



**MINISTRY OF FOREIGN AFFAIRS
OF DENMARK**
Danida

MAY 2018

EVALUATION OF DANISH SUPPORT TO PROMOTION AND PROTECTION OF HUMAN RIGHTS 2006-2016





**MINISTRY OF FOREIGN AFFAIRS
OF DENMARK**
Danida

EVALUATION OF DANISH SUPPORT TO PROMOTION AND PROTECTION OF HUMAN RIGHTS 2006-2016

The logo for NCG, consisting of the letters 'NCG' in white on a blue rectangular background.

MAY 2018

Production: Evaluation Department, Ministry of Foreign Affairs of
Denmark, May 2018

Cover: Nordic Consulting Group (from iphoto.com)

Graphic Production: OTW A/S

ISBN: PDF: 978-87-93616-61-5

ISBN: HTML: 978-87-93616-62-2

This report can be downloaded through the homepage of the Ministry of Foreign
Affairs www.um.dk or directly from the homepage of the Evaluation Department
<http://evaluation.um.dk>.

Contact: eval@um.dk

Responsibility for content and presentations of findings and recommendations
rests with the authors.

CONTENTS

Acknowledgements	6
List of Abbreviations	7
Executive Summary	9
1 Introduction	19
1.1 Purpose and scope of the evaluation	19
1.2 Methodology and delimitation	22
1.3 Theory of change and structure of the analysis	26
2 Introduction to the Danish Human Rights Portfolio	28
3 Promotion of Rule of Law and Better Access to Justice	34
3.1 Scope and aim of the Danish support	35
3.2 Measurable results of the Danish support	48
3.3 Factors influencing achievements of results	57
4 Freedom from Torture	66
4.1 Scope and aim of the Danish support	66
4.2 Measurable results of the Danish support	75
4.3 Factors influencing achievements of results	85
5 Lessons Learned	93
5.1 Common lessons learned	93
5.2 Lessons learned related to programme level	94
5.3 Lessons learned related to policy level	98
6 Conclusions	103
7 Recommendations	115

The following annexes to the Evaluation Report can be downloaded as separate PDF files from evaluation.um.dk.

Annex A: Terms of Reference

Annex B: Evaluation Matrix

Annex C: Detailed methodology

**Annex D: Strategies, policies etc governing the Danish
governance, democracy and human rights interventions**

Annex E: List of people met

Annex F: Bibliography

ACKNOWLEDGEMENTS

The evaluation team would like to thank all stakeholders who have participated in the evaluation by giving their time and attention to interviews, discussions, feedback, input, organisation of meetings, identification of documentation and all different types of support.

A great thanks to staff at Danida's Evaluation Department in Copenhagen with whom many discussions about scope, format and approach to the evaluation has taken place. It has not been an easy task to land on a workable methodology for this evaluation, and without the support from EVAL, it would not have been possible. Also, a great thanks to staff from other departments at the Danish Ministry of Foreign Affairs who have assisted in digging out documentation on the many projects and programmes that have been reviewed and assessed as part of this evaluation and not least the portfolio mapping and analysis.

Our gratitude also goes to the staff at the Danish embassies in Uganda, Tanzania and Burkina Faso and the Danish mission to the UN in Geneva who assisted in setting up field visits and ensuring that relevant key informants were able to provide input to the evaluation.

A very special thanks to staff members of the four key partner organisations in the Danish Human Rights work, DIGNITY, IRCT, DIHR and IWGIA, who have participated directly in the evaluation and spent considerable time on interviews with the evaluation team, digging out information and documentation and who have reviewed and provided comments to the portfolio analysis.

We also acknowledge the support received from the members of the Evaluation Reference Group who have provided critical but valuable comments and feedback on the evaluation's deliverables.

LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
CAT	Convention Against Torture
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
CTI	Convention Against Torture Initiative
DIGNITY	Danish Institute Against Torture (usually spelled in capital letters)
DIHR	Danish Institute for Human Rights
ERG	Evaluation Reference Group (consultative working group for this evaluation)
GANHRI	Global Alliance of National Human Rights Institutions
HR	Human Rights
HRBA	Human Rights-Based Approach
HRC	Human Rights Council
ICC	International Criminal Court
IFU	Investment Fund for Developing Countries
IHB	International Humanitarian Roster
ILO	International Labour Organisation
IRCT	International Rehabilitation Centre for Torture Victims
IWGIA	International Working Group for Indigenous Affairs
JTFM	Department of International Law and Human Rights (Danish Foreign Ministry)
MFA	Ministry of Foreign Affairs (of which Danida is the development 'brand')
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
NPM	National Preventive Mechanisms
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights (UN)
OPCAT	Optional Protocol to the Convention Against Torture
RBC	Responsible Business Conduct
RoL	Rule of Law

LIST OF ABBREVIATIONS

SPT	Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
ToC	Theory of Change or visual and narrative model explaining intended changes
ToR	Terms of Reference (for this evaluation)
UN	United Nations
UNCAT	United Nations Committee Against Torture
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNGP	United Nations Guiding Principles on Business and Human Rights
UPF	Department for Development Policy and Financing (Danish Foreign Ministry)
UPR	Universal Periodic Review

EXECUTIVE SUMMARY

Evaluation scope and approach

Respect for, promotion and protection of human rights are core values of Danish international engagements. Support to promotion and protection of human rights has for decades been a priority for Denmark both in its foreign policy and been an integral part of its development cooperation.

In June 2016, the Danish Ministry of Foreign Affairs (MFA) commissioned Nordic Consulting Group to undertake an Evaluation of Danish Support to Promotion and Protection of Human Rights covering the period from 2006 to 2016. Two separate reports have been prepared – a main evaluation report and a portfolio analysis. The main evaluation report is focused on two specific areas of Danish support to Human Rights: 1) rule of law and better access to justice, and 2) freedom from torture. These two areas have been selected from a total of five priority areas of Danish support to human rights, which are all covered in the portfolio analysis¹.

The evaluation has a two-fold purpose:

1. To provide an overview of results and possible impacts of Danish policy initiatives and development cooperation on human rights promotion and protection.
2. To provide lessons learned on linkages and synergies between multilateral and bilateral interventions as well as on the effectiveness of the chosen strategies and the value added of the Danish support.

Rule of law and better access to justice is analysed primarily at the programme level as this is the main modality applied in Danish support. This analysis takes the form of a meta-analysis and is primarily based on an assessment of a comprehensive sample of programme documenta-

1 The five areas are: Support for national human rights institutions; freedom from torture; rights of indigenous peoples; CSR; and promotion of rule of law and access to justice through justice sector reform. A sixth key priority area of Denmark is gender equality including women and the girl child, and sexual and reproductive health and rights. This area has recently been reviewed and evaluated and was therefore not included in the scope of this evaluation.

tion related to Danish bilateral and regional rule of law programmes and projects. The main focus of Danish engagements in relation to freedom from torture is at the policy level. This part of the evaluation therefore focuses on assessing Danish diplomatic engagement and partnerships in relation to influence norm-setting at international as well as country level.

Overview of the Danish Human Rights portfolio

During the evaluation period, Danish support has been governed by the overall strategies for development cooperation, such as The Right to a Better Life (from 2012) and The Strategy for International Human Rights Cooperation (adopted in 2009). These strategies outline how Denmark seeks to promote human rights through a range of policy and programmatic instruments.

Human rights permeate almost all Danish initiatives both programmatically and at policy level. A significant proportion of MFA personnel, both in Copenhagen and at representations work on human rights either as their core area of work (the Human Rights office in Copenhagen, and missions in Geneva and New York) or as an underlying aspect of other engagement areas.

Denmark works with a number of partners including UN agencies and the EU both in norm-setting forums and in partner countries. In partner countries, Denmark extends its support to state institutions and to civil society actors that work with human rights. Moreover, the MFA supports a number of Danish organisations working with human rights promotion and protection. Key partners include the Danish Institute for Human Rights (DIHR), the Danish Institute Against Torture (DIGNITY), the International Work Group for Indigenous Affairs (IWGIA) and the International Rehabilitation Council for Torture Victims (IRCT). A range of other Danish organisations also works with human rights promotion and protection, e.g. through strategic partnerships with the MFA.

In 2012, the Human Rights Based Approach (HRBA) was introduced in all Danish development cooperation. However, the evaluation finds that many of the core principles governing the HRBA were already an integrated part of the Danish modus operandi before the introduction of the HRBA. These core principles include concentration of efforts, long-term partnerships, empowerment, local ownership, and the possibility of broad involvement of Danish civil society. New was, however, explicit and systematic reference to human rights.

KEY INSTRUMENTS AND MODALITIES OF DANISH SUPPORT TO HUMAN RIGHTS

- Policy dialogue at country level incl. Universal Periodic Review (UPR)
- Initiation of, or support to UN resolutions, declarations or other international instruments
- Participation in the UN General Assembly and the Human Rights Council, committees and special initiatives
- Support to nomination and election of Danish experts for high-level positions in the multilateral system
- Multilateral cooperation
- Bilateral cooperation in Danish priority countries
- Human rights mainstreaming through the Human Rights Based Approach
- Regional programmes (e.g. Danish-Arab Partnership Programme or European Neighbourhood Programme)
- CSO support through strategic partnerships with Danish and international organisations

(Please note that this list is not exhaustive for Danish international cooperation as a whole, but includes the modalities found to be most relevant in the Danish human rights portfolio. The portfolio analysis provides a detailed mapping of Danish programmes, projects, and policy interventions, implemented by the MFA and its partners)

PARTNERS IN DANISH SUPPORT TO ACCESS TO JUSTICE

- Ministries
- Judiciary
- NHRIs
- Enforcement agencies
- Informal justice actors
- Alternative dispute resolutions mechanisms
- Legal aid providers
- CSOs

Key findings related to promotion of rule of law and better access to justice

Support to Rule of Law and better access to justice is integrated into Denmark's strategic goals for development cooperation. Denmark's support is not anchored in an explicit Danish Rule of Law strategy but is based on international principles on rule of law, Denmark's development cooperation strategies and partner countries' own strategies and priorities. Danish support is based on a variety of modalities targeting both demand and supply side actors who contribute to strengthen the rule of law and build up well-functioning legal systems.

The main focus of Danish support is capacity development of key institutions and actors in the justice sector, and support to improving the capability of the sector as a whole. Access to legal aid is also a key feature of Danish support as is engagement with informal justice systems. The evaluation finds that the choice of partners is relevant in order to achieve results.

The evaluation has found that the engagements in this focus area follows an approach that includes value-driven commitment, flexibility and credibility, as well as long-term reliable commitment engaging with both the supply and demand side. This 'Danish approach' is valued by partners and increases the Danish leverage of both the MFA and Danish partners.

Key findings related to freedom from torture

Freedom from torture has been a main focus area by Denmark at the international policy level for decades. The prohibition of torture is contained in international human rights instruments. The evaluation concludes that Denmark has developed a distinct strategic approach to promote freedom from torture and Denmark is perceived as the leading actor on the international scene.

The most important Danish modalities of support include sponsoring the omnibus resolution against torture at the UN General Assembly, the thematic resolution at the UN Human Rights Council, and sponsoring the periodic extension of the mandate of the UN Special Rapporteur. The evaluation finds that Denmark's inputs clearly add content value to the results achieved and it is a measure of success that the resolutions are adopted without a vote or by general consensus. Interviewed interlocutors agreed that the continued Danish focus on the anti-torture agenda has been important in strengthening not only the resolutions, but the architecture and UN bodies as a whole.

Denmark also makes consistent use of the UPR process to raise concerns about national systems for protection against torture. The UPR is a periodic review of the human rights records of all individual UN Member States under the auspices of the Human Rights Council.

Denmark has been among the initiators of the Convention Against Torture Initiative (CTI), a group of states actively promoting and helping states overcome obstacles in the ratification and implementation of the UN Convention Against Torture (UNCAT). CTI is by all interviewed interlocutors seen as a unique model for inter-state cooperation.

Denmark supports a number of dedicated CSOs engaged in projects and technical support to the fight against torture in countries across the world. Particular support in this regard is provided to two Danish organisations, DIGNITY and IRCT, and to some extent to the DIHR. The Association for the Prevention of Torture in Geneva, who hosts the CTI secretariat, also receives support.

Interviews and documentation show that the support to CSOs and the DIHR is essential for facilitating professional and credible organisations, enabling them to contribute to results within the freedom from torture agenda. The achievements of these partners include policy development and monitoring at international and national level, as well as enabling their national partners to access the international policy level.

As also seen in the analysis of the programme level engagements, Denmark has applied a consistent approach to partnerships building on long-term commitment, flexibility and trust in its engagements at the policy level.

Although the outcomes at policy level do not necessarily result in an immediate impact upon rights holders, they contribute to a more robust international framework.

Lessons learned across the intervention areas

Denmark applies a distinct 'Danish Approach' to the promotion and protection of human rights. This approach is value-driven, characterised by firm commitment to international human rights standards with focus on partnership, identification of shared values, long-term planning and engagement with both the supply and demand side. The evaluation findings confirm that Denmark is perceived as a flexible, professional, credible and reliable partner without hidden agendas, capable of building bridges between stakeholders as well as using platforms for dialogue to achieve results. This contributes to an increased leverage, which is useful both at programme and policy level for the achievement of results.

Access to expertise and adequate human resources make a difference. The evaluation finds that Denmark, both through the Ministry of Foreign Affairs, its missions abroad and its partner organisations, has advanced technical expertise on human rights, tried-and-tested methodologies and access to human resources. There is a risk that sudden changes, for example cuts in staff resources as well as cuts in development assistance in general, can undermine the effectiveness of the Danish approach.

The international policy level and the programme level impact on each other. International mechanisms and standards are used to provide a common framework at the programme level. The bridging between the international and the national level will often depend on third parties (e.g. civil society organisations), and the evaluation finds that there seems to be missed opportunities for Denmark to further facilitate synergies between the two levels.

Denmark applies a clever mix of engagements. The Danish support consist of engagements through the MFA, the permanent missions to the UN and the Danish embassies in priority countries. This is complemented by the work of Danish and international organisations that have a good reputation and credibility. This enables Denmark to both target the demand and the supply side, and to build bridge between the two.

Lessons learned related to programme level

Need for a clearer strategic frame for the work on Rule of Law. In the absence of a formal strategy, it has been difficult to evaluate if Denmark is working towards any overall targets and whether the engagements are aligned with Danish priorities. The Danish justice sector support touches upon all essential components of the rule of law and access to justice with varying degrees of intensity.

Access to legal aid and counselling as an implicit Danish priority. The evaluation finds that access to legal aid and counselling is a key feature of Danish support in access to justice programmes. Most programmes include some elements of legal aid mechanisms. Access to legal counselling is also a feature in programmes related to other priority areas, such as NHRI, freedom from torture, rights of indigenous people and CSR. Documentation shows that legal aid programmes are generally performing well when comparing intended outputs and outcomes with actual results.

Measuring the results of individual engagements is challenging. Rule of law is a very broad concept and the justice system is very complex and includes the informal system. The evaluations, reviews and project completion reports studied generally find that there is lack of measur-

able indicators at the outcome and impact level and/or absence of documentation relating to achievements.

Stating the obvious – programme and projects need to be well-prepared and well-managed to achieve results. Related to the above, programmes require an elaborate context analysis, good baseline studies, including identification of the drivers for change etc. M&E modality, the capacity of partners as well as a lack of or access to credible data, must also be addressed from the very start of the planning phase. The evaluation finds that this constitute a challenge for Denmark to ensure that these basics are in place. More focus on preparation of interventions will contribute to achieving better results.

Size and modality matter. The evaluation finds that larger programmes, involving several donors, are more likely to move the sector in general in the right direction, as the donors' leverage is increased both within the sector and vis-à-vis the government. The use of fund managers or the establishment of separate legal entities to manage the programme, as seen in several partner countries, may also create an advocacy platform between civil society and the state, contributing to results beyond what is intended. Smaller appropriations, on the other hand, have offered Denmark an opportunity to provide flexible funding for specific initiatives which, in a smaller context, can have a significant impact.

Better knowledge management in MFA could create better programmes and better results. In the formulation of new programmes, there appears to be very little use made of experience gained from programmes implemented in other countries. It has also been unclear how lessons from a specific programme are used in other programmes. To optimise the use of lessons learned from other programmes, there is a need for the MFA to be much more systematic in how it handles documentation and reports.

Lessons learned related to policy level

Freedom from torture is part of the Danish storytelling. Internationally, Denmark is perceived as the leading state in the fight against torture. This is a result of a long-term commitment to this agenda over the last four decades. The establishment in the 1980s of the Rehabilitation Centre for Torture (now DIGNITY) and the IRCT has contributed to a strong Danish focus on the anti-torture agenda. Based on stakeholder interviews, there are clear indications that the credibility of these organisations contributes to the positive image of Denmark, internationally, regionally and nationally.

No strategy – but a clear strategic approach. Denmark does not have a strategy for this policy area but does have a clear strategic approach to

the fight against torture and, as a result, allocates resources, both within the MFA and through Danish and international CSOs and institutions. Development of a formal strategy might actually have been counter-productive as Denmark seeks to exercise influence and encourage action primarily through the 'nudging' of partners. This is achieved both through policy dialogue and through financial support, with the view to generate and provide back-up to actions by these partners. These kinds of arrangements are difficult to describe in a formal strategy without the risk of appearing to take credit for what should be seen as a joint effort.

The evaluation finds a risk in the consensus-seeking approach taken by Denmark, as it may jeopardise a more progressive development in the protection against torture, e.g. by failing to push a stronger wording in the resolutions. However, Denmark has, so far, been able to strike a good balance. The CTI appears to be a suitable modality for revitalising the agenda, with Denmark in a more passive role. The absence of a strategy may also weaken the link between the international policy results and the national policy level. To mitigate this, the CTI constitutes an opportunity to follow up at national policy level.

The Danish engagements have contributed to measurable results. The evaluation team finds clear results of MFA's direct engagements (resolutions), through CTI and the supported Danish and international organisations and institutions. It is difficult to measure the impact in relation to the rights holders, but the engagements contribute to a platform for dialogue and accountability at national level.

Both individuals and institutionalisation of the priority area are important for the achievement of results. The evaluation finds that Denmark's ability to achieve results at the international policy level depends, to some extent, on individual staff members at MFA, its foreign missions as well as in the supported organisations and institutions. The Danish engagement is based on expertise not only on the subject-matter, but also on processes. The torture agenda at the international policy level has become part of the Danish DNA and has been institutionalised. Nevertheless, the international policy level is subject to many different agendas, that may change quickly, and is faced with fluid alliances. In the absence of a strategy, much is dependent on the dedication of individual staff members and domestic political agendas, with an inherent risk of dilution of the Danish achievements and potentially impacting Denmark's leverage internationally.

Recommendations

1. GENERAL RECOMMENDATIONS

Strengthening the linkages between the international policy level, and national policy and programme level. UN resolutions and UPR recommendations (in general but in particular those made by Denmark) should be reflected in Denmark's country policies and programmes as well as in relevant programme documents. The MFA should follow up on the implementation of UPR recommendations and UN resolutions sponsored by Denmark, within the priority areas and, in particular, in relevant priority countries, in order to ensure a greater impact at national level and to support better linkages and synergies. In the case of freedom from torture, the CTI could be an instrument to link the two levels.

Strengthening of the Ministry of Foreign Affairs' handling of programme and policy related documentation. The MFA should revisit how it manages, structures and publishes documentation relevant for development cooperation. It is, at times, very unclear when a policy-related document 'expires' or where documents are published. Identification and tracking of relevant documentation internally in the Ministry of Foreign Affairs is difficult. This also negatively influences the scope for drawing lessons learned across countries or areas of engagement.

2. RECOMMENDATIONS RELATED TO THE PRIORITY AREA: RULE OF LAW AND BETTER ACCESS TO JUSTICE THROUGH JUSTICE SECTOR REFORMS

A need for clarification of how Denmark wishes to provide support to rule of law and better access to justice through justice sector reforms beyond 2018. The priority area is reflected in Denmark's country policies and programmes; and correspondingly in strategic and thematic programme objective as well as outcomes. However, these policies and programmes are only developed for priority countries and not for all countries. Bearing in mind that rule of law and better access to justice through justice sector reforms is a very broad priority area, that needs to be operationalized in a local context, it is not recommended to formulate a strategy as such but rather to up-date guidelines that clarify how this area should be approached.

The ability to measure results should be strengthened. There is a clear need to identify how to develop a theory of change, implement baseline studies, gather data in the absence of reliable or credible sources, as well as how to formulate measurable and realistic outcomes, impacts and corresponding indicators.

Partners' capacity should be assessed prior to all programmes and a plan developed to strengthen their capacity. As part of programme/project preparation, there should be an assessment of partners' capacity to implement programmes as well as how to monitor and evaluate pro-

gress. If the capacity is low, the programme/project need to address that as part of the programme, otherwise results are unlikely to be achieved.

Knowledge sharing should be envisaged as part of the preparation process. There is a need for an increased focus on sharing of experience, best practice and knowledge, including within the MFA, in programme preparation. The preparation of a programme should ensure that the programme is evaluable and, moreover, that lessons learned from similar programmes or previous programmes in the same country (or elsewhere) are taken into account.

Focus on maintaining a Danish approach throughout the programme cycle regardless of programme modality. Whatever modality or entry point is chosen, the cooperation must reflect the Danish approach and implementation of interventions should guard the principles inherent in that approach. This requires adequate human, technical and financial resources, strategic choice of partners, flexibility and long-term commitment and, above all, a focus on rights holders as well as duty bearers.

Map the role of legal aid services in Danish development cooperation. The role, and results, of legal aid services in Danish development cooperation should be mapped as the evaluation shows that this is a key component in the Danish engagements and that further valuable lessons are very likely to exist.

Improve the frequency of evaluations and reviews. There is a need to conduct more evaluations within the priority area (provided that the knowledge gathered from such evaluations is institutionalised). The present number and frequency do not reflect the efforts in the area and their use as a documentation base for identifying trends, experiences, challenges and opportunities is limited.

3. RECOMMENDATIONS RELATED TO THE PRIORITY AREA: FREEDOM FROM TORTURE

Strengthening the linkage between the Danish embassies and the CTI. The Danish embassies should be introduced to the CTI and its support options enabling them to encourage the implementation of the CTI agenda. Expanding the interface with regional and sub-regional organisations, such as the African Union, may be an effective way to link international and national efforts.

Ensure that the Danish Ministry of Foreign Affairs and the Danish UN missions have the relevant resources and that knowledge is institutionalised. Denmark should keep focusing on internal capacity building at the permanent missions to the UN. The MFA in Copenhagen should ensure that the intervention area is allocated with adequate resources at the Headquarters level. This is also important as it contributes to ensuring that the Danish partner organisations, who are extremely important key

players and who help shape the Danish identity in the area, meet the technical capacity requirements necessary to be able to engage more strategically.

Establish a flexible support mechanism for smaller grants for strategic policy issues. In order to ensure that strategic policy objectives can be followed up by relevant stakeholders, it is recommended to establish a funding frame or modality which can provide support to initiatives or actors that work at the policy level, and which does not fall within any other funding modality at country level or at Headquarters level.

Denmark should continue to support key organisations as they are essential to Denmark's strategic approach. The organisations supported by Denmark should receive adequate support in order to stay professional, to conduct research and to increase their expertise and their potential to engage with duty bearers as well as with rights holders. In line with the above, there is room for the MFA, as well as the Danish UN missions, to engage with key Danish partners even more strategically in order to benefit fully from the capacity that has been built in Denmark within this field.

1 INTRODUCTION

In June 2016, the Danish Ministry of Foreign Affairs (MFA) commissioned Nordic Consulting Group (NCG) with the Evaluation of Danish Support to Promotion and Protection of Human Rights². The present evaluation report includes the findings of the evaluation analysis and presents lessons learned, conclusions and recommendations to the MFA. In addition to this main evaluation report, a comprehensive portfolio analysis, which is an integrated part of the evaluation outputs, has been prepared and is available as a separate volume.

1.1 Purpose and scope of the evaluation

Respect for, promotion and protection of human rights are core values of Danish international engagements. As such, human rights are a central and defining element of all Danish development cooperation and also of Danish diplomatic engagements, i.e. policy level discussions at multilateral, regional and bilateral level. Human rights, understood in a broad sense, permeates through almost all Danish international engagements and an evaluation of this is a complex task. According to the Terms of Reference (Annex A) the purpose of the evaluation is to assess Denmark's engagements in the area of human rights and to learn from past experiences in order to inform future work.

The ToR includes five human rights priority areas to be analysed from both the policy level and the programme level, namely: support for national human rights institutions; freedom from torture; rights of indigenous peoples; CSR; and promotion of rule of law and access to justice through justice sector reform³.

This aspect of the evaluation constitutes a mapping and analysis of the portfolio of all five priority areas at both policy and programme level. It has been a comprehensive task to carry out the portfolio analysis, and

2 The evaluation has been carried out by Thomas Trier Hansen (Team Leader), Marie-Louise Appelquist, Jacob Gammelgaard and Pierre Robert.

3 A sixth priority area of Denmark is gender equality including women and the girl child, and sexual and reproductive health and rights. This area has recently been reviewed and evaluated and was therefore not included in the ToR (see: Lessons learned from promoting gender equality in Danish development cooperation (2016), Lessons Learned on Gender Equality (2013) and Evaluation of the Danish Strategy for the Promotion of Sexual and Reproductive Health and Rights 2006-2013 (2014).

during this work it was decided to narrow the scope of the main evaluation to only two of the five areas, as it became clear that the original scope was far too broad in order for the evaluation to identify focused and useful lessons learned and come up with clear recommendations. Two of the five original areas were selected for the main analysis based on their evaluability and their importance in the Danish work at programme and policy level respectively. These are:

- **Rule of law and better access to justice**
- **Freedom from torture**

The portfolio analysis informs the main report both in general and also specifically in relation to the two selected priority areas. The narrowing of the scope obviously meant that the evaluation to a lesser degree evaluated the broad human rights engagements by Denmark and now more resembles two sub-evaluations of distinct themes. The evaluation does attempt, in the lessons learned chapter, to generalise and provide lessons that are relevant to the broader field of human rights engagement areas.

Freedom from torture will be analysed primarily at policy level as this is the main level of engagement by Denmark, and especially of the MFA. Likewise, rule of law will be analysed primarily at programme level as this constitutes the main focus by Denmark.

The evaluation will serve both learning and accountability purposes, with the main emphasis being on providing inputs to further strengthen Denmark's efforts to promote and protect human rights. Two overall questions are addressed in the evaluation⁴:

1. What are the results of the Danish support to promotion and protection of human rights exemplified through the support provided in two selected priority areas: Freedom from Torture; and Promotion of the rule of law and better access to justice?
2. What are the lessons learned from promotion and protection of human rights as analysed through the above areas?

The purpose of the first question is to provide **an overview of the results** including **possible impact** that Danish policy initiatives and development cooperation engagements have had on the promotion and protection of human rights within the selected priority areas. It is however outside the scope of the evaluation to go into depth with individual programmes and projects from the comprehensive Danish aid portfolio.

4 Slightly modified and scoped in comparison to those mentioned in the ToR.

Nevertheless, engagements and results emanating from individual programmes will be used as examples to illustrate the Danish approach and areas of intervention.

The purpose of the second question is to provide **lessons learned** with a view to informing future activities. The focus will be on lessons learned with regards to **linkages and synergies between multilateral and bilateral interventions** in the same policy area, the **effectiveness and efficiency of the strategies** chosen to promote human rights, including the **choice of activities**, partners and modalities. In summary, as regards its work with human rights, what constitutes a specific Danish approach – if this at all exists – and what is its added value?

The Danish support is implemented through two levels:

1. A *policy level* which includes initiatives at both multilateral, regional and bilateral level. Multilateral level includes meetings and discussions in different forums, tabling of general and thematic resolutions, and contributions to international reporting mechanisms. Bilateral engagement includes dialogue and interactions by Danish diplomats at country level.
2. A *programme level* of development cooperation which includes a variety of direct or indirect bilateral and multilateral engagements at national; regional or global level.

The main channels of support at both policy and programme level includes NGOs/CSOs (core support or specific projects), national and international institutions (core support or specific projects), multilateral institutions (e.g. UN) both HQ and country level offices, and different forms of bilateral assistance.

