

### Consolidated Framework for Monitoring the Rule of Law

<b>1. Inclusive, Legitimate and Effective Political System</b>	<b>2. Independent, Impartial and Effective Judiciary</b>	<b>3. Objective, Equal and efficient Application and Enforcement of Law</b>	<b>4. Secure Human Rights, Fundamental Freedoms and Political Group Rights</b>	<b>5. Social and economic Security</b>
Checks and balances	Independence, checks and balances, impartiality	Prosecution and investigation	Human rights institutions and instruments	Legal and regulatory framework of a market economy
Legitimacy	Judicial powers	Detention	Fundamental rights and freedoms	Legal certainty and security
Efficient and professional institutions	Role of the Prosecutor's Office	Police, security forces and border control	Prevent/abolish torture and the death penalty	Prevent corruption
Legislation and legislative process	Appointment, dismissal and immunity regulations		Anti-discrimination and minorities	Prosecute economic crime
Election legislation and practice	Salaries and resources		Migration including refugees, IDPs and asylum seekers	
Political parties and opposition	Access to effective, fair judicial remedies			
Public administration and services	Education and career			
Media	Accountability, efficiency, and transparency of the administration of justice			
Civil society and political culture				

## **1. Inclusive, Legitimate and Effective Political System**

### **1. Checks and balances**

*In order to strike a balance between separation of powers and accountability*

- A secure legal framework separates and clearly delineates the responsibilities of legislative, executive and judicial branches on and between local and state levels, and ensures functioning mechanisms of horizontal and vertical accountability.
- Parliamentary surveillance is effectively carried out and provided for by laws, regulations and institutional procedures.
- The executive does not (attempt to) undermine certain state bodies or analogous non-state structures, particularly those that provide the ‘checks and balances’ to the activities of the government.

### **2. Legitimacy**

*The political system is legitimized by the population when*

- Politics and the political system are democratic, representative and inclusive with regard to the overall population, and generally perceived as credible.
- The political process is characterized by civil liberties and political rights enabling citizens to participate in the selection of government and providing for maximum public participation and input in the passage of legislation.
- Institutions are capable of balancing diverse and competing interests and are socially inclusive.
- Politicians can be held accountable by their constituencies.

### **3. Efficient and professional institutions**

*The receptiveness and (implementation) capacity of institutions is satisfactory if*

- Key institutions act and take decisions according to their defined responsibilities.
- State institutions on all levels implement political decisions in an efficient, transparent, accountable, democratic and coordinated fashion.
- State institutions possess adequate expertise and skills in policy formulation, and are able to draft legislation in a well-researched and timely fashion.

### **4. Legislation and legislative process**

*Laws and the making of laws comply with minimal rule of law requirements if*

- Legislation is compatible and/or implements key international treaties, conventions and accession requirements (legislation to be strengthened in certain fields).
- Regional legislation complies with federal law.
- Legal norms are drafted professionally, adopted quickly and in a transparent way, and their effects regularly evaluated.
- Laws are published and accessible.

### **5. Election legislation and practice**

*A setting conducive to free and fair elections has been created once*

- The electoral system ensures minimum standards for democratic, free and fair elections in terms of the institutions to be elected, the frequency of elections, and the organization of electoral units in a way that prevents gerrymandering/manipulation.
- All citizens of the age of majority are granted the right to vote and stand for election and are able to effect remedies for enforcing their electoral rights.
- The legal framework ensures secrecy of the vote.
- Limitations of electoral rights are regulated narrowly and in detail, specifying who imposes them and under what conditions, thus protecting voters from bribes or pressure.
- The timing of elections – including interim and extraordinary – is determined by legislation.
- Voting procedures are specified in detailed rules that help to prevent unlawful or fraudulent registration and to ensure equal, fair and transparent counting.

- Candidate registration is regulated by rules applying equal opportunities to all parties independently of their leaning, e.g. concerning treatment before the law and media access.
- Composition of election commissions is balanced and reflects different parties.

## **6. Political parties and opposition**

*Political parties constructively support the process of developing informed opinions and interests if*

- All groups and individuals active in politics adhere to the constitutional principles, and mechanisms to deal with groups not adhering to these principles are in line with the law.
- Political candidates understand democratic values and have knowledge on governance, policy management and campaigning issues.
- Public financing is aimed at each party represented in parliament and extended to political bodies representing a significant section of the electoral body and presenting candidates for election; private financing is transparent and subject to certain restrictions.
- Political parties have the capacity to develop and formulate precise platforms, also on sensitive issues.
- Political parties have equal access to the media.
- The opposition functions as an effective counterbalance to the government.
- Campaigning takes place without intimidation and in the spirit of constructive competition within a multi-party system.
- Opposition parties stand a chance in elections.

