

The European Union's IPA Programme for Turkey

**THEMATIC EVALUATION ON JUDICIARY
AND FUNDAMENTAL RIGHTS IN TURKEY**

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FINAL REPORT

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Any errors and omissions remain the responsibility of the authors.

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Acronyms and Abbreviations

ADR	Alternative Dispute Resolution
AP	Accession Partnership
ATL	Anti-Terror Law
CBC	Cross-border Cooperation
CFCU	Central Finance and Contracts Unit
CISST	Civil Society in the Penal System
CoE	Council of Europe
CSF	Civil Society Facility
CSO	Civil Society Organisation
DG ELARG	Enlargement Directorate-General
DGPDH	Directorate General of Prisons and Detention Houses
DIS	Decentralised implementation system
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EIDHR	European Instrument on Democracy and Human Rights
ETUC	European Trade Union Confederation
EUD	European Union Delegation
FCD	Finance and Contracts Division
GAP	South-Eastern Anatolia Project
GONGO	Government-organised NGO
HSYK	High Council of Judges and Prosecutors
ICCPR	International Covenant on Civil and Political Rights
IPA	Instrument for Pre-Assistance
JHR	Judiciary and Human Rights
KCK	Kurdistan Communities Union
MC	Monitoring Committee
MEUA	Ministry of EU Affairs
MIPD	Multi-annual Indicative Planning Document
MoH	Ministry of Health
Mol	Ministry of the Interior
MoJ	Ministry of Justice
MoNE	Ministry of National Education
NAO	National Authorising Officer
NF	National Fund
NGO	Non-governmental organization
NIPAC	National IPA Coordinator
NPAA	National Programme for the Adoption of the <i>Acquis</i>
OECD	Organisation for Economic Development and Cooperation
OLAT	Online Application Tool
PID	Project Implementation Directorate
PIS	Project identification sheet
PPD	Programming process document
QSG	Quality Support Group
ROM	Results-Oriented Monitoring
SEI	Support to European Integration
SMART	Specific, measurable, achievable, relevant, time-bound
SMSC	Sectoral Monitoring Sub-Committee

SPO	Senior Programme Officer
SQSG	Sector-based Quality Support Group
TA	Technical Assistance
TACSO	Technical Assistance to Civil Society Organisations
TAIB	Transitional assistance and institution-building
TMA	Turkish Medical Association
TORs	Terms of Reference
ToT	Training of Trainers
TPI	Turkey Pre-accession Instrument
UK	United Kingdom
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UYUP	Online Judicial Network

EXECUTIVE SUMMARY

The Enlargement Directorate General (DG ELARG) of the European Commission (EC) has commissioned a team of consultants managed by IBF International Consulting to carry out a thematic evaluation on judiciary and fundamental rights in Turkey. The evaluation focuses on a portfolio of 20 projects implemented since 2004, with a total budget of about €112.6m. These were funded in the context of pre-accession assistance for the 2004-2006 period and of Component 1 (transition assistance and institution-building [TAIB]) of the Instrument for Pre-Assistance (IPA) for the subsequent period.

According to the evaluation Terms of Reference (TORs) – appended to this report – the overall objective of the evaluation is:

“To provide findings and recommendations to assist the Enlargement Directorate General of the European Commission in improving the programming and implementation of EU pre-accession assistance in the area of political criteria and judiciary, and fundamental rights in Turkey”.

The TORs further assign the following three specific objectives to the evaluation:

1. To “provide a judgement on the performance of assistance in the field of political criteria and judiciary”, considering the programming and implementation levels;
2. To “provide a judgement on the performance of assistance in the field of fundamental rights”, also considering the programming and implementation levels;
3. To provide “operational recommendations” for programming future EU assistance in the field and for taking corrective measures to improve the implementation and monitoring of on-going actions.

The evaluation covered a portfolio of 20 projects selected from all the projects linked to Judiciary and Fundamental Rights in the period under consideration. The table below sets out the projects’ reference number and title, and indicates the category under which the projects were considered.

Number	Title	Category
TR.0401.01	Implementation of human rights reforms	Hum. Rights
TR.0401.02	Support to the establishment of Courts of Appeal – Twinning	Judiciary
TR.0401.06	Promotion of cultural rights	Hum. Rights
TR.0404.01	Towards good governance, protection and justice for children	Hum. Rights
TR.0404.02	Development of probation services	Judiciary
TR.0501.01	Better access to justice	Judiciary
TR.0501.03	Training Programme on Istanbul Protocol	Hum. Rights
TR.0501.04	Cascaded training of lawyers on European Convention on Human Rights	Judiciary
TR.0501.07	Courts of Appeal – Construction	Judiciary
TR.0601.02	Civilian oversight of internal security sector	Hum. Rights
TR.0601.03	Training of Gendarmerie officers on European human rights standards	Hum. Rights
TR.0601.04	Support to the court management system in Turkey	Judiciary
TR.0601.05	Shelters for women subject to violence	Hum. Rights
TR.0601.09	Children First – modelling child protection mechanisms at provincial level	Hum. Rights

TR.0701.01	Development of work with juveniles and victims by the Probation Service	Judiciary
TR.0701.03	Training of military judges and prosecutors on human rights issues	Judiciary
TR.0701.04	Empowering women and women's NGOs in the least developed regions	Hum. Rights
TR.0702.18	Dissemination of model prison practices and promotion of prison reform	Judiciary
TR.0801.02	Strengthening the court management system	Judiciary
TR.0801.04	Promoting services for people with disabilities	Hum. Rights

Context of the evaluation

Turkey has made significant progress in the areas of fundamental rights and the judiciary in recent decades. Undoubtedly, this progress has been driven both by internal dynamics for reform as well as by the impetus provided by a deepening of relations between the EU and Turkey. Nevertheless, significant human rights concerns remain in Turkey, justifying further IPA support in this field.

In 2005, the judicial system was strengthened via the adoption of structural reforms, including the adoption of the Judicial Reform Strategy in 2009. The government's zero tolerance policy towards torture and ill-treatment led to strengthening of legislation in this area. However, human rights organisations continued to report cases of torture and ill-treatment, with one of the key issues that continued to be problematic being the impunity of perpetrators of torture.

One of the most significant changes in 2008 was the amendment of Article 301 of the Turkish Penal Code, which was the single most used article to curb freedom of expression. Despite these changes, international and local human rights NGOs reported an increase of court cases opened against writers, journalists, human rights defenders and politicians in this period through other legislative provisions, including the Anti-Terror Law. While provisions on freedom of association were gradually improved, NGOs noted the continued harassment of human rights defenders, and in particular those linked to Kurdish rights and to issues of sexual orientation, as a result of which individuals and NGOs were frequently pursued before the courts. Prolonged pre-trial detention was used very frequently. Improvements in the field of women's rights, children's rights and cultural rights continued, although gender-based violence remained problematic, and state services and protection mechanisms were considered by women's NGOs as inadequate.

As of October 12, 2011, 19,988 cases were pending before the European Court of Human Rights regarding Turkey. In 2011, Turkey was the country with the highest number of condemnations by the Court. Recent reports of international human rights NGOs and the CoE Commissioner for Human Rights revealed continued problems regarding freedom of expression, freedom of assembly, cultural rights and the judiciary.

Pre-accession assistance modalities

Until 2007, all pre-accession financial assistance to Turkey – including assistance in the areas of the judiciary and human rights (JHR) – was provided under the Turkey Pre-accession Instrument (TPI) based on the Council Regulation (EC) No 2500/2001, which set the principles, priorities and rules for this assistance. Following Council Decision No 2002/179/EC, the Commission and Turkey signed the Framework Agreement, laying down *inter alia* institutional arrangements conferring management powers to the Turkish authorities with *ex-ante* approval of procurement related documents by the EC, represented by the EUD. This procedure is known as the decentralised implementation system (DIS).

It was difficult to analyse the budget utilisation of completed projects, because some final payments had not been made or taken into account by the CFCU at the time it provided budget utilisation figures to the evaluators. However those figures that were available suggested about 16% of allocated funds had not yet been contracted, and 5% had not yet been disbursed. It is likely that these percentages may diminish during 2012 as final project payments are made and registered by the CFCU.

Conclusions of the evaluation

Relevance

The projects in the portfolio were generally relevant to IPA objectives, in the sense that they addressed judiciary- and human rights-related concerns identified in relevant strategy documents. They clearly contributed to enhancing the momentum towards human rights reforms meeting political criteria for EU accession. In particular, the projects addressed key gaps in the understanding and implementation of European human rights instruments by the judiciary, and in the promotion and protection of fundamental rights in general.

However project design was of uneven quality, leading to some projects' failure to deliver fully on their intended outputs and results. Although projects addressed genuine needs in the judicial and fundamental rights areas, the portfolio left a number of gaps. These included, for example, support to the rights of defendants in trials, minority rights, and trade union rights. Another concern hampering relevance was that, in some cases, the projects were designed without sufficient consultation with all relevant stakeholders – particularly civil society. Greater consultation may have helped ensure more focused project design addressing specific strategic needs in the judicial and fundamental rights area.

The project-based approach taken to date by IPA TAIB therefore served the reform process well. However a sector-based approach, if adopted in future, could contribute to mitigating some of the concerns highlighted above, by making the programming process more predictable and encouraging joint projects between institutions. Such an approach could also help encourage greater collaboration on judiciary-related projects between institutions and civil society organisations, including professional groups such as bar associations. However, a sector-based approach would be ill-suited to supporting civil society-led human rights projects, since it would jeopardise the independence of these organisations.

Effectiveness

The projects in the portfolio have undeniably produced a wide range of important outputs in relation to the judiciary and fundamental rights. They have enhanced the effectiveness of the court system and the capacity of judges and prosecutors to take into account European and other applicable human rights standards. They have contributed to the protection and promotion of key human rights, particularly for vulnerable groups such as people in detention, children and youth, and also for women at risk of gender-based violence. They have helped enhance the exercise of cultural rights and raise awareness of human rights among law enforcement institutions. To that extent, they have contributed to democratic progress in Turkey and therefore to the absorption of the *acquis* in relation to judicial and fundamental rights affairs – even though continued reform, and further implementation of past reform, remain necessary.

However, in a context of continued distrust between national institutions and independent human rights actors, as well as of a lack of will on the part of the authorities to implement certain human rights reforms, the effectiveness of EU assistance in relation to human rights remains weak. An additional

concern is that, while most planned outputs were delivered, they did not always bring about the expected results or outcomes, in particular in cases where projects touched upon sensitive human rights issues, and where they involved cooperation with civil society organisations.

Projects were generally implemented as planned and achieved expected results. However project design was sometimes flawed, with unclear or overambitious objectives that were not consistent with the duration of the implementation period. This concern was heightened by the fact that delays in starting some projects reduced the time available for implementation. Outputs and results were largely consistent with plans, although quality was sometimes poor (for example when technical assistance obtained through twinning was not of a sufficiently high standard).

Cooperation between civil society and institutions was rarely optimal, and government institutions tended to dominate the implementation of projects, even when civil society input was specifically sought. Civil society representatives were often less than full participants in activities, partly as a result of preventable procedural problems (failure to obtain visas for study tours, for example), but mainly because of a lack of will on the part of the authorities to cooperate fully with civil society.

EU monitoring mechanisms were appropriate and the EUD in particular monitored projects closely, sometimes intervening in activities (for example to support civil society participation).

Efficiency

Generally, taking into account the human resources needs of project management and the management processes of beneficiary organisations, the projects demonstrated an adequate level of delivery of results in view of the available resources. Some projects were able to achieve a significant multiplier effect, such as piloting initiatives that were subsequently replicated with domestic funding. Administrative costs were high, as were transaction costs related to contracting. However, civil society involvement helped enhance efficiency and accountability in many projects.

The management of individual projects met IPA requirements, although staff turnover was a concern. The programming process involved long procedural delays, which led *inter alia* to some projects being implemented by different teams to those that had designed them. The lack of familiarity with IPA processes on the part of some SPOs also led to unnecessary delays. The lack of consistency between IPA administrative and accounting rules and those of beneficiaries such as Turkish institutions and intergovernmental organisations also led to delays and challenges in implementation, for example in relation to timely staff recruitment.

Overall, the lengthy programming process was the most significant challenge to efficiency since it affected the overall performance of each project. Although the process did ensure projects' conformity with IPA administrative requirements, it added little value to the projects themselves in terms of meeting Chapter 23 or other strategic objectives in relation to judiciary and human rights matters. In some cases it took as long to programme a project as to implement it. The excessive complexity and length of the process hampers the timely implementation of IPA in relation to judiciary and human rights matters. Efficiency could be significantly boosted by reviewing the process and by ensuring high-level political support for a more streamlined programming practice.

Sustainability

Many projects have displayed appropriate levels of sustainability, by implementing activities likely to be continued or to exercise a continuing influence on the beneficiary's operations. Projects that have

set up pilot approaches on some human rights issues (probation, juvenile justice, support to the mentally disabled) put in place conditions that facilitated follow-up by beneficiaries themselves or by new projects. Some training projects also contributed, in the main, to sustainability, when new curricula were integrated into subsequent staff training.

Sustainability was more challenging in relation to civil society projects since NGOs often lack the capacity to maintain activities without project funding. In terms of broader sustainability, there was no evidence that projects aimed at supporting civil society were sustainable, because the enabling environment to allow for the development of a vibrant civil society was lacking. This concern existed, though less acutely, in the case of projects implemented in cooperation with intergovernmental organisations, since these are also dependent on project funding. However, the projects have also contributed to more cooperation between these organisations and Turkish institutions, which in itself is a factor of project sustainability.

The highest levels of sustainability were achieved by those projects that were most closely aligned with domestic policy priorities. Those projects were most effectively mainstreamed into the work of beneficiary institutions, for example in relation to places of detention, the rights of children and juveniles, and to some extent the protection of women victims of abuse.

