **highly-motivated focal points within top leadership**: *This person should be of sufficiently high-level to “make things happen” within his own agency and to be able to have impact on other participating agencies.*³⁰¹ WAPIS focal points (in charge of coordination) and national committees (in charge of cooperation) were established in each beneficiary MS.

Working around consensual issues:
Taking lessons from other regions, EU support to ECOWAS fight against drug trafficking, pointed out that *“s uccessful regional cooperation need to develop gradually **around consensual issues** and need to be able to **rapidly show concrete results** in order to keep momentum.”*³⁰² Similarly, WAPIS assumes that its focus on shared interests will

²⁹⁸ EU support to ECOWAS fight against drug trafficking and abuse project documentation

²⁹⁹ For example, according to the final evaluation of EU support to ECOWAS fight against drug trafficking and abuse, *“The 2008 Political Declaration on the Prevention of Drug Abuse, Illicit Drug Trafficking and Organized Crimes in West Africa included a commitment for the Member States to contribute 0.05% of their respective GNP (Gross National Product) to drugs trafficking. This commitment has not been honoured. All counterparts without exception make insignificant budgets available for the fight against drugs and the related project objectives. In several countries, the annual budget for the drug focal points has dramatically decreased. [Similarly] The ECOWAS Secretariat depends on donor funding for its Drug Unit.”*

³⁰⁰ As outlined in: the African Union African Peace and Security Architecture (APSA) Roadmap 2016-2020; ECOWAS Integrated Security Strategy for West Africa (ISSWA) (as mentioned in EU documents) ; ECOWAS Regional Drug Action Plan (2008-15, 2016-20); and more recently ECOWAS West Africa integrated maritime strategy and ECOWAS Regional Cyber Security and Cybercrime strategy.

³⁰¹ WAPIS Description of Action

³⁰² EU support to ECOWAS fight against drug trafficking Description of Action

help address rivalry / lack of cooperation: “The recognized need and urgency to create a regional police data sharing platform will help overcome possible diverging views.”³⁰³

Encouraging emulation:

SAMWA, used a **mentoring model**, whereby some more advanced MS countries (Senegal and Nigeria) would take the lead and act as mentors to less advanced countries, by providing mentoring support to two to five weaker FIUs. This emulation approach – working with regional “hubs” – was also identified as a good practice in the EU support to ECOWAS fight against drug trafficking project “While that approach could appear as a move away from the inherently regional dimension of this project, UNODC came to the conclusion that helping those few countries succeed in a number of areas (legal reform, etc.) will eventually provide the sub-region with good practices and frameworks that other countries could draw upon. Those countries would thus act as front-runners trail-blazing the way forward, for others to follow in their footsteps, when/if in turn ready to go down similar paths of reform.”³⁰⁴

The projects also mention the **effective role that international pressure (FATF standards)** has played in getting some countries to enact relevant legislation and put in place appropriate mechanisms. In addition, many projects rely on **peer-to-peer support** (jumelage) to foster changes, as the beneficiary agencies receive guidance from their EU counterparts

In practice, these risk mitigation strategies have only been partly successful in averting some of the obstacles **identified (see EQ5 for more analysis), which are all linked to complex political economy factors** (see section 0). Some EU support, more specifically WAPIS, has been criticised for not taking the political context (and evident lack of appetite from MS for a centralised regional platform under the aegis of ECOWAS) sufficiently into account, with the project being managed as if it was a simple IT project.

An additional challenge to delivering regional projects through regional bodies is that all MS feel entitled to some support. While this makes sense politically, this has made it difficult for some early projects to show results, as they could not prioritise support to countries that showed strong commitment reforms. Progress on this front has been made in recent years, however, in part thanks to the switch to private contractors (such as France Expertise, GIZ), which has helped getting around this specific political constraint characterising the ECOWAS mandate. As shown in Box 11, EU support still encompasses some compromise solutions – with a mix of activities benefiting a large number of MS and others focusing on selected pilot countries.

Box 11 Selection of beneficiary countries in 10th and 11th EDF RIP projects

The first projects, notably EU support to ECOWAS fight against drug trafficking and abuse, were too ambitious in scope, in part because ECOWAS’ stated preference that all MS should benefit from the regional projects. As a result, UNODC’s approach to a de facto prioritisation of countries (the logical framework called for assessments in ‘minimum x number of countries’) remained unclear.

Some projects have since been taken on a more gradual approach, by focusing first on a small number of pilot initiatives / countries. This approach has notably been adopted by WAPIS, which started with a pilot phase in four countries, under WAPIS I, adding another four countries under WAPIS II, with WAPIS III covering the 15 ECOWAS MS (plus Mauritania). As discussed in JC2.3, this pilot phase was not used to generate new evidence and draw lessons.

OCWAR-M initially selected Senegal and Ghana as its pilot countries, but decided against including Ghana because of the country receiving donor support from elsewhere. Senegal will be used to test new initiatives (for example work with civil society). The project is still supporting bilateral activities in 10 countries. (with another 5 benefiting from regional activities)

Under **OCWAR-C**, different pilot countries have been selected in different areas based on a number of pre-requisites (verified independently) to ensure progress and sustainability. For example, following an extensive selection process, Cape Verde, Mali and Sierra Leone have been selected as pilot countries for the implementation of a Computer Security Incidents Response Team (CSIRT), based on criteria including the existence of relevant agencies; access to premises and IT equipment; and a legal framework in place.

Finally, **the risk that donor-funded interventions (as implemented by third parties) could come to marginalise the leadership role that ECOWAS/GIABA during implementation cannot be overlooked.** As identified by OCWAR-T, “ECOWAS marginalized in donor driven programme that does not address beneficiary priorities” as high, even though ECOWAS “prominent role in steering committee and close working relationship with Implementing Partner” should help.³⁰⁵ This sentiment was also shared by some stakeholders during the field visit (see JC2.2).

³⁰³ WAPIS Description of Action

³⁰⁴ Support To Ecowas Regional Action Plan On Illicit Drug Trafficking, Organized Crime Related To It And Drug Abuse In West Africa Final Report

³⁰⁵ OCWAR-T Description of Action

JC2.2 Engagement with actors at different levels in delivering RoL&AC support

Stakeholder engagement has mostly consisted of working with regional bodies (ECOWAS Commission and GIABA) and law enforcement agencies or units that have a mandate to fight ML and TOC in the region.

A main challenge to engaging with stakeholders in the region is the important differences between French-speaking and English-speaking policies and systems, starting with the use of a common currency (and role of the regional central bank and monetary union) in French-speaking West Africa. Some stakeholders have questioned whether having regional projects covering the entire region (plus Mauritania for OCWAR-M) was realistic. At the same time, the rationale for having a geographical split between IfS-funded AML-WA (Nigeria, Senegal, Cap Verde and Ghana – focus on middle-income countries) and SAMWA (focused on least developed countries) proved unconvincing, as many of GIABA's (EDF-funded) operations ended up covering the entire region. It seems that the approach of working in partnership with regional bodies (ECOWAS/GIABA) – while targeting support to selected MS – provides a good compromise solution.