The structure of the evaluation report will follow this division between policy (freedom from torture) and programme (rule of law, access to justice). The two overall questions are further elaborated in seven evaluation questions (see below and the evaluation matrix in Annex B) and a number of sub-questions. These questions are analysed and answered through a desk-study of relevant material and interviews with a number of staff in MFA and its partner organisations. The questions have also been addressed during field visits to Geneva and to four partner countries identified by the MFA in the ToR (Burkina Faso; Niger; Tanzania and Uganda). Denmark has in these four countries supported the promotion and protection of human rights through the development cooperation programme for several years and with the presence of a Danish embassy (and consequently sustaining a dialogue to complement the development cooperation interventions and to link policy and programme levels).

The evaluation covers a 10-year period from 2006 to 2016. In order to limit the scope of the evaluation, it has been decided not to focus on interventions that were initiated prior to 2006 or after 2015, if they are not well-documented and very illustrative for the focus of the evaluation.

Due to some documentation constraints and haphazard accessibility of documents, the evaluation will have, as its main focus, the policies and programmes after 2009. Interventions prior to 2009 will only be included if they are essential for illustrating the findings of the evaluation. For details on the Danish strategies and policies, reference is made to the portfolio analysis which complements this main evaluation report.

1.2 Methodology and delimitation

This section includes a brief outline of the methodology applied in the evaluation. For a more elaborate account reference is made to Annex C. An evaluation covering 10 years of Danish support to promotion and protection of human rights requires careful scoping in order to be focused and relevant. Denmark's support is multifaceted, from policy initiatives as well as dialogue at international or national forums, to direct or indirect programme engagements at various levels together with or through partners. The instruments governing the support are likewise multiple: including strategies, policies and guidelines; and also including project and programme implementation. Evaluations, reviews and reporting may contribute to changes to existing support.

The intention of the evaluation, through a tailored contribution analysis, is primarily to map results of initiatives or engagements within two selected priority areas of the Danish human rights portfolio. The evaluation also attempts to illustrate if there are any synergies between the policy and programme level. A former study *Synergies and Linkages Between Danish Efforts to Promote Human Rights at the Multilateral Level and in Development Cooperation* provides valuable information about the period from 2000 to 2012. Consequently, this evaluation will not duplicate that study but use its findings to measure whether similar observations may be reflected in the period 2012 to 2016⁵.

Furthermore, the evaluation **assesses actual and potential barriers and opportunities** for an effective and coherent support to promotion and protection of human rights that is aligned with the overall strategies and policies for Danish support. Based on the findings the evaluation **identifies key lessons learned and makes recommendations** for the

5 *Synergies and Linkages Between Danish Efforts to Promote Human Rights at the Multilateral Level and in Development Cooperation* pp. 27-31.

MFA's future work with Human Rights engagements. The evaluation addresses the following seven evaluation questions:

EQ1: What have been Danish priority areas within the field of human rights and how have they been addressed by the MFA and its partners?

EQ2: How have engagements been distributed between the thematic areas, channels of support and between partners?

EQ3: What results have been generated as a result of the Danish engagements within the selected focus areas? And to what extent have these results led to transformative changes for target groups, for countries and at the global policy level?

EQ4: What factors have influenced or constrained the achievement of specific results? And what lessons of a general nature can be learned from this?

EQ5: How may coherence and synergy between the multilateral track and the bilateral track be strengthened?

EQ6: Under what circumstances has Denmark been most effective in promoting the human rights agenda (forums, countries, themes) – and what are lessons learned of a general nature as a result of this?

EQ7: What is the value added of the various channels and modalities and how do they interact?

The first two questions are broad in scope. They are mainly addressed in the portfolio analysis and in Chapter 2. The other questions are addressed in Chapters 3 and 4 for the programme and policy area respectively. It should be noted that due to the shift of scope in the analysis to primarily the programme level related to priority area *rule of law and better access to justice*, the analysis of the potential for synergies between the multilateral/policy level and the bilateral/programme level of Danish support (EQ5) are only touched upon briefly. This analysis is placed at the end of Section 3.1.

PROMOTION OF RULE OF LAW AND BETTER ACCESS TO JUSTICE – PROGRAMME LEVEL

The priority area *promotion of rule of law and better access to justice* is mainly evaluated at the programme level. Thus, with regard to bilateral development cooperation, as the portfolio analysis shows, this constitutes by far the main level of engagement by Denmark, whether it has been an explicit decision made or not. Denmark has supported a large range of programmes, including institutional strengthening, law reform and support to CSOs. Unlike the priority area *freedom from torture*, this priority area has a wider coverage, which covers elements of the four

other original priority areas, as the rule of law is not a human right *per se* but is fundamental for the promotion and protection of human rights and is often an element in programmes falling within these priority areas.

Consequently, the priority area includes a wide range of processes (e.g. strategies, legislative drafting, legal reforms and parliamentary processes) and duty bearers, including oversight institutions, and rights holders as well as formal and informal justice systems and gender equality issues. The priority area could even be extended to transitional justice or post-conflicts situations⁶.

Access to justice is a fundamental human right, which according to UNDP “includes the ability of people to seek and obtain a remedy, through the formal or informal justice system, and in accordance with human rights principles and standards.”⁷ To achieve this, access to justice calls for a number of actions such as legal protection, legal awareness, access to legal aid and counsel, adjudication and enforcement. In this context a number of justice sector actors are essential to ensure and protect the rights holders.

An assessment of rule of law and better access to justice could therefore cover multiple processes and actors, but the present analysis will mainly focus on engagements addressing justice sector actors contributing to access to justice by implementing, up-holding, adjudicating and enforcing laws. The analysis will thus refrain from parliamentary processes for legislative drafting and oversight, or the general justice sector reform processes⁸.

The evaluation will take its point of departure in development cooperation engagements, where rule of law and access to justice have been the core elements and not a smaller component of another intervention programme. However, reference to programmes, where the priority area has been a smaller component will be included in order to illustrate observations, findings or recommendations. Programmes illustrating

6 See e.g. *Delivering justice: programme of action to strengthen the rule of law at the national and international levels*, Report of the Secretary-General to the UN General Assembly March 2012; *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels*, resolution adopted by the UN General Assembly November 2012 and prepared by Denmark and Mexico and *How to Note: Justice Sector Reform*, June 2010 stating that “Danish support to justice sector reform often includes support to formal and informal institutions, and to state as well as non-state actors.”

7 See UNDP 2014 *Guidance Note on Assessing the Rule of Law using Institutional and Context Analysis*, p. 2.

8 In the ToR, the priority area was termed “The promotion of rule of law and access to justice through justice sector reform” but for the stated reason this area will in the evaluation be termed “Promotion of rule of law and better access to justice”.

support to international bodies (e.g. the Inter-American Commission or Court for Human Rights; or the African Commission or Court on Human and Peoples Rights) will be included in the assessment although they may not be regarded as justice sector actors as such.

It should be duly noted that focusing the scope of the evaluation (from five to two areas) was done after the field visits to partner countries had taken place. Rule of law programmes were therefore not necessarily in focus during the (brief) country visits, and therefore written documentation in terms of review reports and evaluations constitute the main empirical basis for observations and findings. As such, the analysis largely takes the form of a meta-evaluation of programmes and projects where a relatively large number of interventions have been included. A handful of programmes (with the strongest documentation base e.g. in terms of recent evaluation reports) are however in focus. Further reference is made to Chapter 3, where rule of law and better access to justice is analysed.

FREEDOM FROM TORTURE – POLICY LEVEL

The priority area freedom from torture is mainly evaluated with regard to the policy level, as Denmark historically has placed its focus here. Denmark has, for many years, worked in multilateral forums and in the EU to strengthen international human rights instruments to fight torture, e.g. by driving UN-resolutions on the subject and spearheading cross-regional initiatives against torture. The evaluation will, however, assess and illustrate the linkages to, and synergies with the programme level through relevant cases. The focus will be at UN level, as it is the main multilateral system that creates norms and has global legitimacy and presence. The UN system also provides a platform for dialogue, monitoring and follow-up. In addition, recognised that Denmark is also active in important forums such as the EU, Council of Europe and OSCE

An evaluation of the policy level faces a number of challenges, in particular with respect to the evaluability of policy level modalities and with attribution of results to specific engagements that do often not have a pre-defined set of objectives. According to OECD/DAC the term “evaluability” is defined as “the extent to which an activity or project can be evaluated in a reliable and credible fashion”. The policy modalities do not fall squarely within that definition. Usually, evaluation is about the extent to which an intervention is successful in reaching its objectives. However, many of the policy level modalities do not, in advance, have clearly identified intended outcomes, impacts or steps towards achieving an objective, and there are rarely any valid or reliable indicators related to outputs, outcomes or impacts.

Consequently, it is generally challenging to apply common evaluation methodologies to policy level evaluations. Instead, when assessing the results of policy engagements, the analysis attempts to assess, based on

a number of engagement flows, if Denmark has contributed to a platform for dialogue; and to standard setting and exchange of knowledge in order to work towards ensuring freedom from torture. The evaluation will focus on whether the outcome (initiative, recommendation, declaration, convention) is a result of a deliberate process facilitated by Denmark or Danish organisations based on an initial decision to achieve the outcome/result. Focus is on the key steps in this process from decision to outcome/result. However, it is important to emphasize that it is difficult to compare actions in one process with actions in another process, as international policy making depends on a number of variables that are outside the control of the Danish engagement. By focusing on each key step, it is possible to assess if the achievement of that step was a result of the Danish engagement or if competing factors/variables could explain the achievement.

The next step is to assess if the work at the multilateral level intentionally has a bearing on the bilateral policy level, and to some extent the programme level, and finally if the bilateral policy level intentionally impacts the multilateral policy level.

1.3 Theory of change and structure of the analysis

The evaluation of the two priority areas is built on a theory of change approach, i.e. that Danish support (intervention inputs in terms of a policy initiative or programme engagement) will lead to tangible outputs, that will result in outcomes, which in turn will contribute to an impact (transformative changes), that fulfils, promotes or protect the human rights of the rights holders.

It is acknowledged that moving from an output to an outcome rarely depends on the Danish support alone. Denmark is contributing to outcomes and impacts which are generated by multiple actors. Moving from an output to an outcome and further to impact level requires a strategy to overcome challenges and the ability to make use of windows of opportunities. Furthermore, it also requires that the leap between the various levels in the results chain are not too ambitious.

In order to obtain results in this reality, the better Denmark is positioned and capable of moving others through a variety of instruments (e.g. partnerships; dialogue; alliances or strategic interventions), the better chances of achieving the planned outcomes and expected impacts. This chain of events to achieve results may even be further catalysed if Denmark makes use of the synergies and linkages between the policy and programme level.

In order to carry out the main analysis of the evaluation, a theory of change (ToC) has been formulated in terms of basic results chains for

each of the two priority areas. This has been done based on assessment of strategies, policies, project and programme documents and a mapping of themes, modalities, instruments and partner choices in the Danish human rights portfolio (this relates primarily to EQ1, EQ2 and to a lesser degree EQ5). These ToCs are then tested, validated, elaborated and adjusted through the remaining analysis in order to respond to EQ3, 4, 6 and 7.

Chapter 2 outlines the Danish human rights engagements followed by the analysis of *promotion of rule of law and better access to justice* in Chapter 3 and the analysis of *freedom from torture* in Chapter 4. Chapters 3 and 4 are structured in the same way and include (in Section 3.1 and 4.1) an account of the objectives of Danish support, key partners and approach of the support. The basic ToC for each area are derived from this. This is followed by an analysis of the results achieved by Denmark within each of the areas, taking as point of departure the “measurable results”, and hence “unfold” the established ToC through concrete examples of chains of results within the two areas (Section 3.2 and 4.2). The final section of the chapters (Section 3.3 and 4.3) presents an analysis of the factors that have influenced and constrained the achievement of results, i.e. establish and test the assumptions on moving from one level in the results chain to the next. Chapter 5 presents key lessons learned which cut across the two priority areas, and in Chapter 6, the conclusions and recommendations are presented.

2 INTRODUCTION TO THE DANISH HUMAN RIGHTS PORTFOLIO

As mentioned in the previous chapter, five areas were pre-selected in the ToR as focus areas of the evaluation. Even though the scope of the main evaluation report has been narrowed, the portfolio analysis covers all five areas, which are therefore also referred to in this chapter. These five areas were selected as they represent areas where Denmark has focused its support within the broad field of human rights.

1. Support for human rights institutions such as national, regional and international human rights institutions and human rights commissions:

Denmark has supported the establishment and strengthening of human rights institutions at national level in many of its programme countries. A considerable share of the support aimed at this objective has been channelled through the Danish Institute for Human Rights. Denmark's support to promotion and protection of human rights promotes cooperation and synergies between human rights institutions at national, regional and international level.

2. Freedom from torture: Denmark is home to some of the oldest torture rehabilitation NGOs in the world which MFA has supported consistently for many years. Denmark has pioneered international efforts to fight torture and to rehabilitate its victims. Freedom from torture has been a core element of the Danish human rights support for more than two decades.

3. Rights of indigenous peoples: Jointly with Greenland this has been an area Denmark has actively engaged in and promoted, in multilateral settings at normative level. Also, in its development cooperation, Denmark has included indigenous peoples' rights in bilateral programmes and Danish core NGO partners have furthered this agenda as well.

4. Corporate Social Responsibility: Involvement of the private sector in ensuring economic sustainability in developing countries has also been a priority area for Denmark. Both in bilateral programmes, business partnership programmes and, at the multilateral level, Denmark has focused attention on CSR and sustainable business. Looking forward, involvement of the private sector, e.g. in reaching the SDGs, continues to be extremely relevant and doing so based on Danish values on human rights will be a key principle for Denmark.

5. *The promotion of rule of law and access to justice through justice sector reform:* Through its bilateral development cooperation Denmark has supported a large range of programmes aimed at strengthening rule of law and access to justice including for marginalised people, justice sector reform processes including institutional strengthening, law reform and support to CSOs. This remains a core element of Danish governance programmes.

Strategies and policies governing the Danish human rights portfolio

Denmark is party to seven of the nine core human rights instruments⁹. Denmark is furthermore party to the ILO Indigenous and Tribal Peoples Convention No. 169 and a strong supporter of the Declaration on the rights of indigenous peoples adopted on 13th September 2007. These international instruments are reflected in a number of instruments guiding Danish support to promotion and protection of human rights. These instruments include the strategies for Danish development cooperation covering the evaluation period 2006 to 2016, where *The Right to a Better Life (2012)* governed almost half of the period and introduced the human rights based approach to Danish development cooperation; the specific *Strategy for International Human Rights Cooperation from 2009*; and the legal foundation for the Danish development cooperation, the *1971 Act on International Development Co-operation* with subsequent amendments. In 2012, this act was repealed and replaced with a similar but up-dated Act on International Development Cooperation. The new Act introduced explicit reference to the UN conventions on human rights as guiding instruments.

The overall framework is further elaborated in a variety of thematic or sector specific sub-strategies, strategic frameworks; guidelines and sometimes also in papers on the Government's Priorities for Danish Development Cooperation. Please see figure in Annex D for a graphic overview of the different Danish strategies, policies and guidelines. Although human rights have not always been governed by an explicit strategy document from MFA, human rights have been a core value of Danish international engagements and have been embedded as an

9 The International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; Convention on the Rights of Persons with Disabilities; International Convention for the Protection of All Persons from Enforced Disappearance (signed but not yet ratified by Denmark); and International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (not ratified by Denmark).

underlying key principle in all other Danish development cooperation strategies.

The Danish approach and priority areas

Common for all the overall strategies is that they, throughout the evaluation period, have addressed human rights and all five original priority areas directly or indirectly, and that focus has been on interventions that would create changes for the individual rights holders' human rights situation.

The focus of the Danish approach to development cooperation and thus also to human rights interventions has been on partnership interventions that build capacity with the partners; improve the capacity of the duty bearers (State) to carry out their mandate and improve the regulatory framework in order to change the situation of the rights holders for the better (processes of change for the benefit of the poor, as it is formulated in the Partnership 2000 strategy, which was the main strategy for Danish development cooperation from 2000 to 2010). In 2012, the Human Rights Based Approach (HRBA) was introduced in all Danish development cooperation, but the principles governing the rights-based approach were already included in strategic documents and policies. Key HRBA principles that have been identified in previous strategies/policies have been concentration of efforts; long term partnerships; knowledge-sharing, experience, empowerment; and the possibility of broad involvement of Danish civil society as well as local ownership.

Human rights in economic development and private sector development have also been addressed in the overall strategies, e.g. in ensuring better labour conditions, but corporate social responsibility was not introduced in the overall strategies before 2009, where it is mentioned in the *Strategy for International Human Rights Cooperation*. However, businesses' social responsibility and reference to UN Global Compact was already introduced in other instruments such as *the Africa Strategy* from 2007.

Facilitation of access to justice from the national to the regional and global level has generally been a priority area for Danish support (MFA and partners) as have impacting the international normative level in order to achieve improvement at national level for the rights holders. National Human Rights Institutions are not mentioned in the strategies before the *Strategy for International Human Rights Cooperation*, where the support to such institutions are confirmed and their importance emphasised. The explicit reference to indigenous peoples and torture is removed in the 2012 strategy (but has been included again in the newest strategy from January 2017).

THE UNIVERSAL PERIODIC REVIEW (UPR), ESTABLISHED IN 2006

is a process which involves a periodic review of the human rights records of all UN Member States. It provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. The reviews are conducted by the UPR Working Group which consists of the 47 members of the Council; however, any UN Member State can take part in the discussion/dialogue with the reviewed States and give 'recommendations'. The review is based on information provided by the State under review, information from the UN system (e.g. treaty bodies), and from other stakeholders including national human rights institutions and NGOs. The outcome provides a summary of the discussions and consists of the questions, comments and recommendations made by States to the country under review, as well as the responses by the reviewed State.

Denmark seeks to promote and protect human rights by addressing the issue from different angles through the application of a range of instruments (policy, dialogue, sector programmes, projects, special interventions, partner selection), thereby creating synergies and, hopefully, greater impact.

For policy interventions, these include but are not limited to: Policy dialogue at country level on specific issues; Policy dialogue around individual countries' Universal Periodic Review (UPR) processes (see box); Initiation of, or support to UN resolutions, declarations or other international instruments; Active participation in the UN General Assembly (UNGA) and the Human Rights Council (HRC), committees and special initiatives; support to nomination and election of Danish experts for high-level positions in the multilateral system.

For programmatic interventions, these include but are not limited to: Support through multilateral cooperation; bilateral cooperation in Danish priority countries either as project- or sector programme interventions; Regional programmes (e.g. Danish-Arab Partnership Programme or European Neighbourhood Programme); Stabilisation programmes (rule of law); CSO support through strategic partnerships with Danish and international organisations¹⁰; CSO support through framework agreements with Danish NGOs¹¹; and support through the Peace and Stabilisation Response/International Humanitarian Response (FSB/IHB).

MFA's organisation of the work with human rights

A significant proportion of MFA personnel work on human rights either directly and technically (e.g. the human rights office at MFA and human rights officers at UN missions) or more indirectly, as human rights, in one way or the other, permeate almost all other activities and initiatives both programmatically and policy-wise. This is done through programming and monitoring human rights interventions, and interventions in other areas that either have a human rights element or where human rights are 'mainstreamed', e.g. through the Human Rights Based Approach (HRBA). Human rights are also supported through bilateral dialogue at country level and active engagements in inter-governmental forums e.g. under the UN.

At the *MFA headquarters in Copenhagen*, official Danish policies and strategies are developed, including strategic support to the negotiations

10 The budget allocations included under the provisions of the Finance Act to individual organisations, e.g. under the Human Rights and Democracy frame.

11 From June 2017 termed strategic partnerships.

that are conducted at the diplomatic missions and representations abroad. Support to civil society through Danish organisations' strategic partnership agreements is managed from Copenhagen, as are several programmes, e.g. Danish business instruments and regional programmes such as the Danish Arab Partnership Programme and the Neighbourhood Programme.

Denmark's permanent missions to the UN in New York and Geneva work to influence the international human rights norms and standards. Danish key priority areas in these policy forums are Freedom from Torture, Gender Equality and Rights of Indigenous Peoples. Denmark is also actively engaged in the UPR processes (Geneva) and the work on setting up standards and guidelines for private companies' influence on and engagement with human rights (the UN Global Compact and the UN Guiding Principles on Business and Human Rights, in New York).

The *Danish embassies in priority countries* have responsibilities for programme formulation, implementation and general administrative responsibility for development programmes, projects and policy. The Danish embassies are also actively engaged in the policy and strategy processes related to the entire Danish foreign service (development, diplomacy and policy) which are coordinated from Copenhagen, and in the UPR processes related to the individual countries.

Cooperation with key partners

Denmark has a number of partners in its international as well as national human rights work. These include UN agencies and EU partners, ministries and counterparts in priority countries, civil society in recipient countries, and partners in Denmark.

Four Danish organisations stand out and are considered key partners of the MFA in its work with human rights, especially in relation to the five original priority areas chosen for this evaluation. These are the Danish Institute for Human Rights (DIHR), the Danish Institute Against Torture (DIGNITY), International Work Group for Indigenous Affairs (IWGIA) and International Rehabilitation Council for Torture Victims (IRCT) who all play a key role in rolling out Danish priorities as the mandates of the organisations' work directly relate to these Danish priority areas¹².

DIHR is Denmark's national human rights institution and, as such, its mandate is governed by law. DIHR has programme and project engage-

12 Besides the four, International Media Support and Danish Institute for Parties and Democracy are also specialised organisations with a specific mandate within the field of democracy and human rights.

ments within a wide range of human rights fields including all five original priority areas included in the ToR. DIGNITY works specifically for the fight against torture and is a key partner in relation to the focus area on freedom from torture. DIGNITY works both in Denmark and internationally, with treatment, research, development projects and advocacy. DIHR and DIGNITY both receive core funding from MFA. IWGIA and IRCT are both international NGOs – based in Copenhagen – with a network organisation and with large global membership bases. IWGIA works with rights of indigenous peoples, including access to justice, and IRCT works with freedom from torture and the right to rehabilitation¹³.

The work of these four partners is included throughout the analysis of this evaluation, and their engagements have been mapped in the portfolio analysis alongside MFA's own programmes and engagements, as they implement a large part of the Danish human rights portfolio and also play an important role in the Danish national and international human rights work.

13 Both have received funding through the MRD frame (Human Rights and Democracy frame) under the Finance Act.

3 PROMOTION OF RULE OF LAW AND BETTER ACCESS TO JUSTICE

The analysis of this priority area focuses on the programme level. Focus is on bilateral programmes and key partners' programmes and projects (i.e. DIHR, IWGIA, DIGNITY and IRCT). Initiatives supported through UN partners and other organisations than these four are only considered if particularly relevant. The theory of change constructed for this priority area is based on the strategic considerations and their stated objectives both in Denmark's overall development cooperation policies and strategies, as well as in the programme documents defining the specific interventions, as outlined in Section 3.1. Results achieved are presented in Section 3.2. and factors influencing results are analysed in Section 3.3. The analysis is based on written documentation from programmes and projects including review reports, evaluation reports, project completion reports and key informant interviews. As mentioned in the introduction, the observations in the three sections will be illustrated with reference to examples, as it is outside the scope of the evaluation to take all programmes and projects into account.

As Denmark does not have any specific guiding strategy for the area, the evaluation does not measure results against a written strategy. Instead results will be held against rationales and objectives identified in the development cooperation strategies, policies and programme documentation. Danida has formulated two "How to Notes"¹⁴ related to the justice sector which are used as main guidance for understanding the rationale behind Danish support in the area. The notes however do not reflect a clear strategic approach for the area as such. Instead they provide the user with broad inspiration for how to engage in the justice sector through a number of entry points.

It should be noted that rule of law, in theory, is not only reflected in good-governance-related programmes and projects, but also in programmes and projects within the other four original priority areas from the ToR, as well as civil society targeted programmes and programmes

14 The MFA published in 2010 two so-called "How to Notes". These notes are linked to the overall strategic priorities in Denmark's development co-operation and provide hands-on guidance and inspiration on "how to" put these strategic priorities into practice. The How to Note on justice sector reform suggests seven key entry points for justice sector reform support, and The How to Note on informal justice contains six key entry points.

on gender equality¹⁵, which has broadened the scope of the analysis considerably.

That being said, the number of evaluations, reviews and completion reports that exist, and on which the analysis is built, is actually rather limited compared to the importance of the priority area in Danish development cooperation. The reviews and evaluations conducted naturally reflect the history of the individual programmes, which are carried out in very different and often complex contexts, each with a unique set of challenges. This obviously influences the robustness of observations, findings and conclusions, and thus of the evaluation report as well.

With these considerations in mind, the following sections will, within the context of the Evaluation Questions and based on documentation and interviews, identify the approach and path that the Danish support has been pursuing. This covers the results at outcome and impact level, as well as the contributing or constraining factor and lessons learned.

3.1 Scope and aim of the Danish support

OUTLINE OF THE PRIORITY AREA AND THE DANISH ENGAGEMENTS

From 2006 to 2016, Denmark has had bilateral programmes with a rule of law and access to justice sector focus in a number of countries such as: Bolivia, Nicaragua, Benin, Ghana, Zambia, Niger, Kenya, Mali, Tanzania, Uganda, Mozambique, Nepal, Georgia, Moldova, Kosovo, Albania, Bhutan, Bangladesh, China, Vietnam and Cambodia (some of which are/were priority/programme countries, others are recipient countries meaning countries that receive support without being a priority/programme country). The Danish-Arabic Partnership Programme also contains minor elements of rule of law and access to justice through support to justice sector reform, which is part of interventions implemented by DIHR and other organisations.

The Danish programme and projects target both on the demand side (e.g. through legal aid/services or support to CSOs) and on the supply side (e.g. the formal justice sector actors but also informal justice service providers). This two-tier focus is regularly emphasised in reviews and evaluations as an appropriate choice¹⁶. The 2012 *Right to a Better Life* Strategy introduction of HRBA (followed by the 2013 Guidance Note on HRBA) has contributed further to this focus. The 2016 study on Lessons learned from the Danish Human Rights Based Approach (HRBA)

15 See for instance the Evaluation of Danida's 'Women in Africa' regional support initiative from 2011.

16 See e.g. the April 2014 Review Aide Memoire of the Bangladesh Human Rights and Good Governance Programme, Phase III.

3 PROMOTION OF RULE OF LAW AND BETTER ACCESS TO JUSTICE

observed that the application of HRBA has ensured that human rights principles have been more systematically considered across programming and have ensured a broader focus on the relationships between duty-bearers and rights-holders.

Rule of law and better access to justice is integrated into Denmark's strategic goals, principles and priorities for Development Corporation (most recently in "*World 2030 – Denmark's strategy for development cooperation and humanitarian action*"), although in different ways, sometimes as a means, sometimes as an objective and sometimes as a principle. It has to some extent been elaborated in two "How to Notes" on the justice sector from 2010 and in Country Policy Papers, such as, e.g. for Tanzania (2014-2018), Bolivia (2013-2018), Nepal (2013-2017) and Bangladesh (2005-2009).

In 2013, the guidelines for country policy papers and country programme documents were updated integrating HRBA as well as a ToC approach for support to the specific country. The guidelines also reflected a move from sector/thematic-approach programming to country programming.

A country policy paper must identify the strategic objectives of the support, e.g. to strengthen democracy, good governance, rule of law and respect for all human rights¹⁷. The policy paper also identifies the focus areas for the corporation, e.g. good governance and access to justice. Both the strategic objectives and the focus areas must be aligned with the country's own vision, strategies and policies¹⁸.

The focus areas are elaborated in the country programme document. If a country programme is developed¹⁹, it contains a thematic programme objective related to the focus area defining what changes the Danish assistance will contribute to achieve. A number of development engagements are formulated with corresponding outcomes. An outcome could be "enhanced access to justice facilitated by effective, sustainable judicial reforms and increased use of alternative dispute resolution and other alternative justice systems", as for example in the Kenya Country Programme 2016-2020.

17 See Country Policy Paper for Tanzania (2014-18).

18 Required by Danida Aid Management guidelines as well as the Paris Declaration on Aid Effectiveness.

19 Denmark has not formulated policy papers for all countries. If they are formulated, the country programme document covering the evaluation period has often not been produced (e.g. the Burkina Faso Country Programme 2016-2020 is based on the Denmark-Burkina Faso Partnership Policy 2013-2018) or the rule of law component of the programme document has been postponed (e.g. in case of programme document for Tanzania).