There is scope to enhance sustainability, in particular through a sector-based approach. However, two conditions should be met for such an approach to have a beneficial effect on sustainability: priorities should be agreed at the senior political level by the Turkish authorities, and the programming process should be streamlined in such a way that it does not lead to excessive delays, as these make it impossible to address priorities in a timely manner.

Impact

The projects have achieved many undeniable elements of impact. These include new practices and policies consistent with Chapter 23 of the *acquis*. The understanding of European human rights standards by judicial officials and others has been significantly enhanced, and understanding of the ECHR demonstrably deepened. The skills and effectiveness of civil society organisations have also been enhanced by involvement in projects, as has their capacity to interact with authorities at the local and national levels.

It is not possible at this time to give quantitative indications of the impact of the projects, partly as a result of a lack of clear and relevant baseline indicators (for example on pre-IPA understanding of ECHR). Project fiches lacked such baseline data, and projects did not include the compilation of such data into proposed activities. However some areas relevant to the judiciary and human rights domains, such as conditions of detention and juvenile justice, have demonstrably improved in the period under consideration. Direct attribution of such improvement to the specific projects in the portfolio is not possible, however the projects have doubtless contributed to these impacts, which were fully consistent with their objectives.

Nevertheless, obstacles to achievement of impact remained. These included weak sharing of information among institutions, which made it difficult for beneficiaries to obtain complete statistical information or reports about issues of concern. Impact was also weakened by limited cooperation among ministries in the broader security sector (the Ministries of Justice, Interior and Defence), and with other ministries (Health) and institutions (Human Rights Presidency).

Portfolio

There is no doubt that the projects contributed in a significant and demonstrable way to the implementation of pre-accession reforms in the fields of the judiciary and fundamental rights. This is made clear in project documents and confirmed by EU and Turkish stakeholders. IPA was key to achieving this contribution because of the size of the funding it made available to Turkey, and because of its largely Turkish-focused programming process. These two features are unique to IPA and set it apart from all other donor processes in Turkey.

However the programming process, as highlighted above, is performing in a manner that is too slow, opaque and unwieldy to constitute genuine added value to the pre-accession process. Whereas the DIS as such is an appropriate system to implement pre-accession assistance, the excessive complication, length and non-transparency of the programming process deprive the assistance of some of its added value.

Programming

The recommendation section suggests ways in which procedural weaknesses could be addressed. These weaknesses included the following:

- Long and complicated programming process, caused *inter alia* by:
 - Consecutive consultations of institutional stakeholders (NIPAC office, CFCU, EUD, EC), which lead to long periods where beneficiaries are hardly involved and are not aware of what is going on;
 - Lack of adequate process management and structured consultations, which impair ownership and active participation;
 - Continued lack of capacity of beneficiaries to draft good project fiches;
 - Continued underuse of the SEI for programming;
 - AP, PRs, NPAA, MIPD which provide incoherent strategic guidance to the programming process and insufficient basis for planning;
 - Regular changes in programming procedures;
 - A heavy reliance on direct grant agreements, which does not always deliver the intended results, nor always strictly follow the requirement that such grant agreements be provided to the sole or most credible providers of these services.
- Unwieldy implementation of projects, due *inter alia* to:
 - Delays in tendering and contracting due to involvement of many actors and internal consultation procedures;
 - Conclusion of many contracts at the tail-end of a contracting period fixed in the Financing Agreement (when there is a risk of losing the EU contribution);
 - Frequent and time-consuming *ex-ante* approval procedures.

These factors combined caused unacceptably long lead times for programming. They also caused a loss of substantial amounts of allocated funds (over 20% of the budget of the evaluated portfolio of projects), due either to non-contracting or to non-disbursement. These patterns have frustrated the development of credible project pipelines.

Recommendations of the evaluation

Programming process

The EU and Turkey should amend the programming process with a view to:

- Streamlining the process and enhancing its transparency to beneficiaries;

- Shortening lead times significantly;
- Strengthening the ownership of programmes and projects by relevant institutions; and
- Optimising the role of the coordinating institutions.

To that end, representatives of the relevant institutions should amend the process, setting objectives to be achieved in relation to improvements in each of the above four areas. In the context of a forthcoming sector-based programming approach, it is recommended that any amendments take the following elements into account:

- The ownership of programmes and projects of the relevant beneficiary institutions can be improved by upgrading the role of the current sector working groups to that of Sector-based Quality Support Groups (SQSGs). Each SQSG should draft and regularly review and update the sector's pre-accession strategy, the related planning of IPA assistance as well as the resulting multi-annual sector project pipeline. Only then, project beneficiaries will develop project fiches for which support from the SEI will have to be identified well in advance by the SQSG and mobilised in a timely way by the MEUA and CFCU.
- Project Fiches development should be continually monitored by the SQSG. Project Fiches should also be checked for attention to cross-cutting issues before submission.
- Optimising the role of coordinating bodies at the national level implies increasing the effectiveness of MEUA to steer and control the programming process. Considering that the NIPAC Office has been given this mandate, there is a need to strengthen its process management capacity to effectively implement this. In addition, there is a need to genuinely rationalise the coordination process by conducting these activities as much as possible in parallel and not in sequence, thus reducing the time used exclusively for coordination (specifically decision making) to a minimum.

Civil society and sector-based approach

A transition by IPA to a sector-based programming approach could enhance the coherence and overall effectiveness and impact of IPA assistance in relation to the judiciary, especially if effective cross-sector coordination is built in at the outset, for the security sector in particular.

However, a sector-based approach may be detrimental to the programming of civil society-led human rights projects and programmes. This is partly because human rights do not constitute a sector *per se* (they are much closer to a cross-cutting issues). However the key concern is that the approach would risk placing civil society human rights activities under the supervision of sector supervision actors such as SQSG, which would be incompatible with the independence of the civil society sector. Given the human rights situation in Turkey and the pressure experienced by human rights actors, such an approach would therefore make it virtually impossible for independent NGOs to be part of sector-based programming.

It is therefore recommended that, in the context of a switch to sector-based programming, funding for civil society human rights projects and programmes should be administered in a separate and case-by-case manner, for example through project-based programming, preserving both the independence of civil society and the need for accountability under EU rules, while at the same time encouraging partnership between civil society and government, and collaboration where appropriate. It is recommended that the EU, following consultations with relevant stakeholders, support the development of a deconcentrated financial tool to support civil society organisations working on human rights, possibly building on the CSF Turkey window.

Programme implementation recommendations

The NAO should take appropriate measures to remedy the long-existing practice at the CFCU of concluding the majority of contracts immediately before the expiry date defined in the FA. Procurement plans and internal procedures at the CFCU should be adapted accordingly. In this respect, it is important to note that the capacity previously used to implement the programmes under IPA components III and IV is still at the disposal of the CFCU. It is therefore necessary to maintain the current staff levels at the CFCU.

To effectively address the sustained underutilisation of the funds allocated under Financial Agreements, specifically but not exclusively in relation to JHR, the NAO should develop effective mechanisms to actively monitor the usage of these funds on a regular basis. Procedures at the CFCU should be adapted accordingly. In particular, to ensure that NF has access at all times to fully updated information in this regard, the management of the CFCU should be requested to address the issue explicitly in the joint review of the procurement plan with the NAO Office.

Monitoring recommendations

The NIPAC should take effective measures to address the under-performance of the national monitoring system for IPA TAIB, specifically but not exclusively in the area of JHR. In this respect it is recommended that the FCD of the MEUA upgrade its present staff capacity, by intensifying its participation in the current ROM training and in other related training. In addition, FCD staff should in this context be attached to one, or maximum two, SQSGs, and actively participate in the work. Procedures at the MEUA – FCD should be adapted accordingly.

Recommendations on project design

- Provide specific *and on-going* capacity building relative to IPA procedures, and particularly to the specific requirements of EU funding and CFCU/MEUA expectations, procedures and monitoring. In particular, ensure the readiness of beneficiary institutions to develop project concepts and designs that are realistic and meet procedural requirements (see also recommendation in the previous section on the use of SEI to support the preparation of project fiches).
- Ensure that project fiches reflect programming priorities in the justice sector and in relation to human rights concerns. This should include, at the time of writing, addressing gaps such as defence and prisoner rights, economic, social and cultural rights, as well as reinforcing the effectiveness and availability of complaints mechanisms for victims of human rights violations and abuses.
- Ensure that project fiches are based on a detailed identification of needs and capacities, and that needs are re-assessed at the project inception stage, and at appropriate intervals throughout project implementation. In particular, institutions' views of their own capacities and needs should be assessed against objective and external expert opinion.
- Ensure that project fiches systematically address cross-cutting issues, and in particular that gender issues are systematically mainstreamed.

- Ensure broad stakeholder involvement at all stages of project design and implementation. Use stakeholders to develop appropriate indicators of success for each project result or outcome, incorporating qualitative aspects in particular.
- Ensure that timeframes and project targets take into account institutional and stakeholder capacity, and political and other risks. In particular, project objectives should take account of the probable long time lag between project design and implementation.
- Clarify partner and stakeholder roles and responsibilities in the design of projects, and ensure this is reflected in partner selection. Involve, integrate and inform the military justice system of projects in the general justice sector.

Recommendations on project implementation

- Ensure the introduction of an effective inception stage into projects – that is, ensure that the first few months following approval of a project are dedicated to a review of its design, with a view to addressing any challenges that have arisen in relation to the project's objectives since the original proposal was submitted, and to reducing emphasis on components that may already have been addressed. Such a stage should conclude with a formal restatement of project objectives, incorporating any modifications that have been seen to be appropriate, and applying any appropriate changes in relation to project funding.
- Direct project beneficiaries and their EU Member State partners towards wider sources of best practices and expertise, either in Europe itself or where pre-accession or development assistance has been provided elsewhere.
- Consider requesting project teams to negotiate with relevant EU Member State diplomatic missions the “fast-tracking” or “pre-approval” of visa applications for representatives of beneficiary organisations and of civil society stakeholders involved in the implementation of projects, when these involve study tours or attendance at meetings in EU countries. Representatives of civil society organisations involved in projects should also be covered by this process.
- Ensure that projects make the best possible use of existing expertise in Turkey, by incorporating appropriate local expertise in the implementation of projects. In particular, consider inviting representatives of institutions that have benefited from IPA project support in recent years to contribute to subsequent projects. Ensure that local experts are compensated to a degree that is comparable to their EU counterparts.
- Incorporate the collection of baseline data in all project design and/or inception activities. Support data collection and statistical analysis activities within the justice sector, and in relation to human rights violations and abuses.

1. INTRODUCTION

The Enlargement Directorate General (DG ELARG) of the European Commission (EC) has commissioned a team of consultants managed by IBF International Consulting to carry out a thematic evaluation on judiciary and fundamental rights in Turkey. The evaluation focuses on a portfolio of 20 projects implemented since 2004, with a total budget of about €112.6m. These were funded in the context of pre-accession assistance for the 2004-2006 period and of Component 1 (transition assistance and institution-building [TAIB]) of the Instrument for Pre-Assistance (IPA) for the subsequent period.

The evaluation started in January 2012 with a briefing meeting in Brussels, followed by a formal kick-off meeting in Ankara on 15 February, which brought together representatives of the main institutions involved in IPA implementation in Turkey, representatives of DG ELARG, and of the European Union Delegation (EUD) in Ankara. An evaluation inception report was prepared ahead of the kick-off meeting and subsequently amended, and a research and analysis mission took place in Turkey from 21 May to 1 June, during which members of the evaluation team met project implementers, representatives of relevant Turkish institutions and other stakeholders – including civil society representatives – in Ankara, Diyarbakir, Istanbul, and Urfa.

The present draft report is submitted to DG ELARG for circulation. A briefing on its findings and recommendations may be held subsequently, if deemed appropriate, with relevant EU and Turkish institutional representatives.

1.1 Objectives of the evaluation

According to the evaluation Terms of Reference (TORs) – appended to this report – the overall objective of the evaluation is:

“To provide findings and recommendations to assist the Enlargement Directorate General of the European Commission in improving the programming and implementation of EU pre-accession assistance in the area of political criteria and judiciary, and fundamental rights in Turkey”.

The TORs further assign the following three specific objectives to the evaluation:

4. To “provide a judgement on the performance of assistance in the field of political criteria and judiciary”, considering the programming and implementation levels;
5. To “provide a judgement on the performance of assistance in the field of fundamental rights”, also considering the programming and implementation levels;
6. To provide “operational recommendations” for programming future EU assistance in the field and for taking corrective measures to improve the implementation and monitoring of on-going actions.

The inception report noted that the evaluation aims to support pre-accession assistance to Turkey in relation to the fulfilment of the *acquis communautaire*, and particularly of Chapter 23, which concerns Judiciary and Fundamental Rights. It also noted the need to take into account the Copenhagen political criteria for accession. The inception report therefore drew three conclusions from this situation, summarised as follows:

1. The evaluation focused primarily on assessing the contribution of projects and programmes funded by the EU to the fulfilment of the Copenhagen criteria.
2. The evaluation focused on lessons learned, good practices and corrective measures that may best contribute to the further fulfilment of the accession and political criteria.
3. The findings and recommendations on programming recommendations focused on contributing to the design of future EU assistance to Turkey on judicial and fundamental rights matters.

The inception report noted the relative sensitivity of the issues raised by the thematic evaluation. It noted that the promotion and protection of human rights in accordance with international standards may be controversial, as may be the assessment of challenges and opportunities faced by the judicial sector. The evaluation team committed to taking an independent and impartial approach, and to avoiding inappropriate value judgements.