During the field visit, some (but not all) ECOWAS officials shared that they had not been sufficiently consulted during the formulation and inception years of the OCWAR projects. Only GIABA confirmed that they had played an active role during the formulation of OCWAR-M. This perceived lack of consultation, which coincided with the EU's decision to stop using ECOWAS (and GIABA) as delivery partners (see JC4.1), has led to lingering discontent about the EU within the organisation. As a result, the EU has been at times accused of **taking the leadership away from the organisation** (a risk also highlighted under JC2.1). In addition, while delivery partners have worked hard – and largely succeeded in – establishing a **good partnership with their direct counterparts**, they also admit that – because of the organisation's many institutional bottlenecks – they tend to 'strategise' their engagement by interacting with the regional organisation on a 'need to know' basis (between the annual meetings of the steering committees). The partnership between the EU and ECOWAS/GIABA (as main strategic partners) is further discussed under JC3.1.

At MS level, the use of self-assessment, diagnosis and frequent missions have ensured that support to law enforcement and other agencies has been overall relevant to their needs. Most projects have used participatory diagnosis extensively in their first year of delivery to engage with law enforcement and other relevant agencies (the main beneficiaries of the project) and identify their needs for support. In the case of WAPIS, the project had the advantage of meeting a need (i.e. the establishment of police information management systems) that had been identified and was formally requested by the beneficiaries (with WAPCCO).

EU support in this area only has had a limited engagement with civil society (the main example being 10th EDF SAMWA (with Transparency International and to a lesser extent EU support to ECOWAS fight against drug trafficking and abuse³⁰⁶), and none with the local population / local authorities living in the most affected areas. While the regional dimension and nature of the projects may justify this mostly technical level of engagement, the projects have also increasingly acknowledged the needs for civil society/multi-stakeholder engagement, although this has yet to materialise (with the corresponding project components / activities barely started) (see JC6.2 for more analysis on the role of CSOs).

JC2.3 Adjustment to changing conditions and new opportunities

As some projects started with significant delays (see EQ4), some EU support, as initially designed, was no longer aligned with the regional context when they started. For example, EU support to ECOWAS fight against drug trafficking and abuse was designed in 2009 but only started in 2015, due to contractual and delivery issues (see JC4.1). As a result, *"The situation on the ground in 2015, when implementation started, was not at all relevant to the design anymore: the drugs trade has totally changed since, and continues to change extremely rapidly."*³⁰⁷

The evaluation team did not come across many examples of adaption to new circumstances (good or bad) during the project's lifespan. All projects made some changes in response to the COVID-19 pandemic. While many activities were stopped, in some cases, the projects were reported as having benefited from these adjustments, for example with OCWAR-M, which expanded its pool of regional experts working on the project. Some elements of innovation were also put forward, hence showing good project flexibility during delivery. This included the use of Mobile Training Units³⁰⁸ and increased use of regional hubs (including on

³⁰⁶ According to the MTR, all in all, global, regional and bilateral partnerships were supported, sustained and strengthened under the project [across all components], which involved the ECOWAS Drug Unit, ECOWAS Member States and Mauritania, regional networks, civil society organisations and the EU.

³⁰⁷ ROM report, 10/2017

³⁰⁸ A Mobile Training Unit is a set of 10 computers, a server and interconnecting equipment (these are very robust, ruggedized, and state of the art computers) already loaded with eLearning training modules that can be used to deliver training and improve the capacity of Law Enforcement Agencies to fight Drugs and Crime.

forensic) in the EU support to ECOWAS fight against drug trafficking and abuse project. The findings of the MTR for SAMWA were also used to make some adjustment to the project.

In contrast, the 2021 MTR of WAPIS criticises the project for not taking new evidence on board or learning from the previous phases. The MTR notes, in particular, that opportunities to learn from the first two phases (funded by IcSP) were missed, in the absence of stock-taking exercises. It also mentions that some assessments carried out by external experts – while relevant and useful – were not taken on board. Importantly, **WAPIS is a good illustration of the careful balancing act that regional interventions need to make as they seek to adjust to the different local context(s), while promoting a harmonised approach.** Initially WAPIS III had envisaged to work in a limited number of countries, if ECOWAS MS failed to agree on a common legal and data sharing framework. When this risk materialised, the project decided instead to skip some essential steps (i.e. legal framework in place) and start rolling-out its support in all countries regardless. This approach, which enabled each MS to progress at their own rate –was rejected by the EU and ECOWAS, however, because it run counter to a sustainable and harmonised approach (see JC5.1 for more analysis).

EQ3: Partnerships and coherence

JC3.1 Partnerships based on comparative advantages

The main added value of the EU regional projects are: their partnership with regional organisations and their scale and (for some, like WAPIS), search for innovative and bespoke solutions. Notwithstanding some organisational constraints, ECOWAS (with GIABA) still has the mandate and convening power to support the regional agenda. As such, some EU-funded initiatives (notably WAPIS) can be found in the head of state communiqués, which are used to urge MS to meet their commitment.³⁰⁹

Some regional projects specifically support inter-state / inter-agency cooperation. Others are mostly appreciated for their capacity to provide flexible support to selected MS, while still using a harmonised approach. Projects working with ECOWAS are also appreciated for the technical expertise that they bring and which ECOWAS is lacking. In the case of OCWAR-M, it was decided that GIABA would continue to support regional events, which Expertise France would complement with targeted support in MS. The project is also appreciated for funding two regional experts to help the organisation accelerate its MS mutual evaluation reviews.

The partnership between the EU and ECOWAS has evolved significantly over the evaluation period, The EU's decision to stop using ECOWAS as a delivery partner (mostly for due diligence reasons, see JC3.2) has thawed the relationship between the two regional communities in recent years. At the same time, **this decision should have enabled the EU to focus more on strategic rather than procedural issues when engaging with the regional organisation,** which was only partly achieved.

- At a **strategic level**, a steering committee meeting between the EUD in Nigeria and ECOWAS is expected to meet every year, but there have been some gaps (including during the COVID-19 pandemic). While the EU's decision based on its pillar assessment approach (see JC3.2) seems well understood within ECOWAS (and GIABA), the new arrangements under the EU's Global Europe: Neighbourhood, Development and International Cooperation Instrument (NDICI), which will take away the role of ECOWAS as the regional authorising officer, have added another layer of complexity to the EU-ECOWAS strategic partnership.³¹⁰
- At an **operational level**, the EU has taken a less hands-on approach and less visible role after it stopped managing the projects delivered by ECOWAS / GIABA. As mentioned before, the delivery partners have worked hard to (re-)establish a good partnership with their main counterparts / focal points, who are co-chairs in the projects' annual steering committee meetings.