The reviewed programme and project documents shows that the Danish support is indeed aligned with national strategies, priorities or policies. This facilitates local ownership of the programme and ensures coherence with other interventions by government or other donors. It also facilitates the contribution of programme/project to the achievement of the overall national goals for the sector as they are formulated in the national strategies and policies. The process of presenting programme proposals before the External Grant Committee for their approval, contribute to the alignment with both Denmark's and the recipient country's overall strategies and policies.

The study of the programmes/projects documents also reveals that they often pursue development objectives at the impact level such as:

- Increasing or achieving respect for rule of law
- Improving justice for all or for particular target groups
- Improving access to justice for all or for particular groups
- Enabling justice sector institutions to deliver access to justice, and to protect and promote human rights
- Enhancing the role of justice sector institutions to provide justice

The review of the programme and project documents shows that the engagements are generally pursuing changes at the outcome level such as:

- Improved framework in line with international human rights standards (e.g. strategies, policies and legislation);
- Capacity development of the partner organisation enabling it to carry out its mandate, functions and objectives in line with recognised international human rights standards;
- The capacity of justice sector institutions, including the informal sector, the sector as a whole, as well as the individual institution, to improve service delivery;
- Legal aid services are promoted, recognized and improved.

SPECIFIC CHARACTERISTICS OF THE DANISH PROGRAMME ENGAGEMENTS

The programme engagements have different characteristics. One approach is sometimes **larger country sector programmes** targeting the justice sector, often as a sub-component of Good Governance Sector Programmes. The Danish engagements may also be **part of a larger**

3 PROMOTION OF RULE OF LAW AND BETTER ACCESS TO JUSTICE

programme or a sector wide approach with other donors in order to contribute to the implementation of components of national development plans or strategies, a national justice sector strategy or a national justice sector programme.

The programme engagements are commonly based on a series of interventions targeting justice sector institutions such as the Judiciary, the public prosecutor, the Legal Aid services, the Prison Service, the Police Service or national human rights or ombudsman institutions. Support may also be provided to alternative dispute resolution mechanisms, in order for them to deliver improved justice for all, in particular rights holders that have traditionally been disadvantaged. For instance, Component 2 of the Tanzania Governance Support Programme 2011-15 targeted the legal sector, based on a strategy to support key legal and judicial reform of the supply side of the justice system, while the Legal Services Facility²⁰ part of the programme supported organisations that assist individuals in claiming their rights and redressing grievances.

The programmes are anchored with the Danish embassies, implemented at times through Danida Human Rights and Good Governance Offices and/or with national or international implementing partners. On one occasion the programme has established a Government Secretariat as a separate entity with an office in the Ministry of Justice, and with Planning Units at each partner institution. The programmes are relying on international advisors assisting the implementing partner with technical assistance and capacity building. Engagement of Danish institutions such as DIHR, the Danish Ombudsman or the Danish judiciary is not, at the outset, envisaged in the programmes.

A second approach is basket funding through mechanisms such as the Democratic Governance Facility in Uganda (DGF, known as HUGGO prior to 2011)²¹; the Tanzania Legal Services Facility (LSF) or the Governance Facility Nepal (GF Nepal)²² that manage a basket fund provided by Denmark and other donors to support State and non-state actors in order to facilitate access to justice through, among others, capacity development of CSOs or projects for CSOs on provision of legal aid. These mechanisms operate as legal entities, but in the case of both DGF and GF Nepal the Danish embassy initiated the initiative and has been responsible for the managerial and administrative support to the Management Units. Another basket funding approach is when the recipient state has formulated a justice sector strategy, programme or plan of action and Denmark, jointly with other donors, provide support to its implementation through a basket fund (e.g. Legal Sector Reform

20 <http://www.lsftz.org/index.php>

21 <https://www.dgf.ug/>

22 <http://gfnepal.org/>

Programme I and II in Tanzania). In some cases, the support is given as sector budget support (e.g. Uganda 2006-2010 Democracy, Justice and Peace Programme).

A third approach is regional programmes²³ with rule of law and access to justice sub-components. The *Danish Arab Partnership Programme* (DAPP), where CSOs or DIHR also implement projects/components under the programme, is one of such programmes. Another programme is *the Africa Programme for Peace*, anchored with the Danish embassy in Addis Ababa, Ethiopia and e.g. with the African Union Commission (AU) and the Economic Community of West-African States (ECOWAS) as partners. The Phase III of this programme intends to improve the peace and security situation in Africa, as well as enhanced democratic governance, gender equality and human rights. Other regional programmes, such as the Horn of Africa Stabilisation Programme, and the Danish Regional Sahel Peace and Stabilisation Programme 2013-2017, include elements of rule of law as prerequisites for stability and conflict resolution.

Another regional programme is the 2012-2015 Central-America Pro-Derechos programme, that targeted the Inter-American Human Rights Court and the Commission, as well as regional NGOs and a number of national NGOs. The programme did not fall squarely into the usual understanding of Justice Sector Reform programmes, as the main focus was the regional human rights mechanisms, and consequently was not linked to a specific country's overall policy or strategy. However, an effective regional mechanism does contribute to protection of human rights at national level, in case the national justice system fails, as the regional system, due to their mandate as a court and a commission. In that sense, the regional system, as a final recourse mechanism, is also working as a part of the national human rights protection system. The system has many similarities with the European Court for Human Rights, and the African Commission and Court on Human and People's Rights.

A fourth approach is support through programmes or projects formulated by Danish CSOs or DIHR and implemented together with one or more local/national/regional partners. These programmes/projects are often funded by MFA (but they may also receive funds from other sources), e.g. through framework agreements, support directly from the Finance Act. The Finance Act has a human rights and democracy frame (which is a flexible tool to respond to emerging issues related to the promotion and protection of human rights and which is where core support to some of the key human rights organisations originates) but also grants to organisations for specific projects (individual appropriation notes to be granted by MFA or the embassy). Such programmes and

23 Although the DAPP is a regional programme, the actual implementation has a bilateral scope.

3 PROMOTION OF RULE OF LAW AND BETTER ACCESS TO JUSTICE

projects are implemented in countries such as Malaysia, Yemen, Tajikistan, Kyrgyzstan, Colombia, Honduras, Peru, Chile, Paraguay, Malawi and Rwanda, but also in the Danish priority countries.

THE WORK OF KEY DANISH PARTNERS

DIHR has, since the inception of its international department in 1997, identified rule of law as a priority area with focus on, e.g. implementation of human rights by police, prosecutors, courts, and informal justice providers. DIHR also contributes to legislative reforms relevant for the justice sector, or to align legislative frameworks with international standards. Consequently, DIHR is less focused on CSOs as the entry point for achieving an impact on the rights holders, but more focussed on the duty bearers. Rule of law is a component of most of DIHR programmes and projects regardless of region²⁴ with focus on access to legal aid, and capacity development of partners, in order for them to implement their mandate based on international human rights standards and the legislative/regulatory framework.

Other Danish organisations such as IWGIA, IRCT and DIGNITY²⁵ include access to justice elements in their programmes, most often as engagements targeting CSOs, in order to enable them to provide legal aid or advisory services to vulnerable groups or victims and to enhance their right to access to justice or for the CSOs to engage with the relevant duty-bearers.²⁶ A number of IWGIA's projects also involve access to justice in relation to land grabbing; access to remedies in relation to the conduct of companies; and access to international mechanisms such as the Inter-American Commission for Human Rights.

Common for the Danish organisations is the fact that they include research and documentation (either conducted by themselves or commissioned through them) on rule of law and better access to justice issues as part of their approach. Consequently, their work is not only based on experience from the field but also from research or studies into specific justice sector issues that provide knowledge of best prac-

24 See for instance DIHR programmes in Rwanda; Burkina Faso since 2006; Mali since 2008; Niger since 2001; Zambia since 2010; Zimbabwe since 2011; China; Cambodia since 2003; Vietnam; Tunisia; Yemen, Honduras and a number of regional pro-programmes e.g. Regional Advocacy and Networking for Access to Justice, East Africa; African Regional Mechanisms and the African Court for human rights.

25 See also Caritas Denmark, Programme de Renforcement de l'État de Droit et de la Démocratie au Niger (since 2004).

26 See Ujamaa Community Resource Team (UCRT) and IWGIA project on training of judges in May 2014 in Tanzania. Based on the success IWGIA and UCRT decided to extend the training to 200 Tanzanian lawyers. The project has both increased UCRT's capacity to deliver training on indigenous peoples' rights to high-profile groups and significantly raised its profile among the judiciary. IWGIA provided funding for the training, both international experts to facilitate the training and training materials.

tice; as well as drawing on methodologies and trends from other regions or countries.

THEORY OF CHANGE FOR THE DANISH APPROACH TO RULE OF LAW AND BETTER ACCESS TO JUSTICE

The review of programme and project documents shows that the Danish support in the area is guided by international instruments²⁷ as well as values, strategies, policies and instruments formulated by Denmark and the partner countries. Although there is no Danish strategy for the priority area, the documentation assessment clearly reflects an overall strategic objective to have rule of law strengthened and with well-functioning legal systems.

Rule of Law is a very broad and to some extent not a very tangible principle overlapping with programmes for governance, accountability, democracy building and human rights protection. Access to Justice is a component or part of justice reform, human rights protection and civil society promotion. Often, the reviewed programme/project documentation do not spell out the strategic contents of Rule of Law. Instead they rely on what seems to be accepted principles for defining rule of law. The evaluation has extracted the following six main principles of Danish Rule of Law Programmes. The principles are reflected in programme documentation, but also in e.g. Denmark's development cooperation strategies and country policy papers.

1. Economic growth. Rule of Law is often linked to the objectives of promoting economic growth. A functioning justice system is perceived as a precondition for protecting property rights, upholding contractual regimes and solving economic disputes in a fair and equitable manner. A functioning dispute settlement system in economic matters will promote economic growth, stability and trust within society.

2. Poverty alleviation. An effective justice system, in particular at the lower levels of justice institutions, can protect and promote property rights and act as an economic agency of the poor. Many justice sector programmes focus also on support to informal law systems on the premise that such systems, if fairly administered, will underpin social and economic relations for poor people. Access to Justice projects support poverty alleviation through representation of poor and vulnerable groups.

3. Protection of human rights. Rule of Law is based on the principle that fair and functioning justice institutions will promote and protect the human rights of people as prescribed in laws and conventions. Rule of

²⁷ Programmes addressing European countries often refer to European standards (e.g. Council of Europe).

Law programmes are thus the instrument for enforcement of conventions and national legislation

4. Promoting civil society. Rule of Law seeks to empower civil society as representatives of the demand for justice. Civil society groups are supported to represent disadvantaged groups, interest groups and to demand accountability and protection of rights. Rule of Law programmes explicitly acknowledge advocacy work carried out by civil society.

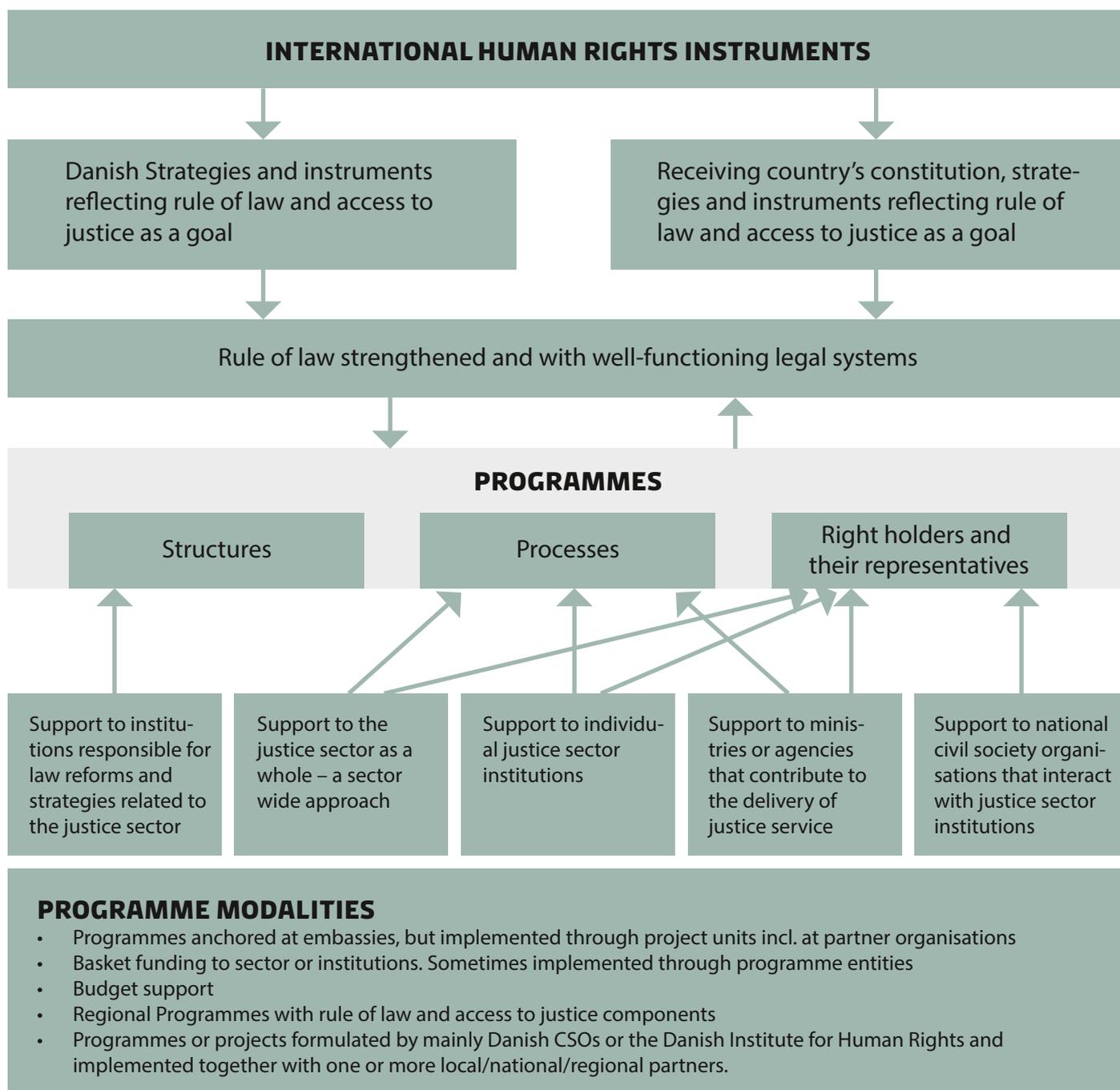
5. Governance and accountability. Rule of Law will often overlap with governance programmes or have complimentary strategic objectives. Justice reform builds on the principle that independent courts and autonomous lawyers will uphold the accountability of state institutions.

6. The humane society. Rule of Law programmes tend to contain an unwritten principle that just societies are good societies; that justice is a public good and an end in itself. A just society is one in which the arbitrary application of law, and state abuse of civil rights, is prevented through upholding rule of law. Thus, Rule of Law programmes build on a set of values that are cornerstones of the international human rights system, and a concept of a liberal social order that Denmark seeks to promote through development assistance. This may be called “the principle of the humane society”. This principle is not unique to Rule of Law programmes but underpins human rights and civil society projects as well.

Consequently, based on the documentation, the evaluation observes that when programmes or projects in the priority area of rule of law and better access to justice through justice sector reforms pursued to strengthen rule of law, then the programmes will, implicitly, contribute to the achievement of these six strategic objectives.

This is done through programmes/projects that target one or more of three intervention areas: structures (institutions responsible for development of the national framework); processes (institutions responsible for implementing the framework); and right holders (institutions and organisations that protect, assist or empower the rights holders to claim and protect their rights). The programmes/projects contribute through their outcomes and impacts to the strategic objective for the priority area, although the programme modality and channel may vary.

This approach is illustrated in the following diagram:



Similarly, and also based on the programme/project documentation, the Danish support generally works along the results chain and theory of change, as illustrated in the following table. In Section 3.2, the evaluation will assess the actual results achieved in the different projects and programmes which have been assessed, and how the results chains unfold as expressed in the project and programme documentation.

3 PROMOTION OF RULE OF LAW AND BETTER ACCESS TO JUSTICE

Engagement	Input	Outputs → Outcomes	Impacts	Strategic objective
Support to institutions responsible for law reforms and strategies related to the justice sector	<ul style="list-style-type: none"> • Technical, financial or human resources • Access to expertise • Access to peers and know-how • Access to reliable and credible partner • Continuous and flexible support 	<ul style="list-style-type: none"> • Improved framework in line with international human rights standards (e.g. strategies, policies and legislation) 	<ul style="list-style-type: none"> • Increasing or achieving respect for rule of law • Improving the formal and informal justice sector performance • Enhancing the role of justice sector institutions to provide justice • Improving access to justice for all or particular target groups 	Rule of law strengthened and with well-functioning legal systems
Support to the justice sector as a whole – a sector wide approach		<ul style="list-style-type: none"> • Capacity development of the partner organisation enabling it to carry out its mandate, functions and objectives in line with recognised international human rights standards 		
Support to individual justice sector institutions		<ul style="list-style-type: none"> • The capacity of justice sector institutions, including informal sector and alternative dispute mechanisms, the sector as a whole as well as the individual institution, to delivery its services is improved 		
Support to ministries or agencies that contribute to the delivery of justice service		<ul style="list-style-type: none"> • Legal aid services are promoted, recognized and improved 		
Support to national civil society organisations that interact with justice sector institutions				

The assumption, reflected in the reviewed documents, underpinning the engagements, is that if key actors perform their mandates and tasks effectively, individually or as a sector, within an enhanced framework (strategic, policy or legislative), it will contribute to an improvement of rule of law and access to justice for all – including the poor²⁸. Consequently, by addressing the structures, processes or right holders and their representative, changes can be achieved as exemplified in the text box below.

ASSUMPTIONS OUTLINED IN THE 2017 EVALUATION OF DANISH-NEPALESE DEVELOPMENT COOPERATION 1991-2016:

Justice component

- Assumption 1. Poor and disadvantaged Nepalese have very limited access to justice.
- Assumption 2. Access to justice by poor and disadvantaged Nepalese would be improved if formal structures (e.g. the

courts) and informal ones (e.g. community mediation) were strengthened.

- Assumption 3. Access to justice by poor and disadvantaged Nepalese would be improved if communication and coordination between the justice sector and non-state actors were strengthened.

Accepting the validity of Assumptions 1-3, it was reasonable to expect that if Danida provides financial and technical support to promote coordination in the justice sector and in the coordination between the informal and professional court system, then the access to justice for the poor and disadvantaged will be improved.

28 See AtoJ Programme in Zambia 2006-2011.

From the programme and project documents assessed as well as the evaluations, review and project completions reports, it has emerged, that the key feature of the programme engagements is focus on processes, such as the capacity of the justice sector actors (duty bearers/ supply side) and those representing the right holders (demand side). Structures (such as major legal reforms or development of justice sector strategies) are not the main entry point for the Danish engagements, but Denmark may contribute to larger sector programmes where other components relate to such reforms. However, support, e.g. in terms of capacity building, is at times provided to institutions that are responsible for initiating such reforms and strategies, as in the case of the programme support to the Justice Sector in Mozambique 2008-2013, where 5 million DKK out of total of 150 million DKK were allocated to law reform by enabling the Technical Unit for Law Reform to implement its law programme.

Engagements such as “Supporting the Kenya Constitution Implementation Process: Increasing Access to Gender Justice in Kenya 2013-2015”, “the Caucasus Programme 2010-2012 Promotion of judicial reform, human rights and minority rights in Georgia” also include components of support to institutions enabling them to suggest new legislation or legislative changes relevant for the functioning of the justice sector. Danish support is also regularly directed to the drafting of specific legislation relevant for the access to justice (e.g. input to legislation on national human rights institutions, anti-torture legislation or legislation to reduce violence against women). The importance of such contributions to law drafting should not be underestimated, but they have constituted a minor component in the Danish support in the priority area in terms of allocated resources.

LINKAGES AND SYNERGIES BETWEEN PROGRAMME AND POLICY LEVEL

According to the 2009 *Democratisation and Human Rights for the benefit of the people – strategic priorities for Danish Support for Good Governance* and the 2012 *The Right to a Better Life Strategy*, Denmark’s approach is to make more systematic use of UN human rights conventions, standards, norms and instruments in its development cooperation. These should, according to the 2012 Right to Better Life strategy, serve as the compass that guides Denmark’s political dialogue, concrete development interventions and partnerships.

Denmark is generally actively engaged in the normative development at international level, related to rule of law and better access to justice. For instance, Denmark was co-facilitator in the process leading to the *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels*, which was the first plenary meeting of the Assembly dedicated entirely to the rule of law, held in September 2012, and has regularly supported UN resolutions on rule of law and access to justice. More recently, Denmark lead the SDG working

3 PROMOTION OF RULE OF LAW AND BETTER ACCESS TO JUSTICE

group on rule of law in a Troika consisting of Denmark, Norway and Ireland that worked actively to ensure that rule of law was included in Goal 16 on Peace, Justice and Strong Institutions.

Danish CSOs also contribute to the adoption of international standards relevant for the rule of law and access to justice. As an illustration of this, IWGIA, IRCT and DIHR have all been engaged in policy making by the African Commission for Human and Peoples' Rights. IWGIA has for instance been engaged with the Working Group on Indigenous Populations/Communities under the Commission, and IRCT, together with its partners, has pushed for the 2015 adoption of the Resolution on the Right to Rehabilitation for Victims of Torture, that stresses the right to justice and remedies. DIHR has for many years been in a partnership with the Commission and during this engagement the Commission has adopted e.g. the Resolution ACHPR/Res.259 (LIV) 259 on Police and Human Rights in Africa in November 2013. In the Resolution, the Commission, among other things, calls for the police services of Africa to execute their duties with respect for human rights and the rule of law.

Consequently, the expectation is that there should be some level of synergies, coherence or linkages between the international policy level and the program level. In terms of the priority area rule of law and better access to justice, it is not difficult to integrate the international standards into programmes as most countries have ratified the major human rights conventions. This is also reflected in Danish programme and project documents covering rule of law and better access to justice, as they often refer to international human rights standards, either directly or indirectly.

Outputs, outcome and impacts indicators in the reviewed programmes and projects often reflect international standards. For instance, programmes are designed to support the establishment or the operations of a NHRI that is compliant with the so-called Paris Principles on NHRIs; or National Prevention Mechanisms as required under the Optional Protocol for the Convention Against Torture (OPCAT); improve the case or court management in the judiciary in order to deliver justice without undue delays. Consequently, such programmes are directly linked to the principles enshrined in the international policy level and constitute a translation of international standards to the national level through the programme engagements, although the programme documents do not often make explicit reference to the actual international standard.

With Denmark's focus on rule of law and access to justice both at international policy level and at programme level, it appears striking that Denmark has only made 30 recommendations under the UPR cycles

related to justice, according to the upr-info.org.²⁹ The recommendations have addressed 12 (17 recommendations) partner countries or countries where Denmark has been supporting programmes. 11 of the recommendations were accepted³⁰. This shows that Denmark is rarely using this instrument directly to supplement their programme level engagements and push for changes through the UPR process. Nevertheless, it should be noted that Denmark only gives a limited number of recommendations to each country. However, when it is used, and the recommendations are accepted, it becomes a strong base. This was the case in Vietnam where Denmark recommended that Vietnam should ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for, at all stages of legal proceedings, and this recommendation later became a platform for the justice sector programme that Denmark supports in Vietnam.

Despite the fact that Denmark rarely prioritises recommendations to partner countries or countries where Denmark has been supporting programmes, UPR recommendations are relevant for measuring progress within the area of rule of law, or design of programmes and projects. This was done in the 2013 Ghana Right to Services and Good Governance Programme which used the UPR recommendation as means of verification of achievement of results at outcome and impact level.

Whether the UPR recommendations will increasingly be used in programmes and projects is still uncertain, based on the reviewed documentation. Most countries had their first cycle of reviews concluded in 2011 after the formulation of several programme documents that are included as part of this Evaluation. The second cycle started in 2012 and ended in 2016. Reference to accepted or noted recommendations has gradually been integrated into project documents; in addition, mid-term as well as final evaluations are in some cases referring to the implementation status of accepted recommendations (see e.g. the 2013 mid-term evaluation of the Uganda Good Governance Programme 2011-2016 or the 2013 review of the Tanzania Governance Support Programme, 2011-2015). Other reviews or evaluations are more silent on this matter (see for instance the 2015 Final External Evaluation of the Justice Partnership Programme in Vietnam). However, the lack of reference to the UPR recommendations in evaluations could be explained by the fact that the UPR was not conducted prior to programme formulation. Other reasons could be that the process was not yet fully appreciated or known by those who formulated the evaluation or conducted it.

29 Upr-info is a Geneva-based NGO, supported e.g. by Denmark, dedicated to promoting the Universal Periodic Review.

30 During the first two UPR cycles more than 4,300 recommendations have been made under the justice heading. For instance, Mozambique has received 46 recommendations – including two from Denmark.

SCOPE AND AIM OF THE DANISH SUPPORT (EQ 2, 3 AND 5) MAIN FINDINGS

Findings related to programme and project rationale

Denmark's support is not anchored in an explicit Danish Rule of Law strategy but in international principles, Denmark's development cooperation strategies, and within the host country normative and policy framework as long as this is aligned with the international principles.

Denmark uses Rule of Law programmes as a driver for economic growth; poverty alleviation; effective protection of human rights; promoting civil society; promoting good governance, accountability and the humane society;

Denmark's support is based on a variety of suitable modalities targeting demand as well as supply side actors that can effectively contribute to results with the objective to have rule of law strengthened and with well-functioning legal systems

Denmark's support is based on an assumption that the rule of law and access to justice in partner countries is challenged due to lack of coherence and shortcomings in the justice system and/or individual key actors, and that particular vulnerable groups are excluded from access. Consequently, interventions target national structure, processes and rights holders and their representatives.

Findings related to implementation

Capacity development of key institutions and actors in the justice sector, and the ability of the sector to perform as a whole, is the main focus of Danish support, including bridging to the informal sector.

The choice of cooperation partners (ministries, judiciary, NHRIs, enforcement agencies, informal justice actors, alternative dispute resolutions mechanisms, legal aid providers and CSO working in the justice sector) are relevant.

By focusing on Rule of Law and access to justice as a priority area, there is automatically a linkage between the national and international level. The international level may influence national strategies, policies and normative framework, and the country might be held accountable at the international level through e.g. UN monitoring bodies and the UPR process. Danish support applies principles in international instruments in its programme engagement, and Danish based organisations support partners in accessing international bodies and mechanisms. Denmark is rarely directly using the UPR process to supplement the programme level engagement and push for changes. Consequently, focus on linking the international policy level to the national policy level through the MFA could be strengthened.

3.2 Measurable results of the Danish support

In this section, the evaluation traces, if the available documentation related to the Danida programmes as well as the programme/projects carried out by DIHR, IWGIA, DIGNITY and IRCT, confirm that the

expected outcomes have been achieved and have contributed to an impact or positive changes for the identified rights holders.

IMPACT LEVEL – TRANSFORMATIVE CHANGE

A partner country's overall progress within the area of rule of law and better access to justice is difficult to measure and indicators are multiple. However, one may expect, theoretically, that national commitment to the improvement of rule of law through strategies, policies and justice sector reforms, combined with external support such as the Danish programmes and projects, would generate some visible results. Nevertheless, partner countries have generally not improved their performance significantly in recent years, assessed against a number of rule of law indicators at macro level. A comparison of the ratings in e.g. the World Justice Project's Rule of Law index for 2012 and 2016 on *access to justice* and *effective criminal justice*³¹ does not show any significant progress for the rated countries that have received bilateral support to the justice sector (Kosovo, Benin, Niger and Mali are not rated). Although such ratings need to be interpreted cautiously, it is striking that during the period in question, only Ghana appears to have improved slightly or kept its scores, while Bangladesh, China, Vietnam, Tanzania and Zimbabwe have improved in *access to civil justice* but deteriorated in *effective criminal justice*.

The *Mo Ibrahim Index of African Governance Rule of Law*, sub-category *Rule of Law* shows more progress than the World Justice Project's Rule of Law index, when 2015 is compared to 2006, for the African countries that have received bilateral support to the justice sector. However, only Kenya and Zimbabwe have experienced a steady improvement in their ratings from 2011 to 2015.