1.2 Scope of the evaluation

The evaluation covered a portfolio of 20 projects selected from all the projects linked to Judiciary and Fundamental Rights in the period under consideration. Seventeen of these projects had been listed in the original TORs, and three were added as a result of the discussion of the inception report. The titles of the projects – and the descriptions given in the project fiches – led the evaluators to divide the projects into two categories. These categories were used solely for practical evaluation purposes and did not represent a prioritisation or judgement as to the projects' intrinsic value. The categories were the following:

- Projects relating to the judiciary. These were projects aimed at supporting judicial institutions and practitioners (including judges and lawyers) as well as the administration of justice.
- Projects related to human rights. These were projects aimed at reinforcing human rights protection for specific groups (children, people with disabilities, prisoners and detainees, minorities, etc.) and for women. They concerned economic, social and cultural rights as well as civil and political rights.

Some projects, such as those focusing on human rights training and juvenile justice, straddled both categories and were considered under both angles. Projects, such as those on shelters for women and cultural rights, involved extensive participation by civil society organisations, while others focused on state institutions with relatively little input by civil society.

The table on the next page sets out the projects' reference number and title, and indicates the category under which the projects were considered. Additional data on each project are provided as an annexe to this report.

Number	Title	Category
TR.0401.01	Implementation of human rights reforms	Hum. Rights
TR.0401.02	Support to the establishment of Courts of Appeal – Twinning	Judiciary
TR.0401.06	Promotion of cultural rights	Hum. Rights
TR.0404.01	Towards good governance, protection and justice for children	Hum. Rights
TR.0404.02	Development of probation services	Judiciary
TR.0501.01	Better access to justice	Judiciary
TR.0501.03	Training Programme on Istanbul Protocol	Hum. Rights
TR.0501.04	Cascaded training of lawyers on European Convention on Human Rights	Judiciary
TR.0501.07	Courts of Appeal – Construction	Judiciary
TR.0601.02	Civilian oversight of internal security sector	Hum. Rights
TR.0601.03	Training of Gendarmerie officers on European human rights standards	Hum. Rights
TR.0601.04	Support to the court management system in Turkey	Judiciary
TR.0601.05	Shelters for women subject to violence	Hum. Rights
TR.0601.09	Children First – modelling child protection mechanisms at provincial level	Hum. Rights
TR.0701.01	Development of work with juveniles and victims by the Probation Service	Judiciary
TR.0701.03	Training of military judges and prosecutors on human rights issues	Judiciary
TR.0701.04	Empowering women and women’s NGOs in the least developed regions	Hum. Rights
TR.0702.18	Dissemination of model prison practices and promotion of prison reform	Judiciary
TR.0801.02	Strengthening the court management system	Judiciary
TR.0801.04	Promoting services for people with disabilities	Hum. Rights

1.3 Methodology

The evaluators’ methodology was guided by the TORs and complemented by the inception report. It was based on the following elements:

- Study of written documentation. DG ELARG and the EUD provided the evaluators with an initial set of project documentation in electronic and paper form. The documentation included project fiches and some additional details, such as contracts, monitoring and implementation reports, and some exchanges of correspondence between project implementers and EU stakeholders. In addition, the evaluators obtained additional project information confirming or complementing the details they already possessed. Some project beneficiaries also provided the team with additional project documents such as publications and implementation reports. Though plentiful, the written documentation was more illustrative of projects’ intent and design than of actual results obtained: it was therefore necessary to complement the information base with feedback from project implementers and other stakeholders. This was done through interviews in Ankara and other cities.
- Interviews. The evaluators met a wide range of stakeholders involved in the design, programming and implementation phases of the projects. The majority of interviewees were representatives of beneficiary Turkish institutions and civil society organisations. Some of the civil society interviewees – such as legal experts – provided an external vision of some projects and of socio-political developments related to the projects in the portfolio. In addition, representatives of institutions implementing pre-accession assistance were interviewed and asked to provide their views on the projects and on the programming and implementation processes. The interviews were conducted with reference to the interview guide, based on the evaluation questions contained in the TORs.

1.4 Constraints and limitations

There were two key constraints:

- Dealing with projects that have been designed and implemented several years ago. Two-thirds of the projects were approved in 2007 or earlier: as a result of the long time gap between initial project design (and implementation) and the evaluation, it was sometimes impossible to identify people for interviews who had been involved in all stages of projects. A related constraint emerged in relation to projects that were completed and followed up with other projects: some stakeholders had difficulties distinguishing between the outcomes of the projects in the portfolio and those of follow-up activities.
- Limited sample of stakeholders met outside Ankara. Most of the projects in the portfolio had a national scope (though some focused on specific regions). This meant that many of the projects had involved activities in various provincial areas across Turkey. For time and cost reasons the team could only visit a small number of locations outside Ankara: Istanbul, Diyarbakir and Urfa. Visiting more places would have caused significant added costs.

Despite these constraints, the team held over 40 interviews, involving over 60 interlocutors, the majority of whom were based in Ankara. This sample was sufficient for the team to form a well-rounded view of the project portfolio and of the other issues raised in the TORs.

1.5 Overview of the report

Chapter 2 summarises the aspects of the Turkish context that are relevant to pre-accession assistance related to Judiciary and Fundamental Rights. Chapter 2 also provides a summary of the processes related to the programming and implementation of projects in this field.

Chapter 3 is the evaluative chapter, divided into headings corresponding with the standard evaluation criteria used by the Organisation for Economic Development and Cooperation: relevance, effectiveness, efficiency, impact and sustainability.

Chapter 4 provides conclusions and recommendations. The report also contains a number of annexes, which help set the project portfolio in the context of broader IPA assistance to Turkey, and outline the performance of the projects.

2. PRE-ACCESSION CONTEXT

This section starts with an overview of developments in the area of fundamental rights and the judiciary, primarily during the period that concerns the portfolio of this evaluation, and to a lesser degree it touches upon the current state of affairs. It aims particularly to relate these developments to the Accession Partnership (AP) for Turkey adopted first in 2001 and updated in 2003, 2006 and 2008.¹ The second sub-section reviews the prevailing institutional arrangements for programming of EU financial assistance, programme implementation and monitoring. The final sub-section analyses the composition of the project portfolio of judiciary and human rights type of action financed with EU financial assistance co-financed with Turkish contributions.

2.1 Human Rights and Judiciary in pre-accession Turkey

Turkey has made significant progress in the areas of fundamental rights and judiciary in recent decades. Undoubtedly, this progress has been driven both by internal dynamics for reform as well as by the impetus provided by a continuous deepening of relations between the EU and Turkey. Turkey's official candidacy after the Helsinki European Council of December 1999 locked Turkey decisively into the reform process, in particular in the area of political criteria.² This process was further strengthened by the opening of accession negotiations in 2005, despite the ensuing blockage of eight important chapters by some EU Member States. The Accession Partnerships of 2003 and 2008 set the priorities, *inter alia*, for fulfilment of political criteria by Turkey. Nevertheless, significant human rights concerns remain in Turkey, justifying further IPA support in this field.

The 2001 Accession Partnership and Reforms

The priorities identified under the 2001 Accession Partnership³ acted as a catalyst for the reform packages and constitutional amendments undertaken between 2001 and 2003, bringing important changes to the Constitution, the Penal Code, and the Media Law, which significantly enhanced safeguards in the areas of freedom of expression and association, religious freedom⁴ and cultural rights among others.

The 3 October 2001 Law Amending Several Articles of the Constitution, No. 4709 provided changes to 35 articles⁵, followed by the first "Reform Package" on February 6, 2002, which amended Article 312 of the Penal Code. In the Second Reform Package of 26 March 2002, provisions prohibiting the use of some languages were removed from the Media Law. In the Third Reform Package of 2 August 2002, changes were made to the Law on Education and Teaching in Foreign Languages, removing restrictive provisions on teaching languages and dialects. With changes to the Law on Broadcasting, restrictions on the use of languages were removed. Article 159 of the Penal Code was also amended to remove restrictions on freedom of speech. Subsequent reform packages in early 2003 eased

¹ See Annex 4 for a comparative listing of all priorities under the 2001, 2003, 2006 and 2008 short-term AP priorities in the field of fundamental rights and judiciary.

² The criteria for EU membership require candidates to adopt political values and norms shared by the Union by achieving "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union".

³ Council Decision of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey (2001/235/EC)

⁴ A new paragraph was added to Art. 312 of the Penal Code that prohibits degrading a part of society in a way that violates human dignity, and hence penalised individuals who express degrading comments about ethnic and religious groups within the country. Article 1 of the Foundations Law was amended to address the specific conditions pertaining to the legal problems regarding the real estate held by community foundations. The application period allowed to community foundations for registering real estate holdings was found to be extremely cumbersome, and new measures were recently adopted in this field.

⁵ This is available at www.belge.net.

restrictions on freedom of speech by removing Article 8 of the Turkish Civil Code, and changing the definition of “terror”. The Law on Broadcasting allowed private TV and radio channels to broadcast in other languages and dialects, and allowed the building of places of worship for all beliefs. The Law on Population was changed to remove existing restrictions in giving names to children. The Seventh Reform Package of 30 July 2003 changed once again Article 159 of the Penal Code, reducing punishments falling under “denigration of Turkish-ness and of the Republic”, reducing the scope of Article 169 for assisting terrorist organisations, easing the teaching of “traditional languages and dialects spoken by Turkish citizens”, and allowing the opening of classes in existing private establishments for this purpose.

With the October 2001 constitutional reforms, restrictions on freedom of expression were considerably relaxed. According to the Human Rights Association’s report published in late 2003, the number of prosecutions relating to freedom of expression halved between 2002 and 2003.⁶ The number of cases filed by the public prosecutors under Arts. 159, 169 and 312 as well as the Anti-Terror Law were until 2005 believed to have decreased significantly.

A step forward was taken with respect to linguistic rights in 2002 through the Law Amending Various Laws, No. 4771⁷, adopted on 3 August and enabling broadcasting and private courses to be taught in “the different languages and dialects used traditionally by Turkish citizens in their daily lives”⁸. The implementing regulation⁹ of the law regarding broadcasting, however, made it extremely difficult to broadcast due to its strict provisions.¹⁰ Other legal changes followed, improving conditions for human rights in compliance with political criteria.¹¹ Following the entry into force of these laws in 2005, the authorities focused on the implementation of the new Penal Code, the Code of Criminal Procedure and the Law on Enforcement of Sentences. There were important amendments to the new Penal Code in May 2005, which deleted the reference in Article 305 to “offences against fundamental national interests”. These steps led to the lifting of the Council of Europe’s monitoring of Turkey.

The 2003 Accession Partnership and reforms

After the signature of the Accession Partnership in 2003¹², further and more detailed milestones and priorities were identified for Turkey’s progress towards achievement of political criteria. The reforms undertaken by Turkey in 2004 and 2005 have had some positive consequences on the execution of judgments of the European Court of Human Rights (ECtHR).¹³ The post-2003 period also saw increased compliance with international human rights instruments, including the European Convention

⁶ See: Human Rights Association Report, 2003. However there was a dramatic increase of cases after 2009.

⁷ This was done through a provision added to Article 8 to the Law No. 3984 on the Establishment and Broadcasting of Radio Stations and Television Channels for broadcasting and Article 11 allowing private education by an amendment to Law No. 2923 on Foreign Language and Teaching.

⁸ The Law is available in English at: <http://www.abgs.gov.tr/abportal/uploads/files/Law%20Amending%20Various%20Laws%20and%20Reasoning%2003.08.2002.doc>

⁹ Regulation on Radio and Television Broadcasting in Different Languages and Dialects Traditionally Used by Turkish Citizens in their Daily Lives, Official Gazette 25 January 2004, No 25357. See: <http://www.belgenet.com/yasa/k4928-y1.htm>.

¹⁰ Other limitations include the prohibition of broadcasting with a view to teaching the different languages (Article 5).

¹¹ The Law on the Establishment of Duties and Powers of the Ordinary Courts of First Instance and Regional Courts of Appeal and the Law amending the Code of Civil Procedures (October 2004), the Law on Associations (23 November 2004), the Law on the Enforcement of Sentences and Security Measures (29 December 2004), the Law amending some of the articles of the New Turkish Penal Code (31 March 2005), the Law on the Implementation of the Code of Criminal Procedure and the Law on Misdemeanours (31 March 2005), the Law Amending the Law on the Enforcement and Implementation Procedure of the Code of Criminal Procedure, the Law amending the Law on the Enforcement and Implementation Procedure of the Turkish Penal Code (18 May 2005), the Law amending the Law on Enforcement of Sentences and the Law amending the Law on Judicial Records.

¹² Council decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Turkey, L 145/44 Official Journal of the European Union, 12 June 2003.

¹³ See: Turkey Progress Report, 2006.

on Human Rights (ECHR).¹⁴ In addition to legislative changes, the government took specific steps geared towards securing their effective implementation. The most notable measures were the establishment of human rights boards linked to the Prime Ministry Human Rights Presidency in cities and provinces (although the boards lacked resources and independence), and of a special Reform Monitoring Group composed of various representatives of selected ministries and government bodies. A Human Rights Advisory Board, with high-level government officials as well as representatives of non-governmental organisations (NGOs), was established with a view to providing recommendations, but has been practically defunct since the publication of the “minority report” and the debate that ensued.¹⁵

In 2005, the judicial system was strengthened via the adoption of structural reforms, primarily through the entry into force of the Penal Code, the Code of Criminal Procedure, the Law on Enforcement of Sentences and the Law on the Establishment of the regional Courts of Appeal. Implementing legislation, namely a revised Regulation on Apprehension, Detention and Statement Taking, a Regulation on Judicial and Preventive Search and a Regulation on the Judicial Police, also entered into force on 1 June 2005. The government’s zero tolerance policy towards torture and ill-treatment led to strengthening of legislation in this area.¹⁶

Nevertheless, human rights organisations continued to report cases of torture, especially outside of detention centres.¹⁷ One of the key issues that continued to be problematic was the impunity of perpetrators of torture.¹⁸ Amendments to the Criminal Procedure Code adopted in December 2006 introduced a new system for the commissioning of a defence lawyer, and access to justice showed some improvement. Regarding the prison system, the major development was the adoption of the new Law on the Execution of Sentences in December 2004. Despite some shortcomings, the Law and its secondary legislation – notably the Law on the Establishment of Probation Centres, adopted in July 2005 – introduced modern concepts such as community service and probation into Turkish law. Accordingly 15,000 individuals had benefited from probation as of 2012.