## **7. Public administration and services**

*The efficiency and adequacy of public administration demands that*

- A meritocratic, well-trained, and democratic public administration at national, regional and local levels ensures effective implementation of government decisions and efficient delivery of public services.
- Appropriate mechanisms exist to ensure accountability and transparency of the administration.
- Civil servants are remunerated adequately.
- Competences of the centre and subsidiary levels of administration are clarified and streamlined, thus preventing arbitrary or irresponsible decisions.

## **8. Media**

*The media provide a valid channel of information and articulating opinions if*

- The media function as an effective corrective, and are able to operate freely at all times.
- There is no direct, structural or indirect censorship on the media.
- The media are not completely state-owned or monopolized to the benefit of certain political groups.
- Journalism is conducted in a professional way.

## **9. Civil society and political culture**

*Conditions favorable for an active involvement by civil society in the political process have been created so that*

- A legal and regulatory framework defines and supports the rights and role of civil society organizations.
- A broad range of national, regional and local non-governmental institutions (lawyers, journalists, trade unions, academics, NGOs) are proactive in their relationship with the established authorities and address issues of public concern independently of whether they reflect the agenda of the government or political parties.
- Civil society groups are able to operate freely, sustain themselves and safeguard democratic advances, e.g. public and media access to information, public participation in political and policy debates, and accountability of government and its agencies.

## 2. Independent, Impartial and Effective Judiciary

### 1. Independence, check and balances, impartiality

*Fundamental prerequisites for an independent, responsible and impartial judiciary are met if*

- The Constitution legally safeguards the independence of the judiciary and provides for a structural balance of arms among the judiciary, legislative and executive.
- Prosecution and detention are separated, i.e. responsibility for the prison system and pre-trial facilities lies with the Justice Ministry, not the Interior Ministry.
- A transparent hierarchy of courts is established; the court system allows for a separation into criminal, civil administrative and martial courts.
- Judges are effectively protected from threats and (political) pressure, e.g. by narrowly defined possibilities of dismissal and long-term or indefinite nomination terms.
- The presumption of innocence is legally determined.
- The functions of the Prokuratura have been changed from an organ of preliminary investigation and court supervision to an organ with solely accusatorial functions.
- Court procedures are revised if they give rise to doubts concerning impartiality (ECHR objectivity test).
- Judges do not give their opinion of the guilt of a person during the trial (ECHR subjectivity test).
- The public trusts in the independence of judges, also with regard to their political preferences.

### 2. Judicial powers

*The powers of judicial organs are determined clearly and are fully respected to the effect that*

- The judiciary reviews administrative practice.
- Judicial organs determine the constitutionality of legislation and official acts, and effectively enforce their decisions.
- The judiciary has exclusive, ultimate jurisdiction over all cases concerning civil right and liberties.
- Criminal and civil procedure codes are defined in line with European conventions and standards and clearly spell out the responsibilities of judges at all stages of the criminal justice process.
- Judicial decisions may be reversed only through the judicial appellate process.
- Judges have adequate subpoena, contempt, and/or enforcement powers, which are utilized, and these powers are respected and supported by other branches of the government.
- Alternative sentences are being explored.
- Martial courts and laws are only applicable to narrowly and transparently defined periods of time (war) and crimes (treason) or are restricted to narrowly and transparently defined groups or people (soldiers).

### 3. Role of the Prosecutor's Office

*The following conditions facilitate and support the Prosecutors' contribution to fair and effective judicial processes:*

- The main task of the prosecutor consists of bringing criminal matters before the court and ensuring the lawfulness of the investigative process.
- The Constitution, respective laws (codes and procedure codes) and international instruments regulate investigative and other competences of prosecutors at all stages of the criminal justice process.
- The general Prosecutor may introduce extraordinary appeals against judicial decisions only under certain conditions so that legal certainty is not undermined (i.e. within a limited period of time, after having exhausted all other avenues, in a non-discretionary way).