The *World Justice Project's Rule of Law index* and the *Mo Ibrahim Index* are used as rule of law impact indicators in Denmark's Country Programmes for Kenya and for Myanmar, and as outcome indicators for the Uganda country programme.³²

Although these ratings are only indicators, they do show that Denmark is, or has been, supporting countries with a very vulnerable justice sector, where improved macro indicators are uncommon in the shorter term, but some macro sub-indicators show certain improvements. Furthermore, it is also important to acknowledge that improving general justice sector indicators takes time that may even go beyond a 10-year period. A fact that is already acknowledged in the Danish bilateral sector

31 See <https://worldjusticeproject.org/our-work/wjp-rule-law-index>

32 The evaluation of the Democratic Governance Facility, Uganda, (DGF Phase 1: 2011-2016) noted that the 2011 baseline for its impact indicator 2, which was based on the *Mo Ibrahim Index's* Governance Rule of Law score, fell from 56.6 in 2011 to 53.5 in 2016.

3 PROMOTION OF RULE OF LAW AND BETTER ACCESS TO JUSTICE

programmes, as they are long-term programmes and often a continuation of previous interventions.

Despite these indicators, it should be taken into account that it is impossible to assess whether their development would have been better or worse without Denmark's support to the sector and its institutions. Furthermore, a number of factors, outside the control of the engagement, may have contributed to the poor development. These factors are often described in the risk assessment in the programme/project documents and their corresponding mitigation strategies.

As the overall macro indicators do not provide much evidence on progress, it is essential that the programme/project document has envisaged how to measure this. Nevertheless, regardless whether an intervention is part of a bilateral county programme or implemented through a partner organisation, the challenge appears to be the same: the impact of the individual programme/project is difficult to track or measure, often due to lack of credible data³³; or results are not consistently measured³⁴; or the indicators have not been sufficiently clear from the start.

For instance, in one programme, the goal was to promote and protect human rights through enhanced and more equal access to services and justice. The corresponding indicator for access to justice was the increase in proportion of the population able to access quality, affordable and equal justice, in both the formal and informal justice systems. This indicator, with all its sub-criteria, is a very difficult to measure, to verify and link to outputs and outcomes of the programme's access to justice component.³⁵

In other cases, the targets at impact level have not been achieved as they have been too ambitious³⁶ or external factors have affected the impacts negatively³⁷.

The lack of a relevant baseline prior to programme start appears to be a challenge that many programmes are facing, as observed, for instance,

33 See evaluation of DIHR West Africa Strategy.

34 See for instance the Revue Aide-Mémoire Programme d'Appui à la Bonne Gouvernance au Burkina Faso (2008-2013) or the 2014 Review Aide Memoire on Human Rights and Good Governance Programme, Phase III, Bangladesh.

35 See the 2013 programme document for Ghana - Right to Services and Good Governance Programme.

36 See for instance the project completion report for the Regional Program for Human Rights and Democracy in Central America 2011-2012 (Pro-Democracy): "A relatively modest program on a regional level without government partners has very limited possibility to generate results to satisfy this development objective."

37 See the evaluation of Zambia 2006-2011.

IMPACTS THAT MATTERS

“The existence of the Legal Aid Forum (LAF) has left an indelible mark in enhancing the provision of legal aid in Rwanda and in the absence of a national Legal Aid Policy and where the Law on the Bar restricts the ability of lawyers working for CSOs to represent clients despite their clients in need of free legal representation.” (Three-year evaluation for the Legal Aid Forum (LAF) for the period 2008-2010 in Rwanda, p. 52. The programme was implemented through DIHR with support from Danida).

Although it is too early to talk about long-term sustained results (impacts), the “most important national outcome is the mere existence of the fund [the Justice Initiatives Facilitation Fund supported by Denmark], which has functioned well and made it possible to support and link up several NGOs in creating and broadening the space and possibility for NGO actions within the justice sector” (Evaluation of 2010-2015 Vietnam Justice Partnership Programme, p. 63).

“Work on development and enforcement of sentencing guidelines contribute to a fairer and more *transparent* justice delivery system.” (2015 Annual Review of the Uganda Good Governance (UGOGO) Programme p. 13).

“In total, the evaluation estimates that somewhere between 30,000 and 40,000 poor and vulnerable people, most of them women and children, will have benefitted directly from the improved VSU services and access to the Legal Aid Board that have been supported through the AtoJ Programme interventions, mainly in the period 2009-11. Poor women and children that previously did not know where to go or were not confident about going to the VSUs, are now attending the VSU Offices to present their case and ask for assistance. (2012 Evaluation of the Access to Justice Programme in Zambia, 2006-2011, p. 55-56).

in the 2012 Desk Review of the Use of M&E Frameworks in Sector Programme Support.³⁸

Other factors related to the management and evaluation of the programme, such as lack of monitoring of outcomes during implementation, may also contribute to difficulties in assessing the actual results (mostly at outcome and impact level), see e.g. the 2013 review of the Tanzania Governance Support Programme, 2011-2015.

Despite these overall challenges, the evaluation finds that the engagements may still have contributed to an impact or future transformative change, although the impact, envisaged in the programme or project document, is not fully or partly measurable. Several evaluations that have been analysed find that some impacts (and outcomes) are visible and traceable. These impacts are sometimes based on the assumption that, by the mere fact that a programme is implemented, partners’

38 Published by: Ministry of Foreign Affairs of Denmark Evaluation Department, www.netpublikationer.dk/um/11231/pdf/ME_framework_web.pdf

capacity is built, and that these partners have become recognised actors in the justice sector which has, therefore, contributed to an impact.³⁹ In other occasions, the evaluations conclude that the engagement is likely to facilitate future impacts.⁴⁰ For instance, it was found in one evaluation, that criminal sector reforms supported and the legal aid system strengthened, has good prospects of transformative impacts that could be sustained.⁴¹ Although these are not measurable impacts benefitting the rights holders at the end of the programme, they increase the possibility that rights holders in the future will experience a transformative change.

OUTCOME LEVEL: VISIBLE AND MEASURABLE RESULTS THAT MAY CONTRIBUTE TO IMPACT

The analysis of the evaluations, reviews and project completion reports shows it is possible to trace that the outputs envisaged in the engagements are resulting in measurable outcomes. As it is outside the scope of this evaluation to list the multiple outcomes of all programmes assessed as part of this evaluation achieved over the evaluation period, they have been purposefully clustered as shown in the following table.

39 See for instance the 2013 review of DIHR, page 71.

40 See for instance the the 2015 mid-term review of the 2012-2015 Central-America Pro-Derechos programme.

41 See e.g. the Evaluation of the Danish Neighbourhood Programme 2008-2015.

3 PROMOTION OF RULE OF LAW AND BETTER ACCESS TO JUSTICE

Engagement	Input	Outputs → Outcomes	Impacts
Support to institutions responsible for law reforms and strategies related to the justice sector	<ul style="list-style-type: none"> • Technical, financial or human resources • Access to expertise 	<ul style="list-style-type: none"> • Legislative framework improved or reformed in line with international human rights standards⁴² • Mainstreaming of national and international human rights into legislation, decisions, enforcement, processes and training⁴³ 	Increasing or achieving respect for rule of law
Support to the justice sector as a whole – a sector wide approach	<ul style="list-style-type: none"> • Access to peers and know-how • Access to reliable and credible partner 	<ul style="list-style-type: none"> • Targeted key justice sector institutions or organisations (e.g. Ministry of Justice; the Judiciary, police and prosecutors, individual courts, legal aid providers and national human rights or ombudsman institutions) have their capacity improved through capacity development enabling them to deliver their mandate⁴⁴ 	Improving justice for all or particular target groups
Support to individual justice sector institutions	<ul style="list-style-type: none"> • Continuous and flexible support 	<ul style="list-style-type: none"> • Creation of an understanding of the justice sector as a whole, and not isolated institutions in terms of a “justice sector wide approach” enhancing the coordination, collaboration and communication amongst the institutions and towards the society⁴⁵ • Informal justice sector/Alternative Dispute Resolution mechanisms contribute to justice sector delivery of services and acknowledged as relevant alternative by the formal justice sector actors⁴⁶ 	The entire justice sector (formal and informal) deliver access to justice based on rule of law

- 42 See e.g. the “Evaluation of the Danish Neighbourhood Programme 2008-2015” or the evaluation study “Lessons learned from promoting gender equality in Danish development cooperation 2016 - Burkina Faso: Law to reduce violence against women”.
- 43 See e.g. the 2013 review of DIHR p. 71 (manuals for and training of Police and National Guard in Niger were completed show that police and the National Guard have internalised and act on human rights principles); “the Caucasus Programme 2010-2012 Promotion of judicial reform, human rights and minority rights in Georgia - final report prepared by the secretariat general of the CoE.
- 44 See e.g. “Supporting the Implementation of the New Kenya Constitution: Increasing Access to Gender Justice in Kenya” 2013-2015 (project completion report); Evaluation of 2010-2015 Vietnam Justice Partnership Programme (and 2015 completion report Justice Partnership Programme, Component 3: Justice Initiatives Facilitation Fund) or the 2017 Evaluation of Danish-Nepalese Development Cooperation 1991-2016, annex F and the engagement with the Office of the Attorney General.
- 45 See 2012 Evaluation of the Access to Justice Programme in Zambia, 2006-2011; Evaluation of DIHR’s Partnership Programme with the General Secretariat – Council of Legal and Judicial reform (GS-CLJR) in Cambodia (2001-2012), September 2012; the Evaluation of 2010-2015 Vietnam Justice Partnership Programme or the project completion report “Support to the Rule of Law and Access to Justice” in Kosovo 2010-2013.
- 46 See e.g. the Democratic Governance Facility, Uganda (Phase 1: 2011-2016) - Final Evaluation Report and support to the Local Council Courts, the Ghana Review Aide Memoire (RAM) 2012 of Good Governance and Human Rights, Phase II or the 2017 Evaluation of Danish-Nepalese Development Cooperation 1991-2016, annex F.

3 PROMOTION OF RULE OF LAW AND BETTER ACCESS TO JUSTICE

Engagement	Input	Outputs → Outcomes	Impacts
Support to ministries or agencies that contribute to the delivery of justice service		<ul style="list-style-type: none"> Guidelines for decision-making, handling of potential offenders or assistance to victims improved creating stronger protection of the right holders⁴⁷ Changes in the institutions and their staff's attitudes towards human rights, victims of human rights violations, vulnerable groups as well as accused and convicted persons⁴⁸ 	Enhancing the role of justice sector institutions to provide justice
Support to national civil society organisations that interact with justice sector institutions		<ul style="list-style-type: none"> Legal aid services within all areas of law provided by state or CSOs and accessible to rights holders, including vulnerable groups⁴⁹ Rights holders being sensitized about their right to access to justice⁵⁰ Public authorities increasingly being held accountable by independent institutions for non-delivery of their service or failure to implement their mandate or functions⁵¹ 	Improving access to justice for all or particular groups

These outcomes of the engagements may not lead to any immediate impact or transformative changes at macro level, but the evaluation – and review reports, at times, observe that achieved outcomes are likely to contribute to changes over time⁵². The fact that the results of the engagements are not reflected in macro level indicators is not the same as that the individual right holders do not experience any change

- 47 See e.g. “Supporting the Implementation of the New Kenya Constitution: Increasing Access to Gender Justice in Kenya” 2013-2015 (project completion report) or the “Promotion of judicial reform, human rights and minority rights in Georgia - final report” prepared by the secretariat general of the CoE.
- 48 See e.g. evaluation of DIHR West Africa Strategy 2012; “the Caucasus Programme 2010-2012 Promotion of judicial reform, human rights and minority rights in Georgia - final report prepared by the secretariat general of the CoE or the evaluation study “Lessons learned from promoting gender equality in Danish development cooperation 2016 – Bolivia: Police unit enabling duty bearers to respond to violence.
- 49 See e.g. final evaluation of the Democratic Governance Facility, Uganda (Phase 1: 2011-2016), the “three-year evaluation for the Legal Aid Forum (LAF) for the period 2008-2010” (Rwanda) from 2010, the 2017 Evaluation of Danish-Nepalese Development Cooperation 1991-2016, annex F, or the Evaluation of 2010-2015 Vietnam Justice Partnership Programme.
- 50 See e.g. the Democratic Governance Facility, Uganda (Phase 1: 2011-2016) - Final Evaluation Report or the 2013 review of the Tanzania Governance Support Programme, 2011-2015 and the role of the Legal Service Fund training of paralegals or the 2014 Review Aide Memoire, Human Rights and Good Governance Programme, Phase III, Bangladesh.
- 51 See e.g. “Evaluation of the Danish Neighbourhood Programme 2008-2015” (the role of Ombudsman institutions) or the project completion report 2011 on the “Support for Human Rights Litigation in Zimbabwe 2010-2011) or the 2015 mid-term review of the 2012-2015 Central-America Pro-Derechos programme.
- 52 See for instance the Evaluation of the Access to Justice Programme in Zambia, 2006-11.

due to the engagement. For instance, a prisoner in Uganda who has been released after years of pre-trial detention, due to an intervention by paralegals organised through a Danish programme, will sense a real change and impact in his life.

It should be emphasised that several evaluations are questioning the application of indicators at outcome level, making it difficult to assess the achievement of expected results of a programme. Again, the indicators could, for example, be too ambitious: a baseline is not applied adequately; indicators are output rather than outcome indicators; results beyond activity and output levels are undocumented or unmonitored; or indicators depend on factors outside the control of the programme. This is further considered in Section 3.3. on factors influencing results.

For instance, in the Uganda Good Governance Programme 2011-2016 one of the indicators for Component 2 on *Support to the Justice, Law and Order Sector* is the percentage of the public with confidence in the justice system. However, the programme component targets the judicial system and not the larger justice system that includes all Justice Law and Order Sector actors. Consequently, the mid-term review of the Programme recommended that the indicators for support to Judiciary should be reviewed as they did not reflect outputs and outcomes relevant for the component and was dependent on factors completely outside the control of the component.

The challenge of evaluating outcomes and impacts of development engagements is, of course, not specific to rule of law programmes. It is also an issue that has been regularly discussed, e.g. at the Council for Development Policy at its meeting December 18, 2013, where the use of the theory of change was highlighted as a methodology to strengthening the focus on outcome and impact by fleshing out the chain of results and how to achieve outcomes and impact. Real-time evaluation was, at that time, also regarded as a methodology to focus on outcome and impact by continuously considering the progress towards outcome and impact during programme implementation, but the specific methodologies were still in process of being developed. In October 2014, Danida launched its first test of real-time evaluation of country programmes (the Kenya Country Programme)⁵³. however the results of the first test are still pending, as the planned evaluation period was 2015-2019.

53 A real-time evaluation is defined as “an evaluation approach, which from the start of the programme defines an independent, external evaluation process that follows the ongoing implementation and regularly reports evaluation findings. The focus will be on assessing progress so as to identify and support any programme adjustments needed, rethinking of theories of change and their assumptions, and continuous learning as well as on capturing selected (prioritized) results at outcome and impact level in a relevant and timely manner.”, see Terms of Reference, Real-Time Evaluation of the Danida Country Programme for Kenya.

ARE THE ACHIEVED OUTCOMES ATTRIBUTABLE TO THE DANISH INTERVENTIONS?

Another question is whether it is possible to attribute the outcomes to the Danish interventions or if the interventions by others would have led to the same outcomes. This linkage is rarely assessed in evaluations, as it is virtually impossible to establish the counterfactual in the type of support programmes Denmark implements. The 2015 review of the 2012-2015 Central-America Pro-Derechos programme, observed for instance that it is too early to assess if support provided under the programme would result in an impact, and that such impact could also be the result of, for example, previous Danish projects or the contribution by others, including other donors.

However, there are other examples indicating that Danish support is significant for the achievement of the outcomes. One of the more thorough and recent evaluations, the 2017 Evaluation of Danish-Nepalese Development Cooperation 1991-2016 (also covering rule of law and access to justice programmes from 2006 to 2016) assessed the contributions Denmark made to changes recorded over time. Although the evaluation found that such an analysis was at the edge of what is possible in evaluation work, the evaluation approached the challenge by first describing 'before' and 'after' conditions for each intervention in each sector. Information was then triangulated to form an impression of the degree of change that could be attributed to Denmark. This was applied to all the main themes of cooperation, and at an aggregate level.

The Nepal evaluation concluded that amongst Denmark's main contributions were support to human rights, by helping detainees, poor and marginalised people gain access to justice and legal aid as well as police training, and gender targeting on access to justice, media, and rights.

The evaluation confirmed that Denmark adds specific value to the achieved results, and it was possible to trace that Danish values were reflected in the achievements of results, with notable characteristics, (for example, moderation, neutrality and reliability), preferences (for example, for partnerships and progressive change), and areas in which Danish leadership was exerted (for example, on human rights). The evaluation also noted a particular Danish approach: compared to other donors Denmark was among the best suited to the particular needs for intimate, non-judgemental, long-term encouragement.⁵⁴

This observation harmonises with the 2016 evaluation study "Danish Development Cooperation from a Partner Country Perspective" (see box).

DENMARK'S VALUES OF LONG-TERM COMMITMENT AND PARTNERSHIP CONTRIBUTE TO RESULTS

"Partnership ties grow stronger over time and translate into more favourable perceptions of performance. Denmark's priority countries see Danish development partners as particularly influential in shaping their reform decisions and helpful in implementing reform efforts, compared to non-priority countries ...This dynamic appears to become more pronounced over time: long-time partner countries rate Denmark the highest on agenda-setting influence and helpfulness in reform implementation, followed by more recent partner countries. ...These findings suggest that Denmark's strategy of building long-term partnerships is working well and is likely to generate even greater influence over time with counterparts in its priority countries." (Danish Development Cooperation from a Partner Country Perspective p.9).

54 See p. 16 of Evaluation of Danish-Nepalese Development Cooperation 1991-2016.

Although the documentation does not confirm that the outcomes are attributable to Denmark's support alone, the outcomes may not have been achieved without the Danish support, because Denmark's support adds values, and specifically, the long-term engagement adds 'consistency' to the results chain. Therefore, sustainability of results may, as a consequence, be jeopardised when Denmark exits programmes or countries.

MEASURABLE RESULTS OF THE DANISH SUPPORT (EQ 3 AND 7) MAIN FINDINGS

Findings related to the linkage between the Danish engagement and results

Denmark's support contributes to traceable outputs and outcomes, that are likely to result in transformative changes for the immediate rights holders, but the macro-level indicators for the receiving country do not yet support significant changes.

Formulation of specific, measurable, achievable, relevant and time-bound indicators for outcomes and, in particular, impacts appears to be difficult.

Results are measurable at output and outcome level, but often evaluations are not able to conclude but only assume that results at outcome level have been achieved. This is due to lack of data, incomplete or no credible baseline, inadequate outcome indicators and outcomes that have been too ambitious. Without a good baseline and relevant outcomes/ impact and corresponding indicators, there is a risk that evaluations of programmes will not provide the necessary lessons learned to improve the programme, its successor or similar programmes in other countries.

Denmark's inputs might not be indispensable but add value for the achievement of results.

Findings related to the actual results that the Danish support has contributed to

Legal aid support, including awareness raising about rights to a remedy, appears to be a common feature in the Danish support. These types of interventions often perform well and are often implemented through a fund platform modality.

The Danish support has contributed to a series of results at structure, process and rights holders level, such as legislative framework improved or reformed in line with international human rights standards; capacity built within justice sector organisations; a wide sector approach, including the informal sector, has been pursued; duty bearers are being held accountable and the rights holders have been sensitized about their right to access to justice.

3.3 Factors influencing achievements of results

Programmes and projects are based on the assumption that if a certain intervention A in a given context is carried out, then this will result in B, contributing to C. However, the reviewed documentation, in terms of

evaluation, reviews and project completion reports, as well as interviews, show that a variety of factors may impact this results chain negatively or positively. In the following section, the main factors reflected in the documentation or from the interviews are described and clustered under different headings.

Although it is possible to identify a series of factors that have influenced the implementation significantly, conclusions on the relevance of these factors must be used with caution as they might be very context specific. Furthermore, an assessment of contributing or constraining factors, based on existing evaluations of larger regional programmes, country programmes, components of programmes or projects of different sizes and characteristic, is also limited by the fact that the individual evaluation or review was guided, at that time, by its specific purpose, and also by the format or the character of the programme and project itself.

The following analysis is divided into different categories of factors. First, the analysis discusses the external variables. These variables are usually outside the control of the programme/project and may impact the intended outcomes and impact, negatively or positively. They will usually not affect the output level significantly.

Second, the analysis will focus on the internal variables. These variables relate to the ability of partners in the programme/project to move from activities to output to outcomes and impact as intended. Such variables should be within the control of the programme/project. They may cause inadequate results or slow down implementation of the programme/project. The individual variable may only affect part of the programme/project, and there are no actual examples of engagements that have not achieved any of their intended outputs.

Lastly, the analysis will look at the inputs that are essential for the implementation, e.g. nature of assistance and resources, and the context in which these inputs are provided. Their significance for achieving results may vary depending on the nature of the programme/project. It is however possible to cluster the inputs into some categories that generally will have influenced or constrained the achievement of result.

Although reviews, evaluations and project completion reports describe how the programmes were implemented, they rarely link achievements to identifiable interventions, approaches or events for the purpose of describing what specifically contributed positively to results. Instead they identify factors of a more general nature that have influenced the implementation positively.

EXTERNAL VARIABLES

The local context and the commitment of the government as well as state institutions

The Danish programmes are mostly carried out in countries with a high level of political, religious, tribal, ethnical, cultural, racial, gender complexity at local or national level. This is not necessarily a hindrance but calls instead for a tailored approach and a solid context and risk analysis, before engaging with realistic focus on factors that may hinder the programme moving from outputs to outcomes, as observed in a number of reviews and evaluations.⁵⁵

External variables that affect the political stability or the commitment from the State may always affect a programme, regardless its character. However, justice sector programmes are particularly sensitive, because they are characterised by the fact that justice sector reform and access to justice may never be fully achieved without the involvement of the state. Consequently, several evaluations, despite acknowledging the intentions of the programmes, have observed that the lack of engagement from state institutions has negatively influenced their intended outcomes.

On the other hand, changes in political will may also suddenly open a window of opportunity. For instance, in Nepal, the appointment of a new Attorney General changed the attitude of the government, after which donors were contacted to support a five-year strategic plan for the Office of the Attorney General. According to the HUGOU report *Nepal 2014 Rights and Governance for Development*, the Danish support modality was flexible, and a pilot project was initiated speedily. The political will was also mentioned as a contributing factor in the 2017 evaluation of the Danish Neighbourhood Programme 2008-2015 as the Council of Europe was able to obtain results on adoption of key legislation in the countries under the Programme, by leveraging the political will for closer association with the EU.

National strategies, policies or plan of actions, general performance of the sector and the public perception of justice sector institutions

Several evaluations have observed that the absence of national sector strategies or plans of action may have hindered realization of intended outcomes and impacts as the sector will suffer from lack of direction. Without such strategies, the individual institutions (and donors) may focus more on their individual performance and less on the role of the supported institution in the chain of justice. However, evaluations also regularly emphasise that the performance of other sector institutions is an important factor, which is likely to impact the effects of support to

55 See e.g. the 2016 review of DIHR programme in China (2014-2016) or the 2016 Uganda DGF evaluation.

3 PROMOTION OF RULE OF LAW AND BETTER ACCESS TO JUSTICE

partner institutions simply because the chain of justice is not better than its weakest link.⁵⁶ Bringing the justice sector institutions together, for example by creating a platform for discussing common challenges and exchange of experiences, has sometimes been suggested as an instrument to minimize shortcomings in the system.⁵⁷ Also public perception of corruption in the justice sector is important. If the sector is perceived corrupt, the rights holders may not use the system or trust that the partner institutions will make a difference.⁵⁸

Donor coordination

Coordinated sector approaches amongst donors have generally been applied. They provide a number of benefits as well as providing the development partners with a platform for pushing the government and sector towards agreed objectives. Their leverage simply increases, and donor coordination allows donors to present a united voice to the government and to demonstrate solidarity with civil society and other actors, as observed in the 2016 Uganda DGF evaluation. On the other hand, the 2012 evaluation of the Access to Justice Programme in Zambia observed that it may impede planning and implementation of joint programming, when the development partners apply different approaches and procedures, and may even lead to decreased motivation and ownership by the national partners.

Partners' perception of Denmark

Another, and often un-noted, factor, that is observed in interviews and confirmed in the documentation is the good reputation and credibility attributed to Denmark, Danida, Danish CSOs and institutions.

International policy level

Many of the interviewed interlocutors have observed that the international policy level (e.g. in terms of the UPR mechanism) has an impact upon the programme level and on dialogue with the national duty bearer and partners. Nevertheless, reference to the impact of international policy development or international processes is rarely made in the completion reports, reviews or evaluations as a factor that may contribute to, or constrain, the achievement of outcomes and results within the field of rule of law and better access to justice. A reason could be that those authoring the reports are not focusing on this aspect in their reporting.

56 See for instance the 2012 evaluation of the Access to Justice Programme in Zambia; the Ghana Review Aide Memoire (RAM) 2012 of Good Governance and Human Rights, Phase II.

57 See for instance the Mid-Term Review, 2010, Ghana Good Governance and Human Rights Programme, Phase II.

58 See for instance the Review Aide Memoire for the Uganda Good Governance (UGOGO) Programme, May-June 2015.

PARTNERS' PERCEPTIONS CONTRIBUTE TO RESULTS AND DENMARK'S LEVERAGE

"DIHR seems to have built a level of trust in its capacity with partner institutions which reflects positively on other Danish interventions, especially in West Africa..." (p. 7, 2013 review of DIHR)

"The Tunisian component of DIGNITY's regional programme, 'Freedom from Torture in the Middle East and North Africa – Ministry of Justice' achieved considerable success in improving government and civil society capacity to monitor and respond to instances of torture. This is largely attributed to the carefully nurtured relations with the Tunisian Ministry of Justice" (2015 DAPP evaluation)

INTERNAL VARIABLES

Commitment, capacity and capability of the partner organisation, including capacity to monitor and evaluate implementation

A condition for achievement of results is the commitment from the management and staff of the partner organisation and the feeling of ownership. The documentation and interviews sometimes identify these explicitly as contributing factors, but they are also highlighted as constraining the implementation⁵⁹. The documentation and interviews further point to capacity and capability as a common factor for constraining achievement of results. This may include e.g. weak organisational infrastructure, case management systems or management performance systems. Examples of weak organisational capacity negatively impacting the outcomes of the engagement are numerous, and this may even impact the monitoring of the engagement's successes⁶⁰, when the partner organisation does not have the ability to monitor and report on progress.⁶¹

Consequently, there is a need to assess the partners' capacity when developing the programme as pointed out in several evaluations. The 2015 Evaluation of the Danish Arab Partnership Programme observed for instance that a more systematic use of capacity building needs assessment of partners was required, a recommendation that was repeated in the 2016 Uganda DGF evaluation.⁶²

The design of the programme and the capacity of the programme management to implement the programme

Not only the capacity of the national partner may affect the intended outputs and outcomes, but also programme design. If it is too ambitious, spreading its activities and limited resources, then the programme is unable to ensure its planned outcome and impact, as noted, for instance, in the 2012 review of the Bolivia Programme for Access to Justice 2010-2012. Realistic indicators and efficient planning, management and evaluation systems are highlighted as positive factors. As

59 See for instance the project completion report 2014 on *the human right and good governance and democratization phase 3 Indonesia*, or the 2011 project completion report on *Support for Human Rights Litigation* in Zimbabwe.

60 See for instance the 2014 Review Aide Memoire of the Bangladesh Human Rights and Good Governance Programme, Phase III.

61 A 2012 Desk Review of the Use of M&E Frameworks in Sector Programme Support observed for instance that partner organisations may not have the capacity to apply M&E and implementing partners were still mainly reporting progress on activity and at times on output level. This undermined the evaluability of sub-components' results and would also hamper the programmes' ability to gather data relevant for programme outcome and impact.

62 The Evaluation of Capacity Development in Danish Development Assistance (2015), concluded that only limited ex-ante analysis is undertaken of the organisational, technical and human resource contexts prior to the launch of different Danida programmes.

3 PROMOTION OF RULE OF LAW AND BETTER ACCESS TO JUSTICE

observed in many reviews and evaluations, some of the main challenges in tracing results is the lack of good indicators and baselines, as well as achievable and measurable outcomes and impacts

A preferred implementation modality appears to be (basket) funding mechanisms for justice sector actors and legal aid providers in particular, e.g. through a small grant system. This methodology, although sometimes criticized for making the small justice sector NGOs too dependent on donor funding, has been praised for reaching out to the most vulnerable groups, having an impact and developing the capacity of the smaller justice sector actors.