A new Law on the Protection of Children, adopted in July 2005, established for the first time a legal framework aimed at safeguarding the rights and well-being of both children with particular problems and children under legal investigation or who have been convicted of crimes, although it does not fully comply with international standards¹⁹ since juvenile offenders still are dealt with under the ordinary penal framework. As regards the rights of disabled people, a new Law on Disabled People was adopted in July 2005, which stressed discrimination aspects and noted, with reference to the Turkish Penal Code (TPC), that discriminating on the basis of disability is a crime.

¹⁴ In October 2004, Turkey ratified the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights. It also signed Protocol N° 14 to the European Convention on Human Rights (amending the control system of the Convention) and the Revised 1996 European Social Charter. The International Convention on the Protection of the Rights of All Migrant Workers entered into force in January 2005. The First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), which was signed in February 2004, was ratified in 2006. Turkey signed the Optional Protocol to the UN Convention against Torture (OPCAT) in September 2005 and ratified it in 2011. Turkey also ratified Protocol No 13 to the ECHR concerning the abolition of the death penalty in all circumstances in October 2005. In October 2006 Turkey ratified Protocol No 14 of the ECHR amending the control system of the Convention. The UN Convention on the Rights of Persons with Disabilities was signed in March 2007. Parliament passed legislation to ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse in November 2010.

¹⁵ See: Minority Rights and Cultural Rights Working Group Report, Presented to the Prime Ministry on 22/10/2004.

¹⁶ All detained people now have a formal right of access to a lawyer from the outset of their custody, prosecutors no longer need to seek authorisation from an administrative authority to instigate proceedings under Arts. 243 (torture) and 245 (ill-treatment) of the Criminal Code, procedural amendments have been adopted to ensure the speedy investigation and prosecution of offences under Arts. 243 and 245, and sentences imposed under these articles can no longer be converted into fines or be suspended.

¹⁷ See: Turkey Progress Report 2006, TIHV, IHD, Human Rights Watch

¹⁸ See: concluding observations of the Committee against Torture, 5th session Geneva, 1-19 November 2010.

¹⁹ See: Turkey 2005 Progress Report.

2006 & 2008 Accession Partnerships and reforms

The Judicial Reform Strategy was finalised in 2009 with an accompanying action plan, adopted by the Ministry of Justice (MoJ).²⁰ This brought a clearer framework for reform although shortcomings remained. For instance, while amendments to the law on the duties and legal powers of the police, adopted in 2007, provided that the police are not entitled to use force unless confronted with resistance, there were reports that the implementation of this law resulted in cases of ill-treatment during routine identity checks.²¹ There was also an increasing number of reported cases of disproportionate use of force by security forces in demonstrations.²²

One of the most significant changes in this period was the amendment of Article 301 of the TPC in 2008, which was the single most used article to curb freedom of expression. Among others, the amendments foresaw the introduction of a requirement for permission to be obtained from the Justice Minister in order to launch a criminal investigation. Nevertheless international and local human rights NGOs reported a significant increase of court cases opened against writers, journalists, human rights defenders and politicians in this period through other legislative provisions²³ including the Anti-Terror Law (ATL).²⁴

Since 2009, with the operations against alleged members of the “Kurdistan Communities Union” (KCK), the number of human rights defenders facing criminal charges has increased.²⁵ International NGOs noted the continued harassment of human rights defenders, and in particular those linked to Kurdish rights and to issues of sexual orientation, as a result of which individuals and NGOs were frequently pursued before the courts.²⁶ Prolonged pre-trial detention was used very frequently and was seen by some observers as a form of punishment in itself, independently of the outcome of the trial.²⁷

As of October 12, 2011, 19,988 cases were pending before the ECtHR regarding Turkey. In 2011, Turkey was the country with the highest number of condemnations by the ECtHR.²⁸ Despite some progress in the juvenile justice system, the number of child courts was still deemed inadequate by child protection experts, who also expressed concern about an increase in the number of children in detention.²⁹

²⁰ See Turkey 2008 and 2009 Progress Reports.

²¹ See: 2008 Turkey Progress Report; Concluding Observations of the Committee against Torture Forty-fifth session Geneva, 1-19 November 2010.

²² According to the MoJ, 3,294 people were taken to court in 2007 for alleged violations of the Law No. 2911 on Assembly and Demonstrations. The figures for subsequent years were: 3,778 in 2008; 8,251 in 2009 and 11,462 in 2010. See: Human Rights Association (HRA) 2011 Annual Report on Human Rights.

²³ The Press Law and the Law on the Protection of Atatürk are also used to restrict freedom of expression. So were a number of articles of the TPC, such as Art. 125 on defamation; Arts 214, 215, 216 and 220 on protection of public order; Art. 226 which outlaws publication or broadcasting of obscene material; Art. 285 which protects the confidentiality of investigations; Article 288 which outlaws attempts to influence the judiciary; Art. 314 on membership of an armed organisation and Art. 318 which makes it an offence to discourage people from performing military service.

²⁴ In 2010, 11,994 cases were brought against individuals accusing them of conducting propaganda for illegal organisations. See HRA 2011 Annual Report.

²⁵ This process has also affected the trade union movement with operations conducted under the Anti-Terror Law and since 2009 has also played a role in anti-KCK operations. For instance, in the trials of 153 defendants, including six Peace and Democracy Party (BDP) mayors and a human rights defender, defendants were held in pre-trial detention for 22 months.

²⁶ See: Turkey: Human Rights Defenders, Guilty Until Proven Innocent, international fact-finding mission Report by the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), within the framework of their joint programme the Observatory for the Protection of Human Rights Defenders, May 2012.

²⁷ See FIDH Report, as above.

²⁸ ECtHR Turkey Country Profile, quoted in FIDH Report, as above.

²⁹ See: Turkey 2009 Progress Report. According to MoJ figures there are 2,309 children imprisoned and 2100 of them are in pre-trial detention, see response of the Ministry of Justice to a parliamentary question placed by MP Pervin Buldan. The response date: 13/02/2012 and number: B03.0.KGM.0.00.00.5/2011/-610.01-62/262/568.

In 2009 new constitutional amendments brought several changes that affected the independence of the judiciary. These included increasing the number of full members of the High Council of Judges and Prosecutors from seven to 22.³⁰ Cases related to offences against the security of the state, the constitutional order and the functioning of this order were henceforth to be tried before civilian courts. The Law on the Constitutional Court was adopted in March 2011, extending the powers of the Court by introducing an individual application procedure.

Nevertheless, experts were concerned that the independence of the judiciary remained weakened by the close relationship between judges and prosecutors. The 2012 report on Turkey³¹ by the Commissioner for Human Rights of the Council of Europe (CoE), Thomas Hammarberg, noted that there was scope for further reinforcement of the judiciary's independence from the executive, and for developing internal democracy within the judiciary. The report expressed concern that the role of the Minister of Justice in the High Council of Judges and Prosecutors (HSYK) and in the appointment of judges may have an adverse effect on the appearance of independence. The report also stated that "one of the major factors hampering progress seems to have been the established attitudes and practices followed by judges and prosecutors at different levels giving precedence to the protection of the state over the protection of human rights."³²

The improvements regarding independent human rights institutions came with a draft law on the establishment of the National Human Rights Institution, which was submitted to parliament in February 2010, despite criticism by experts and NGOs as to its compliance with the Paris Principles on such institutions.³³ The law was adopted in late June 2012 without significant changes to the draft. The institution was foreseen to be staffed and operational by the end of September 2012.

Improvements in the field of women's rights occurred in this period. An amendment to the Constitution provided that positive discrimination measures in favour of women may be adopted, and a Prime Ministerial circular was issued with the aim of promoting women's employment and equal opportunities. An important step has been the establishment of the Ministry of Family and Social Policy in June 2011.³⁴ The Law N° 6284 on the Protection of Family and Prevention of Violence against Women was passed on 8 March 2012. Nevertheless, domestic violence and sexual violence³⁵ continued to be prevalent, although coordination between relevant institutions was improved, as was the referral system.³⁶

As regards freedom of association and assembly and trade union rights,³⁷ the legal framework further improved with constitutional amendments. The amendments to the Constitution granted civil servants and other public employees the right to collective bargaining, but did not introduce the right to strike for civil servants – although a Prime Ministerial circular called for the facilitation of the exercise of trade union rights in the public sector. The adoption of the amendments to the Law on Foundations in February 2008, which addressed a number of property issues regarding non-Muslim minorities further

³⁰ In addition to representatives of the Court of Cassation and the Council of State, the new members include representatives of first instance judges, the Justice Academy, law faculties and lawyers.

³¹ Thomas Hammarberg, Report on Administration of Justice and Human Rights in Turkey, Strasbourg, 10 January 2012, CommDH (2012).

³² *Ibid.*

³³ See 2012 Press Release of IHOP, http://ihop.org.tr/index.php?option=com_content&view=article&id=585 http://www.ihop.org.tr/english/index.php?option=com_content&view=article&id=101:the-draft-law-on-establishment-of-human-rights-council-of-turkey-must-be-withdrawn-immediately-&catid=1, of TIHV http://www.tihv.org.tr/index.php?oba_20120323 and Progress Report on Turkey 2010.

³⁴ See: Decision in the Force of Law No. 633.

³⁵ See reports of KAOS GL, Lambda etc. for information about the increase in sexually motivated crimes and violence.

³⁶ The police have started to use standard reception forms for victims, for risk assessment and subsequent referrals.

³⁷ The bans on politically motivated strikes and lockouts, solidarity strikes and lockouts, general strikes and lockouts, occupation of work premises, labour go-slows, productivity go-slows and other forms of resistance were lifted.

strengthened minority property rights. Cultural rights were further improved following the June 2008 amendments to the relevant Law; these allowed TRT (the public service broadcaster) to broadcast nationally throughout the day in languages other than Turkish. The Regulation on the Radio and Television Supreme Council (RTUK) was amended in November 2008, removing all restrictions on broadcasting in Kurdish and other languages by private and public channels at the local level.

Conclusion

The pre-accession process of Turkey witnessed considerable change and reforms in the fields of fundamental rights and judiciary, which have brought structural and legislative changes in the area since 2001. These changes were supported by the EU financial assistance as shown in the mapping of the portfolio of projects (Section 2.3 and Annexe 3).

Notwithstanding the fact that 19 projects (of which 10 are in the evaluation portfolio) directly targeted the judiciary sector, it is clear that the independence, efficiency and quality of the justice system continue to expose the Turkish administration to serious challenges. In a sign of continuing concern on the part of the EU, improvements to the judiciary remained short-term priorities in all Accession Partnership documents.³⁸ Indeed, a recent authoritative study stated: “it is not possible to claim that objectives and the activities underlined in both the Judicial Reform Strategy and the Action Plan of the Ministry of Justice have been sufficiently translated into practice.”³⁹

Furthermore, the issue of impunity stems from a complicated penal law structure, which still prevails in administrative, legal and practical areas.⁴⁰ Despite several improvements made to the Constitution, “law-enforcement bodies, prosecutors and judges, long-accustomed to limiting rights, continue to interpret and apply the law in an overly restrictive manner”.⁴¹ Hence legal changes have not always been accompanied by changes in mentalities and in administrative and legal practices.

State-centred approaches to reform have at times compromised human rights monitoring and execution bodies. In the cases of combating domestic violence, discrimination, furthering freedom of religion, minority and cultural rights, dispersed reform efforts have not been translated into holistic strategies. The increase of cases related to freedom of expression and assembly in the post 2009 era has also been indicated as being of special concern by international institutions and human rights NGOs.

2.2 EU Assistance to Turkey

Until 2007, all pre-accession financial assistance to Turkey – including assistance in the areas of judiciary and human rights (JHR) – was provided under the Turkey Pre-accession Instrument (TPI) based on the Council Regulation (EC) No. 2500/2001 which set the principles, priorities and rules for this assistance. Following Council Decision No. 2002/179/EC, the Commission and Turkey signed the Framework Agreement, laying down *inter alia* institutional arrangements conferring management powers on the Turkish authorities with *ex-ante* approval of procurement related documents by the EC, represented by the EUD. This procedure is known as the decentralised implementation system (DIS).

³⁸ For a thorough analysis see Özgür Aşık, (2012), “Legal Reforms in Turkey: Ambitious and Controversial”, *Turkish Policy Quarterly*, Vol. 11, Issue 1.

³⁹ Seda Kalem Berk, (2011), “Access to Justice” in *Turkey: Indicators and Recommendations*, TESEV Democratisation Programme Publications, p. 45.

⁴⁰ Mehmet Atılğan & Serap Işık, (2012), *Disrupting the Shield of Impunity: Security Officials and Rights Violations in Turkey*, TESEV Democratisation Programme Publications.

⁴¹ Thomas Hammarberg, *Op. Cit.*

Key players in the Decentralised Implementation System (DIS)

In Turkey, the following actors play a key role in the decentralised implementation of IPA assistance:

- The Ministry for EU Affairs (MEUA) is designated as National IPA Coordinator (NIPAC) in charge of the general coordination of pre-accession assistance. The NIPAC is responsible for the annual programming for the TAIB component of IPA, as well as for the related monitoring. The Financial Cooperation Directorate of the MEUA performs the NIPAC Secretariat function.
- The National Fund (NF) acts as a central treasury unit in charge of the financial management of IPA assistance, under the responsibility of the National Authorising Officer (NAO). The NAO is responsible for ensuring the legality and regularity of the underlying transactions, as well as the effective functioning of management and control systems under the IPA Regulation.
- The Central Finance and Contracts Unit (CFCU) performs the role of implementing agency responsible for tendering, contracting, payment transactions and reporting related to projects implemented under IPA components I (TAIB) and II (Cross-border Cooperation). The Programme Authorising Officer (PAO), designated by the NAO, heads the CFCU.
- Finally, a Senior Programme Officer (SPO) is an official appointed by the line ministry or agency benefiting from EC financial cooperation to ensure that the technical aspects concerning the preparation and implementation of the programmes relating to his/her line Ministry or Agency are carried out in an effective and timely manner. A Project Implementation Unit under the responsibility of the SPO carries out the related practical work.