#### **4. Appointment, dismissal and immunity regulations**

*Appointment, dismissal and immunity regulations underpin the independence of the judiciary in such a way that*

- Qualified, independent, impartial judges are appointed on the basis of objective criteria such as strong professional competence.
- Appointment terms are for life or long periods.
- The transfer, suspension and dismissal of judges are governed by narrow and transparent rules contained in law or the Constitution, and must allow for an appeal process.
- Instances of and reasons for restructuring and liquidating courts are clearly regulated.
- Judges enjoy immunity for their official acts; disciplinary proceedings are regulated according to international law.
- Minorities and members of ethnic groups, including women, are adequately represented in the judiciary.

#### **5. Salaries and resources**

*Financial and material resources of the judiciary are adequate and ensure that*

- Salaries are sufficient to attract and retain qualified judicial staff and to support them fully without them having to look for other sources of income.
- Judges' salaries are not reduced during term.
- Tenure is guaranteed for senior-level judges until retirement or expiration of term.
- The judiciary is adequately funded through its own budget and is able to influence its amount.
- An adequate infrastructure ensures sufficient space, access, and judicial security.

#### **6. Access to effective, fair judicial remedies**

*Vital conditions for ensuring the effectiveness, fairness and accessibility of the law are met once*

- The right to a fair and independent legal counsel in private at an early stage is safeguarded for criminal defendants by national law in accordance with international standards.
- The criminal procedure code guarantees that everyone deprived of liberty has access to a judge or officer authorized by law to decide on the lawfulness of the detention, also during pre-trial detention, and review of lawfulness is prompt and completed within four days at the most.
- A free-of-charge legal aid system ensures broadest possible access to legal advice and representation, also for geographically isolated and economically disadvantaged people.
- The judiciary reaches a decision on the guilt of the accused within reasonable time.
- Evidence collected through duress or violation of human rights is inadmissible in court.
- A process exists for facilitating and handling complaints against judicial conduct, including actual or perceived bias.
- Defendants as well as the public at large are aware of legal rights, especially during pre-trial investigations as well as procedures of appeal.
- Civil courts provide citizens with administrative decisions on issues such as property ownership, changes in marital status, births, deaths, etc.
- Public access to legal advice is supported by public legal libraries, resource centres, legal aid hot lines, etc.

#### **7. Education and career**

*A professional, performance-based, motivated and independent judicial work force has been built up if*

- Judges, lawyers and prosecutors have timely access to jurisprudence on all levels.
- Career prospects depend on objective criteria such as ability, integrity and experience.
- Formal legal education is a requirement for all judicial candidates.
- Judges are required to have a particular amount of professional experience and to continue legal education regularly and without cost.
- General prosecutors are trained in international norms and transparent rules.
- Training is provided in accordance with the needs expressed by the judges and deals with current legal developments.

- Judges should be trained before taking office in a code of ethics that explains major problematic issues such as conflict of interests, inappropriate political activity, etc.
- Judicial associations effectively protect and promote the interests of the judiciary, and foster an exchange of best practices.

### **8. Accountability, efficiency and transparency of the administration of justice**

*Conditions conducive to an accountable and efficient administration of justice ensure that*

- Cases are processed efficiently and take place publicly, unless harmful to the privacy of a party, and in due course.
- New judicial positions are created according to need.
- Administrative procedures are
  - (i) Efficient, e.g. case filing and tracking system, computerization, budget and personnel management;
  - (ii) Streamlined and transparent, e.g. distinct budget lines for free legal aid; and
  - (iii) Accessible, e.g. information in local language, no or little fees, no posting of bonds required in civil cases, etc.
- The court's support staff is sufficient and capable of handling documentation and research.
- The appeals system clarifies which court is competent.
- Case assignment takes place according to an efficient and objective system (lottery, area of expertise).
- Licensing procedures for lawyers are not too complicated.
- Regional networks of the judiciary are built up.
- Judicial decisions are generally published and open to scrutiny.
- Trial records are publicly available.
- The public and the media are able to assist courtroom proceedings.

