

Contribution to the Bhutan Legal Sector Programme / Justice Sector Programme 2019 - 2023

Mid-Term Evaluation 24 November 2022

Executive Summary

Background and Context:

The Austrian Development Agency (ADA) has provided continuous support to the Justice Sector of Bhutan since 2009. This was initially delivered via two phases of Support to the Judiciary of Bhutan (2586-00/2009) and (2586-00/2012). The current Justice Sector Programme (JSP) 2019-2023 (2586-00/2019) builds upon these two programmes as well as foundations generated by the Legal Support Programme (LSP), which was jointly funded by the ADA and the Swiss Agency for Development and Cooperation (SDC). JSP is exclusively funded by ADA, and the programme supports the implementation of the Royal Government of Bhutan's Justice Sector Strategic Plan with a particular focus on capacity development of justice sector personnel.

JSP is implemented using national modalities, and the programme works with and through the Office of the Attorney General (OAG) who also now provide the secretariat for the programme, this having transitioned from the Gross National Happiness Commission. The Royal Courts of Justice (RCoJ), the Royal Bhutan Police (RBP), the Anti-Corruption Commission (ACC), the Bhutan National Legal Institute (BNLI), the Alternative Dispute Resolution Centre (ADRC), the National Commission for Women and Children (NCWC), and the Jigme Singye Wangchuck (JSW) School of Law are also responsible for the implementation of programmatic activity.

Evaluation Design and Approach:

This report is the result of a mid-term evaluation conducted just under three years since the commencement of JSP 2019-2023 implementation. Focused primarily on assessments of effectiveness and sustainability, it provides an analysis of the project's progress against its outputs, and where possible, its outcomes, reflecting on the opportunities, documenting best practices and lessons learnt, and provides recommendations to inform operational level decision making for the remainder of the JSP until June 2023, and strategic decision making post-2023.

The MTE was undertaken between June and November 2022 by three independent consultants¹. Following a desk review of key literature and the production of an inception report, data collection via key informant interviews (KIIs), focus group discussions (FGDs), and e- and paper-based surveys was undertaken by all MTE team members over the course of a two-week period in August 2022. During this time, the MTE team met with key stakeholders in Thimphu, Paro, Punakha and Wangdue. Further details are provided below:

The MTE assessment team deployed the following tools for the evaluation:

¹ Mark White, Jamyang Wangdi and Cheku Dorji

- Desk Review
- Consultations with implementers and beneficiaries via Key Informant Interviews and Focus Group Discussions
- Field visits to construction sites, district courts and local government officials involved in justice dispensation and mediation.

In total 59 documents were reviewed, and 36 key informant interviews (KIIs) were undertaken through which a total of 50 individuals were consulted (35 male, 15 female). The KIIs involved members of the PSC, members of the reference group/PMU, ADA staff, and the three Technical Advisers/Organisations. Additionally, the MTE team interviewed academics, civil society organisations, members of the judiciary and their staff, and elected local government leaders in Thimphu and in three field locations (Paro, Punakha, Wangdue). The MTE team also held two focus group discussions involving a total of 6 informed stakeholders (3 male, 3 female). The first FGD involved members of the public currently involved in various civil legal disputes, the second involved representatives from a number of law firms in which issues and challenges relating to the commercial, civil and criminal legal systems were discussed. An e-survey was circulated to 204 beneficiaries of JSP training opportunities, from which 38 responses were received (23 male, 12 female, 3 did not disclose their gender). Finally, a paper-based survey was administered to court officials in the Punakha and Wangdue courts which generated 17 responses (8 male and 9 female).