In accordance with the Memoranda of Understanding⁴² on the establishment of the Central Finance and Contracts Unit (CFCU) and the National Fund (NF), and following the accreditation of these structures in June 2004, the Commission delegated the responsibilities for the coordination and management of pre-accession assistance to the National Aid Co-ordinator, the National Authorising Officer (NAO), the CFCU and NF.

Further to Council Regulation (EC) No. 1085/2006 establishing the instrument for pre-accession (IPA), Turkey has been benefitting from IPA assistance programmed for 2007 and beyond. IPA has five components; assistance in JHR areas is provided under IPA Component I, Transition Assistance and Institution Building (TAIB).

Commission Regulation (EC) No. 718/2007 on the implementation of this Council Regulation, provides a detailed description of the DIS including the role of each of its key actors (see box). While, in essence, the provisions for decentralised coordination and management of pre-accession assistance have not changed since 2007, it is important to note that the CFCU is not only playing the role of implementing agency for TAIB and CBC programmes, but also played this role on a transitional basis for programmes under IPA Components III (Regional Development) and IV (Human Resource Development) until the implementing agencies of the institutions designated by the Prime Ministry in Turkey⁴³ were established and accredited in late 2011 and early 2012. IPA Component V (Rural Development) has separate arrangements for the implementation of its programmes.

⁴² As concluded by Turkey and the Commission on 14 February 2002.

⁴³ Prime Ministry Circular, No. 2009/18 on regulating the structure of the financial management in Turkey (entered into force on 4 December 2009).

Programming of EU financial assistance

Prior to the programming process, the EC and the MEUA agree on a joint programming process document (PPD) setting out the steps and timelines, which is reviewed annually and updated to adjust or further define the different steps and timelines. In the last decade, the PPD underwent substantial changes, including new procedures, such as Project Identification Sheets (PIS) and the establishment of a Quality Support Group, and the abolition of old procedures. Because of these changes, the team analysed the programming process as it stood in the most recent complete year, 2011. The 2011 case is representative of programming practice in the last decade.

A simplified timetable for the 2011 programming process is shown below⁴⁴.

	2010												2011											
	Month:	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J			
1. Identification phase	< 4 months >																							
1.1. Establishment of 1st draft Project Fiches by pot. beneficiaries	x	x																						
1.2. Review of 1st draft Project Fiches by MEUA			x	x	x																			
1.3. Assessment of 1st draft Project Fiches by EC Services				x	x	x																		
1.4. Agreement on list of projects to be further developed						x																		
2. Project Development Phase	< 7 months >																							
2.1. Discussion in working groups for PF preparation				x	x																			
2.2. Procurement of TA for consistency check (SEI)				x	x	x	x	x	x	x	x													
2.3. Drafting of full Project Fiches					x	x	x	x	x	x														
2.4. Review of first draft of PF by MEUA and CFCU, submission to EC							x	x																
2.5. Review of draft of PF by Commission services									x	x														
2.6. Deployment of TA for project fiche consistency check (SEI)										x	x	x	x	x	x	x								
3. Approval Phase	< 3 months >																							
3.1. Assessment/final review of package by EC services																								
3.2. Formal Submission of Programming Package																								
4. Adoption	< 7 months >																							
4.1. Quality Support Group (QSG), EC Inter-service consultation and Local Consultation																								
4.2. Consultation IPA Committee																								
4.3. Commission Decision																								
5. Start of Implementation	< 1 >																							
5.1. Signature of Financing Agreement																								
Summary of involvement by actor																								
involvement of (potential) beneficiary : 3.5 months																								
involvement of the EC/EUD/ QSG : 10 months																								
involvement of other players : 6 months																								
involvement of technical assistance (as required)																								

During the annual programming process, procedures and timelines are adjusted as appropriate. Combined with the limited institutional memory and programming skills of (potential) IPA beneficiaries due to staff turnover in project formulation teams, the programming capacity of beneficiaries is often constrained. This may to some extent be compensated by the use of external technical assistance, financed by the Support to European Integration (SEI) facility. However this facility has been underutilised for this purpose due to beneficiaries' lack of awareness of its existence and use, and (in previous years) to time-consuming procurement procedures⁴⁵. SEI funds are also being used to support the MEUA to carry out a comprehensive consistency check for the entire project package prior to formal submission to the Commission.

Other findings related to the 2011 programming process include the following:

- The process lasted from June 2010 to December 2011, almost 19 months. This means that, as currently implemented, an annual programming approach is likely to cause bottlenecks;
- The (potential) beneficiaries were involved in this process for 3.5 months, with hardly any involvement in the last 12 months. This may cause misunderstandings among beneficiaries;
- The involvement of the EC/EUD, including the Quality Support Group (QSG), took 10 months;
- The involvement of other players (specifically MEUA, CFCU) stretched over six months.

⁴⁴ The actual programming process in this period included in addition (and to some extent in parallel) the phasing out of the 2010 programming (old PFs) combined with an early start-up of the 2012 programming exercise.

⁴⁵ The SEI process was recently streamlined, leading to a substantial reduction in approval lead times for assistance requests, according to the CFCU manager in charge of that facility.

Project implementation

In the project implementation stage, there are two main types of players:

- The CFCU, which is in charge of the organisation of tendering, contracting and payment transactions;
- The SPO, who is responsible for the technical implementation of projects.

At the tendering stage, the SPO provides the CFCU with the necessary technical documents (such as TORs and technical specifications for required services) and participates in the tender evaluation. At the contracting stage, the SPO provides technical inputs as required. At the implementation stage, the SPO provides steering to the technical implementation of the project, and supports the CFCU in the verification of payment transactions as required. In addition, the SPO supports the MEUA in monitoring the project.

Monitoring

TAIB programmes are monitored at four different levels:

- At the overall IPA programme level by the IPA Monitoring Committee (MC);
- At the sector level by the TAIB Monitoring Committee;
- At the level of the project fiche by Sectoral Monitoring Sub-Committees (SMCSs);
- At the contract level by the Project or Contract Steering Committee.

The data to be compiled and analysed for the purpose of monitoring are based on a bottom-up transmission of information from the contract level to the overall IPA programme level, involving subsequent steps in aggregating data. Practice shows that Project Steering Committees may be instrumental in actively monitoring project development, depending on the level at which the beneficiary institution is represented. Also the IPA MC has important powers to adjust the programme if required. At the intermediate levels, however, monitoring barely goes beyond producing and exchanging the minimum information that parties are obliged to provide in a semi-automated way.

In addition, external monitoring is being conducted by an independent Result Oriented Monitoring (ROM) team in Turkey. ROM regularly (on average twice a year) reports on the progress of projects and programmes based on the collection of structured information on the implementation in the field, with the aim of contributing to the quality of EU financial cooperation in terms of relevance, efficiency, effectiveness, impact and sustainability.

Donor coordination

Other donors, including Sweden, UK, Germany, Norway, and Canada and the Netherlands, acknowledge the EC as the lead donor in the area of JHR. Projects of bilateral donors are generally much smaller in size than those funded by the Commission, however they are quicker at approving and subsequently implementing them. There is no regular mechanism or platform in place for structured or strategic consultation between the main donors in this area.

2.3 Evaluation portfolio

The evaluation portfolio consists of 20 projects: 5 from the NP 2004, 4 from the NP 2005, 5 from the NP 2006, 4 from the NP 2007 and 2 from the NP 2008. All projects are closed in

Area	Budget (€)	Institution Building		Investment	
		EU contribution	TR contribution	EU contribution	TR contribution
HR	54.100.900	43.629.400	200.000	7.703.625	2.567.875
TR 0401.01 Support to the Implementation of Human Rights Reforms in Turkey	5.461.000	5.187.000	-	205.500	68.500
TR 0401.06 Promotion of Cultural Rights in Turkey	2.500.000	2.500.000	-	-	-
TR 0404.01 Towards Good Governance, Protection and Justice for Children	6.041.200	6.041.200	-	-	-
TR 0501.03 Training Programme on Istanbul Protocol	3.000.000	2.700.000	-	225.000	75.000
TR 0601.02 Civilian Oversight of Internal Security Sector	3.000.000	3.000.000	-	-	-
TR 0601.03 Training of Gendarmerie Officers on European Human Rights Standards	1.947.500	1.250.000	-	523.125	174.375
TR 0601.05 Shelters for Women Subject to Violence	17.110.000	8.110.000	-	6.750.000	2.250.000
TR 0601.09 Children First – Modelling Child Protection Mechanisms at Provincial Level	6.041.200	6.041.200	-	-	-
TR 0701.04 Empowerment of Women’s NGOs in the least developed regions of Turkey	5.000.000	5.000.000	-	-	-
TR 0801.04 Promoting services for people with disabilities	4.000.000	3.800.000	200.000	-	-
Judiciary	58.500.000	20.230.000	500.000	28.327.500	9.442.500
TR 0401.02 Support to the Establishment of Courts of Appeal-twinning	1.400.000	1.400.000	-	-	-
TR 0404.02 Development of Probation Services in Turkey	1.600.000	1.300.000	-	225.000	75.000
TR 0501.01 Better Access to Justice	4.400.000	1.140.000	-	2.445.000	815.000
TR 0501.04 Cascaded Training of Turkish Lawyers on ECHR	1.300.000	1.300.000	-	-	-
TR 0501.07 Courts of Appeal-construction	30.000.000	-	-	22.500.000	7.500.000
TR 0601.04 Support to Court Management System in Turkey	3.300.000	3.300.000	-	-	-
TR 0701.01 Development of Work with Juveniles & Victims by Turkish Probation Service	2.000.000	1.790.000	-	157.500	52.500
TR 0701.03 Training of Military Judges and Prosecutors on Human Rights Issues	2.000.000	2.000.000	-	-	-
TR 0702.18 Dissemination of Model Prison Practices & Promotion of Prison Reform	7.000.000	3.000.000	-	3.000.000	1.000.000
TR 0801.02 Strengthening the court management system	5.500.000	5.000.000	500.000	-	-
Grandtotal (€)	112.600.900	63.859.400	700.000	36.031.125	12.010.375

Number of links between EU financed projects in the area of Judiciary and Human Rights and 2008 AP priorities

AP priority	EU Project portfolio 2004 - 2011	Evaluation project portfolio 2004 - 2008
1: Civilian Oversight of Security Sector	2	1
2: Judicial System	19	10
3: Anti-corruption policy	5	0
4: Observance of international HR Law	5	4
5: Compliance with ECtHR judgements	8	3
6: Promotion and enforcement of HR	10	5
7: Prevention of torture/ill-treatment	6	2
8: Access to Justice	8	4
9: Freedom of Expression	1	0
10: Freedom of assembly/association	6	1
11: Freedom of religion	1	0
12: Women’s Rights	9	2
13: Children’s rights	7	3
14: Labour rights and trade unions	0	0
15: Anti-discrimination	6	0
16: Minority rights, cultural rights	2	1
17: Civil society organisations	15	4
18: Internally Displaced Persons	1	0
Total number of links to the 2008 AP	111	40

terms of contracting and implementation, except for the 2007 and 2008 projects, where project execution is still continuing. The detailed composition of the evaluation portfolio by main area and by type of contribution is shown in the above table.

Representativeness of the evaluation portfolio vis-à-vis the overall JHR portfolio

During the programming period 2004-2011, a total of 63 JHR-related projects have been financed: 37 as Objective 1 type of actions in the pre-IPA period, 25 under IPA Component I.⁴⁶ Annexe 5 provides a comprehensive mapping of all projects in the JHR area that were funded from EU financial assistance defined in the 2004 – 2011 National Programmes. The mapping juxtaposes the objectives of these projects with the

⁴⁶ This figure is the evaluators’ calculation, based on publicly available project data. It does not include some projects that may have had a social or socio-economic dimension but did not appear to fall in the “fundamental rights” category, even though they arguably contributed to the fulfilment of economic, social or cultural rights.

priorities identified in the 2008 Accession Partnership.

The box at the bottom of the previous page shows the number of links between EU financed projects related to the JH area and the 2008 AP short-term priorities⁴⁷. The projects in the overall 2004 – 2011 portfolio are strongly linked to the following priorities: judicial system (priority 2), compliance with ECHR (priority 5), promotion and enforcement of human rights (priority 6), access to justice (priority 8), women's rights (priority 12) and civil society organisations (priority 17). However, the overall portfolio is weakly linked to civilian oversight of the security sector (priority 1), freedom of expression (priority 9), freedom of religion (priority 11), labour rights and trade unions (priority 14), minority rights and cultural rights (priority 16) and internally displaced persons (priority 18).

Comparing the AP priority links of the overall portfolio with those of the 20-project evaluation portfolio, the latter has no significant over-representation of any priority. It does show however considerable under-representation in anti-corruption policy (priority 3), prevention of torture and ill-treatment (priority 7), freedom of assembly and association (priority 10), women's rights (priority 12) and anti-discrimination (priority 15).

Findings related to the implementation of projects

It is difficult to conclusively analyse the budget utilisation of completed projects because final payments for some projects had not yet been made at the time the evaluation field visit took place. The CFCU provided the evaluators on 1 June 2012 with provisional figures (not taking account of final payments still due on some projects) indicating that, at that point, €73.4m (84%) of the allocated funds of the completed projects had been contracted. However, €18.44m (21%) of the allocated funds had remained unused, according to the CFCU at the time it provided the information to the evaluators. The CFCU figures (see table below) indicated that this was due to non-contracting (€13.72m, i.e. 16%) or to non-disbursement of contracted funds (€4.71m, i.e. 5%).