## **3. Objective, Equal and Efficient Application and Enforcement of Law**

### **1. Prosecution and investigation**

*Prosecution and investigation procedures comply with standards of (international) law, and are efficient if*

- Prosecutorial services follow up on allegations and recommendations for inquiries, also addressing difficult issues in a transparent and independent way.
- The law is not politically obstructed or instrumentalized against political enemies.
- Arrests do not take place arbitrarily or on the basis of questionable charges, and have to be authorized by the judiciary.
- The arrested person is promptly informed of the reasons for arrest and brought promptly before a judge or another officer authorized by law to decide on the lawfulness of detention.
- Intrusive investigative measures, e.g. wiretapping and house searches, are authorized by judicial authorities and take place in a procedure provided by the law.
- International crime cases are effectively processed by the police and prosecuted by the judiciary.
- Systems of data collection, analysis and inter-agency sharing are efficient, while safeguarding the protection of personal data.

### **2. Detention**

*Essential requirements for objective and efficient law enforcement are accomplished if*

- Institutional and practical capacities of the police, justice, prosecution, and penitentiary systems ensure humane and secure conditions for detainees in respect of international HR standards.
- Sentences are reliably enforced.
- Guarantees for release are legally determined in cases of no serious risk of flight, abduction of evidence, or committing further crimes.

- Inquiries into cases and allegations of ill treatment of detainees are followed up without impunity and through a thorough, transparent, and independent process.
- Corruption among law enforcement officials is low and prevented.
- Period of detention is kept to a minimum during investigation.
- Alternative measures to imprisonment are being developed.
- Prisons are not overcrowded.

### **3. Police, security forces and border control**

*The legal obligations of the police, security forces and border control as well as their performance capacities have become evident if*

- Roles and competencies of police and security forces are legally delineated; exceptions for suspending this delineation are rigidly and clearly regulated.
- Police and military conduct are monitored by civilian monitoring mechanisms (ministries of defence or interior, parliament).
- Neutrality and effectiveness of the army and police are ensured among other things by recruitment, training and retirement policies, e.g. equitable representations of major identity groups.
- Border institutions effectively support the fight against organized crime, smuggling and trafficking, increase regional and international trade, and stabilize border regions.
- Institutional capacity of the police ensures adequate investigative and information services.
- The police are well trained in the investigation of key criminal activities and in human rights.
- Border police are sufficient in number and well trained in vested (personal) rights and languages.

## **4. Secure Human Rights, Fundamental Freedoms and Political Group Rights**

### **1. Human rights institutions and instruments**

*Vital structural conditions for securing human rights have been created if*

- International human rights conventions are signed, ratified and implemented.
- Independent national institutions, such as ombudspersons, safeguard the protection of human rights and are able to resolve disputes and impose their decisions on authorities.
- The mandate of HR institutions is sufficiently broad to influence the domestic human rights situation.
- Institutions are sufficiently supported in financial and material terms.
- Competences are clear, well balanced, and institutions cooperate on a regular basis.
- A separate budget line submits the ombudsperson to the legislative, not the executive branch.
- Local administrators are aware of legal and HR issues, their role in responding to HR complaints and the competencies of the judiciary and HR institutions.

### **2. Fundamental rights and freedoms**

*Fundamental rights and freedoms are effectively safeguarded if*

- Fundamental rights and civil and political liberties, such as the freedom of belief, expression, information, or to assemble peacefully, are guaranteed by law and effectively protected.
- Various forms of alternatives to compulsory military service have been introduced, which are compatible with reasons for conscientious objection.

### **3. Prevent/abolish torture and the death penalty**

*The practice of torture and the death penalty have been credibly abolished so that*

- The death penalty, or at least its practice, has been ruled out as a possible form of legal punishment.
- All international and national laws aimed at the eradication of torture have been ratified and implemented; there is no impunity with regard to torture.
- A domestic strategy for the eradication of torture has been formulated that includes a mechanism for systematically reviewing anti-torture policies.

- Anti-torture and HR standards are included into the training of law enforcement bodies with particular regard to vulnerable groups.
- Victims of torture are assisted (rehabilitation, reparation).
- Reliable information exists on the use of the death penalty and prison practices.

#### **4. Anti-discrimination and minorities**

*Equality of persons belonging to minorities and the equality of their rights is evident in that*

- The legislative framework protects the rights of persons belonging to national minority groups, and ensures their full access to and integration in public life, e.g. representation in governmental institutions and public bodies, equal right to vote and stand for office.
- Legislation is not discriminatory, nor applied in a manner that discriminates against any group or community of believers.
- There is no discrimination taking place in employment, education nor concerning the access to pensions, insurance and health services.
- The education system promotes the equality of different social or ethnic groups and is responsive to their needs.
- The government as well as political parties identify and adequately respond to issues that are of concern to national minorities.
- Minorities are not restricted in their cultural practices, e.g. concerning language or religious observance, and are able to live at standards comparable to other identity groups.