The MTE team experienced several limitations during this assignment. Firstly, there was an absence of key supporting data against the stated impact and outcome level indicators, which also lacked baselines. This was due to a lack of alignment with RGoB implemented data collection mechanisms. Second was the limited institutional memory that existed among some JSP focal institutions as a result of high staff turnover, highlighting the need for robust JSP information management mechanisms. Third was the low response rate to the e-survey (19%). This was mainly due to many of those consulted not having engaged with the JSP for over a year prior to being consulted. This reinforces the need for prompt pre- and post-evaluation assessments to be conducted for the remainder of the programme given the sizeable proportion of the JSP budget invested in training. To a lesser extent, the over reliance on self-reporting, quantitative rather than qualitative data and the absence of challenge functions on data generated were also limitations of note. Despite these, it is the MTE team's assessment that our ability to assess the effectiveness of the interventions was not duly undermined, that the findings and the recommendations still hold, and the evidence presented to support them was sufficiently robust and consistent.

Key Findings:

The evaluation identified a total of 30 findings, which are elaborated in full in the main body of the report. For the purposes of the executive summary however, ten key findings have been highlighted below, and are structured around the two main areas underpinning the seven evaluation questions, notably: *effectiveness*; and *sustainability*.

Effectiveness:

Key Finding 1: JSP remains on track to deliver against the majority of its outputs

Of the 49 output indicators currently possible to assess, JSP has already achieved 20 with a further 11 on track to be delivered by June 2023 (63%). Additionally, those beneficiaries consulted in the e-survey and paper-based survey expressed satisfaction with the JSP training, infrastructure development and wider support they had received from the JSP. Further, the majority were able to apply new skills and learning in their roles, thus demonstrating some evidence of achievement of Level 3 Behavioural change according to the Kirkpatrick Training Evaluation Model. Given the significant problems presented by the fluid and dynamic context posed as a result of the COVID-19 pandemic, and the resultant delays in the implementation of programmatic activity, these are notable achievements within the timescale available.

Key Finding 2: JSP has generated some positive unintended effects through delivery

Additionally, there have been a number of unintended effects generated through delivery. Firstly, those consulted through the e-survey and via KIIs noted that they felt more supported and motivated in their roles as a result of the investments made in them with several noting their pride at being part of an improving justice system. Whilst anecdotal, this demonstrates a level of progress towards the motivational element of the first outcome of the programme and the 2nd Goal of the Justice Sector Strategic Plan (Justice Service Providers are competent and motivated). Secondly, over 60% of those involved in JSP felt that their institution's levels of coordination and collaboration with other justice sector providers had improved and attributed this to JSP².

Key Finding 3: Some strong examples of 'leave no-one behind' (LNOB), GESI and protection of women and children facilitated by JSP were observed

The MTE team observed some strong examples of 'leave no-one behind' (LNOB), GESI and protection and promotion of access to justice for women and children achieved through targeted support to marginalized groups. The MTE team saw first-hand that child and disability friendly equipment was being utilised in the Courts visited, whilst key informant interviews with Judges highlighted the progress made in making justice sector services accessible and inclusive e.g., through home-visits for those unable to physically access court. Good progress has been made in advancing issues relating to child justice, and further opportunities exist to consolidate and strengthen such work in the programme's final phase of implementation based on research being undertaken should adequate capacity and sufficient financial resources be available.

Key Finding 4: Assessment of outcomes was challenging due to cancellation or postponement of key surveys

The key informant interviews, focus group discussions and the e-survey and paper-based surveys yielded useful evidence and insights. However, several key data sources that were initially planned to act as barometers of both JSP progress and the RGoB's wider Justice Sector Strategic Plan (JSSP), 12th Five Year Plan (FYP) and National Key Results Area (NKRA) objectives have been cancelled or

² E-Survey of Direct Beneficiaries of Justice Sector Programmes

postponed. This presents a risk to the existing results framework that the ability to adequately assess JSP's contribution to outcome and impact level indicators will not be possible at the end of the programme.