According to those figures, human rights projects experienced on average an under-spending of 32% of the allocated funds. Specifically TR0401.01, TR0601.05 and TR0601.09 witnessed high under-spending. In the case of TR0601.05 "Shelters for Women Subject to Violence", 41% of the funds allocated remained un-contracted whilst 16% of the contracted funds were not disbursed.

In the judiciary area, the CFCU data indicated that the under-spending on average remained limited to 11%. However, the unused budgets for TR0601.04 "Support to Court Management System in Turkey" and TR0501.07 "Courts of Appeal-construction" amounted to €2.59m and €1.22m respectively.⁴⁸

It is likely, however, that the amount of under-spending on both human rights and judiciary projects will diminish during 2012 as final payments proceed.

Other findings:

- Except for TR0702.18 and TR0801.02, all projects were contracted within the contracting deadline set in the Financing Agreement (FA): on average 106 days before the expiry date set by the FA.
- The i-perseus database shows that 13 of the 20 projects were contracted just before the FA expiry date; only 5 were fully contracted well in advance.

⁴⁷ For further details, see Annex 5.

⁴⁸ Project TR0501.07 was almost fully implemented, however a recovery procedure was initiated and funds were repaid to the EU by the Turkish Government. See below, section 3.3.

- During project implementation, each project underwent on average 16 amendments either as addendum, rider or side-letter.
- Specifically TR0401.02, TR0404.02, TR0501.01, TR0701.01 and TR0601.03 have substantial numbers of “side letters”, which may indicate that they were difficult to implement.⁴⁹

Budget utilisation of *closed* projects⁵⁰

Area	Budget (€)	Contracted	Not contracted	but not disbursed	Budget unused
HR	45.100.900	33.983.779	11.117.121	2.420.230	13.537.352
TR 0401.01 Support to the Implementation of Human Rights Reforms in Turkey	5.461.000	4.000.749	1.460.251	227.491	1.687.742
TR 0401.06 Promotion of Cultural Rights in Turkey	2.500.000	1.812.618	687.382	192.975	880.356
TR 0404.01 Towards Good Governance, Protection and Justice for Children	6.041.200	6.041.200	-	-	-
TR 0501.03 Training Programme on Istanbul Protocol	3.000.000	2.700.000	300.000	-	300.000
TR 0601.02 Civilian Oversight of Internal Security Sector	3.000.000	2.752.259	247.741	275.726	523.467
TR 0601.03 Training of Gendarmerie Officers on European Human Rights Standards	1.947.500	1.820.453	127.048	68.108	195.155
TR 0601.05 Shelters for Women Subject to Violence	17.110.000	10.056.500	7.053.500	1.625.864	8.679.364
TR 0601.09 Children First – Modelling Child Protection Mechanisms at Provincial Level	6.041.200	4.800.000	1.241.200	30.066	1.271.266
Judiciary	42.000.000	39.390.527	2.609.473	2.289.389	4.898.862
TR 0401.02 Support to the Establishment of Courts of Appeal-twinning	1.400.000	1.399.888	112	192.140	192.252
TR 0404.02 Development of Probation Services in Turkey	1.600.000	1.496.289	103.711	13.451	117.162
TR 0501.01 Better Access to Justice	4.400.000	3.891.450	508.550	9.865	518.415
TR 0501.04 Cascaded Training of Turkish Lawyers on ECHR	1.300.000	1.300.000	-	266.258	266.258
TR 0501.07 Courts of Appeal-construction	30.000.000	28.297.572	1.702.428	884.962	2.587.390
TR 0601.04 Support to Court Management System in Turkey	3.300.000	3.005.328	294.672	922.712	1.217.384
Grandtotal (€)	87.100.900	73.374.306	13.726.594	4.709.619	18.436.213

⁴⁹ In response to an earlier draft of this report, the EC noted that these five projects were twinning projects and that the “side-letters” related to practical implementation matters. In the evaluators’ view this illustrated the point concerning the complex implementation procedure of these projects.

⁵⁰ All budget related figures presented in this report are based on the figures officially provided to the evaluators by the CFCU on 1 June 2012.

3. EVALUATION OF THE PORTFOLIO

The evaluators observed almost indistinguishable links between project design and factors influencing implementation, and their resulting effectiveness and impacts. To the extent possible, and for the purpose of evaluation structure and logic, the key findings have been separated into sub-sections that follow the evaluation criteria of relevance, effectiveness, efficiency, sustainability and impact. However it is strongly emphasised that their complex interrelationship and “flow-on” effects make these distinctions somewhat artificial, and hence the evaluators’ observations are to be read and interpreted in a holistic manner.

3.1 Relevance

Relevance to needs and policies

The 2001 Accession Partnership document (Article 3) identified achieving stability in the rule of law, and by extension in the justice sector itself, as one of the main priority areas in meeting the Copenhagen criteria. The 2001 National Programme for the Adoption of the *Acquis* at Section 2.1.7, reinforced by the 2003 NPAA, outlined the Turkish authorities’ commitments to reform in the judicial

Court management projects: examples of relevance

A number of IPA-funded projects have focused on court management issues. These projects were highly relevant because they addressed a clear need, understood and shared by all key EU and Turkish stakeholders. The relevance of these projects was further enhanced by appropriate design: training, in combination with the piloting of innovative court management techniques – including extended use of information technologies – helped the court system to make significant steps forward. The pilot projects were deemed highly successful, with court procedures reportedly “much more efficient and rapid” according to stakeholders interviewed. Similar projects are currently being replicated in other courts.

sector. An examination of the overall objectives and specific activities of EU supported projects in the justice sector, and implemented during the period under evaluation, clearly demonstrated a high degree of general relevance to Pre-Accession instruments and to relevant Accession Partnerships. A similar finding applies to human rights aspects, with the limitations discussed below.

The evaluators observed that the portfolio of projects under consideration also demonstrated a broad range of general and specific objectives and related activities that directly addressed a number of genuine needs and priorities within the justice sector in Turkey and in relation to human rights protection, including *inter alia* integrating human rights approaches in the ordinary and military judiciary, juvenile justice and victim support initiatives, court reforms aimed at reducing substantial backlogs, probation and other initiatives aimed at addressing prison over-population, and the introduction of an additional tier of Appeal courts. The justice sector projects therefore exhibited

a priori a strong correlation to the objectives and priorities under the IPA, MIPD and related instruments, as well as to pressing sectorial needs. Nevertheless, significant gaps in programming were observed, notably any form of direct support to defence rights, or significant, sustained and strategic attempts to reduce the high percentage of prison inmates awaiting trial⁵¹. Gaps in relation to human rights protection are also referred to below.

⁵¹ At the time of writing, this was estimated at around 40% of the total prison population. Available statistics in this respect are however unreliable, since individuals who have been convicted but are awaiting appeal are not taken into consideration.

The evaluators understand that this deficiency is being addressed at least to some extent in the current and planned project cycles (see Annex 5). This omission for the period under consideration is nevertheless symptomatic of the extent to which programming was influenced by national political priorities rather than by genuine human rights *lacunae* in the field of judiciary and fundamental rights.

As projects that are considered relevant both by the Turkish government and the European Commission to AP and NPAA priorities can be funded, projects are generally relevant to the needs of the beneficiary institutions and of the final beneficiaries. In some cases, pre-accession projects aim at providing an opportunity to trigger activities in a field and/or a region where nothing similar had been done before. For example, the GAP administration⁵² insisted on the relevance of the “Empowerment of Women” project, which provided them with an unprecedented opportunity to work with EU support in East Anatolia, which are very under-developed regions and where women’s NGOs need support (the project also worked in the Black Sea region).

Project design

Individual project relevance, and the relevance of individual activities, was highly uneven. In this

Good design enhancing project relevance: human rights training for Gendarmerie

The project on training *Jendarma* officers on European human rights standards was an appropriate response to a clear need. Though it faced some reticence at the outset on the part of the Gendarmerie, the project was eventually embraced, partly thanks to the impetus provided by some of the service’s most senior officers. Its relevance was enhanced by the fact that the *Jendarma* itself was involved in its design, particularly in setting the contents and modalities of training, and in policy follow-up (establishment of a complaints mechanism open to the public).

The project included twinning (technical assistance by counterparts from an EU Member State). The approach had a catalytic effect, with the *Jendarma* developing genuine skills and expertise in relation to human rights protection and promotion, including through the

respect, difficulties can for the most part be traced back to specific approaches at the *programming and project design phase*. Logically, these difficulties had direct consequences on the overall implementation, results and impacts of the projects themselves.

The objectives pursued by the projects also echo the priorities reflected in the NPAA and they are in line with the objectives of the Multi-annual Indicative Programming Documents and Accession Partnership and IPA priorities. The identification of the needs in this sector for programming has been largely based on a bottom-up approach, each project arising from the particular needs put forward by a beneficiary institution. This demand-driven programming carries a positive aspect as, from the point of view of the beneficiary institutions as well as for the target groups, projects are relevant to beneficiaries’ perceived needs. However, the projects cannot suffice to support the implementation of a global pre-accession judicial and fundamental rights strategy in Turkey. There is a need for a more detailed pre-accession strategy in these fields, supported by project and policy planning, which would provide a framework for

project identification that can translate global priorities into individual projects.

⁵² The GAP (*Güneydoğu Anadolu Projesi* (South-eastern Anatolia Project) is administered by the Regional Development Administration of the Ministry of Development. It covers nine provinces in the Euphrates and Tigris basins and Upper Mesopotamia. Its coverage includes sensitive areas of Turkey where violent conflict with Kurdish armed opposition has occurred.

The patchwork of projects resulting from this demand-based programming left some gaps, as not all human rights issues were reflected in project support. In particular, there was comparatively less attention given to minority rights, freedom of expression, cultural rights and trade union rights⁵³, even though these issues were consistently reflected in progress reports and other programming documents as main areas of concern over the examined period. Even though the 20-project portfolio on which this evaluation is based gives a representative sample of EU's assistance to Turkey in the field of human rights, the experts' team also looked into prior and subsequent programming periods and found only limited information to moderate this finding.⁵⁴ These gaps may be explained by the sensitivity of the issues at hand, by lack of demand by beneficiary institutions, and by difficulties in identifying the proper beneficiary institution to implement such actions.

Similar reasons may explain the limited focus on human rights NGOs in pre-accession assistance to Turkey. The 2007 Turkey Accession Partnership⁵⁵ includes a focus on civil society organisations among its short-term priorities, which is not limited to the area of fundamental rights. In this particular area however, there is room for improving support to independent human rights organisations. While participation of human rights NGOs is noted in some projects, there is no strategic involvement of human rights NGOs at the programming level. Human rights NGOs are mostly eligible to apply for funding to the European Commission under the EIDHR CBSS or through other donors, which provide project support. The lack of possibilities to apply for core funding has a negative on human rights, whereby some NGOs wait for calls for proposals, and design projects based on EU requirements, even when these projects might not fully answer their own needs. Conversely, some essential NGO activities are put aside when they do not correspond to donors' priorities, or when NGOs do not have the capacity and resources to design a specific project. This lack of financial support adds to the challenges faced by human rights defenders⁵⁶ and weakens them, whereas the Accession Partnership aims to: "*Further strengthen the domestic development of civil society and its involvement in the shaping of public policies.*"⁵⁷ The evaluators see this as a gap in EU assistance to Turkey in the field of fundamental rights. They consider it essential that current efforts to provide support to rights-based NGOs through IPA programming (such as the Civil Society Facility's Turkey window) should be further increased.

Stakeholders raised a number of critical issues concerning project design that had clear impacts on project relevance and feasibility, and in turn on project results, with one beneficiary stating "*these were ontological problems – other problems we can solve, but these we could not*":

⁵³ See table in Annexe 5.

⁵⁴ In the Civil Society Dialogue sector, the European Trade Union Confederation (ETUC), together with its four member confederations in Turkey has carried out a project entitled "Civil Society Dialogue – Bringing together workers from Turkey and European Union through a shared culture of work" to create or enhance sustainable dialogue between the workers of Turkey and EU member states. It involved a limited human rights component whereby Turkish workers' representatives were trained on workers' rights and their implementation.

⁵⁵ 2008/157/EC: Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with the Republic of Turkey and repealing Decision 2006/35/EC Official Journal L 051, 26/02/2008 P. 0004 - 0018

⁵⁶ "Turkey: Human rights Defenders, Guilty Until Proven Innocent", report of the Observatory for the Protection of Human Rights Defenders, op. cit. See section on context.

⁵⁷ It should be noted however that IPA has supported Public Sector-CSO collaboration through the "SKIP" project. The TACSO Western Balkans and Turkey programme also supports civil society-public sector collaboration among some others although these are not strictly targeting fundamental rights issues.

- Inadequate stakeholder involvement during the project design phase considerably reduced the specific relevance of project activities and approaches (see below for a more detailed examination of this aspect);
- Some projects lacked focus due to inappropriate indicators, with several interviewees noting that SMART indicators are not always suited to the justice sector, where qualitative long-term impacts are crucial to overall reform, a view that is strongly shared by the evaluators. See also below, section on impact;
- Time frames and project targets were in some instances unrealistic, which obviously had an objective impact on project effectiveness, even in projects that were clearly successful. In addition, risks and assumptions were at times not adequately taken into account, for example the Court of Appeals projects, which clearly did not incorporate into their overall design the considerable political risks and degree of institutional resistance.

Stakeholder consultation

Many of the projects launched under IPA include a strong civil society component, but this dimension

Consulting civil society in human rights projects: opportunities and challenges

The participation of the NGO Civil Society in the Penal System (CISST) as a member of the executive committee of the “Prison Reform” project constituted good practice and proved effective. However three other NGOs involved in the beginning of the project only attended the first executive committee meetings.