The large number of development actors engaging in ML and TOC increases the risk of duplication, particularly in view of the weakness of donor coordination and a culture of secrecy³¹¹, that pervades the development community in West Africa. The ECOWAS Commission (and to a lesser extent GIABA)³¹², who are responsible for coordinating donor actions in the region don't necessarily have the information at hand about specific programmes at MS level. This situation is compounded by a culture of secrecy, both from MS and the donor community (see below). A mapping exercise by OCWAR-T has captured some of the most

³⁰⁹ See for example ECOWAS (2019): Fifty-Fifth Ordinary Session of the Authority of ECOWAS Heads of State and Government.

³¹⁰ As of early 2022, other Regional Economic Communities had sent request for support in the context of NDICI, but ECOWAS had only sent a concept note.

³¹¹ For example, for EU-EDIP, the ROM mission mentions that: *"It has been impossible for this ROM mission to obtain an informed overview of all EU or other donor funded projects supporting either the fight against drug trafficking (or related organised crime), or indeed of any ECOWAS capacity building projects funded by the EU"*.

³¹² GIABA regularly organises donor roundtables.

relevant and largest interventions in the region, but identifying the plethora of interventions at MS level that have relevant components has proved difficult.

An informal group (established by Switzerland) in Nigeria was reported to meet every month to discuss peace and security in the region, but this has not prevented EU MS (and other donor agencies) from commissioning their support in silo. In the absence of a more structured donor coordination framework - and following EU's request -, delivery partners have taken steps to coordinate their operations with each other's and other lead development partners (including UN agencies and the World Bank). **Good examples were shared by delivery partners during the field visit to show that, thanks to their coordination efforts, some duplication or incoherence between their projects and others' have been avoided.** While it took time to set it up, the structure of OCWAR-T³¹³ is also used to facilitate inter-agency cooperation. The delivery partners, however, can only pretend to a partial coverage and oversight of donor-funded support in the region, while some were said to be less forthcoming than others with information.

JC3.2 RoL&AC support delivered in a coherent manner

The RIP regional projects have been designed to be complementary amongst each other; for example, AML was excluded from EU support to ECOWAS fight against drug trafficking and abuse to avoid any duplication with SAMWA. The recent approval of 11th EDF RIP project 'Introduction of criminal Automated Fingerprint Identification Systems (AFIS) in West African countries', is a necessary component for WAPIS success. Finally, the three OCWAR are also complementary.

On a less positive note, the linkages between the RIP regional projects, EU interventions in the Sahel, and the IcSP-funded global programmes are hardly known. There is no documentary evidence on how the RIP projects have complemented EUCAP Sahel Niger and EUCAP Sahel.³¹⁴ As previously mentioned, outside Interpol and UNODC, the delivery partners for CRIMEJUST, no stakeholders interviewed during the field visit seemed to know or have connections with the Global IFF programme.

With Global Europe-NDICI, there is a growing trend to support sub-Saharan African (rather than sub-regional) programmes. At the time of finalising this case study, a Team Europe Initiative was being developed (with support from Finland, France, Germany, Netherlands, and Sweden) to support Africa in combating IFF and TOC.³¹⁵ Germany is also providing some financial support to OCWAR-T.

The EUDs in Senegal and Nigeria have worked to ensure that EU-funded national and regional support is delivered in a coherent manner in their respective countries, with the latter mostly providing top-up support to the former (see Box 12). There is some evidence of this happening in Niger and Cote d'Ivoire too, but little visibility elsewhere, in part because of the lack of a coordination/information sharing platform involving all EUDs.

Box 12 Link between RIP projects and EU country programmes in Senegal

Promoting RoL&AC is core to EU's support to Senegal. This includes support to the Financial Intelligence Unit and, through the use of budget support (and with it, policy dialogue), a call for specific AML actions. The EUD also participates in the International Monetary Fund (IMF)'s working group established to support Senegal's action plan to be removed off the FATF / EU list. Other areas of support related to AC include support to the Cour des Comptes (national audit), the AC agency, and internal audit, and, through the use of budget support (and with it policy dialogue) procurement reforms. Senegal EUD also supports reforms in the penal and criminal justice sector, with law enforcement agencies being amongst the beneficiaries.

At a global level, the EU has followed on FATF decisions and put Burkina Faso, Mali and Senegal on its list of high-risk countries. **Concerning the link with EU's anti-fraud policy, the EU retained ECOWAS as a delivery partner in the first half of the evaluation period, despite the known delivery/management risks.** Several institutional assessments, evaluations and audits conducted had indeed pointed to the lack of compliance by ECOWAS with international standards on financial and administrative management. As a result, implementation of projects (under the 9th EDF) had been affected by long delays and financial and contractual errors non-compliant with EDF rules and procedures. These problems continued into 10th EDF, as shown with EU support to ECOWAS fight against drug trafficking and abuse, and the ECOWAS Peace and Security

³¹³ See footnote 6

³¹⁴ EUCAP Sahel Niger is the civilian capacity building Mission supporting the Nigerien Internal Security Forces (Police, Gendarmerie and National Guard) in strengthening the Nigerien capacities to fight against terrorism, organised crime and irregular migration, through advice, training and delivery of equipment. EUCAP Sahel is the EU civilian crisis management Mission in Mali, whose 2021-23 mandate is i) improved governance and the fight against impunity in the security forces, ii) the redeployment of internal security forces and return of the state and civil administration, iii) the transition authorities and internal security forces in securing elections scheduled for 2022, iv) improving their operational efficiency.

³¹⁵ EU: Website Team Europe Initiative To Support Africa in Combating Illicit Financial Flows and Transnational Organized Crime.

Project. Since then, staff freeze within the organisation has also made it difficult to demonstrate they have sufficient capacity to manage EU funds.

It is also worthwhile to note that **the limited capacity of ECOWAS had already let many international donors to withdraw or reduce their financial support to the Secretariat.** Management and delivery issues finally prompted the EU to move away from a direct contracting with ECOWAS in the new RIP. Because of slow delivery, GIABA was also stripped of its delivery partner role.

A more cautious approach, based on the EU's so-called pillar assessments and complementary capacity building, is now being used. Pillar assessments are used to protect the EU's financial interests when using indirect management. They consist of verifying the systems, rules and procedures of the persons or entities implementing the EU funds through the use of external audit. A mock pillar assessment for ECOWAS has concluded that ECOWAS had met four out of eight pillars. A EUR 5 million grant (with GIZ) has been signed to provide institutional support to ECOWAS, with the first component of the project focusing on strengthening the internal administrative systems at the ECOWAS Commission to meet the EU pillars. Similarly, GIABA has been awarded a EUR 750,000 capacity building grant (which the organisation will manage), following an independent organisational assessment in 2020.³¹⁶

Finally, while most projects do not have specific AC objectives (see JC6.2), some projects have sought to address the risk of corruption with their main beneficiaries/local partners, through the use of due diligence mechanisms. For example, OCWAR-T has conducted micro-assessment of administrative and financial management capacity of National Commissions of Small Arms (NATCOM) before delegating them some responsibility. Importantly, due diligence is also used to check the beneficiary agencies' compliance to human rights principles. With OCWAR-C, the use of some software disqualifies for project support because of their known mis(use) of electronic personal data by government agencies (for ex to track opposition leaders) (see JC7.2).