Key Finding 5: Data that is available however indicates the programme is on track to progress its outcomes, and in so doing the relevant Justice Sector Strategic Plan Goals and National Key Results Area targets

Data sourced by the MTE team indicated that 83.6% of those who had experienced crime services provided by the Police were satisfied with the responses they received, and 92.3% of those who had received judicial services expressed confidence in the system. Underpinning public confidence has been an impressive reduction in the number of pending court cases, with 99.1% of cases now being resolved within the agreed time period of 12 months. Turnaround times (TAT) have been significantly reduced in both the Police and the Anti-Corruption Commission, the former having reduced theirs from 90 to 23 days and the latter from 90 to 72.4. Improvements in case management quality were also noted within the Office of the Attorney General by other key justice sector stakeholders.

Key Finding 6: There were both benefits and costs to JSP effectiveness derived from the national execution modality from both a governance as well as a monitoring perspective

In terms of the effectiveness of JSP governance and monitoring, the MTE team noted that there were clear benefits derived from national execution. However, there were also some downsides to such an approach. Most of the component managers were required to undertake their roles in addition to their regular jobs, and often had limited experience of either programme or financial management. As a result, there was a tendency to focus primarily on activity-based reporting, and thus more qualitative elements of output monitoring were omitted. Risks were not managed, and oversight of delivery was not consistently exercised.

Key Finding 7: The JSP secretariat lack the resources or the capacity to oversee a project of JSP's breadth and complexity. These challenges are compounded by the absence of delineated Secretariat roles and responsibilities

Monitoring and governance challenges were also replicated at secretariat level, largely due to the workloads of the two members of the secretariat, who also had regular jobs within the OAG. As JSP activities expanded, and the onerous requirements of project management (including results and financial reporting) were combined with additional tasks expected of a secretariat serving both the PSC and the NSC, it became increasingly clear that there were insufficient resources allocated to enable the JSP secretariat to deliver both its project management and justice sector coordination mandates. The challenge has been compounded by the absence of clear lines of accountability between the two roles, or collectively agreed delineated roles and responsibilities between the JSP secretariat and the nine implementing institutions.

Sustainability:

Key Finding 8: JSP's interventions have been designed and implemented in a manner that maximized their sustainability

At a strategic level, interventions were aligned to national strategies and priorities for the justice system, and operationally they were implemented using national structures and modalities, with careful coordination with the institutions that would be required to take ownership of the activities in the longer-term. By integrating JSP activities into the core systems and functions of the nine implementing institutions, JSP was able to not only demonstrate how such activities might be undertaken, but also build internal RGoB capability to deliver them. The delivery mechanism also had the additional benefit of ensuring that the costs involved are transparent to RGoB by virtue of the fact that they are being implemented using government systems and processes. This enables costs associated with the activities that were successful to be potentially integrated into future government budgets via the next five-year planning and budgetary cycle.

Key Finding 9: The JSP was highly influential in facilitating and enhancing strategic partnerships *within* the Bhutanese justice sector institutions

The process of identifying, agreeing, implementing and monitoring JSP's activities was undertaken collectively by justice sector stakeholders through the Justice Sector Working Committee and the Project Steering Committee, thus maximizing coherence and coordination across the justice system through joint ownership of delivery. This finding was endorsed by the e-survey respondents who also opined that coherence, coordination and collective problem solving had improved significantly within the justice sector. The JSP was thus highly influential in facilitating and enhancing strategic partnerships within the Bhutanese justice sector institutions, the challenges of which at the outset of the programme should not be underestimated. There is significant potential for these structures to be maintained in the JSP's aftermath, providing a strong platform for justice sector strategic planning, as well as policy and delivery coordination. This will be a significant legacy of the JSP programme, and a strong example of sustainability.

Key Finding 10: There is a need however to replicate the collaboration and coherence forged within the Bhutanese Justice Sector between the justice sector institutions and actors within the wider justice system

With regard to partnerships more broadly, as well as sustaining the progress made in facilitating coherence and coordination *within* the justice institutions however, it will also be important for greater efforts to be made to improve coordination and collaboration *between* the justice sector institutions and wider justice system stakeholders such as CSOs, lawyers, and academic institutions. Such approaches would reduce duplicatory activity, increase collaboration rather than competition, and ensure that each stakeholder focused on their areas of comparative advantage. It is hoped that post-JSP implementation, the RGoB will build upon some of the institutional partnerships formed during the programme, and further develop strategic partnerships organically, based on mutual sharing interest of expertise and experience.