In the “Training Programme on Istanbul Protocol” project, cooperation with the Turkish medical Association was also effective. It was also essential because this organisation had expertise in the fight against torture and the documentation of torture cases (the Human rights Foundation of Turkey, also with relevant expertise, was closely involved at design stage but had to step out due to tensions with the authorities). However, the cooperation proved to be very challenging due to the lack of trust between partners (see section on effectiveness below). The EUD played a key role in facilitating dialogue and ensuring that cooperation was sustained throughout project implementation.

is not mainstreamed throughout the EU’s assistance in the field of fundamental rights. The human rights portfolio demonstrates mixed results regarding the involvement of civil society actors at programming and implementation stage. These stakeholders include human rights NGOs or professional organisations, as well as academics with valuable expertise in the areas addressed by each project. The evaluation shows that some good practices have been experienced, but these remain *ad hoc*. Civil society actors interviewed in the course of this evaluation insisted on the entrenched State-centred culture and the fact that independent civil society is left out of most institutional projects. Whenever civil society actors are involved, their participation is challenging or consultation processes are cursory and remain at the formal level.

Despite the positive examples given in the box on this page, the evaluators encountered several examples where key stakeholders were not consulted or even informed about projects. Official institutions are often reluctant to work with NGOs and argue, sometimes rightfully, that they do not have sufficient capacity to be involved in EU projects. Stakeholders systematically express concern that beneficiary institutions prefer to consult “GONGOs”⁵⁸ than independent civil society actors. These criticisms carry a negative effect on the projects’ relevance and may affect the

⁵⁸ Or “governmental NGOs” as are often called civil society groups who lobby in favour of their government and/or established with support from their government.

credibility of EU's assistance.

These concerns can be addressed on an *ad hoc* basis, as illustrated by the example of the “Shelters” project where the beneficiary reports that “*unfortunately most of the municipalities (regardless of their*

political positioning) were reluctant towards working with NGOs, either because some of the NGOs did not have the capacity to provide such services or because the local governments were too conventional”. They suggest that, “*to overcome this problem and to ensure partnership between municipalities and NGOs, collaboration has to be presented as a condition to municipalities during initial discussions – that they are expected to partner with a qualified NGO working on gender-based violence in provision of services. The NGO can be selected together by experts, MoJ and the concerned municipality*”.⁵⁹

**A challenge to relevance:
synchronising assistance and policy
development**

The “Human Rights Reform” project benefited *inter alia* the Human Rights Presidency and provincial human rights boards, which are mechanisms for preventing and remedying human rights violations. Capacity building activities targeted about 1,500 governors, sub-governors, and members of provincial and sub-provincial boards, who were trained on the ECHR, including over 200 individuals who travelled to EU countries for study visits. Since this project was implemented, the authorities have been working on several draft laws to set up a national human rights institution to take over and coordinate the responsibilities of these mechanisms.

The mandate of this new institution and the future status of the provincial human rights boards was still unclear when the project was followed by a similar capacity building project “support to the local human rights boards and women’s rights awareness”. This raised concerns as to the timing of projects with regard to legislative developments.

More recently, this concern was partly addressed, as the implementation of another project was conditioned on the adoption of the law setting up the National Human rights Council of Turkey. Nevertheless, this conditionality showed its limits since the latest draft law, published in March 2012, fell far short of the Paris Principles on national human rights institutions, a concern raised by leading human rights organisations at the national and international levels.

However these concerns also need to be addressed in a more systematic manner, through the development of a standardised consultation mechanism at both the programming and implementation phase. Based on transparent eligibility criteria, such a mechanism would ensure that major NGOs and other key actors have an opportunity to provide their inputs. This would not only strengthen the project’s relevance but also ensure that the civil society dimension of the partnership is mainstreamed throughout assistance in the field of human rights.⁶⁰

Legislative developments and international human rights standards

EU’s assistance is aimed at fostering institution building and reform towards an institutional setting that can provide a stronger framework for the protection of fundamental rights. In this context, support to human rights institutions that do not meet this criterion is questionable.

EU assistance modalities

The evaluators note with concern that numerous stakeholders, including major beneficiaries such as the Ministry of Justice (MoJ), complained that

⁵⁹ United Nations Population Fund-UNFPA, Shelters for Women Subject to Violence, Component IV: Capacity Building for Women’s Protection Services, Final Narrative Report (March 2008-Nov 2010), p. 32.

⁶⁰ This recommendation is elaborated on in section 4.2.

certain EU conditionalities in the enlargement process resulted in reform being “imposed” before key aspects of sector or institutional readiness had been adequately established. One Ministry official stated point blank that “*the EUD forced us to make this mistake*” relative to the Better Access to Justice Project, which failed to meet some of its primary objectives. Despite the general pattern of reliance on requests from beneficiaries in initial project design (referred to above as a “bottom-up” approach), certain key stakeholders therefore considered that the EUD “imposed solutions” in the approach and structure of some projects, in particular for projects designed during the pre-IPA period. In a similar vein, certain primary beneficiaries stated that EUD was too closely involved in the identification of sector capacities and needs, and in the selection of specific activities. Other stakeholders considered that, for some projects, the EUD was overly reliant on assurances provided by the MoJ concerning institutional capacity. These comments demonstrate *inter alia* the sensitivity of the EU’s involvement in programming and monitoring projects related to judiciary and fundamental rights.

The evaluators take the view that difficulties with certain projects were clearly due to a lack of readiness on the part of key institutions, and notably the Court of Appeal projects, which necessitated numerous structural and constitutional/ legislative reforms as obligatory pre-conditions for achieving the overall project objectives. However the causes of these difficulties relate, in the evaluators’ opinion, to a complex interplay of all the elements highlighted below relative to EU support to the justice sector.

Some beneficiaries took the view that the EU had a weak understanding of institutional capacity. They stated that the EU displayed at times a “prejudiced” view of Turkish capacity, or did not act in a timely manner to accompany policy reforms. For example, stakeholders observed that technical assistance activities in particular often under-estimated the actual operational and technical level of beneficiaries. In another case related to the rights of mentally handicapped people, IPA support came too late to support pilot activities to implement an otherwise welcome reform. These observations were too widespread to ignore, and encompassed both the justice and human rights project areas. As a result, the evaluators consider that a stronger identification of needs and capacities should be conducted at both the design and inception phase, and re-assessed at appropriate intervals throughout project implementation.

Stakeholders highlighted a dissonance between the assistance modalities described, compared to their implementation in reality. One beneficiary stated: “*we proposed various projects, but they were not big enough; [EUD] said we’ll do an umbrella approach [... which] was not appropriate. We had to coordinate a large number of partners, which meant they were very difficult to implement. We would have preferred a lot of separate projects, so we could focus on specific issues.*”

The evaluators agree that, looking at the projects as a whole, and examining the huge quantity and diversity of activities, a large number of ostensibly “integrated” activities as part of a broader project were in reality smaller discrete projects, without the flexibility that smaller project approaches would have otherwise provided. This raises in turn questions as to the overall strategic basis of larger projects, and the degree to which they were, from the design phase onwards, aimed at having truly sectorial and coherent approaches and results. This leads the evaluators to observe that it is perhaps not sufficient to simply “name” modalities that are adopted in programming, but also to ensure that they adhere genuinely – both strategically and in their implementation – to the selected approach.

Related to the above points, several key beneficiaries noted that, while the EU favours a sector-based approach in the justice sector, this results in a large number of project partners, with concomitant impacts on efficiency and effectiveness. Interviewees observed that, given these multiple and equal partners “*no-one was taking ultimate responsibility for projects*”, which in the evaluators’ view resulted in a lack of strategic focus. Stakeholders considered it would be far simpler, strategic and flexible to

provide a number of smaller direct project grants, combined with budget support directly to the Ministry itself. Other beneficiaries commented on a need for greater autonomy, with one Ministry official stating: ““*we are reasonably autonomous, and we could benefit from more autonomy. We have this [with other donors], but [with the EU] we feel like a customer on a bus*”.

3.2 Effectiveness

The effectiveness of the projects was extremely variable, with certain projects having had all project components implemented within the requisite time-frame, whereas others were more problematic, and in the case of the Court of Appeal (Construction) project, most disappointing. Rather than analysing the *extent* to which projects were effective or otherwise, it is considered more constructive to detail the reasons *why* successes and difficulties occurred.

The elements outlined above in the section on relevance provide the strongest indication of the link between project conception and implementation, and overall effectiveness. The evaluators are convinced that these ontological deficiencies were the root cause of certain difficulties with implementation. Limited stakeholder involvement, in particular in project design and inception, doomed some projects *ab initio* (for example, the Court of Appeal projects). Delays as a result of external influences also impacted on the implementation of projects; this was particularly dramatic given the institutional changes taking place during the period under examination, when the entire judicial sector became a vast focal area of reform. The extent to which these elements were reasonably foreseeable is however the subject of considerable disagreement between stakeholders. These difficulties were also compounded by a strongly perceived lack of flexibility in EU and CFCU procedures, which added

Examples of effectiveness: human rights training projects

The training project on the ECHR for military judges and prosecutors was particularly effective – this was demonstrated by consistent reports as well as interviews – in that it addressed almost all members of the target group at the time, and provided input that was widely seen to be up-to-date and of high quality. The project contributed to enhancing the capacity of military justice to address human rights concerns – indeed, it contributed to making military justice experts among those with the best understanding of ECtHR judgements in Turkey.

Other projects also demonstrated effectiveness in their training dimension, including the project on civilian oversight of the security services (though other components of this project were less successful). Overall, training has been one effective way for the portfolio of projects to help develop momentum in favour of broader reforms in judicial and human rights matters.

to existing institutional challenges, and, disturbingly, *dissuaded* beneficiaries from seeking the necessary adjustment in activities that became apparent during the projects’ implementation phase, since these would have impacted negatively on projects’ already over-ambitious time-frames. For the purposes of clarity and to avoid repetition, these challenges are grouped and outlined in more detail in the sections below on efficiency and impact.

On the other hand, project effectiveness was enhanced when activities were in line with the government’s domestic reform agenda and where political will to implement reform – as expressed in directions given by government ministers and senior ministry officials – was present. It was also enhanced by sound project design setting realistic objectives and achievable results. Many of the training-related projects were therefore effective, largely because they were not particularly dependent on the domestic political reform agenda (see examples in box on this page).

Achievement of project objectives and results

At the programming level, the main limitation to project effectiveness lay in the projects’

overambitious design. The scope of the projects was invariably wide, with various components touching on training, institution-building, construction, publications, and grant schemes, that were to be implemented within challenging deadlines, ranging from 1 to 3.5 years. Beneficiary institutions tend to insist on reaching out to very large target groups, as the scope of reform areas requiring support is wide.

Stakeholders from a majority of the fundamental rights projects have insisted that projects were too ambitious, with implementation periods that were not sufficient to generate relevant results, or because beneficiary institutions lacked the capacity to implement certain activities. This concern is not new and it has been taken on board to some extent, including in project fiches, which insist on this point as an important “lesson learnt”⁶¹. Nevertheless, the same concern was recurrently reflected in final reports and during interviews with stakeholders. For example, several stakeholders involved in the “Model Prison” project – official institutions as well as NGOs – mentioned it was too ambitious and indeed, some important outputs appeared unattainable as of June 2012, when the project was nearly completed. Another example is reflected by UNFPA in the lessons learnt section of their report on the “Shelters” project: “*Multi-year programming is suggested for actions similar to this action (i.e. an action with several components and follow-up requiring activities.) (...) The action should have been designed to be executed phase by phase*”. The evaluators received the same feedback about the “Children First” project, which stakeholders found lacked the necessary focus.⁶²

In order to balance the challenge of designing and implementing broad projects, the inclusion of pilot activities has proved successful. This was the case with the “Children First” project whereby a coordination mechanism was to be developed to ensure cooperation between child protection services and to implement the multi-sector system introduced by the 2005 Child Protection Law. The pilot implementation that took place in Bursa, prior to the action being continued in other provinces, proved essential to identifying and rectifying the shortcomings of coordination mechanisms.

Delivery of outputs

Many outputs were delivered in the course of the projects. However, delivery was sometimes hampered by weaknesses in design, external factors and significant contracting delays. There were several instances where outputs were delayed, such as the setting up of a training centre for prison staff under the Prison Reform project due to on-going discussion among Turkish authorities about its location,⁶³ or the PR component of the same project. In the “Shelters” project, one of the 8 shelters could not be built due to unresolved planning issues with the Municipality in Istanbul. There were also cases where the number of outputs had to be revised, for example with the Human rights Reform project where only 60% of the Ministry of Interior staff could be trained. Contracting delays compounded these challenges (see section on Efficiency).

In spite of these difficulties, it must be stressed that most outputs were delivered for human rights projects, in particular given the numerous challenges raised by the broad scope of these projects, the number of partners involved, requiring considerable coordination, and the very high number of target groups. This is particularly true for training activities, which represented an important component of judiciary and human rights projects. In most cases, the quantitative indicators for these training

⁶¹ An example is highlighted in the “Model Prison Practices” project fiche: “*One of the lessons learned in this area is that projects addressing the political criteria should not be defined with overly ambitious objectives. Hence assistance in this area will be provided through individual projects making incremental steps within a well defined strategic framework*”.

⁶² This project pursued 5 objectives, including: increasing the capacity of 600 professionals working with children at risk; training 75,000 vulnerable families on positive parenting behaviour with their children after completing the parenting education training; enrolling 50,000 children aged 10-14 in the catch up education programme; setting up model coordination mechanisms at the provincial level to support the implementation of the Child Protection Law.

⁶³ At the time of this evaluation, this project is reaching its conclusion and the exact location of the training centre has not yet been decided.

activities were very high, such as “75,000 vulnerable families with children aged 0-18”, “15,000 prison staff in all 90 prisons”, “4,000 physicians”, “2,500 governors, sub-governors, police and *Gendarmerie* officers” “220 study visits to Council of Europe member States”. There were instances where target groups were not properly selected, however these were rare, bearing in mind the very high number of trainees.