EQ4: Choice of modality

JC4.1 Right mix of modalities for RoL&AC support

Concerning the choice of implementation approaches, as mentioned previously, **the EU's use of ECOWAS and GIABA as delivery partners in the first half of the evaluation period proved problematic.** The projects started with significant delays (seven years between design and the start of activities for EU support to ECOWAS fight against drug trafficking and abuse and four years for SAMWA) and by mid-term the SAMWA project had only achieved 16%. For EU support to ECOWAS fight against drug trafficking and abuse, the involvement of UNODC only partly helped to mitigate the risk of poor delivery, in part because of the contractual arrangements in place³¹⁷ and UNODC's own limited capacity.³¹⁸

The use of Interpol as a delivery partner has also come with some challenges. The choice of Interpol as delivery partner for WAPIS is based on strong comparative advantage (if not 'market monopoly')³¹⁹. Interpol is the only organisation, which can be given access to police data and whose main mandate is to promote international police coordination.³²⁰ Interpol is also considered as neutral and was assessed as having all human and logistical resources to manage the project efficiently. There have been some issues with project delivery, however, in part linked to design (see JC2.1) and management issues. The decision to select an IT engineer as head of team rather than someone from the police did not help either. In the first 4-5 years of the project, Interpol also did not follow the (very similar) recommendations made by an external auditor, the Steering Committee and a Result-Oriented Monitoring exercise. As put by a key informant, while the contract is signed with EUD Cote d'Ivoire, Interpol has "*higher entry points*" to Brussels than the Delegation itself. It took a decision by the Steering Committee in 2021 to suspend support to selected MS for WAPIS to adjust to ECOWAS/EU recommendations (see JC4.2).

³¹⁶ An early action document (2012) for SAMWA referred to a first objective focusing on increasing the organisation's capacity, based on an institutional assessment of its Secretariat, allowing to identify and address key weaknesses in accounting, internal control, procurement and external audits systems and draft A strategy for better engaging with key stakeholders (GIABA Member States, Donors, GAFI-Sud, etc.). This objective was subsequently dropped.

³¹⁷ Acknowledging the limited capacity of the ECOWAS Commission, the EU initially opted for a joint management of EU-EDAP by UNODC and ECOWAS Commission. Difficult negotiations followed, as ECOWAS pushed for an individual grant, which it finally obtained. As a result, some management /value for money issues, already identified under the 9th EDF, persisted, with the ROM report also mentioning per diem over-use.

³¹⁸ With the core staff at UNODC Nigeria being at the time limited to five senior experts, there was also limited staff capacity to oversee the project and a lack of result-oriented monitoring and evaluation approach.

³¹⁹ For example, Interpol was the only agency to respond to the call for proposal for the new 11th EDF APIS project.

³²⁰ It is also worth noting that Interpol have not been immune from allegations of corruption / human right violations over the years – whether this reflects the misdeeds of high-ranking individuals or portrays more systematic governance issues within the organisation.

While less problematic, the implementation arrangements for some of the projects delivered by bilateral agencies have remained complex: More specifically, OCWAR-T is coordinated by GIZ – with each component being implemented by a different agency. As a result, the period between the signature and the start of activities for this project took a couple of years. At the time of finalising this case study note, all OCWAR projects were preparing their request for a one-year extension (to 2023), to compensate for slower activities during the COVID-19 pandemic.

The interviews conducted during the field visit did not confirm concerns raised in recent MTR of CRP that “for each expert recruited from service for a MS government agency, a bias towards the interests of their home country is inevitable.”³²¹ While these agencies tend to mobilise experts (including civil servants) from their home country, they also recruit international experts from other countries, as well as regional experts. The same review also raised concerns that the EU’s added value would be lost when relying on a MS government agency. *“Only the European Commission has the vision and mandate to design a mechanism for protecting the needs of the entire EU. But in the absence of executing agencies to call upon, it has to rely on MS for implementation.”* Based on selected interviews, this case study concludes that it is not the choice of MS government agency as delivery partner that pose problems, but more the EU’s strategic positioning with ECOWAS (see JC3.1 and JC4.2).

The funding modalities used by the EU to fight TOC in the region consist of a complex woven of national, regional and global projects, funded through the EDF and thematic instruments (such as ICsP). The IcSP is designed to be a subsidiary instrument, providing assistance which cannot be provided under any other EU instruments, either because the trans-regional nature of the activities or because it goes beyond the bounds of development cooperation instruments. The strength of the IcSP is also in its fast-tracking mechanism.

The evaluation found areas of EU support where these funding modalities have been combined effectively to ensure some continuity in actions, although this cannot be generalised. With WAPIS, the first two phases of the project were funded through IcSP. The first 15 months of the third phase started with funding from the EU Emergency Trust Fund for Africa; followed by a roll-out period funded through EDF RIP. In the case of AML-WA and WAPIS, the EDF RIP provided a funding alternative that made continued support from the IFS redundant. At some stage, under the EU support to ECOWAS fight against drug trafficking and abuse, the UNODC was actively pursuing fundraising with ‘fast mechanisms’ such as IcSP, to fast-track support (as EDF funding was extremely slow to start). At the end, UNODC was able to draw on funding from IcSP (with CRIMEJUST) and EDF to carry out its operations.

As previously mentioned, while the use of IcSP has been good to ensure some continuity in funding, opportunities for cross-fertilisation have been missed. As noted in the MTR of WAPIS, if an evaluation was not carried out for the previous WAPIS phases because the programme was considered as continuous and ‘linear’ and covering the entire period (2012-22), then at the very least, a mid-term review should have taken place in 2017.

JC4.2 Mutually reinforcing political/policy dialogue and programming

In the early years of the evaluation, a formal dialogue mechanism in the form of an ECOWAS-EU ministerial troika existed, covering both political and economic integration issues.³²² This was discontinued in 2013.³²³ The main channel for dialogue have now become the yearly **steering committee meetings** between the EUD in Nigeria and ECOWAS Commission. This steering committee involves the head of cooperation and top ECOWAS management, but has no ministerial representation from ECOWAS MS.

As explained previously, the delivery partners are now in the lead when it comes to technical discussion (see JC3.1). Some delivery partners seem to be better positioned than others: According to the design documents, *“INTERPOL has been lobbying ministers, National Security Coordinators and Heads of Police throughout the Programme’s implementation. This took place in various high-level meetings and high-level fora.”* Through its long-term experts, GIZ has had a long-standing partnership with ECOWAS Commission.