Conclusions:

Presented below are the headline conclusions drawn from the MTE's key findings (more details in main report):

- 1. JSP remains on track to deliver against the majority of its outputs and contribute positively to both its, and RGoB outcomes despite the significant challenges posed by the COVID-19 pandemic (Findings 1, 2, 5, 6, 8, 9, 13, 14)**

Despite the COVID-induced implementation challenges, JSP remains on track to deliver against the majority of its outputs and contribute positively to its outcomes. Given the significant problems presented by the fluid and dynamic context generated by the pandemic, these are achievements of which all involved can rightly be proud. In this regard the programme can be said to be delivering effectively.

- 2. JSP's activities have incorporated an inclusive approach, including LNOB, promotion of gender equality, and strengthening of the protection of children and women. However, gaps in service delivery, and multi-agency coordination remain (Findings 15-20)**

In addition to achieving the majority of the targets set, the MTE team observed some strong examples of 'leave no-one behind' (LNOB), as well as targeted support to marginalized groups, particularly vulnerable women and children, and persons with disabilities. Progress has been made in increasingly mainstreaming GESI issues into programming. Further work will be required to sustain progress in light of wider civil service restructuring activities and there is a need to engage CSOs more proactively to maximise collective delivery given resource limitations.

- 3. JSP's interventions were designed and implemented in a manner that maximised their sustainability (Finding 26)**

Further, to the JSP's credit, the interventions were designed and implemented in a manner that maximized their sustainability. At a strategic level intervention were aligned to national strategies and priorities for the justice system, and operationally they were implemented using national structures and modalities, with careful coordination with the institutions that would be required to take ownership of the activities in the longer-term. Better still, the process of identifying, agreeing, implementing and monitoring the activities was undertaken collectively, thus maximizing coherence and coordination across the justice system through joint ownership of delivery.

- 4. JSP has made a significant contribution to the promotion of coherence and coordination among the justice sector institutions. There is potential for this progress to be maintained in the aftermath of the programme, as well as further developed to include non-government stakeholders and district level actors (Findings 27 – 30)**

In terms of strengthening procedures and systems to sustain the integrated approach to justice sector delivery, JSP has played, and will continue to play a key role in promoting coherence and coordination between its justice sector target institutions. It was noted by a range of stakeholders consulted via key informant interviews both within and outside the justice sector that JSP has contributed to significant

improvements in both working level and senior level coordination between the justice sector institutions engaged in the programme. This finding was also verified through the e-survey.

5. **Whilst JSP has made significant progress, prioritisation and proactive oversight is required from the Secretariat and the wider JSP governance architecture in the final phase of the programme to avoid high-profile investments failing (Findings 3, 21 -23, 25)**

Despite this clear progress however, there remains a significant risk that without adequate prioritization, resource allocation and proactive oversight, the JSP's most high-profile investments are in danger of not meeting their intended objectives prior to the end of the programme as currently scheduled. Whilst steps have been made to increase programme management capacity in 2022, there is still a need to ensure adequate capacity and sufficient senior level oversight is in place for the final phase of implementation.

6. **JSP's approach to monitoring, evaluation and learning needs significant revision if effectiveness and impact is to be appropriately assessed at the end of the programme (Findings 4,7,10-12, 24)**

As noted in the findings, several of the key barometers of JSP progress at outcome and impact level will not yield the data required prior to the end of the programme and thus alternative means of verification will need to be found. Given that ADA will not commit to further phases of programming, particular importance should be given in the final phase of JSP implementation to monitoring, evaluation and learning to maximise the contribution JSP makes to future RGoB justice sector strategy, policy, planning and delivery. Further, the strategic importance of JSP collecting and collating lessons to inform the future JSSP and 13th FYP should not be underestimated, and not be compromised by an excessive focus on implementation of tactical activity in the final few months of the programme.