Programme design that focuses on organisational development of the individual institution or organisation or processes within the control of the partner, such as specific case flows, also seems to generate the intended outcomes, generally speaking.

Specifically, larger programmes, such as the *2010-2015 Vietnam Justice Partnership Programme*, require adequate programme management that is capable of keeping the programme on track and ensure that synergies are used. However, short-comings in the management setup may also impact the realisation of the programme, as observed in the 2015 evaluation of the *Justice Partnership Programme*. The short-comings in the *Justice Partnership Programme* included e.g. the programme management structure being unwieldy and overly demanding in terms of staff resources; and the multiplicity of Steering Committees required a considerable workload, which stretched the resources of all the institutions and donors involved.

Linkage between the formal and informal justice system

According to the How to Note on Informal Justice, ignoring the informal systems may exclude large segments of society from access to justice. When the formal justice sector is distrusted or not accessible, the rights holders are even more motivated to use informal systems. Consequently, the informal justice system must be considered in programmes targeting the justice sector nationally or locally in order to achieve results.

The 2017 Nepal country evaluation observed that the 2003-2008 justice component was based on the relevant assumption that if Denmark provides financial and technical support to promote coordination in the justice sector and in the coordination between the informal and professional court system, then the access to justice for the poor and disadvantaged will be improved.⁶³ The 2009-2013 justice component had the practical aim of promoting access to justice through informal justice

63 See Annex E – evidence of design quality of the intervention.

systems to compensate for weaknesses in the formal justice system, with particular emphasis on community-based mediation and a pilot programme on traditional dispute resolution.⁶⁴

The importance of targeting both the formal and informal justice sector, including alternative dispute mechanisms, in order generate results has been highlighted a number of times in evaluation and reviews. For instance, in the 2016 Uganda DGF evaluation, it was observed that the unlike the formal courts in Uganda which were inaccessible to the majority of the Ugandan population, the supported local council courts were accessible for the rural and urban poor. Support under the programme had been very effective and it was recommended that the “future DGF II design should enhance the focus on the informal justice system as an integrated part of the justice sector reform and build on the lessons learnt from DGF 1”.⁶⁵

The nature of the services, that the partner organisation delivers

The very nature of services, that the partner organisation delivers, may also contribute to the achievement of outcome and results. It is rather remarkable that a very large number of Danish engagements include support to legal aid services and appears, more or less, to be a component in engagements worldwide. At times, they are part of justice sector programmes, sometimes they are part of programmes or projects implemented through DIHR, IWGIA, DIGNITY or IRCT and sometimes they are included in, for example, Civil Society programmes. The engagements cover legal aid services in relation to the formal as well as the informal justice sector.

The evaluations, reviews or project completion reports are generally positive about the results generated from such engagements and acknowledge that they seem capable of achieving results at local levels. However, they rarely manage to impact the legal aid system at national level and access to legal services do not guarantee access to justice if the rest of the sector fails to perform. It is generally unclear why the engagements with local legal aid service providers seem to achieve outputs, outcomes and impact at local level. One reason could be that it is easier to formulate measurable output and outcomes indicators in relation to legal aid services, that often includes awareness-raising. Another reason could be that the very nature of the engagement might be a contribut-

64 See Synthesis Report p. 40.

65 See also the 2017 Nepal country evaluation observed that the 2003-2008 justice component was based on the relevant assumption that if Denmark provides financial and technical support to promote coordination in the justice sector and in the coordination between the informal and professional court system, then the access to justice for the poor and disadvantaged will be improved, Annex E - Evidence on design quality of the interventions and the Synthesis Report p. 40.

ing factor, as it benefits from internal variables, such as commitment and ownership, as well as external variables such as good relations with key stakeholders and the local community.

While many of the internal variables mentioned above may affect the achievement of results negatively, there are obviously also variables that may contribute positively. Most of them relate to proactively addressing the potential negative factors. For instance, proactively building the capacity of the partner institution may not only address the programme in question, but may also empower the partner institution, thereby making it more attractive to alternative funding, enhancing ownership and commitment, as was observed in, for example, the 2009 thematic review of DIHR. Other factors that may also have contributed to better results by creating ownership and sustainability are efforts to reinforce, not replace, local capacity, for example by using local experts, training institutions or experts from the neighbouring region.

INPUT

The Danish approach – value-driven, flexible, reliable and credible long-term commitment engaging with both the supply and demand side

Support to the justice sector is complicated and systematic changes are rarely visible within the short term, as some evaluations and reviews have observed. Consequently, long-term Danish commitment is key for creating partnerships, enhancing credibility, building the relationship with the partner and facilitating the partner's trust in the inputs delivered by Denmark and Danish organisations. That long-term commitment is an essential feature in the Danish approach, together with value-driven commitment and reliability, has been repeatedly emphasised in the assessed documentation and during the field visits of this evaluation to Uganda, Tanzania, Niger and Burkina Faso. This approach contributes to effectiveness as well as to the sustainability of results. Denmark's long-term support for human rights to, among others, Niger and Burkina Faso was perceived by the interviewed interlocutors to have led to substantial, identifiable improvements in human rights safeguards, and to significant capacity building among key institutions. The strategic use of Danish resources where they could achieve impact, was also perceived as having contributed to the sustainability of results. The Danish approach also includes flexibility in the implementation; see for instance the final report on Denmark's Caucasus Programme 2010-2012 Promotion of judicial reform, human rights and minority rights in Georgia.

Financial resources and funding model

Budget constraints in terms of insufficient funding from the state budget to justice sector institutions, or disconnection of funding from donors (not only from Denmark but also other donors supporting the sector or partner institution) may hinder the realization of the programmes. It is however not only cuts in the direct funding to the programme, that

may have a negative impact. Insufficient capacity at Danish embassies (stemming from financial cut-backs in the MFA as a whole) may also impact the management of programme and the capability to monitor the programme, as observed in the 2014 mid-term review of the human rights and governance programme in Bangladesh.

The actual funding modality may have many shapes, e.g. direct support to the institution(s) as project support, budget support, sector budget support or basket funding. There is no indication that one modality contributes to or detracts from, a better achievement of results than another modality. Nevertheless, the funding model where Denmark joins forces with other and bigger donors may have a negative impact on the benefits of the Danish approach, as observed in the 2015 DAPP Evaluation. To mitigate such adverse consequences, Denmark has attempted, according to the DAPP evaluation, to be active in the programmes by ensuring participation of Danish experts and participation in the various steering committees of multi-donor trust funds and agreeing jointly on M&E frameworks.

Capacity

Not only the capacity of the partner organisation is an essential factor. So is the capacity of the programme management organisation, and of the Danish support organisations. This includes provision of (or failure to provide) the necessary organisational setup and technical assistance, or the capacity of the experts provided to the programme/project. These are factors sometimes mentioned as constraining as well as driving factors. The evaluations and reviews also point out the importance of providing access to international and regional pools of substance/context experts. Exchange of experience with similar institutions in the region and twinning components in the programmes are appreciated and contribute to engagement; and to capacity building and improved results.

Technical resources

Most programmes/projects include the purchase of hard- and/or software such as vehicles, office and IT equipment or electronic case management systems. Previously, some programmes also included the building of facilities, but that approach appears to have been phased-out significantly in recent years. It is more common to purchase hard- and software under the programme. This may be justifiable for many reasons, but also has the potential for frustration, if not well-coordinated and based on need assessment, as observed in for instance the 2012 review of the *Access to Justice Programme in Zambia, 2006-11*.

4 FREEDOM FROM TORTURE

In this chapter, the focus turns to the policy level of Danish engagements exemplified through the priority area freedom from torture. As the analysis will show, this priority area is approached rather differently than rule of law and better access to justice, but there are still some similarities in relation to 'the Danish approach'. The analysis is based on document reviews, mainly drawing on internal communication and

CREDIBILITY OF INTERNATIONAL PARTNERS CONTRIBUTES TO RESULTS

"A key factor in success of criminal justice reforms has been engagement of the Council of Europe, through a delegated partnership. The CoE had the legitimacy and credibility to support the reforms... For both Moldova and Ukraine, the CoE has considerable authority, and the opinions issued by the CoE are widely discussed in public life. The governments therefore have a strong incentive to perform in order to comply with CoE standards (pp. 40-41, 2017 evaluation of the 2008-2015 neighbourhood programme).

reporting within the MFA (such as with the permanent missions to the UN or with foreign states' missions) and also including a field visit to Geneva, allowing the evaluation to discuss with key Danish partners based there. Discussions and interviews with IRCT, DIGNITY and DIHR has also provided invaluable insights and perspectives on the analysis.

4.1 Scope and aim of the Danish support

OUTLINE OF THE PRIORITY AREA AND THE DANISH ENGAGEMENTS

Unlike with rule of law and access to justice, the overall international normative framework on torture is fixed in non-derogable anti-torture provisions in the general human rights instruments, such as the Universal Declaration on Human Rights, the International Covenant on Civil and Political Right and the various regional conventions. Furthermore, the prohibition of torture is part of international customary law. The subject is further elaborated in the UN Convention Against Torture (UNCAT), ratified by 162 countries, and the related Optional Protocol (OPCAT). Furthermore, this normative framework has a corresponding infrastructure at UN level with four bodies and mechanisms designated to the subject: The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Committee Against

FACTORS INFLUENCING ACHIEVEMENT OF RESULTS (EQ 4, 6 AND 7) MAIN FINDINGS

A variety of **external variables** may influence the achievement of results. This includes the local context and the commitment of the government as well as state institutions; lack of national strategies, policies or plans of action. Other variables are the public perception of the justice sector, inadequate functioning of the justice sector as a sector, and failure to coordinate amongst donors. Lack of political commitment and perception of corruption in the sector are major obstacles. These are the most difficult factors to manage, but careful planning and context analysis, with focus on drivers for change and how to increase leverage, are potential mitigation strategies. Donor coordination or joint programmes, but also the recipient country's perception of Denmark and the recipient country's international commitments are useful tools for increasing leverage. Short-comings in the sector are sometimes addressed through sector-wide approach and support programmes that increase the understanding of the sector as whole.

External variables, e.g. changes in government, may also offer windows of opportunity for accelerating the results of the programme. The flexibility of the programmes enables Denmark to make use of these opportunities.

Internal variables influence the output and outcomes levels. They are generally manageable within the programme and relate to the partner's capacity and commitment as well as ownership from its management. These are also factors that are common to programmes outside this priority area.

Strategies to manage the negative impacts include that the capacity of the partner is assessed, expectations are managed and that the partners ability to monitor and evaluate the implementation is strengthened. Programme design and the capacity of the programme manager also contribute to the achievement of results. Flexibility in the support and long-term commitment are major factors that contribute positively to achievement of results.

Evaluations have highlighted that inclusion of informal justice sector/ alternative dispute resolution mechanisms contribute to results and that programmes focusing on legal aid services often achieve planned results. The reasons for their achievement are seen as being results of the programme design, that they are easier to measure at output and outcome level, as well as the fact that the mere access to the service is a transformative change in itself, although it does not necessarily increase access to justice, if other justice sector actors are not performing.

The Danish **inputs** to the programme in terms of human, financial and technical resources and provision of access to expertise are key to the achievement of results. The fact that the Danish support, including through Danish based organisations and institutions, is based on a Danish approach that reflects value-driven commitment, flexibility and credibility as well as long term reliable commitment engaging with both the supply and demand side, and that this approach is appreciated by partners, increases the Danish leverage as well as increases the partner organisation's credibility. However, failure to provide quality input or disrupt the input are negative factors that impacts the potential to achieve the expected results.

4 FREEDOM FROM TORTURE

Torture (CAT), the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT); and the UN Voluntary Fund for Victims of Torture.

The UN normative framework is regularly elaborated or confirmed by the member states through resolutions adopted either by the UN Human Rights Council (HRC) in Geneva or the UN General Assembly (UNGA) in New York, prepared in its third committee. The UN anti-torture mechanisms may also impact the understanding of the UNCAT and OPCAT by recommendations on concrete cases, issuing general comments or reviewing the periodic reports of the member states, as it is the case of the CAT or, for example, through their recommendations and their advisory mandate to member states.

The UN normative framework is complemented by regional instruments or systems in, for example, Europe, the Americas and Africa or the Arab League.

At national level, the norm setting is often guided by the international instruments that a country has ratified. Sometimes domestic legislation, instructions or guidelines are adopted or amended to be implemented or be aligned with international standards. In some jurisdictions, the domestic authorities are inspired by international norms, standards or guidelines when applying their national laws or implementing their mandate or functions.

The member states' commitment to, compliance with and application of the international anti-torture framework is monitored through the UN bodies (and through regional bodies) and processes. The UPR process is one of these processes. Each state submits a set of recommendations to the member state under review – ideally a maximum of three substantial recommendations. Then the often very long list of recommendations from the UPR review constitutes a future check list for all stakeholders. The member states' recommendations are often also reflecting its priorities for human rights dialogue.

However, the policy engagement is not only about addressing the normative developments. It also deals with capacity building and sensitization of diplomats and other actors that are engaged in the fight against torture at national and international level. If they grasp the importance, they might be capable of, or positioned to, impact on others within their systems. Side events during the sessions of HRC and UNGA in Geneva and New York, workshops, meetings, formal or informal dialogue are all instruments that Denmark uses in its policy engagements.

THE DANISH STRATEGIC APPROACH – CORE MODALITIES

Freedom from torture has been a key feature in Danish policy initiatives for many years. Denmark does not have a written strategy within this

area, but the evaluation analysis shows that Denmark has a clear strategic approach that is recognisable to other national and international actors. Based on the documentation and interviews conducted, it is clear that Denmark's approach is holistic and firmly based on the international anti-torture framework and infrastructure. The objective here is to apply all relevant means to push this framework at international level, as well as at national level in partner countries e.g. via partner organisations and CTI. This is done through a set of engagements and modalities that target the development of international and national policy frameworks (structures), the international processes and the capacity of those playing a role in those processes; as well as organisations that represent the interests of rights holders or that are able to link the representatives at national level to the international.

This strategic approach has been developed and fine-tuned over the past decades, touching all potential areas of engagement, such as international processes for policy development, support to international mechanisms and bodies; inter-government initiatives and support to Danish or international based organisations.⁶⁶ Denmark has every year since the 1990s and until 2013, been sponsoring a comprehensive resolution against torture (omnibus resolution) to the UNGA and also a thematic resolution on torture to the HRC. Since 2013, Denmark decided to make the resolutions biennial and thus sponsor the resolution in the HRC every even year, and every uneven year in the UNGA. Furthermore, Denmark sponsors every three years an HRC resolution for the extension of the mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment – last time in 2017. During the HRC and UNGA sessions, Denmark hosts side events on torture providing a platform for other actors, including CSOs; in addition, Denmark hosts a joint breakfast meeting for the Special Rapporteur, and the Chair of CAT as well as of SPT, thus facilitating that these key bodies are present at the UNGA.

Furthermore, Denmark makes continuous use of the UPR mechanism, to raise concern about the national system for protection against torture and the right to rehabilitation, as well as ratification of torture conventions. For example, Denmark as a matter of principle makes recommendations to states during the UPR processes on ratification of the UNCAT (and the OP-CAT), if they have not ratified.

In March 2014, Denmark together with Chile, Ghana, Indonesia and Morocco ('the CTI core group') marked the 30th anniversary of the UNCAT by launching the Convention Against Torture Initiative (CTI) – a 10-year global initiative for the universal ratification and implementation of UNCAT. This is an initiative outside the formal UN system but with a clear

66 See the figure below.

4 FREEDOM FROM TORTURE

linkage to the anti-torture framework and is, by many of the interviewed interlocutors, regarded as a unique governmental initiative for the promotion of the UN normative framework, both internationally and nationally.

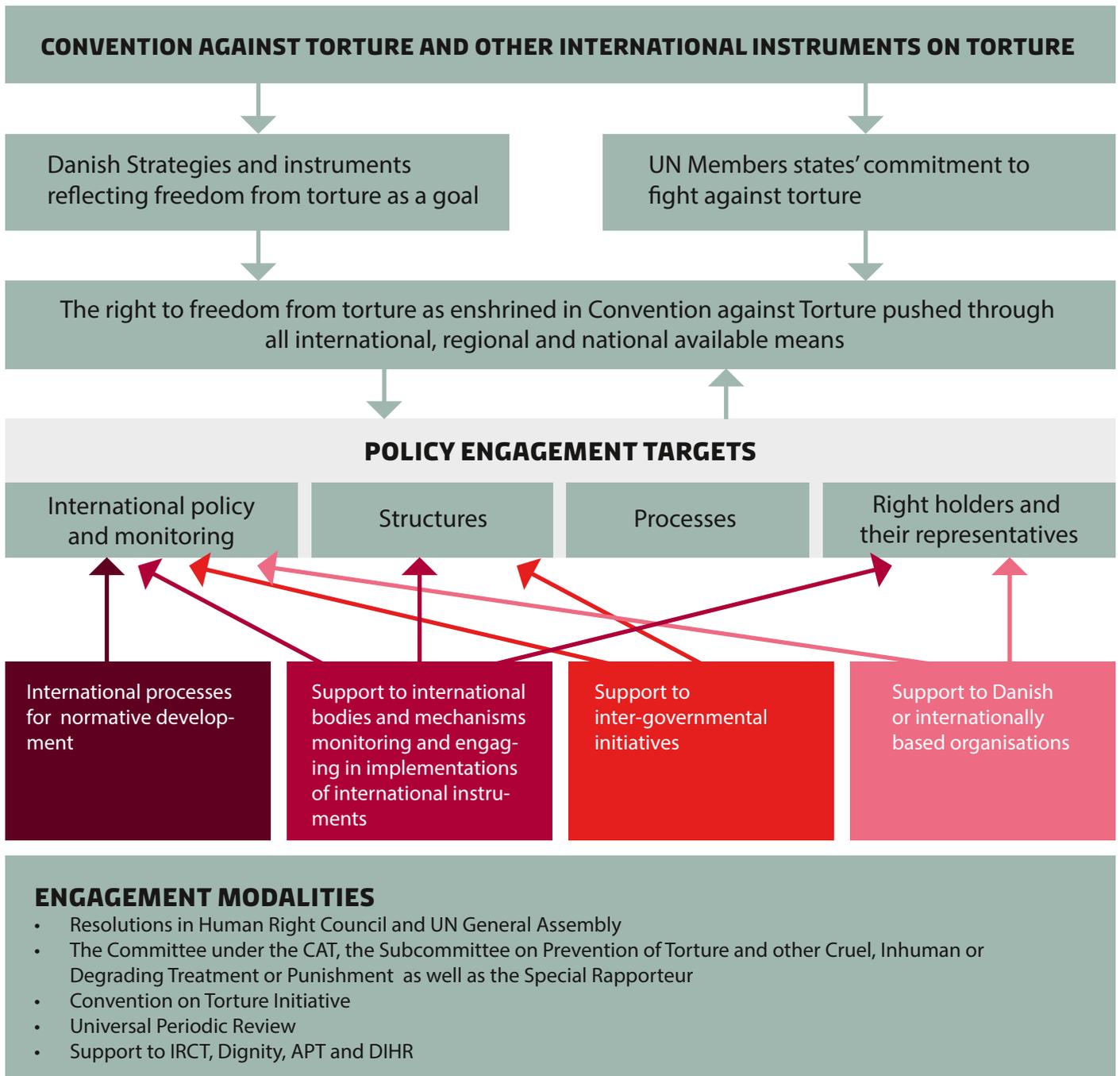
The Danish policy engagement is furthered through support to international CSOs as well as Danish CSOs. This applies, in particular, to DIGNITY and IRCT, and to some extent DIHR, which either individually or through their partners are tabling inputs to international, regional and national instruments, policies and recommendations. DIGNITY and IRCT are also pushing international organisations for medical practitioners to adopt policies or guidelines for their members that integrate measures to protect against torture.

In terms of programme engagements, the Danish country programmes are not always explicitly focussing on freedom from torture, but support to justice sector institutions may address freedom from torture elements, e.g. Human Rights and Good Governance Programme, Phase III, 2011-2016 Bangladesh, where support to the NHRI enables it to address human rights violations, which in a country like Bangladesh include incidents of torture. In other cases, the Danish programmes are supporting, in alignment with national strategies and other donor initiatives, national institutions to combat torture and its root causes, and/or to improved legislation and policies. See for instance the Moldova Human Rights & Democracy Programme, 2015-2018 or the Good Governance and Human Rights Programme in Ukraine 2015-2018.

DIGNITY, IRCT and DIHR also address issues of torture through programme and project engagements. DIGNITY supports partners in a number of countries in the implementation of projects, while IRCT provides a variety of technical support to its members across 76 countries. DIHR addresses torture-related issues, through its justice sector partners, in a number of ways. This includes, for example, support to NHRIs or Ombudsman institutions designated as national preventive mechanisms under the OPCAT and making training manuals for the police. The activities may also include expert inputs to the drafting of national legislation in order to align it with international standards, for example. IRCT has provided expert commentary on the draft Kenyan Anti-Torture law in 2016.

All of these interventions or engagements are, according to those interviewed, characterised by a Danish approach. The interviews have highlighted, that this approach includes elements such as consistent international leadership, predictability and principles, partnerships, platform for dialogue, bridge building and allocation of resources. The collaboration with the UN mechanisms, but also other international mechanisms, other member states and credible CSOs and DIHR is another reflection of this approach.

The components of the Danish approach are illustrated below.



THEORY OF CHANGE FOR THE DANISH APPROACH TO FREEDOM FROM TORTURE

In the absence of strategies, policies, programme or project documents it is challenging to assess if an intended results chain has been implemented or if the engagements intentionally reflect a theory of change.

Nevertheless, based on the interviews with interlocutors and available documentation, the evaluation finds that the engagements are based

4 FREEDOM FROM TORTURE

on an implicit results chain and theory of change thinking, where it is assumed that a strong international framework and infrastructure will establish a platform for accountability, monitoring and dialogue, as well as improvement of the national structures and processes. The interviews with interlocutors and documentation also show that the rationale behind Denmark's approach is the idea that when states are committed and engaged through dialogue, and not only held accountable e.g. through the UPR, that their national implementation will be affected. This approach also reflects an assumption that states that have committed themselves internationally are more likely to be responsive, both nationally and internationally, to respect freedom from torture. The approach further assumes that although individuals often are subject to torture due to oppressive regimes, it can also be due to a variety of other reasons, e.g. as a result of lack of awareness, malpractice and insufficient competences within the justice sector agencies. This approach and the assumptions observed by the evaluation are also reflected in, for example, the 2009 Strategy for International Human Rights Cooperation.

The evaluation finds, based on the interviews with informants and the available documentation, that the overall theory of change appears to be that ratification of international instruments, their continuous re-confirmation and elaboration of their substance as well as monitoring and dialogue about their implementation will contribute to increased protection of the rights holders and facilitate international commitment. Through a variety of engagements targeting duty bearers, rights holders and international bodies and mechanisms, Denmark contributes to renewal of the commitment to the fight against torture, building capacity, improving and elaborating the normative framework; as well as increasing the accountability for the benefit of rights holders and the international community.

The elements of the Danish strategic approach are illustrated in the table below. It illustrates that a number of tangible inputs, including Denmark's general standing internationally as a credible actor, through a variety of engagements related activities, results in a number of outputs. These outputs lead to measurable outcomes at the international policy level. Denmark is not fully in control of outputs and outcomes that rely on third parties, but the inputs at least contribute to these. The impacts are generally not formulated or measured. However, interviews with interlocutors have identified some general potential impacts on rights holders and impacts related to the international policy level, that the Danish support pursues. The main impacts are summarised in the table. In the following sections (4.2. and 4.3), the evaluation will assess measurable results and what have been the factors that constrain or contribute to achieving the results.

Engage-ment	Input	Outputs →	Outcomes	Potential impacts internationally	Potential impacts nationally
Resolu-tions in HRC and UNGA	Financial resources Human resources Expertise Credibility	Process carried out accord- ing to plan resulting in a resolution	Resolutions elaborating and confirming the fight against torture adopted regularly without a vote/ with consensus	Improved and consoli- dated normative UN and regional framework. Robust UN structural framework	Improved national framework protecting rights holders. CSO, NHRIs and watch- dogs have an improved platform for dialogue and holding governments accountable nationally and internationally
		Side events and other dialogue activities carried out	Participants sensitized, dialogue platform for stakeholders facilitated	Capacity of national and international policy makers improved Formal and informal dialogue creates trust and opportunities for collaboration	National and interna- tional policy makers are using their improved capacity at national level.
CAT, SPT and Special rappor- teur	Financial resources Human resources Credibility Expertise	UN bodies perform in accordance with their mandate	UN bodies elaborate anti-torture protection generally or country specific CAT develops case-law	International monitoring of states' commitment to implement international obligations facilitated International standards for protection against torture further elaborated	Individuals, CSOs and NHRI have access to international monitoring bodies in case that the states are failing to protect rights holders Decisions by national authorities are reviewed international mechanisms
CTI	Financial resources Human resources Expertise Credibility	CTI performs in accordance with its goal and objective	Number of ratifications increased Implementations activi- ties carried out Regional outreach Peer-to-peer projects carried out	Ratifications give inter- national legitimacy to the states and consolidate the universal fight against torture Capacity of national and international policy makers improved Formal and informal dialogue creates trust and opportunities for collaboration	Improved national frame- work protecting rights holders in states ratifying the UNCAT or OPCAT or withdraw reservations CSOs, NHRIs and watch- dogs have an improved platform for dialogue and holding governments accountable nationally and internationally Rights holders benefit from improved imple- mentation of CAT

4 FREEDOM FROM TORTURE

Engage-ment	Input	Outputs →	Outcomes	Potential impacts internationally	Potential impacts nationally
UPR	Human resources Expertise Credibility	Torture recommendations to states under review	Recommendations related to torture accepted	International monitoring of states' commitment to implement accepted recommendations facilitated Accepted/noted recommendations create a platform for further dialogue and follow up internationally or inter-governmentally (bilaterally and multilaterally)	Improved national framework protecting rights holders in states CSO, NHRIs and watchdogs have an improved platform for dialogue and holding governments accountable nationally and internationally
Civil Society and DIHR	Financial resources	Organisations perform in accordance with their goal and objective	Ratifications and UPR recommendations reflecting torture issues pushed; UN and regional bodies pushed to elaborate anti-torture protection generally or country specific; International professional associations for practitioners or NHRI pushed to adopt standards or policies.	International monitoring of states' commitment to implement accepted/noted recommendations facilitated Accepted/noted recommendations create a platform for further dialogue and follow up internationally or inter-governmentally. International framework elaborated creating a platform for further dialogue and follow-up internationally or inter-governmentally.	Improved national framework protecting rights holders in states CSO, NHRIs and watchdogs have an improved platform for dialogue and holding governments accountable nationally and internationally National professional organisations, NHRI and professionals align their practice with international standards

SCOPE AND AIM OF THE DANISH SUPPORT (EQ 2, 3 AND 5) MAIN FINDINGS

Findings related to rationale behind the Danish support

Denmark's support is not anchored in a written Danish strategy but in a firm strategic approach that holistically pursues the confirmation, implementation and elaboration of the international normative framework on freedom from torture and creating platforms for dialogue.

The Danish support is firmly based on international instruments that are reflected in regional instruments as well as national constitutions and/or legislation.

Denmark's support is based on an assumption that ratification of international instruments, their continuous re-confirmation and elaboration of their substance, as well as monitoring and dialogue about their implementation, will contribute to increased protection of the rights holders and facilitate international commitment. Consequently, interventions have to target the international policy level, enabling policy and programme interventions directed toward national structure, processes and rights holders and their representatives.

Findings related to implementation

Denmark's support is based on a variety of suitable modalities targeting mostly the supply side actors but also multilateral organisations as well as internationally based organisations and institutions that work for protection of right holders, as these effectively contribute to results due to their individual credibility and expertise.

Resolution processes, the UPR process, UN treaty bodies and special mechanisms, as well as the UN Voluntary Fund for torture victims, the inter-state cooperation CTI and credible expert-based Danish or international organisations and institutions are the entry points for the Danish support, which are all relevant choices.

By focusing on freedom from torture as a priority area, there is automatically a linkage between the national and international level. The international level may influence national strategies, policies and normative frameworks; moreover, the country might be held accountable at the international level through e.g. UN monitoring bodies and the UPR process. However, the focus on linking the international policy level to the national policy level through the MFA could be strengthened.