At country level, EU delegations in the region are expected to engage at a political level to reiterate the importance of country commitments for the various regional projects and secure political buy-in. The responsible EUDs in Cote d’Ivoire, Senegal and Nigeria have performed well on this front. The decision by WAPIS ECOWAS / EU Steering Committee to suspend funding to all MS that had not the adequate legislative framework (as well as prompting government actions, see JC5.1) – as well as showing effective

³²¹ For example, under the AML-WA, the FIAPP operated in consortium with the Crown Prosecution Service, ADETEF and CivilPol Conseil (the in-house consulting company of the French Ministry of Interior). OCWAR-M has a partnership with the Ecole Nationale de la Magistrature in France.

³²² The importance of the regional Action Plan on illicit drug trafficking and organised crime was discussed during the ministerial Troika meeting between ECOWAS and the EU back in 2009 and 2010.

³²³ EU / ECOWAS (2013): 19th EU-ECOWAS Political Dialogue Meeting at Ministerial Level Final Communiqué.

joint working – shows good links between programming and political/policy dialogue. The EU is also co-signatory for some of the letters sent by ECOWAS to Ministries (e.g. OCWAR-C). Other good examples were shared with the evaluation team during the field visit demonstrating that the EUD in Nigeria and in Cote d'Ivoire stepped in when necessary to address some blockages. As put by the recent MTR of WAPIS, however, “*the support of EU delegations in beneficiary countries has been instrumental in some instances in achieving political buy-in and agreement for project implementation. However, the cooperation between delegations and project implementation partners has varied and is often less than desired. This has resulted in some programmes in a divide between the political and technical engagement which, in fact, weakens programme implementation.*”

Effects of EU support to RoL&AC

EQ5: Effects on RoL&AC (I): the quality / efficiency of justice systems and AC institutions

JC5.1: Core legal, regulatory, and administrative reforms promoting RoL&AC

The EU’s main support to improving legal, policy and regulatory frameworks in relation to ToC has consisted of strengthening ECOWAS legal, policy and strategic framework (in line with international standards) and support its domestication in selected MS.

At a regional level, the EU support has targeted areas where ECOWAS legal/regulatory, policy/strategic frameworks needed strengthening, building on existing commitments.³²⁴ Progress on this front has been mixed, although some OCWAR projects have started to show results. In the first part of the review period, the EU (EU support to ECOWAS fight against drug trafficking and abuse) has supported ECOWAS in drafting a Supplementary Act on Drugs Control – in line with the 2008 Praia Declaration³²⁵, which was adopted by ECOWAS Member States in 2008. This proposed Act, however, had not been signed by the time the project came to an end (2020) and plans for its signature were not subsequently carried over by ECOWAS. EU’s main contribution under this project was the drafting and adoption of the new ECOWAS Action Plan to Address illicit Drug trafficking, Organised Crime and Drug Abuse in West Africa (2016-2020).

Similarly, one objective of OCWAR-T is the elaboration of a comprehensive legal framework to fight TOC, which includes an ECOWAS Political Declaration and Common Position against TOC, a Supplementary Act and a new Strategy Plan. First milestones were achieved in 2022 with an expert meeting, followed by the organisation of the first regional multi-stakeholder dialogue on addressing TOC in West Africa, when the West African Research Network on Organised Crime was launched. It is too early to talk about results, however. During formulation, WAPIS had also envisaged to support the adoption of an ECOWAS Act for the implementation of WAPIS (as a risk mitigation measure against low political will) but this was not taken forward. A main achievement to date comes under OCWAR-C, which has helped with ECOWAS’s drafting of the regional cybersecurity and cybercrime strategy and the regional policy for the protection of critical infrastructures, which were adopted by the ICT ECOWAS MS ministers in 2020.

At a national level, all regional projects endeavour to strengthen the MS’s policy, strategic, legislative and/or regulatory frameworks. The relative importance of EU support in this area has varied with the issues concerned. In some areas, like cybercrime, the region and MS are facing a huge legislative backlog, but in others, like small arms and light weapon (SALW), the national legislative frameworks are already largely in place– and the project focuses on strengthening the institutional architecture instead (see JC5.2).

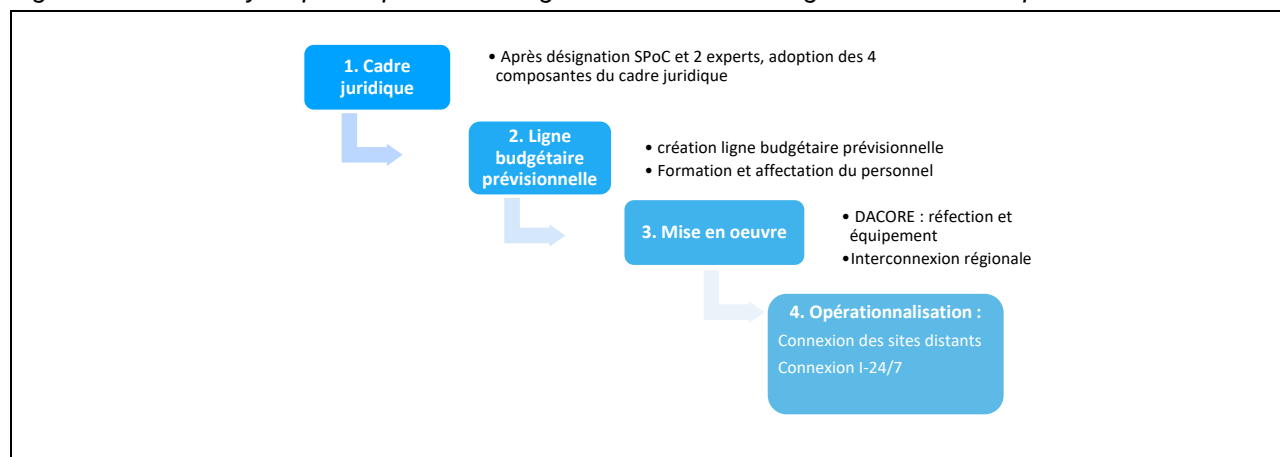
Based on evidence from the most relevant projects (EU support to ECOWAS fight against drug trafficking and abuse, WAPIS, OCWAR-C), progress in strengthening the policy / legal framework in MS has been overall slower than expected. Many of these projects have typically started with an assessment of the national legal frameworks (and capacity building needs) in all or selected countries (plus Mauritania for some projects). These rather extensive (yet necessary) exercises, combined with limited delivery capacity, explain why support to reforms (requiring further stakeholder consultations) only started in 2017 (the third year of implementation) for the EU support to ECOWAS fight against drug trafficking and abuse. The project’s ambitions were not achieved as a result, with its main achievements being the elaboration of National Drug Control Master Plans in three MS. Elsewhere, the slow progress is explained by weak political will: Under WAPIS, 53% of the MS were reported to have the required legal frameworks in place by 2021.