Recommendations:

Based on the key findings and conclusions, the MTE team developed nine priority recommendations, with a tenth for consideration depending on progress made and resources available. A tabular summary of the nine priority recommendations, accompanied by their priority, owner, timeline and supporting actions is provided below (more details in main report):

Recommendation:	Priority	Owner	Timeline	Actions
1. Approve a short no-cost time extension to maximise likelihood of effective delivery (Findings: 1 & 3)	High	ADA/ACO	30 November 2022	Decision to be taken whether to grant a 3-to-6-month extension to enable JSP interventions to be completed effectively, responsibly and sustainably.
2. Ensure that the extension is conditional upon	High	ACO/OAG	30 November 2022	ACO/OAG to negotiate the extension interventions as a package of support, rather

all three proposed interventions receiving RGoB approval, not negotiated separately (Findings 1 & 3)				<p>than individually. This will ensure that a balance is maintained between donor funding to infrastructure, training and equipment through Paro Dzongkhag Court and the Forensic Laboratory and investments made in the generation of a strong evidence base to inform the next FYP and Justice Sector Strategic Plan JSSP through LNS.</p> <p>OAG will need to secure political approval for the LNS to be conducted</p>
3. Each extended intervention should generate a clear delivery plan and associated budget that is accompanied by set milestones that are reviewed on a monthly basis at a minimum. (Findings 3,4,10,11,12,23)	High	JSP Secretariat RBP JSP focal RCoJ JSP focal OAG JSP focal	30 November	<p>JSP secretariat to coordinate production of delivery plans, budgets, and time-based milestones for the extensions granted to Paro Court, the Forensic Laboratory and the Legal Needs Survey.</p> <p>Respective focal points to develop and secure institutional approval of plans and milestones</p> <p>JSP secretariat to establish mechanisms to regularly review progress outside of JSP governance structures (JSWC and PSC)</p>
4. Refresh the Results Framework (Findings 4,6,7,10-13, 24)	High	JSP Secretariat (with approval from the PSC) With International Adviser support	30 November 2022	Ensure RF captures all activities being undertaken; removes nugatory indicators and repetition.
5. Develop an MEL plan for the Outcomes and Impact Assessment	High	JSP Secretariat with International Adviser support	31 December 2022	Ensure progress against all stated indicators can be measured prior to the end of JSP.

(Findings 4,6,7,10-13, 24)				
6. Balance qualitative and quantitative reporting to 'tell the JSP story' (Findings 4,6,7,10-13, 24)	Medium	JSP Secretariat in coordination with JSWC focal points	Ongoing until 30 June 2023	Encourage greater emphasis on case studies, examples of application of knowledge and learning and significant change. Consider development of a JSP template to support qualitative reporting
7. Focus JSP final phase on the high priority deliverables and consolidate existing activity rather than expand into new areas (Findings 3, 23, 25)	Medium	JSP Secretariat in coordination with JSWC focal points and PSC	30 November 2022	PSC to agree that no additional interventions will be funded for the remainder of JSP unless there is collective confidence that existing interventions will all be completed on time, within budget and to the necessary quality
8. Ensure that the JSP secretariat is adequately resourced with delineated responsibilities to enable a smooth transition into a justice sector coordination mechanism (Findings 21,22, 27-29)	Medium	JSP Secretariat with input from International Adviser	31 December 2022	Terms of Reference for JSP secretariat roles to be agreed with roles and responsibilities clearly delineated. Outstanding areas for capability strengthening (e.g., MEL) to be identified and discussions held between OAG and ACO as to how these might be addressed using resources earmarked for programme management and administration
9. Consolidate key lessons from JSP design and delivery for JSSP and FYP13 (Conclusion 6)	Medium	JSP Secretariat with International Adviser inputs	30 th June 2023	Invest in a facilitated exercise to capture lessons and best practices from JSP and articulate in a short briefing document