4.2 Measurable results of the Danish support

The potential mechanisms for impacting the global, regional and national policies on anti-torture are multiple, but the outputs, outcomes and impact are not always visible or measurable.

In the following section the observations illustrated in the above table will be elaborated further and exemplified. The analysis will however not assess the outcomes and impacts of engagements such as side events during the sessions in Geneva or New York. Denmark is consistently hosting, or facilitating others to host, side events as part its strategic

4 FREEDOM FROM TORTURE

approach. The events, the participants and the discussions are all measurable results. One interviewed interlocutor said that there are hundreds of side events during the sessions and they are difficult to recall, however, a good side event is an event with an interesting topic, good experts and where you learn something new. Several of those interviewed have confirmed that that is the case with the Danish side events. Some interlocutors also indicated that these events are important both in relation to other actors' perception of Denmark's role in the fight against torture, for the capacity building and sensitisation of diplomats and other relevant actors, and for facilitating a platform for dialogue and relation-building between the UN bodies, the member states, CSOs and experts.

Resolutions

Denmark sponsors the omnibus resolutions adopted by the UNGA, thematic resolutions adopted by the HRC and the resolutions extending the mandate of the special rapporteur.

The omnibus resolutions confirm the conventions, as well as previous resolutions, and are often based on the issues addressed in previous years' thematic resolutions. The omnibus resolutions are furthermore important as they are adopted by all UN member states at the UNGA in New York. Not all states have ratified UNCAT, and even less so OPCAT, however by adopting the omnibus resolutions without a vote or by consensus these countries confirm their support and commitment to the fight against torture and consequently providing a platform for engagement both at international and national level.

The thematic resolutions both elaborate the understanding of the protection against torture in a specific area and may also address the practical implementation of the right to freedom from torture. Often, the resolutions will contain paragraphs that expand on the interpretation of specific parts of the Convention, thus contributing to the further development of soft law that may be taken into account by courts and other legal bodies preoccupied with jurisprudence in this area.

Denmark's preparation of resolutions adopted by the HRC and UNGA follows a standardised model, based on a process action plan approach, from identification of the relevant topic, engagement of partners, formal and informal discussions, leading up to the finalisation of the draft text of the resolution and the adoption by a consensus vote or without a vote. The success of the process is measured when comparing the adopted resolution with the text of the first draft, as significant amendments should be avoided, and secondly, on the adoption of the resolution by consensus, meaning that every member state of the UN has voted in favour of the resolution. According to the interlocutors interviewed there are rarely any significant changes, once the first draft has been finalised. However, the resolution might be amended between

submission of the first draft and the adoption of the final draft. For instance, the first draft of the 2013 resolution submitted to the third Committee under the UNGA⁶⁷ was sponsored by 56 countries. The second draft, that later became the final text, was sponsored by another 28 countries, including the USA. However, the text was changed as, for example, Paragraph 25 in the first draft, which recognised the importance of full, holistic and specialized rehabilitation service, was omitted in the final draft. Later all 193 countries adopted the resolution.

That resolutions sponsored by Denmark always have been consensus resolutions or adopted without a vote, are regarded by all interviewed interlocutors as a major achievement by Denmark. According to the interviewed interlocutors, it is also a clear indication that Denmark, both in Geneva and in New York, is very good at managing the process and accommodating the various views and opinions, without devaluing the substance of the resolutions.

The systematic approach shows that the end-result – the adopted resolution – is an intended outcome of the intervention; to reinforce and elaborate the international framework for the fight against torture and reconfirm the member states' commitment to the agenda. The fact that Denmark consistently and without any lapse, year after year, has sponsored UN resolutions on torture and the extension of the mandate of the special rapporteur, has contributed to the global opinion that Denmark is the leading actor at the international level in this field. A position that was confirmed repeatedly during interviews with stakeholders.

A consensus resolution is also an outcome that reaffirms the international consensus on the fight against torture. The resolution adds to the understanding of the protection provided for in UNCAT and OPCAT in the light of the present-day conditions contributing to the development of international law. Although, the resolutions are soft law, they are a reference for UN bodies and constitute a body of international recommendations that national authorities may use in interpreting their international obligations and domestic legislation. For CSOs they can also be used as a source of inspiration, and they constitute a platform for dialogue with the national authorities.

In principle other countries could sponsor the resolutions instead of Denmark but it is seriously doubted by many of those interviewed whether the quality of the resolutions would remain the same. Moreover the 'Danish approach' would obviously be missed.

67 UNGA resolution 68/156 (2013).

4 FREEDOM FROM TORTURE

The impact of the resolutions is more difficult to assess. There are no studies that have actually assessed whether the resolutions contribute to measurable impact on the rights holders at national level.

Based on the interviews and documentation it can be concluded that the Danish embassies are not using the adopted resolutions at any great depth as a basis for their bilateral dialogue or for monitoring their implementation in the individual countries. Apparently, there is no structured linkage between the international and the national policy level in relation to the freedom from torture agenda. On the other hand, without the resolutions there would obviously not be any potential for impact. The resolutions at least enable, for example, local CSOs to push the state to consider new laws, amendment to laws or instructions, in order to be aligned with the UNCAT, OPCAT or the text of the adopted resolutions. States that have co-sponsored the resolution might even be more willing to implement the resolution. The 2013 Resolution on the Right to Rehabilitation for Victims of Torture adopted by the UN Human Rights Council⁶⁸ was, for instance, co-sponsored by 49 countries. IRCT regards this resolution as a landmark resolution as it emphasised a victim-centred approach and elaborated the states' obligations to rehabilitation. The resolution was followed the same year by a UNGA resolution that was adopted by all 193 member states⁶⁹. A resolution that the MFA found particularly important since not all countries around the world have ratified the UN Convention against Torture⁷⁰. This resolution continued the international consensus on the right of torture victims to rehabilitation services as part of redress, according to IRCT. The two resolutions, as well as the UN Committee against Torture's General Comment No. 3, are key instruments in the clarification of states' obligation to ensure provision of rehabilitation services to victims of torture.

The UN Bodies and Mechanisms

Denmark has for many years supported the UN bodies dealing with torture, such as the CAT, the SPT, the Special Rapporteur and the UN Voluntary Fund for Torture Victims. Denmark also supports the Office of the High Commissioner for Human Rights (OHCHR) and collaborates with OHCHR on the issue of torture and other cruel, inhuman or degrading treatment in light of the Danish lead on the resolution on torture. Every three-year, Denmark sponsors, using its international standing, the resolution on the extension of the mandate of the Special Rapporteur. Furthermore, Denmark also funds so-called Junior Professional Officers (JPO) from Denmark working for the UN bodies – staff that are highly-valued and which increase the capability of the body, hosting the

68 HRC resolution 22/21 (2013) on rehabilitation of torture victims.

69 UNGA resolution 68/156 (2013).

70 See Press Release published at <http://fnnewyork.um.dk/en/news/newsdisplaypage/?newsID=39F68796-7011-4480-B6F5-554CF93AC475>

JPO, to implement its mandate according to interviewed stakeholders. On other occasions, Denmark and these bodies conduct joint side events, seminars or workshops.

It is also part of the implicit Danish strategy to push, at ambassador level, Danish candidates for the UN bodies. Recently, a highly qualified candidate from a Danish CSO was re-elected as member (and has even been chair) of the CAT and, according to interviewed interlocutors, this was clearly a priority for Denmark. At the same time, it was recognised that the candidate was very strong and an asset to the Committee. The re-elected person works with the Danish NGO DIGNITY but was elected by the State parties. Two previous Danish CAT members were also from DIGNITY and IRCT respectively, which indicates that Danish NGOs are generally well-respected amongst the State parties.

The members of the CAT do not represent any country or organisation, but Denmark traditionally seeks to maintain an ongoing dialogue with the Committee and formally meets with it in the context of the CTI-CAT dialogue, in order to discuss joint activities or exchange views on protection against torture at policy level with the Committee.

Well-functioning UN bodies and mechanisms that possess the necessary expertise contribute to the development of the agenda, monitoring of the implementation and holding the states accountable. It adds credibility to the system and to the Danish support thereof.

The Convention against Torture Initiative

Although Denmark does not have a written strategy for the fight against torture, the CTI (cf. above) reflects many of Denmark's priorities, values and intended outcomes and impact. The CTI is an inter-state initiative outside the UN system with a core group of five equal partners from Europe, Asia, the Mena-region, Africa and the Americas. Furthermore, the CTI has a Group of Friends counting 39 states and 17 NGOs. 19 states are from Europe and eight states are from the Americas. However, states such as Fiji, Myanmar, Burkina Faso, Sierra Leone, Togo, Uganda, Egypt, Iraq, Jordan and Tunisia are also members.

The CTI is not a Danish initiative, although all interviewed interlocutors believed that it would never have been realised and would not have achieved the international recognition without the Danish support and standing in the international community. The Danish engagement with the CTI can be considered a programme – as well as a policy engagement – as Denmark is (so far) the sole funder of its secretariat, funds its activities, but also is member of the core group. Consequently, the Danish support to the CTI has been essential for its creation and operations, and the results achieved by CTI could not have been achieved without Denmark's engagement as also observed through interviews relevant stakeholders.

4 FREEDOM FROM TORTURE

According to CTI, it is a long-term engagement to help states to overcome obstacles in ratification and implementation of UNCAT (and encourage ratification of OPCAT). CTI will through strong partnerships and inter-state cooperation provide coordinated and sustained support through legal and technical advice and assistance. It also intends to build a global platform of States, the UN, national and international NGOs and experts, to work jointly to achieve the CTI vision. CTI operates with goals and measurable indicators (e.g. universal ratification of CAT by the end of 2024). It should be noted that the present evaluation is not an evaluation of CTI as a project, but how CTI contributes to identifiable outcomes and impacts at the international as well as at national policy level, bearing in mind that CTI has only existed since 2014 and the evaluation period ends in mid-2016.

CTI is by all interviewed interlocutors regarded as a unique model for inter-state cooperation. This has further been confirmed by the fact that the UNGA, in a resolution adopted on 17th December 2015, on torture and other cruel, inhuman or degrading treatment or punishment, recognised the role of the CTI. Consequently, CTI is today positioned and recognised as a key player in the fight against torture at international level with the potential of impacting on international and national policy making.

The activities carried out by CTI and the structure of CTI, with all regions in the core group as well as in the Group of Friends, have enabled CTI to enter into dialogue with several 'difficult' countries on the ratification of UNCAT. After the launch of CTI and up to end of 2015, four new states had ratified or acceded to the UNCAT according to the CTI 2016-2017 strategy. A number of other states withdrew reservations to the Convention and one state accepted the authority of the CAT to consider individuals' and states' communications on violations. During the same period, eight states ratified or acceded to OPCAT. Consequently, there appears to be a link between the efforts of CTI and ratification of and commitment to the international instruments. It is not possible to conclude that this is a direct result of CTI, but it is likely that CTI has contributed to this. The increased number of ratifications and the withdrawal of reservations will have an impact on the international community's universal confirmation of the importance of combating torture; and it may even increase the potential for positively impacting the life of the rights holders in the respective countries, as ratification is the first step towards implementation of UNCAT.

The number of ratifications is not the only outcome that CTI potentially contributes to. CTI is very active in providing a platform for countries that are interested in ratification and improving their implementation. For instance, it was confirmed in June 2015 by a representative from the Permanent Mission of Jamaica to the UN in New York that "the CTI seminar on UNCAT ratification is for us extremely useful as it demystifies what it entails to prepare for a ratification process".

This platform covers a range of options such as seminars, peer-to-peer assistance or inspiration or capacity building. To Denmark it also offers a unique opportunity to address the policy level in countries through the partners in the core group, simply because the partners may have a more substantial leverage than Denmark in relation to countries that are facing different challenges than Denmark or having another legal tradition. For instance, in December 2015, the Kingdom of Morocco (a member of the core group) and the CTI invited Middle East and North Africa MENA states and anti-torture experts to a regional workshop in Marrakech to discuss how to prevent torture and ill-treatment in police custody. The workshop was attended by more than 70 participants from the region. It is very unlikely that Denmark could have had the same outreach without the efforts from the core group as also observed during interviews with interlocutors.

Although these activities have resulted in increased focus on ratification and on ways to improve implementation, it is still difficult to conclude that changes at international and national policy level are direct results of, or attributable to these CTI activities. On the other hand, it is assumed that the engagement of other core group members, the discussions held at seminars or bilaterally, the attention that the various events attract nationally and internationally, and the support from the secretariat are all contributing to some outcomes at national or international policy level and may potentially also contribute to impacts at national and international level. The evaluation finds, as also confirmed by consulted stakeholders in the evaluation process, that the establishment of CTI itself in March 2014 clearly initiated a new and much invigorated phase in the global CAT-ratification efforts.

The UPR process

In the preparation for making recommendations to a state under review, Denmark receives inputs from the Danish embassy or representation and other internal and external sources, including CSOs, in order to assess which issues should be raised. The potential recommendations are also discussed with external partners. Denmark submits two-three recommendations per country (see for instance UPR questions and recommendations in relation to Uganda, Tanzania, Zambia and Vietnam) and ratification of UNCAT and/or OPCAT has become a standard recommendation to countries that have not ratified the instruments.

According to UPR-info.org, Denmark has issued, during the two first review cycles, 154 recommendations related to torture – 91 of them accepted by the state under review and the rest have been noted. In 2014 UPR Info published a report “Beyond promises: the impact of the UPR on the ground” based on data collected from 165 countries in regard to the mid-term implementation of UPR recommendations made at the first cycle of the UPR. According to the study 1,649 out of total number of 20,452 recommendations were on torture (also worth

4 FREEDOM FROM TORTURE

noting that Denmark accounts for almost 1/10 of these). 335 recommendations had triggered an action, but 651 recommendations were not implemented at mid-term. However, bearing in mind that this was a mid-term review it is likely that the recommendations by countries such as Denmark have contributed to an outcome in terms of the acceptance of the State under Review and a potential impact at national level (ratification of UNCAT or OPCAT, changes in legislation, guidelines or instructions). For instance, Denmark recommended, together with five other countries, at the first cycle, that Pakistan should speed up ratification of the convention. Pakistan ratified in June 2010.

The UPR is increasingly accepted as a means to address concerns in the member states and contributes to an impact at national level. With the UPR, it has become easier for the Danish embassies to assess if recommendations are implemented and then, potentially, contribute to an impact on the rights holders.

The UPR also provides Denmark, or organisations supported by Denmark, with an opportunity to follow up on the Danish recommendations that are accepted, or even noted (explicitly rejected), by the state as well as using them as a platform for dialogue. Furthermore, the follow-up on the recommendations may also be integrated into the country policy paper adopted by the MFA for the priority countries. The policy paper builds the bridge from the overall policies of Denmark to the national level and sets the strategic direction for Denmark's relations with each country. With the 2015 revised *Guidelines for the Development of Policy Papers for Denmark's Relations with Priority Countries*, the analysis should include the priority country's compliance, and challenges, with its international and regional commitments.

It is not only the MFA and the Danish mission to the UN in Geneva that is engaged in submitting recommendations to the UPR. CSOs supported by Denmark, such as IRCT, and DIHR, are also actively supporting their partners to effectively influence the work of UN human rights mechanisms including the UPR mechanism. It has happened that, for example, states receiving UPR recommendations, have accepted the recommendations promoted by IRCT members.

The Danish approach to the UPR appears systematic, following a predictable process for inputs and formulation of recommendations, as well as guidance for prioritization of recommendations. The Danish efforts contribute to an outcome – the acceptance of the recommendation – but other countries also contribute to this outcome. Simultaneously, other CSOs supported by Denmark and DIHR facilitate input to the process and formulation of recommendations by other countries. Denmark does not instruct nor control such activities, but by providing resources to these organisations, Denmark contributes to their credibility and expertise that, at the end of the day, will enhance their ability to address

the fight against torture at international and national level through the UPR process.

Civil Society Organisations and the Danish Institute for Human Rights

Denmark provides funding to a number of Danish as well as Geneva-based organisations working within the field of freedom from torture. They are not instructed by the Danish government and operate independently. Nevertheless, support to strong, credible, technical and expert-based organisations that are capable of building bridges between civil society and government, as well as engaging with governments without jeopardising their role as watch dogs, is integrated into the Danish strategic approach to impact on the policy level nationally and internationally. The capacity of the organisations supported by Denmark are generally acknowledged by the states, as confirmed in interviews with interlocutors, and they are regularly involved in seminars in Geneva, New York and in member states.

DIGNITY, IRCT and DIHR also actively support their partners in recipient countries to effectively influence the work of UN human rights mechanisms, such as the UPR mechanism and CAT. The support may result in improvements at national level as it provides the monitoring body a better understanding of the gaps in implementing the convention at national level, and acceptance by the monitoring body fosters room for future dialogue between CSOs and the government, as well as legislative changes on the ground, see for example the IRCT annual report 2015. The recommendations or statements by the monitoring bodies are also used as platforms for dialogue and advocacy at national level.

At policy engagement level, there appear, based on the available documentations and interviews conducted during the evaluation process, to be interlinkages from input, output, outcome to impact. There are several examples of Danish CSOs or DIHR, alone or together with their partners, conducting research or studies, documenting violations, organising events or presenting opinions on freedom from torture issues, and hence supporting Denmark's key priorities. The outputs of these activities are fed into the international mechanisms. The mechanisms issue resolutions, recommendations or observations (outcomes) taking into account these contributions. Such resolutions and recommendations then serve as a platform for dialogue with states at national level, reference points for holding the states accountable or as catalyst for legislative changes facilitating the possibility of transformative changes at national level. If the state does not comply with international recommendations, the local partners with the support from Danish CSOs or DIHR are enabled to report the failure to domestic, regional or international mechanisms.

However, the organisations are not only contributing to the international and national policy development through UN or regional bodies in

4 FREEDOM FROM TORTURE

Europe, Africa and the Americas through advocacy, lobbying and expert inputs. DIGNITY and IRCT, for instance, may also contribute to the development of standards for global medical associations, such as the World Medicine Association's 2013 statement on the right of rehabilitation of victims of torture.

If these organisations adopt resolutions on medical treatment or examination of torture victims, the national chapters of these organisations are likely to adopt national standards with a concrete impact on the rights holders. DIGNITY and IRCT are capable of providing essential inputs to these international standards, because they possess the relevant expertise or have access to a pool of knowledge on the health-based consequences of torture.

MEASURABLE RESULTS OF THE DANISH SUPPORT (EQ 3 AND 7) MAIN FINDINGS

Findings related to the actual results that the Danish support has contributed to

Denmark has contributed to a variety of results that all are related to implementation of UNCAT and OPCAT, this includes e.g. resolutions elaborating and confirming the fight against torture adopted regularly without a vote/with consensus; the establishment of CTI – a unique model for inter-state cooperation reaching beyond Denmark's usual international leverage – enabling it to implement its mandate that contributes to further results at national and international level, including increased ratifications of UNCAT and OPCAT; key UN bodies are strengthened and regarded as credible bodies with the capacity to elaborate anti-torture protection generally or country specific and CAT develops case-law. Denmark has during the two first review cycles made 154 recommendations related to torture – 91 of them accepted by the state under review and the rest have been noted. In some cases, the state under review has implemented the recommendation.

The supported CSOs and DIHR have contributed to regional normative frameworks and adoption of international standards for professionals through their engagement with regional multilateral bodies, networks and organisations for professional practitioners.

Findings related to the linkage between the Danish engagement and results

Although, no results chains are formulated for the Danish engagements related to policy development, it is still possible to trace and measure results of the processes at output and outcome level. At impact level the results are less measurable, but evaluation finds that it is likely that the engagements contribute to impacts at international policy levels in terms of a more robust framework, better understanding of the issue amongst stakeholders and reconfirmation of the commitment. The impacts at national level have not been measured, but the evaluation team finds that it is possible to assume that the rights holders will benefit if the international commitment, monitoring and dialogue is translated into national implementation and platforms for dialogue.

As regards the resolutions, Denmark's inputs clearly **add content value** to the results achieved at the international policy level.

Denmark's support in the creation of the CTI was essential, but the CTI could not achieve its results without the core group of countries.

The financial support to CSOs and DIHR is essential for facilitating professional and credible organisations enabling them to contribute to results within the freedom from torture agenda, such as policy development and monitoring at international and national level, as well as enabling their national partners to access the international policy level.

4.3 Factors influencing achievements of results

The multilateral policy level depends on numerous factors that are sometimes very difficult to map out, and factors influencing multilateral normative conduct are so complex that human rights engagements at country level are unlikely to have a statistically significant impact within what is a relatively short time span⁷¹. Although the international policy level is difficult to manage, persons acting in that environment are trained to manage it. In addition, the organisational structure of the MFA, as well as of the organisations supported by Denmark, is focused on operating in that environment. In that regard, it is important that the Danish ambassadors and Permanent Representatives of Denmark to the United Nations in Geneva and New York are considered by the international community as high-profile persons with strong competences as the majority of the interviewed stakeholders have confirmed.

Despite these constraints, it is possible, based on the documentation provided and interviews with a variety of stakeholders and international actors, to identify some influencing factors. The achievements cannot be linked to one single factor but a combination of factors.

As in the previous chapter, the following analysis is divided into three levels: external variables, internal variables and inputs.

EXTERNAL VARIABLES

Freedom from torture is a right strongly recognised internationally, whereas it can be a sensitive issue at national level

Today, “freedom from torture” has a very strong international policy and normative framework with a rather robust international infrastructure. Furthermore, it is generally a protected right in regional instruments and even in most constitutions. The scope of the rights, and the implementation at national level, is the major challenge but few states wish to be publicly associated with systematic torture. This general acceptance of the issue works in favour of pushing the agenda further at international level. It is sometimes more difficult to address it through a bilateral dialogue for some of the same reasons – the topic becomes more sensitive. Consequently, according to those interviewed, it is often, and rightly, addressed as rule of law topics, e.g. investigation interviews, conditions in police custody or detention centres or as evidence in criminal trials at national level. Denmark’s willingness to put itself ‘out there’ and discuss shortcomings in its own implementation of CAT, including inter alia the fact that torture in itself is not a specific crime in Denmark, but an

71 See the 2014 study *Synergies and Linkages Between Danish Efforts to Promote Human Rights at the Multilateral Level and in Development Cooperation*, p. 20.

4 FREEDOM FROM TORTURE

aggravating circumstance, and that the Danish Penal Code can deal with any allegation of torture nonetheless, is but one example of this.

Multilateral policy development environment

The multilateral policy development environment is both predictable and unpredictable. It is predictable in the sense that most diplomats and actors operating at policy level know the official positions of their counterparts. The voting paths in multilateral organisations follow, to a large extent, bloc politics or practice. Everyone knows the different alliances and their positions. This predictability may have both a negative and a positive impact upon the achievement of results. It works because efforts are concentrated on those states that are responsive to arguments, and once the states have accepted general standards, they are more likely to support them in the future as well. The torture resolutions sponsored by Denmark are a result of this. They are all adopted either without a vote or with a consensus. No state votes against the resolutions but they may object to part of draft resolutions during the negotiations and may even vote against a provision of the text, but they are, at the end of the day, voting in favour of the entire final text.

However, the policy level also leaves room for new openings and possibilities for fluid alliances on thematic and/or geographical issues, as was observed in the study of Synergies and Linkages (p. 20) if Denmark is ready to profit from such openings. The Convention on Torture Initiative is a good example. Denmark took the initiative but could not have achieved the establishment of the CTI without the support from its partners in the core group. The group of friends counts countries that Denmark may not have reached on its own, but the composition of the core group might have contributed to their commitment to the CTI.

With the CTI, Denmark has been recognised in interviews with interlocutors during the evaluation process for its capability to push an innovative approach to develop the agenda further within the existing normative framework. This creates a space for intergovernmental dialogue and bilateral assistance at policy level. Consequently, the CTI does not only give Denmark a positive image but also contributes to the achievements of actual results through the CTI.

The international multilateral environment may also constitute a hindering factor in the sense that there are always many different issues on the agenda and it is difficult to attract attention in such a competitive environment. The many side events during the HRC and UNGA sessions are examples of this and to stay relevant is always a challenge. The introduction of the biennial resolutions (in the Human Rights Council and UN General Assembly) is an attempt to optimise the agenda and is seen by several interviewed interlocutors as contributing to a revitalisation of the agenda.

Consequently, the environment in which multilateral policy is developed, discussed and negotiated requires an ability of Denmark and its partners to understand the mechanisms and use their own credibility to push the agenda efficiently and in a timely fashion.

The international community perceives Denmark as the leading state in the fight against torture

Denmark has a unique standing in the international community as the leading state in the fight against torture, and many of the interviewed interlocutors refer to the torture resolutions as “Denmark’s resolutions” or the CTI as “the Danish initiative”. Although this is meant as a compliment to the Danish approach and positively contributes to Denmark’s and Danish organisations’ ability to push the agenda, it is clear from the evaluation analysis that it also constitutes a risk of becoming a factor that may discourage other states from being actively engaged in the agenda or it may result in an indifference on part of some states. To prevent this potential negative effect, Denmark is aware about the importance of leaving the floor to other actors, e.g. through the negotiation of resolutions or the CTI activities, often seeking to ‘lead from behind’ and pull back somewhat from too visible a presence in various multilateral forums.

Division of work amongst the EU countries

The EU and the group of EU member states support Denmark’s role in the fight against torture according to those interviewed. This provides Denmark with more weight in negotiations at international level. Furthermore, it improves the efficiency of the negotiation processes. The division of work amongst the EU countries also ensures that Denmark can focus its resources, as Denmark is not required to dilute its resources in order to address human rights issues falling outside the prioritised areas (besides freedom from torture, the global fight for gender equality and the rights of indigenous peoples are key Danish priorities).

INTERNAL VARIABLES

The Danish approach

“The Danish approach” is a result of number of factors that, over the years, have contributed to a unique Danish position at international policy level. Those interviewed have repeatedly mentioned that Denmark, during the last couple of decades, has been very consistent and always based its views on the principles reflected in international frameworks. The diplomacy is focused on bridge-building, engagement of a variety of stakeholders in all relevant activities and processes, including the UN mechanisms, as well as organisations protecting the right holders, and consensus seeking but without leaving behind its fundamental principles. This approach can be linked to the fact that Denmark is a small state in the international community, without hidden agendas and generally consensus seeking. Furthermore, Denmark

4 FREEDOM FROM TORTURE

is perceived as transparent and not pursuing a hidden agenda. This contributes to a high degree of credibility. This perception is supported by the documentation trail, such as the process action plans approach applied to the UN resolutions on torture.

The Danish approach has not just emerged at the international policy level but appears also to have been confirmed at bilateral level, as observed during the country visits and in evaluations of Danish programme engagements. Denmark is praised for moderation, neutrality and reliability as well having a preference for partnership and progressive change. Characteristics that add value to the cooperation.⁷²

The modus operandi of the Ministry of Foreign Affairs

The absence of a written strategy or policy is generally not perceived as a constraining factor for the work at the international policy level as the work is based on a clear strategic and systematic approach. The actual execution of the strategic approach is left to the Human Rights department in MFA in Copenhagen and the Danish missions to the UN in Geneva and New York. While the resolutions are drafted in Copenhagen, the diplomatic missions lead the negotiations in Geneva and New York. The missions have a large degree of autonomy and flexibility in their daily management, although they are in close contact with Copenhagen for receiving inputs and guidance. Hence, both the missions and MFA in Copenhagen have considerable subject-matter and process expertise, although they are somewhat constrained by limited human resources. This expertise is generally perceived as an asset by many of the interviewed stakeholders, not only by the staff but also by their partners, and a contributing factor to the results and Denmark's position.

However, there is a gap between the efforts at the international policy level and national follow-up and implementation. The resolutions are not automatically followed-up by the Danish embassies and there seems not to be any procedures for translating them into practical tools for the bilateral dialogue. This gap could, among other things, be due to the cutbacks in human resources, which entails that there is very limited overlap in the areas of work of MFA staff (home and abroad). Before the decentralisation of Danish development assistance, high-level consultations between MFA in Copenhagen and the political level in programme countries took place regularly. This constituted a natural scene for which to tie together the different levels of implementation. It is however outside the time scope of this evaluation to further consider if this constitutes one of the main barriers, but several interviewees have suggested that this might be the case. The implementation and follow-up of resolutions is today left to the organisations supported by

72 See for instance the 2017 Evaluation of Danish-Nepalese Development Cooperation 1991-2016, p. 16.

Denmark or the potential programme level. The perception is, based on the available documentation and interviews carried out during the evaluation process, that once the international policy procedures have been concluded, there will not be any follow-up upon their implementation at national policy level. The UPR process provides an opportunity for follow up bilaterally on recommendations, although only in three of Denmark country policies (Zimbabwe 2013-2015, Nepal 2013-2017 and Kenya 2015-2020) is there a reference to UPR recommendations. The CTI could be a platform to change this by providing an instrument to follow up on the implementation of UNCAT and UPR, but a systematic internal communication and coordination of follow-ups engaging the MFA, the missions to Geneva and New York as well as the embassies could be strengthened.