³²⁴ Existing regional legal and regulatory frameworks include the 2018 Praia Political Declaration on the Prevention of Drug Abuse, Illicit Drug Trafficking and Organised Crimes in West Africa, ECOWAS Acts on personal data protection and e-transactions, the ECOWAS Convention on SALW, and the ECOWAS plan of action on trafficking in persons. The AML/CT legal and regulatory framework at a regional / global level is also well established, with GIABA (which is both an FSRB and an ECOWAS organisation) in the lead, even though there are still some gaps (notably with regard to the independence of FIUs). For cybercrime, the African Union Convention on Cyber Security and Personal Data Protection (2014 known as the Malabo Convention) and the corresponding Budapest Convention are used as the main framework to support strengthened legislation in the MS.

³²⁵ Political Declaration on the Prevention of Drug Abuse, Illicit Drug Trafficking and Organised Crimes in West Africa.

Seen as a prerequisite to ensure sustainability (see Figure 7), the EU and MTR consider this level of achievement as unsatisfactory. As briefly mentioned under JC2.3, this low level of achievement is explained by the programme decision to roll-out activities in all countries, hoping that the legal and budgetary aspects could follow. Some progress was nonetheless made after the Steering Committee in March 2021 decided to suspend the programme's support to the beneficiary countries considered as high risk – prompting some countries (Ghana and Cote d'Ivoire) to adopt the necessary legal provisions.

Figure 7 Key steps to operationalising WAPIS – from the legal framework to operationalisation



Source: Mid-term review WAPIS

For cybersecurity and cybercrime, support was still ongoing under OCWAR-T to review the beneficiary countries' legal framework, shape their national action plans / support the domestication of the regional Cybersecurity and Cybercrime Strategies and Policy for Critical Infrastructure Protection. Under OCWAR-M, EU is supporting the drafting / strengthening of AML / CT national strategies in selected MS.

JC5.2: Strengthening of institutional architecture of core RoL&AC institutions

EU's support (at a regional level) to strengthen the RoL&AC institutional architecture in West Africa has been multi-layered and included i) capacity building to GIABA, ECOWAS Commission and its responsible departments and units, ii) capacity building to relevant agencies / actors in charge of fighting (and preventing) ML and TOC in MS, and iii) support to strengthen regional inter-state and inter-agency cooperation.

EU's contribution to strengthening GIABA, ECOWAS and ECOWAS responsible departments and units

EU's capacity building support to ECOWAS and GIABA only (and perhaps belatedly³²⁶) started recently in 2020-21. The EU support to ECOWAS fight against drug trafficking and abuse included a stand-alone component to support the ECOWAS Drug Unit, focusing on advocacy, monitoring and coordination capacity. This support was key in making ECOWAS Drug Unit more active, visible, and operational, which involved, amongst others, monitoring missions in MS to assess their compliance to ECOWAS Drug Action Plan; public awareness campaign and the establishment of regional networks (see iii). The bulk of the grant (with co-funding from ECOWAS), however, was spent on salaries, consultancy services and per diems for various training and networking events – raising concerns about sustainability.³²⁷ Many activities (newsletter, use of website launched by the project) indeed stopped when the project came to an end.

EU's contribution to strengthening relevant MS anticorruption, law enforcement, and justice agencies

As mentioned before (JC1.1), EU support has broadened over the years to include all relevant agencies with a role to play in the fight against ML and TOC, not just the police. For example, OCWAR-M's approach is to provide support across the entire criminal justice chain. **EU regional support has no doubt contributed to training and mentoring law enforcement and other relevant agencies in the region.** Joint training also offered opportunities to strengthen inter-state and inter-agency collaboration (see iii) For example, under the EU support to ECOWAS fight against drug trafficking and abuse, an e-learning programme using Mobile Training Units was seen as particularly effective in promoting stronger cooperation amongst agencies. Elsewhere, the training ambitions of the SAMWA project were not met. The main reason given for the mixed progress was that the budget allocations had not reached the FIUs (responsible for training the reporting entities) and that the training materials had not been shared with the training institutions for magistrates and judicial police officers. An activity that seems to work better was the support given by the mentor FIUs to other

³²⁶ An early action document (2012) for SAMWA referred to a first objective focusing on increasing the organisation's capacity, based on an institutional assessment of its Secretariat. This objective was subsequently dropped.

³²⁷ ROM

FIUs in the region. Since then, OCWAR-M has started to provide some technical expertise through an expanding network of international and regional experts (75 in total), each bringing their own area of expertise.

Achievements (outside training and mentoring) have included the establishment of new units, teams, or structures, including the pilot forensic hubs in Ghana, Cabo Verde and Côte d'Ivoire to support the region with scientific analysis of samples of seized drugs (EU support to ECOWAS fight against drug trafficking and abuse), and the establishment of a functional Data Collection and Registration Centres in six out of 16 countries (WAPIS).

It is too early to talk about results for the OCWAR projects, which each have components on institution building. For example, OCWAR-C is supporting the establishment of Computer Security Incidents Response Team (CSRIT) and the establishment or renovation of digital forensic laboratories in selected MS. OCWAR-T is supporting the establishment/ strengthening of criminal intelligence and investigation tasks forces; national referral mechanisms to prevent trafficking in persons; and set-up of decentralised field offices of the NATCOM in three MS.

There has been a concern that these newly established structures could stop functioning after the end of EU support. With scattered resources – and limited time to test -and- roll out pilot initiatives – there is a risk that EU regional support could only lead to 'half-cooked' pilot initiatives and not contribute to significant and lasting results in strengthening individual agencies in the region. **In response, the EU and its delivery partners have been careful to build on existing capacity,³²⁸ as shown in all OCWAR projects (but not WAPIS).** The EU has also pressed hard for WAPIS to ensure the legal framework would be in place, in so doing making it legally binding for the government to support the new Data Collection and Registration Centres. While this is a step in the right direction³²⁹, this approach is based on the assumption that the centres will be fully equipped and operational by the time the project finishes. However, as of 2021, the technical pre-requisites for the centres to become operational were not in place: the number of computer stations was not sufficient to ensure full coverage of data (which the systems need to become useful) and, due to a manufacturing defect, only 40% of the scanners were working at the time of the mid-term review. The internet costs had also been under-estimated.

Finally, the challenges are also such that getting countries and/or individual agencies to meet regional and international standards remains a long and onerous task. For example, despite GIABA efforts (with support from the EU and other donors), no FIUs from the region have been admitted to the Egmont Group since 2018 (Benin) and 2017 (Cabo Verde). Helping FIUs qualify for Egmont membership remains an objective for OCWAR-M.

EU's contribution to stronger inter-agency and inter-state collaboration

There are good examples to show that the EU support has contributed to developing further the regional inter-agency / inter-state architecture. However, issues of trust and around intelligence sharing will need to be tackled to increase effectiveness. More specifically, the EU has supported the launch of new regional associations, notably, West African Epidemiology Network on Drug Use (WENDU) and West African Network of Civil Societies in Substance Abuse (WANCSA) (EU support to ECOWAS fight against drug trafficking and abuse) and more recently, the West African Research Network on Organised Crime. Another success story, as reported in the project documents, is that of joint operations between law enforcement agencies in the region, which were conducted as a direct result of EU support (EU support to ECOWAS fight against drug trafficking and abuse), and led to increased levels of seizures of drugs and arrests. These joint operations (operations BENKADI, Open Roads, NINIBO), which involved both UNODC and Interpol, were also said to have built momentum for police-to-police cooperation.