#### **5. Migration including refugees, IDPs and asylum seekers**

*The integration, management and protection of rights of refugees, asylum seekers, IDPs and other migrants are supported so that*

- Legislation, measures and institutional capacities facilitate the return of refugees, the resolution of claims (property, housing) and refugees' reintegration.
- Modern and comprehensive systems of managing and administering migration, entry permission, asylum and border management have sufficient capacities at their disposal, aim at reducing the scale of illegal immigration, and produce reliable information.
- Returnees have equal access to and are not subject to discrimination in employment, education, pension and health services.
- National authorities, interior ministries, police and border control agencies cooperate and exchange information regularly on national, regional, and international (Europol, Interpol) levels.

## **5. Social and Economic Security**

### **1. Legal and regulatory framework of a market economy**

*Preconditions for free markets and a predictable economic environment are legally determined providing that*

- The constitution contains principles that ensure the stability and predictability of free markets; application of principles is left to ordinary legislation.
- The constitution proclaims and recognizes certain economic rights and freedoms:
  - (i) Protection of different forms of property;
  - (ii) Freedom of trade and industry;
  - (iii) Freedom of contract;
  - (iv) Freedom of association; and
  - (v) Principle of equality before the law and non-discrimination.
- Restrictions of these rights are regulated narrowly by law.
- Economic legislation is in line with international standards (conventions, CSCE Bonn document, WTO membership requirements, UN Pact on Economic and Social Rights).

- The principle of free competition ensures that authorities engage in economic activities only under conditions that do not exempt them from normal legal requirements.
- The state remedies deficiencies in the market economy through ensuring the rights of employees and providing a social welfare framework, i.e. regulates certain economic activity or creates public enterprises to fill gaps where the market economy is not performing properly.
- An effective price mechanism has been established.
- Monetary mechanisms are effectively controlled by the state, i.e. restrictive and stable monetary policy, creation of an independent central bank.
- Restrictions on foreign trade have been removed, e.g. via introducing realistic exchange rates.
- An effective tax system has been established, general state subsidies have been abolished, and there is strict budgetary policy.

## **2. Legal certainty and security**

*Economic activity is protected and stimulated when*

- Legislation and sentences are put into effect reliably; litigation, particularly in commercial law, is swift; and judgments are effectively enforced.
- Government composition and (economic/reform) policy direction are stable and supported by a qualitatively and institutionally strong bureaucracy that is capable of absorbing shocks in case of government changes.
- Legislation and bureaucratic regulation affecting business operations (taxation, customs, transaction costs, etc. as described below) are simple and transparent.
- Economic operators are protected from organized crime and delinquency, among other things with the help of internationally interlinked information systems, efficient customs operation and availability of comparable statistics.
- Consistent enforcement of contracts is part of regular business practice.
- A system of professional accounting standards coupled with requiring larger companies, banks and other financial institutions to publish accounts subject to internationally accepted accounting standards.
- Specialized courts are established to handle economic cases and to relieve civil courts from the additional workload of converted economic affairs cases.

## **3. Prevent corruption**

*A legislative and regulatory framework helps to fight and prevent corruption if*

- Corruption is a criminal offence as defined in the Criminal Law Convention and Civil Law Convention on Corruption that have been incorporated into domestic anti-corruption legislation.
- Financial resources (salaries, separated budgets, etc.), training (codes of ethics) and other practices are part of preventive measures of corruption.
- Criminal liability between natural and legal persons is closely linked with regard to crimes committed for the benefit of the legal person.
- Politicians need to lay open all financial resources on a regular basis.
- Corruption cases within the police result in discriminatory or criminal proceedings that are implemented by the prosecutor.
- The judiciary is trained in and implements anti-corruption measures.

## **4. Prosecute economic crime**

*Legislation and regulations combat money laundering and illegal trafficking, particularly in drugs and human beings, provided that*

- The criminal code defines illegal trafficking and money laundering as offences.
- Investigation, prosecution and protection mechanisms build on international cooperation and are based on a legislative and regulatory framework.
- Law enforcement agencies, customs services, and border guards are sufficiently equipped to foster technical capabilities for supply-reduction measures concerning drug trafficking and preventive measures for drug abuse.