Another aspect of the ministry's modus operandi is the consistent and continuous submission of resolutions on torture as a sponsor and with focus on adoption without a vote or with consensus. This is a clear strategic choice by the MFA that has contributed to Denmark's leverage and the achieved results, including international reconfirmation of the fight against torture and a normative platform. From 2013, Denmark submits biennial resolutions to the HRC and UNGA which fits into the general need of the UN system not be overburdened with resolutions. Denmark's contributions have, according to the interviewed interlocutors, been instrumental for the quality of the negotiation processes as well as of the resolutions. Nevertheless, Denmark's efforts are not indispensable. Other countries are ready to pick up the agenda, and not necessarily in order to push the agenda in the same direction as Denmark.

The resolution process methodology

The MFA has developed a structured and institutionalised approach (expressed in a process action plan) that enables MFA to systematically receive inputs from its internal and external partners or other credible sources for the identification of relevant topics to be included in the resolutions. Through this process, the MFA receives input to issues that should be further clarified, in order to have an impact at national level, in particular with regard to the thematic resolutions. This approach is appreciated by those interviewed and contributes to ensure the quality of the resolutions and their adoption. It furthermore enables the MFA to measure the process afterwards and follow up with the engaged organisations on the outcome of the process. The evaluation has however not had access to any written follow-up.

The supported civil society organisations and the Danish Institute for Human Rights

Denmark supports a number of Danish and Geneva-based CSOs, as well as DIHR. A common characteristic for these organisations is that they are experts within the field of torture and rule of law. The Danish-based organisations provide assistance to partner organisations as well as

4 FREEDOM FROM TORTURE

governments at both national and international level; and they have access to a large network of organisations and sources of information from the national level. They are generally considered by interviewed interlocutors, to be capable of bridge-building between civil society/ rights holders and the duty bearer, and they are recognised by all categories of stakeholders for their high degree of credibility. The evaluation has found that the MFA and the Danish UN missions benefit considerably from the expertise and knowledge that they possess, and they are capable of influencing other stakeholders in order to push the agenda. Consequently, they are contributing to policy development, both at national and international level, and they provide a linkage between the national implementation level and international policy level.

However, the evaluation also observes that there is not much strategic engagement between the MFA and the various civil society organisations. For the organisations based in Denmark (primarily DIGNITY and IRCT), contact appears to be mainly on financial issues and the framework agreements; consequently, the MFA may not benefit from the accumulated expertise that these organisations possess. Also, Denmark supports the Association for the Prevention of Torture (APT) based in Geneva (which also hosts CTI's secretariat), but APT is rarely in contact with the ministry in Denmark. The engagement through the CSOs and DIHR could thus be further optimised, for example by organising annual thematic meetings for all the organisations and the ministry and/or more visits and discussions between the MFA and the organisations.

INPUTS

Credibility

One of the major assets of Denmark's approach is the fact that Denmark, and the organisations supported by Denmark, are perceived as credible partners by other states and stakeholders. According to interviewed interlocutors Denmark adds quality and expertise to the processes and initiatives but also continuity, consistency and predictability. This credibility contributes to the achievement of documented results at the international policy level.

Expertise and funding

The Danish policy level engagement is based on the ability to provide expertise, both on substance as well as on processes at the international level. Years of consistent and continuous submission of resolutions have resulted in an expertise on how to manage negotiations and elaborate the international standards reflected in the UNCAT. The work with the resolutions shapes the missions' staff's knowledge about standards and methodology and is a perfect format for creation of diplomatic expertise. Consequently, a new staff member at one of the missions is quickly becoming an expert in the development of international policy in the area of torture, compared to her/his peers.

However, it is not only in-house expertise that Denmark's support generates. Through the core funding support to organisations such as IRCT, DIGNITY, APT, CTI and DIHR, Denmark enables these organisations to have focus on developing expertise within the sector – both in relation to substance and international processes.

This accumulated expertise with the Danish and Geneva-based organisations benefit international bodies and mechanisms, e.g. when staff from DIGNITY are appointed to CAT. It is somehow remarkable that these organisations manage to engage with states, directly or through partners, and even with states with whom Denmark does not necessarily have close diplomatic ties. This, according to many of the interlocutors, reflects the fact that these organisations have a high credibility due to their expertise. Similar observations appear to be reflected in the 2015 Review of DIGNITY, page 16ff. Consequently, core funding to organisations possessing a high level of expertise pays off, both as a generator of waves of leverage outside the traditional policy engagements through diplomats, and as a resource platform that contribute to push the international and national agenda, providing the rights holders with a normative platform as well as access to international bodies and mechanisms.

Human resources

During the interviews, the interlocutors highly appreciated the capacity and competences of the present and past staff at the missions. They emphasized their personalities and ability to apply the Danish approach as part of the leverage that Denmark has. Other expressed the concern that the MFA, due to its frequent reorganisation and budget cuts, risks losing expertise within this field and that its prioritization will be reduced, which will undermine Denmark's leverage. The organisation of the MFA, the designated resources, e.g. the posting of extra staff from the ministry to the mission in New York during the sessions of the UNGA, and quality of the staff at the diplomatic missions have been instrumental for the achievement of results so far. Substantial changes to this approach may affect Denmark's leverage at international policy level within the area of freedom from torture.

FACTORS INFLUENCING ACHIEVEMENTS OF RESULTS (EQ 4, 6 AND 7) MAIN FINDINGS

Only few external variables may hinder the achievement of outputs and outcomes. The international community is relatively positive towards the agenda as reflected by the fact that UN resolutions are adopted without a vote or with consensus, but the challenge is to have the agenda pushed further – still within the UNCAT and OPCAT framework. The positions of the different countries are rather fixed in relation to the agenda, and the voting paths in multilateral organisations are, to a large extent, following bloc politics or practice. There is also a risk that the international agenda becomes too loaded with a variety of issues, resulting in a loss of interest in the torture agenda or that it is perceived as ‘the Danish agenda’. Consequently, it requires good diplomatic skills to push the states in a certain direction and maintain their interest. The CTI is a modality for going down that path.

The international environment also offers a number of opportunities that may contribute positively: one major opportunity is the regional corporation in the CTI framework and the composition of its core group. Without the core group Denmark could not have achieved the same results, as the members of the core groups possess other leverage than Denmark in relation to states that are not usually closely linked to Denmark. The fact that Denmark is capable of relying on the EU and its division of work also contributes to Denmark’s ability to achieve results.

Finally, Denmark’s reputation within the area of freedom of torture provides Denmark with a certain leverage amongst the states. CTI has also added value to that reputation.

One of the key factors and internal variables for achieving results is the fact that others recognize that Denmark works according to a certain Danish approach. This approach is perceived by others as a contributing factor to the quality of the international policy work. This perception is further strengthened by the *modus operandi* of the MFA in Copenhagen, which leaves flexibility to the missions in New York and Geneva to negotiate the resolutions. However, there is a risk that the distance between the MFA and the work in the UN becomes too far and that the MFA does not benefit from the experience of, for example, the CTI and from expertise of Geneva-based organisations supported by Denmark. Furthermore, the MFA could also strengthen or systematize its follow up on resolutions and UPR recommendations at the bilateral policy and programme level, contributing to the achievement of results at national level.

The fact that the subject-matter and process expertise is also located at the Danish diplomatic missions is generally perceived as an asset, not only by the staff but also by their partners, and is a contributing factor to the results and Denmark’s position.

The Danish support reflects a clever mix of engagements, because the Danish and Geneva-based organisations and institutions supported by Denmark contribute, through their networks and expertise, to pushing the same overall agenda. This mix may not be measurable but it is clear that these organisations do influence the agenda.

The Danish inputs to the engagements in terms of human and financial resources are key to the achievement of results. In addition, the fact that the Danish support, including through the supported organisations, reflects credibility is another important factor for the achievement of results. The organisations supported possess not only credibility but also expertise in the subject-matter and processes; and this extends the freedom from torture agenda beyond the direct reach of MFA, through their bilateral dialogue with states or within their network.

5 LESSONS LEARNED

The evaluation covers two different, although sometimes complementary, priority areas and two different levels of engagement: Programme and Policy level. However, it is possible to identify some common lessons learned that contribute to results, before summarising the main lessons under each of the priority areas. The lessons learned can hopefully be used by the MFA in future planning and implementation of interventions within the area of human rights.

5.1 Common lessons learned

A 'DANISH APPROACH' CONTRIBUTING TO RESULTS

The evaluation has identified to identify a certain Danish approach. This approach is value-driven, characterised by firm commitment to international human rights standards with focus on partnership, identification of shared values, long-term planning and engagement with both the supply and demand side. Denmark is perceived as a flexible, professional, credible and reliable partner without any hidden agenda, that is capable of building bridge between stakeholders as well as pursuing platforms for dialogue. Denmark seems to become more influential when the partner recognises the Danish approach. This contributes to an increased leverage, which is useful both at programme and policy level for the achievement of results. Denmark is not indispensable but, according to several informants, without the Danish approach the quality of the results and processes leading to results may not be the same.

ACCESS TO EXPERTISE AND ADEQUATE HUMAN RESOURCES MAKE A DIFFERENCE

The Danish approach is based on expertise on the subject-matter, processes and methodology and on access to human resources. Sudden changes, for example due to cuts in staff resources as well as in development aid in general, may undermine the effectiveness of the Danish approach as a contributing factor to achieving results. Investments in the 'MFA machinery' is important if results are to be achieved. Adequate resources, flexibility in funding (options of providing smaller grants), proper hand-over between staff that rotate positions, competence development and proper case and document management are all key elements for this.

THE INTERNATIONAL POLICY LEVEL AND THE PROGRAMME LEVEL DO IMPACT EACH OTHER

International mechanisms and standards are used to provide a common framework at the programme level. There appears to be room for improvement within the MFA to ensure and monitor whether results from the international policy level are integrated into the Danish programme level as well as at policy level in recipient countries. The bridging between the international and the national level will often depend on third parties (e.g. civil society organisations), and there seem to be missed opportunities for Denmark to further facilitate synergies between the two levels. Denmark is a well-respected partner due to 'the Danish approach' and Denmark could leverage this standing much more to ensure greater impact. The UPR process is an opportunity that is increasingly used by MFA; and the CTI also provides an opportunity to link international level with national programme and policy level, but other pressure points and engagements could be used as well.

CLEVER MIX OF ENGAGEMENTS

The Danish support constitute a clever mix of engagements through the MFA, the permanent missions to the UN and embassies combined with Danish or internationally-based organisations that have a good reputation and credibility. This enables Denmark, based on international human rights principles, to both target the demand and the supply side, and to build bridge between the two. It also enables Denmark to target the international, regional and national policy level through these organisations without the use of diplomatic measures. In addition, the flexibility in funding is important. Large programmes can target a sector broadly, but flexible and smaller appropriations can also have huge impact. The CTI is one such example – it is not large in terms of grant size, but the evaluation shows that it has had a major effect in terms of pushing the agenda. This mix provides Denmark with influence and leverage beyond the MFA; an approach that seems to fit well into the 2016 Review of Denmark's Foreign and Security Policy Danish Diplomacy and Defence in Times of Change observations: "in light of international developments, the need for stronger prioritisation is increasing and we need to look at new ways of making the most with what we have got. One way of doing this is by pooling our efforts with stakeholders from all areas of Danish society". Hence the approach is well suited to fulfil the Danish objectives within the field of human rights work, although there might well be opportunities to aim for even greater impact, through synergies between the two levels, cf. above.

5.2 Lessons learned related to programme level

NEED FOR A CLEARER STRATEGIC FRAME FOR THE WORK ON RULE OF LAW

In the absence of a strategy, it is difficult to evaluate if Denmark is working towards any specific targets and if the engagements are aligned

with Danish priorities. The Danish justice sector support is basically touching upon all areas of rule of law and access to justice with varying intensity. However, during the evaluation period, MFA has phased out programmes that included construction of physical premises.

The absence of a strategy may also prevent a more uniform approach shared by the MFA, CSOs and DIHR, but may not necessarily impact the individual programme level perspective. Rule of law and better access to justice are not concepts that easily translate into a development cooperation strategy and, at the end of the day, the actual programmes have to fit into the national context as well as the partner country's legal framework, visions and strategies as long as these are compliant with international human rights standards and principles. The programme engagements do not appear to lose direction due to the absence of a Danish strategy, as the goal is rather clear and the How to Notes work in theory as guiding tools, although they are rarely referred to in recent years. It would however be beneficial to revisit them and align them with other policies and strategies.

ACCESS TO LEGAL AID AND COUNSELLING AS AN IMPLICIT DANISH PRIORITY

The Danish support to rule of law and better access to justice covers a wide range of interventions, but access to legal aid and counselling is emerging as a key feature. Most programmes or projects include some elements of legal aid mechanisms. Access to legal counselling is also a feature in programmes related to other priority areas, such as NHRI, freedom from torture, rights of indigenous people and even CSR, as the right to remedy is a key principle in the UN Guiding Principles on Business and Human Rights. In the 2014 Strategic Framework for Gender Equality, Rights and Diversity in Danish Development Cooperation, access to legal aid is mentioned as one of the dimensions of gender equality.

The results of this part of the Danish support has not yet been evaluated systematically, but legal aid programmes are generally performing well when comparing intended outputs and outcomes and are much appreciated. The programmes target the demand side and the mere fact that the individual victim has access to legal counselling could be considered a transformative change and an impact at micro level for that specific right holder, regardless that the related macro level indicators are not improving. The legal aid engagements also touch upon other programme levels: Structures (the adoption of laws ensuring legal aid and the implementing infrastructure); processes (support to the institutions providing legal aid) and the right holders and their representatives (often connected to awareness raising projects). Furthermore, the right to have access to quality legal representation is anchored in international human rights standards. The legal aid support is often channelled through a platform modality, for example a fund. This appears to be a

successful model, as it may also contribute to build bridges between CSOs and governments, although there are some challenges that need to be addressed in terms of sustainability, professionalism, for example in the management of grants, and ownership. The programmes do not necessarily require support from government, but in order to be more effective and sustainable, the government should be committed to provide the legal framework and resources; and justice sector institution should recognise the importance of quality legal aid and representation.

CHALLENGING TO MEASURE THE RESULTS OF INDIVIDUAL ENGAGEMENTS IN RELATION TO THE RULE OF LAW AND ACCESS TO JUSTICE

When engaging in promotion of rule of law and better access to justice, one has to realise that it is rather difficult to measure whether overall progress at outcome level is made due to a specific engagement. This is the case with most types of programmes. Rule of law is a very broad concept and the justice system is very complex, including the informal system, with numerous stakeholders. It is also extremely vulnerable to a variety of risks outside the control of a programme or project. This is reflected in basically all evaluations, reviews and project completion reports as they generally find that there is lack measurable indicators for outcomes and impact level and/or documentation for achievement.

Consequently, this evaluation cannot determine if the Danish support has contributed to visible results at macro level, nor is it possible to conclude that the Danish contributions did not have an impact, did not prevent that the system would have deteriorated further, or that the contribution did not have an impact at meso or micro level. In several cases there are reasons to believe that the Danish support contributed to measurable results and even transformative changes for the right holders: this is at meso or micro level due to justice sector reform engagement, such as law reforms, capacity and organisational development and legal aid engagements. However, the documentation also shows that there is a need for realistic measurable outcomes, based on relevant baselines and impacts reflecting the character of the engagement. Here, the real-time evaluations could show the way forward; however, it is a bit pre-mature to make any assessment.

STATING THE OBVIOUS – PROGRAMME AND PROJECTS NEED TO BE WELL-PREPARED AND WELL-MANAGED TO ACHIEVE RESULTS

Due to its complexity, rule of law and better access to justice programmes need careful planning. This requires an elaborate context analysis, including identification of the drivers for change, the role and complementarity of the informal justice sector/alternative dispute mechanism and the damaging impact of perception of corruption/impunity creating a distrust in the system. Baseline studies appear to have been more consistently used in recent years, recognising that they are essential for assessing the results of the programme, as well as for institutional ownership of the results and for adjusting the interventions.

M&E modality, capacity of partners as well as lack of or access to credible data, must also be addressed from the very start of the planning phase.

SIZE AND MODALITY MATTER

The Danish human rights and governance programmes lead to traceable outputs in relation to the justice sector sub-components. They are likely to contribute to results, at least at outcome level, although these results are difficult to trace due to insufficient monitoring and documentation. The Danish approach is a contributing factor where external factors are not severely impacting the programme. Donor coordination is, however, still essential as programmes of other donors may impact the implementation of the programme and the engagement of the Danish embassies is needed to push for this.

Larger programmes, involving several donors, are more likely to move the sector in general, as the donors' leverage is increased toward the sector and the government. The use of fund managers or the establishment of separate legal entities to manage the programme may also create a platform between civil society and the state, contributing to results beyond what is intended. Smaller appropriations, on the other hand, offer an opportunity to provide flexible funding for specific initiatives which, in a smaller context, can have a significant impact. The larger sector programmes entail a risk that the Danish approach is less visible, that potential lack of results or inefficiency affect Denmark's reputation and that the results of the specific Danish contributions are less traceable.

Regardless of the size of a programme, there is a need to anchor the programme in a national strategy or framework. Although a programme may achieve some results in addressing the demand side, the commitment of the supply side is essential for achieving results beyond outputs. Smaller programmes rarely move the justice sector as a whole, but they are suitable for institutional capacity building of the individual partner, making it capable of performing in accordance with its mandate for the benefit of the rights holders who are directly affected by its work. The smaller programmes also show results by creating a platform for dialogue and coordination amongst justice sector stakeholders, including the informal sector. This can be done through supporting development of sector strategies, or by addressing more local justice sector stakeholders or local access to justice issues. Denmark has more leverage in smaller programmes in the immediate relationship with the partner or in a local context, where the outcomes do not depend on external factors.

BETTER KNOWLEDGE MANAGEMENT IN MFA COULD CREATE BETTER PROGRAMMES AND BETTER RESULTS

In formulation of new programmes, there appears to be very little use made of experience from other programmes in other countries. It is unclear how lessons from one programme are used in other

5 LESSONS LEARNED

programmes. Experience and programme management may inspire other programmes as was the case of the Legal Services Facility (a fund for legal services, inspired by a 2005 programme in Uganda, which is administered by a fund manager) under the Tanzania Governance Support Programme, 2011-2015 which was recognised for having produced immediate outcomes in the mid-term review. Reference to learnings rarely appears in the programme formulation or the appraisal of programmes. To optimise the use of lessons learned from other programmes, there is a need for the MFA to much more systematically handle documentation and reports.

In the evaluation process, the evaluation has experienced incomplete publicly accessible data and severe difficulties in the ministry to identify relevant internal documentation.

The capability of the MFA to identify and retrieve relevant documents appeared, at times, to be very dependent on the knowledge of the individual staff member and not the system of MFA. These observations seem also to be supported in the 2014 "Analysis of the use of evaluations" which called for a strengthening of the evaluability of programmes already in the design phase, in order to be able to evaluate, document results and provide learning, as well as to increase the online overview and to improve online search criteria for the different kinds of evaluation documents. The External Grant Committee and the Development Council have been useful for some exchange of experience and improvement of the policies and programmes. However, there only seem to be a limited structured horizontal exchange of experience amongst those that manage project and programmes. Furthermore, the interaction between the MFA and the partner organisation are, by many interlocutors, regarded as being focused more on administration and management of funds and less on substance. Having in mind the substantial knowledge that many organisations and the MFA possess on legal aid programmes, it could, for instance, be useful to exchange experience on that particular subject.

5.3 Lessons learned related to policy level

THE PRIORITY AREA IS PART OF THE DANISH STORYTELLING

Internationally, Denmark is perceived as the leading state in the fight against torture. This is due to a long-term commitment to the agenda for the last four decades which accelerated with the adoption of the UNCAT. Denmark was the 10th country to ratify the convention triggering that the convention entered into force in 1987. At the same time, in the 1980's, the Rehabilitation Centre for Torture (now DIGNITY) and the IRCT were established as NGOs. This also entailed a stronger Danish focus on the anti-torture agenda. In an article published in a Danish newspaper

in 2001,⁷³ the foreign minister highlighted the importance of Denmark at the forefront internationally (e.g. the UN resolutions and the UN Voluntary Fund for Torture Victims) as well as regionally (through the Council of Europe and the EU) and the complementarity of organisations such as DIGNITY and IRCT. All these efforts, which have been further elaborated year after year, have contributed to the perception that the fight against torture is part of the Danish story in relation to Denmark's international human rights policy image and in development cooperation. This provides Denmark with a unique position internationally and strengthens the Danish leverage at the international and regional (within Europe) level. However, it also impacts the work of organisations that are supported by Denmark, although there are clear indications that the credibility of these organisations also contributes to the positive image of Denmark, internationally, regionally and nationally.

NO STRATEGY – BUT A CLEAR STRATEGIC APPROACH

When a priority area is closely linked to a generally accepted principle confirmed in an international legal framework and with a comprehensive international infrastructure, there is less need to actually formulate a strategy. The condition is that Denmark actually has a clear strategic approach and allocates resources, both within the MFA and through competent Danish and internationally-based CSOs and institutions. Development of a formal strategy may actually be counterproductive if Denmark, as is the case, seeks influence and action primarily through the 'nudging' of partners, both through policy dialogue and through financial support, with the view to generate and back up action by these partners. These kinds of arrangements are difficult to describe in a formal strategy without the risk of appearing condescending and/or manipulative.

The strategic approach applied by Denmark in its policy work on the fight against torture has been elaborated and fine-tuned for many years, and Denmark's partners understand the approach. The strategic approach can be said to be based on the aforementioned 'Danish approach' (consensus seeking, flexibility, use of multiple channels, etc.) coupled with holistic thinking. Denmark is engaged either directly or indirectly at all levels to influence the agenda, and then pushing it in a direction that is acceptable for the vast majority of states. This approach has contributed to a number of results such as UN resolutions, and the establishment and work of the CTI. At the same time the supported organisations have sufficient means to pursue their strategies, focus on being experts within their fields for the benefit of rights holders and their representatives, as well as operating at national level with partners who often include governments in countries where Denmark is not

73 See <https://jyllands-posten.dk/debat/ECE5059559/Kronik-Kampen-mod-tortur/>

5 LESSONS LEARNED

present. This strategic approach appears very influential; and the CTI is another stepping stone in that approach, having its own characteristics as it creates a platform for the states to engage in the agenda. Both the support through the Danish and international organisations and through the CTI adds a dimension to the more traditional policy level, as they are catalysts for impacting other levels beyond the reach of Danish diplomacy. For instance, IRCT and DIGNITY impacts professional associations for medical practitioners; and CTI core members are in a better position to link with certain states than Denmark, especially states within their own geographical region.

One challenge that this strategic approach may face is that Denmark, in order to have broad support, may jeopardise a more progressive development in the protection against torture, e.g. by failing to push a stronger wording in the resolutions. However, the evaluation finds that Denmark has, so far, been able to strike a good balance according to the interviewed interlocutors. The interlocutors also, generally speaking, support that Denmark has streamlined the frequency of sponsoring resolutions and praised this decision, as it contributes to the credibility and the strength of the UN system as a whole, and the anti-torture agenda specifically. Nevertheless, Denmark has to pay attention to the fact that other countries are interested in the agenda - not necessary to add the same quality to the resolutions and the process protection, but rather to dilute it. Another challenge is whether there is a risk of the agenda becoming 'Denmark's agenda' and that other countries lose interest. The CTI appears to be a suitable modality for revitalising the agenda, with Denmark in a more passive role.

The absence of a strategy may also weaken the link from the international policy results to the national policy level. Although, the MFA in Denmark and embassies provide inputs to both the resolution and UPR processes, there does not seem to be any systematic linkage between international policy and the national level. Out of 13 country or partnership policies, only three refer to torture explicitly (Bangladesh 2013-2017, Nepal 2013-2017 and Kenya 2015-2020) and only three policies (Zimbabwe 2013-2015, Nepal 2013-2017 and Kenya 2015-2020, makes reference to UPR recommendations.⁷⁴ This has been left to the Danish and internationally-based organisations and institutions supported by Denmark. The CTI also constitutes an opportunity to follow up at national policy level; and the embassies may even consider supporting programmes or project at national level that contribute to the implementation of UNCAT.

74 This may change as the 2017 guidelines for the development of policy papers for Denmark's relations with priority countries makes reference to the UPR recommendations as a source for data.

Finally, the absence of a strategy also challenges the visibility of the agenda in the MFA and makes it vulnerable to budget, staff and resource cuts; while the institutional anchorage and learning, or the strong buy-in from senior management, is diluted. Without a strategy, stakeholders may fear that the commitment of the MFA could be subject to change and to new trends, and that today's firm commitment relies on some few internal advocates for the "Freedom from Torture" agenda. On the other hand, a number of strategies have been adopted and forgotten again during the past decades, while the commitment and strategic approach has not yet been challenged. All in all, the evaluation concludes that there is no need for developing a strategy within an area that is this much at the core of the Danish MFA's DNA.

THE DANISH ENGAGEMENT HAS CONTRIBUTED TO MEASURABLE RESULTS

The strategic approach by Denmark has effectively contributed to a series of intended international policy level results at output/outcome level, either as a result of MFA direct engagement or through CTI and the supported Danish and international organisations and institutions. It is difficult to measure the impact in relation to the rights holders, but the engagements contribute to a platform for dialogue and accountability at national level. At international level, the Danish contributions may not have been indispensable for achieving the results, except in case of the CTI, but it has been key to the quality of the results and the processes leading to those results. Furthermore, the consistency in sponsoring resolutions that are adopted without a vote or by consensus has contributed to international consensus on the anti-torture agenda. It also gives the UNCAT, OPCAT and the UN bodies and mechanisms manoeuvre room to be elaborated further within the existing framework.

INDIVIDUALS AND INSTITUTIONALISATION ARE BOTH IMPORTANT FOR RESULTS

It is clear from the interviews with interlocutors that Denmark's ability to achieve results at the international policy level depends, to some extent, on the staff at the Danish missions in Geneva and New York as well as in the supported organisations and institutions. There is always a risk that changes in staff composition will lead to a disruption in the relationship with partners and stakeholders. However, this has not yet happened, probably due to the fact that the Danish engagement is based on expertise not only on the subject-matter, but also on processes. This is then combined with excellent professional skills and the fact that the torture agenda at the international policy level has become part of the Danish DNA and been institutionalised, including through a clear involvement and constant support from senior managers within the organisation. If a person is not very knowledgeable in the anti-torture agenda before taking up a position in one of the missions, the firm focus will automatically require of the person to pay attention to the agenda and make this one of the most important success parameters. Nevertheless, the international policy level is subject to many different agendas, that may

5 LESSONS LEARNED

change quickly, and is faced with fluid alliances. If the Danish focus shifts to another agenda or the Danish approach is diluted, then Denmark's unique standing is at risk of being quickly challenged, impacting Denmark's leverage and ability to contribute to real results.

6 CONCLUSIONS

Below are presented the conclusions from the evaluation, with particular reference to the Evaluation Questions. It should be emphasised that in addition to this main report, the portfolio analysis provides critical input to the Evaluation Questions and, in particular, to EQ1 and EQ2.

Q1: What have been Danish priority areas within the field of human rights and how have they been addressed by the MFA and its partners?

Six areas have been at the heart of Denmark's work with human rights during the evaluation period 2006-2016: Support to National Human Rights Institutions; Freedom from Torture; Rights of Indigenous Peoples; Corporate Social Responsibility; Promotion of Rule of Law and Access to Justice through Justice Sector Reforms; and gender equality (gender equality not covered by this evaluation). All areas have been addressed, directly or indirectly in the overall strategies for Danish development cooperation covering the evaluation period 2006 to 2016. The strategy *The Right to a Better Life (2012)* governed almost half of the period and introduced the human rights-based approach to Danish development cooperation. The *Strategy for International Human Rights Cooperation from 2009* also addressed these priority areas. Common for the strategies has been a focus on interventions that would create changes for the individual rights holders' human rights situation and that the international human rights framework is the fundament for any cooperation. Since 2012 the Human Rights Based Approach has explicitly been integrated into programming although this approach was applied in programming before 2012. Programmes and policies under the five priority areas reflect this focus and it has been pursued through a variety of interventions and modalities.