As shown with WAPIS, however, issues of trust and around intelligence sharing will need to be tackled for inter- agency cooperation to become more effective. With WAPIS, there has been no progress in setting up a regional platform (under the aegis of ECOWAS), and only one country is connected to Interpol. WAPIS – whose objective was both to set up systems in MS and linking them up to a regional data sharing platforms (and globally Interpol) – had not conducted any activity at a regional and global level by the time the MTR was conducted in 2021. **In addition, there are some concerns that the newly established regional platforms may lack resources to stay operational after EU supports end** (see ii). The need for establishing new regional networks is also questionable in some areas – regional networks can overlap in their mandate and hence compete for resources.³³⁰ In response, the EU and its delivery partners have been more careful to build partnership with existing networks that are operational, such as West African Central Authorities and Prosecutors Against Organised Crime (WACAP) under OCWAR-T, through the nomination of focal points.

³²⁸ institutions / units already in place; available infrastructure, office equipment etc),

³²⁹ Five countries had created and paid into a budget line for WAPIS as of 2021.

³³⁰ See contrasting examples between WANCSA (reported active yet lacking visibility) and the West Africa Drug Policy Network, a coalition of over 600 civil society organisations in 17 West African countries with a goal of promoting evidence-based drug policy reform in the region, supported by the International Drug Policy Consortium and Open Society Foundations. <https://idpc.net/profile/west-africa-drug-policy-network>

Inter-agency cooperation has also been supported under SAMWA and now OCWAR-M. Key to OCWAR-M's expected results is to increase the number of information exchange between FIUs and the number of protocols signed between FIU in the region and outside.

JC5.3: Progress in justice systems and anticorruption frameworks

There is no data available to show that EU support has had an impact on curtailing ML and TOC in the region through its support to more effective RoL&AC frameworks. Except for the joint operations (see JC5.2), there is no statistics available on the project's contribution to increased investigations and prosecutions in relation to ML / ToC. With GIABA (SAMWA), notwithstanding a very low level of effectiveness, some high-level indicators were still reached, indicating either low ambition or contribution from elsewhere. Targets achieved included: the total number of suspected transaction declaration submitted by the reporting entities (which have increased by 20% every year); the number of investigation reports sent to local authorities by the FIUs; the sharing of information between FIUs (with a 82% satisfactory response rate); the number of conviction for ML/CT (15 in 2017 (very low target!)); and, to a lesser extent, the satisfactory response to asset request by the competent authorities (14/25 in 2017). Similarly, OCWAR-M outcome indicators are to increase number of suspected transaction declaration submitted by the reporting entities; and number of lawsuits resulting in an AML-CT court decisions.

EQ6: Effects on RoL&AC (II): independence, impartiality, accountability of the justice and AC institutions

JC6.1 Legal safeguards, checks and balances ensuring the independence and impartiality of the judiciary, and functioning of AC agencies

None of the sampled regional projects seek to promote the independence, impartiality and accountability of the RoL&AC institutions, but examples can be found in the EU's integrated strategy for the Sahel and CRIMEJUST Phase I. The EU's integrated strategy for the Sahel adopted in 2021, put strong emphasis on fighting corruption, impunity and human right violations in the (internal) security forces. This is also reflected in EUCAP Sahel's mission. CRIMEJUST global programme Phase I (2016-19) has two components: i) Enhancing integrity and accountability of law enforcement and the judiciary, and ii) Enhanced capacity of CSOs to identify, monitor and propose measures to address key integrity and accountability challenges in effectively combatting organised crime in law enforcement and the judiciary.

The ICsP mid-term review (2020) identifies corruption in beneficiary institutions; difficulties in co-operation from institutions and lack of political buy-in as the most commonly raised issues impeding project efficacy. One of its recommendations is that future programming should involve a greater emphasis on anticorruption initiatives to support institution-building along routes of illicit flows, and support the role of civil society to create external pressure on institutions and promote political will to commit to international cooperation and counter organised crime effectively.

JC6.2 Empowered role of oversight institutions, non-state actors and the private sector in strengthening RoL&AC processes

The OECD report on IFF in West Africa recommends that non-state actors be more involved in building reform coalition: The OECD study also recommends a multi-stakeholder approach to build effective coalition. **In practice, achieving results in this area remains challenging,** because of the regional and technical dimensions of EU support in this area. **While most EU-funded regional projects held some consultations or training events for or with CSOs, SAMWA (component 3, with TI) is the only example of EU active support specifically aiming to strengthen public awareness and civil society oversight in the fight against ML in the region.** OCWAR-T is also planning to establish civilian monitoring and oversight mechanisms to monitor TOC actions, but this has yet to start.

The Transparency International project involved the development of a publicly available AML tracker online platform to monitor existing AML/AC commitments in the region; training and dedicated support to journalists; and some engagement with the private sector through the use of a multi-stakeholder survey. **While the final narrative report indicates that all objectives were achieved, the independent evaluation report, however, shares concerns about sustainability.** The final report highlights seven innovative research projects and regional training for investigative journalists as key successes. In addition, the AML tracker and portal was launched in 2019, with the priority recommendations identified in the multi-stakeholder survey used to inform the online tracker.³³¹ One main achievement of this project (not directly captured in the objectives) has been the strengthened collaboration between TI and GIABA at a regional level, and TI national chapters and FIUs at a national level (in seven MS). According to the independent evaluation report, there are benefits that are likely to continue, such as networks and partnerships with the public and private sector; the use of

³³¹ Transparency International: Anti-Money Laundering in West Africa Website.

existing resources (videos, guides, comic books); and the increased reputation of National Chapters as experts on AML. There are some factors, however, that could impact negatively on the sustainability of the project, including the high staff turn-over in the National Chapters; and the resources needed to maintain the tracker up-to-date.³³² As quoted in the report *“if the pressure goes down, some of the successes disappear”*.