For programmatic interventions, these include but are not limited to: Support through multilateral cooperation; bilateral cooperation in Danish priority countries either as project- or sector programme interventions; Regional programmes (e.g. Danish-Arab Partnership Programme or European Neighbourhood Programme); Stabilisation programmes (rule of law); CSO support through strategic partnerships with Danish and international organisations; CSO support through framework agreements with Danish NGOs; Support through the Peace and Stabilisation Response/International Humanitarian Response, where Denmark contribute to EU rule of law missions.

6 CONCLUSIONS

For policy interventions, these include but are not limited to: Policy dialogue at country level on specific issues; Policy dialogue around individual countries' Universal Periodic Review (UPR) processes; Initiation of or support to UN resolutions, declarations or other international instruments; Active participation in the UN General Assembly (UNGA) and the Human Rights Council (HRC), committees and special initiatives; support to nomination and election of Danish experts for high-level positions in the multilateral system.

The programme interventions, as illustrated in the assessment of the priority area *Promotion of Rule of Law and Access to Justice through Justice Sector Reforms*, are generally building capacity with the partners; improving the capacity of the duty bearers (State) to carry out their mandate and improving the regulatory framework in order to change the situation of the rights holders for the better. Key principles have been concentration of efforts; long-term partnerships; knowledge, experience and empowerment; and the possibility of involving the Danish civil society as well as local ownership.

The policy interventions, as illustrated in the assessment of the priority area Freedom from Torture, include the active promotion of an agenda internationally for years, through UN bodies and together with like-minded state partners in Europe and from other parts of the world. The approach requires that the MFA coordinates its efforts internally, between Copenhagen, its permanent missions to the UN and the embassies. It is further supplemented with a consistent collaboration with a number of key partners amongst Danish and international organisations that possess expertise and experience within the priority area. This approach provides a potential for Denmark to link international policy level with regional and national policy and programme interventions. However, today the linkages between the international policy level and national policy and programme level appear to mainly be assured through DIHR and CSOs supported by Denmark.

Q2: How have engagements been distributed between the thematic areas, channels of support and between partners?

The five thematic areas pre-selected in the ToR have been addressed rather differently by the MFA.

Support to National Human Rights Institutions is a core component of many Danish programme engagements at national level (good governance and human rights programmes). Support often consists of capacity building of NHRIs and is often provided in cooperation with DIHR. The priority area has been influenced by the fact that the Danish NHRI is a very strong organisation and sets standards internationally.

Core support to DIHR has enabled this institution to develop its strategic partnership with both MFA and with partners in other countries, and also engage at international policy level.

Freedom from Torture and Rights of Indigenous Peoples share similarities by being areas that MFA mainly addresses at the policy level. Each have a unique partner(s) in terms Danish organisations working as specialists within the area, pursuing the same objectives as MFA. These organisations (IWGIA–indigenous peoples and DIGNITY/IRCT–torture) are highly specialised organisations with international recognition that have helped shape the Danish profile within their respective areas. The organisations carry out their own projects at country level and receive core funding from MFA, which enables them to pursue their own strategic goals.

The CSR priority area is characterised by not having a main partner for MFA, even though the DIHR also works a lot with this agenda and is considered ‘world-leading’ (inter alia made possible through core support from MFA). CSR has been prioritised in Denmark’s business programmes, in ad hoc initiatives and also at policy level but there seems not to be a clear strategic approach that the MFA has followed in this respect.

Like support to NHRIs, rule of law and access to justice is also a key Danish priority area at programme level. In this respect Denmark has formulated a number of interventions throughout priority countries, often as part of good governance and human rights programmes. Capacity building of key justice sector institution (state and non-state, formal and informal) and legal aid programmes constitute some of the main modalities and channels of support.

Q3: What results have been generated as a result of the Danish engagements within the selected focus areas? And to what extent have these results led to transformative changes for target groups, for countries and at the global policy level?

Denmark does not have a strategy for its engagements in the priority area **rule of law and better access to justice**. Consequently, there is no explicit overall strategic objective of the Danish support and the entry points for cooperation could be multiple as there is no prioritization of efforts. However, rule of law and better access to justice is a key principle in Denmark’s development cooperation and the interventions do reflect a strategic objective of “rule of law strengthened with well-functioning legal systems.”

6 CONCLUSIONS

The Danish engagements target the structure (institutions responsible for developing the legislative framework); the processes (institutions responsible for implementing the framework) and the rights holders or their representatives. Capacity building of institutions enabling them to perform in accordance with their mandate is the most common outcome focus of the engagements.

Results at impact level are difficult to identify. The overall rule of law indicators at macro level are, not surprisingly, hardly improving in any partner country. At micro level, individuals targeted by the Danish interventions do, in some cases, experience a change. A significant impact has been an improved access to legal aid service for poor and vulnerable groups. Access to legal aid services is a key element in the Danish support and better access to such services increases the potential for better access to justice, although it is not guaranteed.

The Danish engagement has also contributed to **results at outcome level**. These include: improved legislative frameworks or guidelines; improved capacity of partner organisations acting in the justice sector, including civil society organisation or NHRIs monitoring justice sector institutions; improved understanding amongst the sector actors of the sector as whole, and not isolated institutions; enhancing the coordination, collaboration and communication amongst the institutions and towards the society. The role of the informal justice sector and alternative dispute mechanisms has also been enhanced in a number of countries. Although these are mostly results at outcome level, it is likely that these outcomes will lead to transformative changes over time, contributing to real impact. Programmes and projects however often fail to have sufficient baselines and adequate indicators to measure the achievement and hence documentation of results.

The priority area **freedom from torture** is also characterized by the absence of an overall strategy. However, unlike the rule of law and better access to justice priority area, this area is anchored in a clear normative framework – the UNCAT – and within a strategic approach refined over the years. This approach reflects a clear strategic objective to push the right to freedom from torture, as enshrined in the Convention against Torture, through all international, regional and national available means. The focus of the evaluation has been the international policy level and consequently, the impact upon the rights holders has not been assessed.

The assessment of the policy interventions shows a number of **results at outcome level**. The outcomes include that resolutions elaborating and confirming the fight against torture are regularly adopted without a vote/with consensus, diplomats are sensitized about the agenda and dialogue platform for stakeholders are established and their use facilitated. Other measurable outcomes include an increased number of

ratifications of UNCAT; establishment of the Convention against Torture Initiative and its performance according to its mandate; engaging states and making regional outreach through CTI core group and group of friends. UPR recommendations related to torture have been accepted or noted by states under review. Here Denmark has made 154 recommendations during the first two UPR cycles where 91 of them were accepted. This must be considered as a relatively good indicator of success.

The Danish support to a variety of Danish and international organisations further contributes to outcomes as these organisations often work in tandem with Denmark, pushing the same agenda.

Although these outcomes do not result in immediate impact upon rights holders, they contribute to a more robust international framework, an international platform for dialogue, understanding, commitment and accountability related to the torture agenda. This may contribute to improved national legal frameworks and facilitation of a platform at national level for dialogue, commitment and accountability.

Q4: What factors have influenced or constrained the achievement of specific results? And what lessons of a general nature can be learned from this?

In relation to **the programme level and rule of law and better access to justice through justice sector reforms**, external variables influencing results include the presence of an enabling environment and commitment of the government and other state institutions. This calls for a solid context and risk analysis, before engaging with the partner and with realistic focus on factors that may hinder the programme moving from outputs to outcomes. Flexibility in the programme design is an important element to address such changes.

Other external variables that encourages commitment are linking the engagement to national strategies or policies, general perception of the sector, the level of donor coordination, the positive perception of Denmark, Danida, Danish CSOs and institutions as credible and reliable partners.

Key internal variables include commitment, capacity and capability of the partner organisations. Related to this is the design of the programme and the capacity of the programme management to implement the programme. If a programme is too ambitious, too large, not discouraging “silo thinking”, not capable of measuring results or benefitting from past experience, not able to communicate its objective and the rationale behind the programme to the sector, then there is a greater risk that the programme will not achieve its planned results at outcomes level.

6 CONCLUSIONS

Realistic indicators and efficient planning, management and evaluation systems are highlighted as positive factors. Lack of good indicators and baseline studies, and the formulation of outcomes and impacts that are not easily measurable have a severe impact on tracking and documentation of results

A key factor for success is the **Danish approach** applied in programmes. This approach reflects a long-term Danish commitment that contributes to creating partnerships, enhancing credibility, building the relationship with the partner and facilitating the partner's trust in the inputs delivered by Denmark and Danish organisations. The partner organisation knows that the Danish support is value-based on international human rights, credible, reliable and flexible. However, the funding model where Denmark joins forces with other and larger donors may have a negative impact on the benefits of the Danish approach, i.e. joint programmes may dilute the advantages of the Danish model.

The strategic Danish use of partner organisations provides access to national and international expertise as well as technical and financial resources contributing to achieving results. Consequently, if the Danish organisations do not have the required capacity to deliver their inputs, this could jeopardize the achievement of results.

Turning to **the policy level and freedom from torture**, most external variables actually contribute positively to the achievement of results. Due to its consistent focus on this priority area Denmark is able to manage the potential risks emanating from external variables. The "freedom from torture" has a very strong international policy and normative framework with a robust international infrastructure. It is also a protected right in regional instruments and in most constitutions. Consequently, the agenda is widely accepted at international policy level and provides Denmark with a solid platform. The implementation at national level is the major challenge.

The environment around multilateral policy development is an important influencing factor. Its predictable nature makes room for Denmark, as a small country with limited resources, to focus its efforts where new grounds can be reached, for example negotiation with 'difficult' countries. However, the multilateral environment is, at times, unpredictable, providing Denmark with a window of opportunity to create new relationships, as seen with the CTI.

The fact that Denmark is internationally perceived as the leading country within the freedom from torture agenda, with Danish organisations seen as experts in the sector, provides Denmark with a unique platform in the international policy development environment. Denmark's leverage is very high and contributes to the achievement of results, but there is a risk that other countries will, for the same reason, limit their engage-

ment in the agenda. The CTI is a very constructive approach to prevent that from happening.

Finally, the fact that the EU and the group of EU countries support Denmark's role in the fight against torture provides Denmark with more weight in negotiations at international level and enables Denmark to focus its efforts on a few key topics, instead of diluting its resources.

One of the prominent internal variables that contribute to the achievement of results is the existence of a **Danish approach** at the international policy level. This has emerged over the years, contributing to a unique Danish position at international policy level. It reflects consistency, based on principles of the international framework. It focuses on bridge-building, engagement of a variety of stakeholders in all relevant activities and processes. This includes the UN mechanisms as well as organisations protecting the rights holders, and engagement includes consensus seeking but without leaving its fundamental principles. Denmark is perceived as transparent with a high degree of credibility. A similar approach is reflected in Denmark's programme engagements.

The modus operandi of the MFA when engaging also contributes positively to the achievement of results. Denmark has a systematic approach to preparing resolutions, ensuring that the final text is acceptable and adopted by consensus or without a vote. It also includes engagement of embassies, relevant UN Bodies and Danish and international expert-based organisations with linkages to organisations in the UN member states. The MFA leaves room for the permanent diplomatic missions to manage the international policy level at the UN.

It is however notable that there is not much strategic engagement between the MFA in Denmark and the programme level or organisations. Once the international policy procedures have been concluded, there is no follow up bilaterally neither in political dialogue or in bilateral programmes. Their implementation is left to the organisations supported by Denmark. Only in three Danish country policy papers is a reference made to the UPR.

The support to, and cooperation with Danish and international CSOs and DIHR is strategic and important. The mix of engagements contributes to the achievement of result as it enables Denmark to both target the demand and the supply side, and to build bridge between the two. The international, regional and national policy level is also targeted through these organisations. The fact that international professional associations for practitioners or NHRIs adopt guidelines, policies and standards is a result of this. These instruments are, at times, more efficient tools at national level than resolutions and declarations.

The achievement of results depends on Denmark's capability to maintain the Danish approach, the clear strategic and systematic approach to the priority area and the clever mix of engagements. This requires inputs in terms of human, technical and financial resources as well as expertise. Some of the interviewed interlocutors observe that frequent reorganisation in the MFA and budget cuts, could contribute to loss of expertise within this field and that the prioritization of the area will be reduced. This will undermine Denmark's leverage.

Q5: How may coherence and synergy between the multilateral track and the bilateral track be strengthened?

Denmark as well as Danish and internationally-based organisations supported by Denmark have, within both priority areas covered by this evaluation, been active at the multilateral policy development level. Furthermore, reference to international human rights standards are often directly or indirectly made in rule of law and better access to justice programme documents. The bilateral level through the embassies and organisations contribute to multilateral policy in the preparation of, for example, the UPR processes and the anti-torture resolutions. The organisations are active in providing UN bodies with information from their national partners and sometimes they also support regional mechanisms, such as the African Commission for Human and Peoples' Rights, or associations for professionals in their development of instruments. Instruments that subsequently become a platform for dialogue or norm development at national level. Consequently, it is possible to say that there are some synergies between the multilateral and bilateral track. Nevertheless, there is room for improvement. It is remarkable that Denmark rarely uses the UPR mechanism to address rule of law and better access to justice issues in partner countries or uses the recommendations more actively as a means for designing indicators for this priority area. In the priority area of freedom from torture, the UPR process is applied more actively, although the country policy and programme documents rarely refer to the Denmark's recommendations on torture.⁷⁵ It also appears to be a missed opportunity, that Denmark uses efforts and resources to have resolutions adopted on freedom from torture, without any systematic follow up on the implementation at national policy level. Monitoring their implementation is left to the organisations supported by Denmark.

75 See for instance the second cycle recommendations of Denmark to Myanmar; Kenya and Burkina Faso. The recent country programmes for these countries do not refer to any of the Danish UPR recommendations on torture. Country policy papers do not make reference as well to Danish recommendation, see for instance the 2014 Country Policy paper for Tanzania or the 2016 policy paper for Niger.

Q6: Under what circumstances has Denmark been most effective in promoting the human rights agenda (forums, countries, themes) – and what are lessons learned of a general nature as a result of this?

The programme level evaluation does not clearly indicate that specific forums, countries or themes facilitate a more effective promotion of human rights. Denmark has strategically chosen to support both the demand side and the supply side. At times, the planned support to the supply side is not implemented as foreseen, which has a bearing on the results of the programmes. On the demand side, it is often observed that linkages to the informal justice system contribute to the achievement of results. Consequently, the overall conclusion is that, in order to be effective, both the supply and demand side need to be addressed as well as the formal and informal system.

Whether a programme will succeed in achieving results at outcome and impact level depends significantly on the external and internal variables and on the inputs provided, as analysed through EQ4. Programmes, where the variables are within the control of the programme, have as consequence that risks are more manageable, and Denmark's leverage is stronger, and thus more likely to achieve immediate results. These programmes are often targeting capacity building of partner organisations enabling them to implement their mandate.

Programmes supporting partners in introducing new legislation, and where the draft legislation or the actual legislation is an outcome indicator, have generally also achieved the planned result. The results often depend on the capability to engage stakeholders and law-makers, and also on political will as a driver. These are considered fundamental for the actual enactment of the law or justice sector reforms, although this external variable is not easy to manage.

While Danish support has contributed to legislative reforms, adoption of new laws or improved capacity at partner institutions, legal aid interventions have shown some very consistent results at outcome level. It has often provided vulnerable groups with access to legal aid services that were not accessible prior to the programme. This result is reflected in the programmes, regardless their geographical context. Their effectiveness could be caused by the fact that the programmes are manageable, often based on a fund modality. They may engage local justice sector institutions (including the informal justice sector), grassroots organisations and lawyers that are interested in the course. Local level legal aid service rarely depends on political will from central government but on the local context.

6 CONCLUSIONS

The freedom from torture agenda is very effectively implemented despite the absence of a strategy. Denmark has, for years, had a firm strategic approach, engaging all potential stakeholders (states, UN and regional bodies, the EU and organisations with access to international and national platforms) that wish to push the agenda. Denmark is systematic in its approach, bridging the various stakeholders, expert-based and innovative, as in the case of CTI. Denmark is recognized by all interviewed interlocutors for its approach. The success also benefits from anchorage in a clear international framework, in terms of the UNCAT, ratified by most states, and with international bodies and mechanisms to monitor its implementation. Furthermore, the right to freedom from torture is recognized, although not up-held, in most national legal frameworks. Denmark, and organisations supported by Denmark, have achieved a unique position at the international policy level due to this approach. It is however resource demanding and requires consistent Danish support and political will. Sudden changes in the approach may undermine Denmark's position and other states could capture the agenda, not necessarily for the purpose of consolidating the achieved results. The Danish success in relation to freedom from torture is an example of how a small state can contribute to an international agenda, increase its leverage significantly and have an influence beyond what its size merits. Whether the approach can be duplicated is questionable, but the priority areas of indigenous peoples, CSR and national human rights institutions have some of the same characteristics.

Q7: What is the value added of the various channels and modalities and how do they interact?

The modalities of the programmatic engagements fall into five main categories within the area of rule of law and better access to justice: large country sector programmes; larger sector programmes with other donors (sector wide approach); basket funding; regional programmes; and programmes or projects by Danish CSOs and DIHR.

The Danish support targets all sector stakeholders and not only the supply or demand side. All channels are used (ministries, justice sector institutions and NGOs), although not necessarily within the same programme or project. It is not possible to conclude that one channel or modality is more efficient or adds more value than another and there is not, as point of departure, a preference for a specific channel or modality. It all depends on the local context. However, it is clear that large programmes involving more development partners increase the leverage of the development partners towards the government and contribute to moving the indicators for the sector in a positive direction. On the other hand, the Danish approach to programme implementation may get lost in larger programmes with other donors and they may also contribute to "silo" thinking, if this is not addressed by the manage-

ment of the programme. Larger Danish country-, sector-, or smaller programmes rarely move the indicators for the sector as whole, but they have a more immediate effect on the partner institution(s) and the partnership relations become clearer.

As highlighted several times, support to legal aid service appears to be a common feature in the Danish support, which performs well. Legal aid service programmes make it possible to address both demand and supply side at local level and support can be channelled through Danish organisations, larger sector programmes or basket funding. However, the documentation also shows that the programmes supporting the legal aid service institutions carry a risk that lack of ownership from the state and institutions increases donor dependency which threatens their sustainability.

Regardless of the channel or model, the Danish support is recognised as adding value to the implementation of the programme. The reviewed documentation often highlights the Danish support as being a long-term commitment, reliable, credible, flexible and value-based in pursuing partnerships. This approach contributes to effectiveness as well as to the sustainability of results. Other countries may have a similar approach, but the way that Denmark applies the approach contributes to results in the programmes supported by Denmark and Danish organisations.

The elements reflected in 'the Danish approach' also describe how Denmark engages at the international policy level within the priority area of freedom from torture. In this priority area, Denmark also applies an astute mix of engagement, where all relevant stakeholders are engaged. This involves a variety of engagements: through UPR processes; UN bodies and mechanisms (but also regional and specialised mechanisms, such as professional associations for practitioners or NHRIs); inter-state cooperation CTI; and credible expertise based in Danish or international organisations.

In the making of international policy in the UN system, the member states are the main entry point. Denmark uses its unique position to push the agenda but still within the scope of the UNCAT, making the elaboration of resolutions presented acceptable to the UN member states. Many organisations likewise appreciate how Denmark manages the processes at international policy level, and express that Denmark adds value to the process as well as to the result – the resolutions. Although Denmark is not indispensable, many believe that the resolutions would not have the same quality and be adopted systematically without a vote or with consensus; likewise, the agenda would not have attracted the same attention. The CTI is an example of how Danish support has materialized in a setup that revitalizes the member states' commitment and extends the reach of the agenda beyond Denmark's usual leverage, as the core group of the CTI has access to other forums than Denmark has in Asia,

6 CONCLUSIONS

MENA-region, Africa and Latin America. Similarly, the support to credible expert-based Danish and international organisations that share the same objective as Denmark (implementation of the UNCAT) provides Denmark with influence through channels outside the immediate confines of Danish diplomacy.

7 RECOMMENDATIONS

1. General recommendations

STRENGTHENING THE LINKAGES BETWEEN THE INTERNATIONAL POLICY LEVEL, AND NATIONAL POLICY AND PROGRAMME LEVEL

The coordination between the international policy level and national policy and programme level should be further strengthened. UN resolutions and UPR recommendations (in general but in particular those made by Denmark) should be reflected in Denmark's country policies and programmes as well as in relevant programme documents.

The MFA should follow up on the implementation of UPR recommendations and UN resolutions sponsored by Denmark, within the priority areas and in particular in relevant priority countries, in order to ensure a greater impact at national level and to support better linkages and synergies. In the case of freedom from torture, the CTI could be an instrument to link the two levels.

STRENGTHENING OF THE MINISTRY OF FOREIGN AFFAIRS' HANDLING OF PROGRAMME AND POLICY RELATED DOCUMENTATION

The MFA should revisit how it manages, structures and publishes documentation relevant for development cooperation. It is, at times, very unclear when a policy-related document 'expires' or where documents are published. Documents are not published systematically and it is clear that identification and tracking of relevant documentation internally in the ministry is difficult for others than the desk officer who was originally responsible for the case. This also negatively influences the scope for drawing lessons learned across countries or areas of engagement.

2. Recommendations related to the priority area: Rule of law and better access to justice through justice sector reforms

A NEED FOR CLARIFICATION OF HOW DENMARK WISHES TO SUPPORT TO RULE OF LAW AND BETTER ACCESS TO JUSTICE THROUGH JUSTICE SECTOR REFORMS BEYOND 2018.

The Danish priorities within rule of law and better access to justice should be clarified. The substance of- and Danish priorities within the priority area is unclear as it, in theory, covers a variety of entry points as well as combining a fundamental principle for the enjoyment of all

7 RECOMMENDATIONS

human rights, as well as a human right in itself. In the absence of a strategy, there is no prioritisation and no overall agreed indicators for how to measure results. The present status of the two “How to Notes” related to the justice sector is also unclear. The priority area is reflected in Denmark’s country policies and programmes; and correspondingly in strategic and thematic programme objective as well as outcomes. However, these policies and programmes are only developed for priority countries and not for all countries. They are, by their nature, developed for the context of that particular country. They refer to different indicators for measuring macro-level rule of law development such as World Bank Rule of Law index; Mo Ibrahim Foundation Index or World Justice Project Rule of Law index. This is so despite the fact that staff in MFA have expressed doubt about applying such indicators. Bearing in mind that rule of law and better access to justice through justice sector reforms is a very broad priority area, that needs to be operationalized in local context, it is not recommended to formulate a strategy as such but to up-date guidelines that clarify, how this area should be approached.

THE ABILITY TO MEASURE RESULTS SHOULD BE STRENGTHENED

There is a clear need to identify how to develop a theory of change, implement baseline studies, gather data in the absence of reliable or credible sources, as well as how to formulate measurable and realistic outcomes, impacts and corresponding indicators. Impact indicators could focus more on the experience of the immediate rights holder, as a supplement to quantitative indicators.

PARTNERS’ CAPACITY SHOULD BE ASSESSED PRIOR TO ALL PROGRAMMES AND A PLAN DEVELOPED TO STRENGTHEN THIS

As part of programme/project preparation, there should be an assessment of partners’ capacity to implement programmes as well as how to monitor and evaluate progress. If the capacity is low, the programme/project need to address that as part of the programme, otherwise results are unlikely to be achieved.

KNOWLEDGE SHARING SHOULD BE ENVISAGED AS PART OF PREPARATION PROCESS

There is a need for an increased focus on sharing of experience, best practice and knowledge, including within the MFA, in programme preparation. The preparation of the programme should ensure that the programme is evaluable and, moreover, that lessons learned from similar programmes or previous programmes in the same country are taken into account.

FOCUS ON MAINTAINING A DANISH APPROACH THROUGHOUT THE PROGRAMME CYCLE REGARDLESS OF PROGRAMME MODALITY

There is no basis for recommending one modality instead of another or that a particular entry point should be pursued, as it is clear that it all depends on the context in which a programme is implemented.

However, it is recommended that whatever modality or entry point is chosen, the cooperation must reflect the Danish approach and that the implementation guards the principles inherent in that approach. This requires adequate human, technical and financial resources, strategic choice of partners, flexibility and long-term commitment and, above all, a focus on rights holders as well as duty bearers. Substantial impact in justice sector programmes can be achieved through short-term commitment.

MAP THE ROLE OF LEGAL AID SERVICES IN THE DANISH DEVELOPMENT CORPORATION

The role, and results, of legal aid services in Danish development cooperation should be mapped as the evaluation shows that this is a key component in the Danish engagements and that further valuable lessons are very likely to exist.

IMPROVE THE FREQUENCY OF EVALUATIONS AND REVIEWS

There is a need to conduct more evaluations within the priority area (provided that the knowledge gathered from such evaluations is institutionalised). The present number and frequency do not reflect the efforts in the area and their use as a documentation base for identifying trends, experiences, challenges and opportunities is limited.

3. Recommendations related to the priority area: Freedom from Torture

STRENGTHENING THE LINKAGE BETWEEN THE DANISH EMBASSIES AND THE CTI

There seem to be a missed opportunity in the tremendous work done by Denmark at international policy level, compared with the lack of follow-up at national and embassy level. The Danish embassies should be introduced to the CTI and its support options enabling the embassies to encourage the implementation of the CTI agenda. The analysis at programme level confirms that Denmark is a trusted partner in its priority areas, which makes for a natural opportunity for engagement, also in a sensitive area like freedom from torture. Expanding the interface with regional and sub-regional organisations, like the AU, may be an effective way to link international and national efforts.

ENSURE THAT THE DANISH MINISTRY OF FOREIGN AFFAIRS AND THE DANISH UN MISSIONS HAVE THE RELEVANT RESOURCES AND THAT KNOWLEDGE IS INSTITUTIONALISED

Denmark should keep focusing on internal capacity building at the permanent missions to the UN to ensure that it remains a priority area for the missions and that this does not become dependent on individuals who rotate positions. The continuous buy-in of senior management, both in the MFA and at the UN missions, will be important in this regard.

7 RECOMMENDATIONS

The MFA in Copenhagen should ensure that the area is allocated with adequate resources at the headquarter level. This is also important as it contributes to ensuring that the Danish partner organisations, who are extremely important key players and who help shape the Danish identity in the area, meet technical capacity requirements with which to engage more strategically.

ESTABLISH A FLEXIBLE SUPPORT MECHANISM FOR SMALLER GRANTS FOR STRATEGIC POLICY ISSUES

The evaluation shows that relatively small grants can have a significant impact at the policy level (CTI is one such example). Therefore, in order to ensure that strategic policy objectives can be followed up by relevant stakeholders, it is recommended to establish a funding frame or modality which can provide support to initiatives or actors that work at policy level, and which does not fall within any other funding modalities at country level or at headquarter level. Such funding could also help to tie the multilateral and bilateral levels closer together in respect of key Danish policy issues.

DENMARK SHOULD CONTINUE TO SUPPORT KEY ORGANISATIONS AS THEY ARE ESSENTIAL TO DENMARK'S STRATEGIC APPROACH

The organisations supported by Denmark provide Denmark with a unique opportunity to extend the objectives of its policy beyond the usual traditional diplomacy and they are essential to Denmark's strategic approach. Consequently, these organisations should receive adequate support in order to stay professional, to conduct research and to increase their expertise and their potential of engage with duty bearers as well as rights holders. In line with the above, there is room for the MFA, as well as the Danish UN missions, to engage with key Danish partners even more strategically in order to fully benefit from the capacity that has been built in Denmark within this field.

EVALUATION OF DANISH SUPPORT TO PROMOTION AND PROTECTION OF HUMAN RIGHTS 2006-2016

**MINISTRY OF FOREIGN AFFAIRS
OF DENMARK**

2 Asiatisk Plads
DK-1448 Copenhagen K
Denmark

Tel +45 33 92 00 00
Fax +45 32 54 05 33
um@um.dk
www.um.dk

ISBN: PDF: 978-87-93616-61-5
ISBN: HTML: 978-87-93616-62-2