EQ7: Effects on RoL&AC culture, human rights and democracy

JC7.1 Promoting a RoL&AC culture among public/private actors and society

There has only been limited attempt to raise the general population’s awareness (and change their perceptions) on the ills of ML and TOC and the steps that their governments should take. With the law enforcement agencies (who are already convinced by their mandate) being the main beneficiaries, the main influencing / awareness-raising element of the sampled projects is to get ECOWAS MS fully on board and committed. The evaluation report of the EU support to ECOWAS fight against drug trafficking and abuse makes an interesting point about the need for raising the population’ awareness about their rights. *“More awareness training and public advocacy is needed in order to mainstream this issue. The average citizen wants his or her rights to be respected, but does not know how to advocate for that to happen, especially given a long history of disregard or of ignorance in this area. The time appears ripe for the collective consciousness of the region to be made aware of the power of each and every citizen to demand his or her rights.”*

The recent MTR of WAPIS also makes a useful parallel with EU’s communication strategy / search for more visibility (a constant issue when working through international organisations), with the following recommendation: *“Direct the program’s communication activities also to a large audience within ECOWAS. To achieve this, non-state actors (media, NGOs / CSOs, associations and unions), as well as parliamentary institutions, should be more involved in communication and awareness-raising activities. Raising public awareness of the offenses that WAPIS aims to combat will also help strengthen ownership of the program by internal security forces and justice personnel in charge of law enforcement.”*

JC7.2 Using national RoL frameworks and international standards to foster human rights

EU support to fighting AM and TOC has followed a human right based approach mostly by incorporating the human rights principles into its training modules for law enforcement agencies. Yet, it is not known if a human right based approach was used – and monitored- during the joint drug seizure operations. The EU support to ECOWAS fight against drug trafficking and abuse evaluation reports an increase in law enforcement agencies’ awareness through targeted training. According to the final evaluation report, *“Human Rights preoccupations are not generally widely understood in the region; Law enforcement agencies have also been sensitized through targeted training groups on the need to consider drug offenders as persons in need of care rather than as criminals. This represents a singular change in attitude, which is gaining ground in the region.”*

For WAPIS and OCVAR-C, it also includes a specific focus on personal data protection. As mentioned previously, only nine out of 16 countries had adopted the required legal framework to ensure personal data protection by end 2021. The ROM and MTR nonetheless stress that there is no evidence that the investigation practices leading to the data being collected with the new systems follow good standards. Conversely, WAPIS in its design document, claims that the establishment of police information management systems could indirectly help strengthen human rights compliance, as improved and shared access to forensic evidence encourages the police to move away from current investigation practice relying still heavily on confession, which is prone to bias, discrimination and abuse. Given the delays encountered, this result claim cannot be verified and at this stage unlikely. Looking forward, OCVAR-C plans to strengthen compliance with human rights and the principles of the rule of law in two pilot countries. This will consist of evaluating the procedures in place in the CSIRT of two pilot countries concerning human rights; strengthening the institution responsible for personal data protection in two countries; and evaluating the main databases regarding human rights in two countries.

Finally, there is also a more general point to be made, which is the extent to which the EU has considered the risk of causing harm, by supporting law enforcement agencies that are perceived as corrupt, with some alleged of human right abuse.³³³ This risk was indeed confirmed by one key informant as the biggest risk they are facing as delivery partners: if an agency does not comply with human right

³³² National Chapters cannot update it directly and it is not clear who in TI-S would be in charge of collecting new data from National Chapters and updating the tracker.

³³³ A similar point is made in the OECD (2018) study as follows: *“when seeking to intervene in criminal markets, it is important to consider that all flows – including development assistance – can have an impact on incentives and vested interests. [...] An IFF response strategy that applies heavy-handed, punitive measures to marginalised groups – for example, those whose livelihoods depend on subsistence activities – is likely to be counterproductive and will only increase criminal groups’ social collateral within their host populations. It is particularly important for international efforts to ensure that all actions and rhetoric strive to “do no harm” in the context of these complex and contingent realities.”*

standards or more generally does not adhere to rule of law, and if the project reinforces its capacity, there is a risk this could be misused (also a significant reputational risk). As put by the informant *“it is a thin line that we have to walk”*. This risk is mitigated through a continuous monitoring of the context and regular exchange with other implementing partners to gain intelligence on the actors they are working with.

JC7.3 Using the RoL to foster application of democratic principles

The main focus of EU support to preventing ML and fighting TOC has been to strengthen relevant institutions in the region, and work with ECOWAS to call on MS to strengthen and meet their commitments. The domestication of laws and practices may at times require the approval of elected representatives / parliament but this is not a main focus in the regional projects. EU more relevant support in this area is the support to ECOWAS election monitoring role.

EQ8: Effects on wider EU external action goals

JC8.1 Peace, resilience and security

EU support to preventing ML and fighting TOC in the region falls within the RIP’s peace and security objectives. The specific objective (specific objective 1.2) is to support for regional initiatives to address the main threats to peace, security and stability (from strengthening cooperation between security services to maritime security and the fight of other threats (including TOC) in the region. Impact level results on this front (which have yet to materialise) will also be achieved through EU’s support to strengthen regional mechanisms to promote peacekeeping and stability (specific objective 1.1).

JC8.2 RoL&AC for functioning markets, trade and private sector development (compliant with human rights and due diligence)

The sampled interventions do not include any entry points to strengthening the environment for a functioning market, although stronger AML is expected to help attract private investment in the region. Diagnosis work supported by Transparency International included a diagnosis on ML in the real estate sector. More relevant EU support exists in this area: under priority area 2, RIP West Africa 2014-20 entails a component on improving the business climate.

JC8.3 Natural resource management

The sampled interventions do not include any entry points to natural resource management. More relevant EU support exists: Under priority area 3, RIP West Africa 2014-20 entails as a specific objective protection of the environment, biodiversity, and tackling and adapting to climate change. An expected result is that wildlife and fisheries are better protected from over-exploitation, poaching and environmental crime.

Overall assessment

Over the evaluation period, EU support to fighting ML and TOC in West Africa has evolved to reflect new threats (cybercrime, maritime security, counter-terrorism) in the region. With direct links with the EU security agenda and an important component of the EU-Africa Strategy, EU support in this area has been mostly concerned with institution building and law enforcement. Root causes such as poverty; corruption at borders; etc have received little attention. As such, the analysis on the key obstacles and drivers to fighting TOC have mostly focused on the institutional landscape and, notably the role that ECOWAS (and GIABA) as regional organisations can and should play to coordinate and emulate reforms in ECOWAS MS.

From a programming perspective, EU support in this area has translated into a host of national, regional, and global initiatives, which – despite coordination efforts from the EUD and delivery partners – have lacked a coherent and cohesive framework. The switch from ECOWAS (and GIABA) to private contractors as delivery partners, while an appropriate decision from a due diligence / efficacy perspective, has also led to some challenges in ensuring that the regional organisation will remain in the lead. There has also been a lack of joint working between Brussels and the EUD in charge of the regional projects.

All in all, it seems that the EU’s support for long-term, transformational changes, and the very slow results achieved so far have had little impact on making the fight against criminal networks and terrorist groups in the region more effective. The OCWAR projects, which started in 2019, were still ongoing (with 1 year extension) at the time of this case study note. There have also been some design issues in some areas (with WAPIS in particular) and external circumstances (including the COVID-19 pandemic) in others.

Some limited results could be found at three levels: institution building for ECOWAS departments and units; strengthening relevant MS agencies; and contribution to stronger inter-agency and inter-state collaboration. Corruption in beneficiary institutions; difficulties in co-operation from agencies, and, lack of political buy-in from MS (especially for ECOWAS-led initiatives) remain the main hindering factors to lasting achievements in this area.

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