Quality of outputs

Stakeholders expressed conflicting views on the quality of outputs. The major component of the institution building activities implemented under the human rights projects was training: Training for judges, prosecutors and some public officials (Istanbul Protocol project, Human rights Reform project, Children First project), for prison staff (Prison Reform project), for public officials from various ministries or municipalities (Women Empowerment project, Shelters project), for educators (Children First project), etc. Questionnaires completed by participants and independent evaluations conducted after some training sessions reflect a strong level of satisfaction. The importance of this training, which often exposed trainees to human rights issues for the first time, and of study visits to EU countries, which provided an opportunity to share experience and step back from daily work, should not be underestimated. However, many stakeholders have questioned the methodology of training where it was not interactive. The quality of trainers was also questioned, in particular when they were not familiar with the Turkish context. Similarly, trainers did not always take full consideration of conditions of detention in order to train prison staff more effectively. On the other hand, training based on case studies and interactive small groups’ sessions were reported to be very effective.

Challenges to civil society effectiveness

There is however an area where the production of outputs proved very challenging and which would require particular attention in the future. Several projects include a strong civil society component and, invariably, objectives related to this component could not be attained in an effective manner, as reflected in various ways by the following four examples:

The Prison Reform project provides an example where objectives could not be met at all. One of the expected results was to “*increase in the activities of civil society in the prisons*”. To this end, the project envisaged developing an NGO Strategy for the Directorate General of Prisons and Detention Houses (DGPDH) of the MoJ. Several focus groups and seminars were held which highlighted significant differences in interest and approach between the two sectors. As reflected in one of the interim narrative reports⁶⁴ “*the focus of interest of the prisons group was exclusively on the supply of services by NGOs, [whereas] the focus of the NGO group was more on the other roles outlined for them in the European frameworks like monitoring, policy and legal development*”. During the evaluation, the NGOs involved expressed their great disappointment in the lack of political will displayed by the Ministry of Justice to commit themselves to any document on an NGO strategy for the DGPDH. Given that the development of this strategy was a project component, civil society stakeholders expressed frustration that the efforts of dozens of NGOs who participated in two-day meetings in Istanbul, Ankara and Izmir to draft this paper were in vain. This resulted in a loss of credibility of the process and of the MoJ among CSO stakeholders.

In other instances, planned outputs were delivered, but there is no evidence that they lead to the expected results. The Istanbul Protocol project provides an example where activities were unable to be implemented by all partners according to the project design, due to the lack of trust between the Ministry of Justice and the civil society partner, the Turkish Medical Association (TMA). The project came to the verge of collapse, due to accusations of writing inaccurate forensic reports on torture

⁶⁴ Reporting period 15 February 2010 – 31 March 2011

allegations, and disagreements about the trainers and modules proposed by the TMA. With the support of the EUD, a compromise solution was found resulting in a strict share of responsibilities whereby the Ministry of Justice would train judges and prosecutors, and the TMA would train physicians. Consequently, even though the training took place, it failed to reach one of its objectives, which was to help legal and health professionals create a common language in the process of the detection and documentation of torture cases through the joint detection of problems.

The Human rights Reform project provides another example. This project aimed at involving civil society in the implementation of the human rights reform programme, in particular by strengthening the 931 Human Rights Boards set up in all provinces and sub-provinces, and in which civil society organisations are represented. Independent human rights NGOs have only a few members in these boards. A large majority of NGOs board members come from the Association of Atatürkist Thought, associations promoting the rights of people with disabilities, Associations of Martyrs' Families and War Veterans, or the Red Crescent Association⁶⁵. Interviews conducted in the course of this evaluation show that this situation has not changed significantly since the project was implemented, and that many civil society board members do not have a human rights mandate or expertise, with the exception of women's organisations in some provinces.

The Prison Reform project provides another example of the effectiveness of the civil society component being hampered by the context. Some stakeholders noted that the project contributed to improving NGOs' access to prisons, but this could not be verified in the course of the evaluation, and NGOs interviewed considered it was still very difficult to work inside prisons. In this project, activities related to the monitoring boards of prisons was undermined by the lack of independence of monitors appointed by deputy governors, and the lack of transparency of their work. For example, the reports of these boards are not made public, so the problems they highlight cannot be accessed. Academics and NGOs point out that these boards are established and functioning without adequate training, and through a top-down approach where there are clear limitations to membership, such as having served as a public servant for 10 years, having no criminal record, demonstrating "good citizenship", whereas NGOs cannot always fulfil these strict eligibility criteria.⁶⁶. Four members of CISST who are academics applied to be a member of the monitoring board, however only one was approved. Furthermore, the Diyarbakir Branch of the Human rights Association and the Diyarbakir Bar Association applied to the MoJ but were refused access.

Stakeholder involvement

A key criticism of virtually all stakeholders was a failure to adequately involve stakeholders (and even beneficiaries, such as the Justice Academy) during the design phase of projects, with notably Turkish Bar Associations at the national and local level and civil society actors in the human rights sector not adequately consulted, if at all, in particular in the preparation of earlier projects during the period under consideration.

Such stakeholders were not necessarily even involved in subsequent activities. This resulted in the programming of clearly inappropriate activities, for example the "grafting" of the German legal aid system onto the Turkish system, an activity that was abandoned when it became clear that the two systems were not sufficiently compatible, a fact that could have been made clearer had broader

⁶⁵ Prime Ministry Human rights Presidency, "Turkey Human Rights Report (An Evaluation)", 2008, p. 77.

⁶⁶ "Cezaevleri için acil çağrı var", *Radikal*, 10/04/2012, <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=1084467&CategoryID=77>

consultation taken place. Even where sufficient stakeholder inclusion existed, there were problems of a serious lack of coordination, with stakeholders' roles not being sufficiently clear and differentiated.

Project partners were not always well selected in terms of real responsibilities and implementation, one example given was the Good Governance, Protection and Justice for Children project (TR0404.01), for which the MoJ was the nominal lead partner, whereas in reality the activities were conducted by and impacted on the MoJ. Related to sector capacities, stakeholders reported that project design failed to incorporate, or at times even remunerate, appropriate local expertise. One beneficiary stated that: *“university professors and other local experts don't want to work with us because we don't pay them, whereas we pay foreign experts”*. Even when paid, local experts were discouraged by the difference in fees, which they felt was discriminatory. The evaluators agree that failing to adequately utilise, and value, national expertise resulted in an erosion of goodwill and ownership within the justice sector, and bred unnecessary resentment of EU initiatives. In addition, the failure to systematically incorporate national expertise in key activities significantly reduced their overall relevance and impact on the sector.

The EUD concedes that there were deficiencies relative to stakeholder inclusion in the design and implementation of earlier projects. However, situations were in reality more complex and nuanced than they might at first appear. Certain stakeholders themselves at times failed to include or disseminate information to other members of their own constituencies. Crucially, project design was supported by advisory visits and peer review reports, which for example supported the establishment of Appeal Courts, and criticised institutional delays in their establishment following the enactment of the relevant laws. In addition, stakeholders were by no means unanimous in their support of certain projects or activities. As an MEUA official succinctly stated *“it is easy in hindsight to say [certain projects wouldn't work]”*.

Any deficiencies in this regard were however largely rectified over time, with for example the 2nd Phase of the two Court Management projects having involved the relevant Bar Associations at all phases of project design and implementation, and with a stronger involvement of academic institutions, civil society and the media. It is therefore unsurprising that the reported impacts of this Phase were considerably stronger than those of the initial phase.

In summary, the evaluators note that there exist strongly divergent views as to the degree of stakeholder participation, *and to what extent this could have altered in reality the final outcomes of certain projects*. They consider that, for example in the case of the ill-fated Court of Appeal project, a complex convergence of circumstances, notably of political origin in the overall national context, which occurred at the time of implementation, constituted a situation of *force majeure* that in all likelihood could not have been reasonably foreseen at the programme design phase. As one beneficiary stated *“even if [projects] had been more participatory, changing policies and structures would still have made implementation difficult”*.

Conclusion

Despite certain observed difficulties, the evaluators note the resounding success of some projects, for example the Probation project (TR0404.02), which completed all of its activities within the execution period, and attained all its stated objectives, with a high degree of stakeholder satisfaction. Similarly, while some initiatives experienced considerable difficulties in earlier projects, their follow-up projects were considerably more effective, and far better managed in general, for example the Court Management initiatives (TR0601.04 and TR0801.02). Again, such successful projects can be linked to stronger stakeholder involvement, more relevant and realistic project design, and improved capacity in

the implementation of EU-supported projects. In this respect, it is therefore more useful to consider certain consecutive and linked projects as a unified whole; in this way it becomes evident that *overall effectiveness evolved and dramatically improved over time*.

In a context marked by a continued distrust between national institutions and independent human rights actors, as well as by a lack of will by the authorities, the effectiveness of the EU's assistance in the field of human rights remains a challenge. Delivered outputs did not always bring the expected results, in particular where projects touched upon sensitive issues and/or when they involved civil society organisations. There are complex reasons behind these difficulties, which only reflect the challenge of a long reform process. They also raise questions as to the relevance of some training activities. Even though training is key to institution building and to supporting the implementation of reform, it is not sufficient to bring about the necessary evolution in mentalities.

The finding of the Interim evaluation team, that *“the extent to which outputs would be transformed into results became less clear”* holds true as far as human rights projects are concerned. The evaluators share their impression *“that for beneficiaries, the outputs of the assistance are ‘the results’, and anything beyond the delivery of these outputs is hard to define or determine, and that they are not in fact their responsibility – their responsibility being primarily to successfully oversee the implementation.”*⁶⁷

3.3 Efficiency

At the programming level, the evaluators found that there was a reasonable relationship between project inputs and outputs. The main concern relates to the fact that most projects are considered to be overambitious by stakeholders (see section on Effectiveness). Project reports and interviews suggest that budget design was adequate to enable the projects to meet their objectives. In other terms, where objectives could not be met, this was not due to budget restrictions; on the contrary, a significant percentage of some project budgets was not used.⁶⁸

Delays

At the implementation level, very significant delays in tendering and contracting had a negative effect on projects' efficiency. A common thread seems to have been a one-year delay before the execution of contracts. This was particularly striking in the case of the Women's Empowerment project, where both the TA component and the grant scheme were delayed, jeopardising the relevance and effectiveness of the project. The launch of the call for proposals was delayed by one year, which led to the loss of the budget allocation and a delay of two years before the contracts could be signed. The TA was mobilised after the preparation of guidelines and the launch of the call for proposals, and hence their assistance to the project preparation component became redundant. The beneficiary institution had invested a great deal in promoting the programme from the acceptance of the project fiche for 2007 programming, and felt that it lost credibility. For many grant beneficiaries this meant that conditions on the ground had changed and/or they had partly carried out some activities that were supposed to be part of the grant contract.

Coordination challenges

Administrative and organisational structures in place have ensured efficient implementation of the projects in general, even though they encountered two difficulties. First, the on-going restructuring in many Turkish administrations and institutions created some challenges that affected the projects'

⁶⁷ Interim Evaluation Report prepared by Particip, Technical Assistance for Interim Evaluation of IPA I in Turkey for years 2007-2008-2009, February 2012, p. 63.

⁶⁸ 35% was unused for the HR Reform project and for the Cultural Rights project, 21% for Children First project, 20% for Cascade Training on ECtHR.

efficiency. For example, in the course of the Prison Reform project, the responsibility for implementing some prison health staff training was moved from the MoJ to the MoH, which failed to identify the target groups in a timely manner. Consequently, most health staff could not be trained. The Women's Empowerment project is another example, where the GAP administration moved from Ankara to Urfa in the course of the project, which added further delays. In the Shelters project, structural changes also affected to a certain degree the functioning of shelters, when the initial project beneficiary (Ministry of Interior) had to transfer the project to the Ministry of Family and Social Affairs, based on the new regulation on shelters, which resulted to some tension between the two institutions.

The second difficulty relates to the significant coordination efforts required by most projects, since they often involved several ministries and other stakeholders. However, the evaluators found that coordination activities have become more effective over time, ensuring a more efficient project implementation. Whereas during earlier projects beneficiary institutions were not experienced and objected to the workload involved in coordination, they have clearly gained expertise and efficiency in project implementation. Evidence also shows that the presence of an external partner increases coordination effectiveness, as was highlighted in the Children First project.

A major contribution of UNICEF to this project was to trigger long-lasting collaboration between 12 partners from various ministries and agencies.⁶⁹ UNICEF insisted that: *“project partners are now increasingly aware of areas that complement each other, and work carefully towards reducing duplication. The project also enabled project partners to increase communication amongst different line ministries. This in turn assisted the project partners in finding faster solutions to challenges encountered during the project implementation. As the project was implemented and coordinated, the partners were able to see the convergence between projects and are seeing the benefit of working together.”*⁷⁰

The external factors, institutional capacity, and design flaws outlined above significantly affected efficiency in the implementation of projects in the justice sector. Several key elements appeared to recur within the sector portfolio.

EU processes

Numerous beneficiaries reported significant difficulty in adjusting and incorporating EU processes and timeframes in the implementation of projects. This clearly impacted on the overall efficiency and effectiveness of projects. Some implementing partners also referred to the difficulties of institutional “overlay”, that is the cumulative and compounding effects of internal requirements within partner institutions. For example the Council of Europe as the implementing partner in several projects was required to adhere to their own internal timetables and processes, which added to the quite different procedural constraints of the EUD, the CFCU, the MoJ, the MEUA, and all other project partners. The evaluators note however that this aspect has improved in recent years, as partner institutions have gradually improved their capacity to respond to EU and other institutional requirements. The difficulties however highlighted a clear need for specific *and on-going* capacity-building relative to EU expectations and procedures. It is accepted that the responsibility for this lies with the MEUA, and that certain capacity building activities did take place, in particular towards the beginning of the period under consideration. However, the considerable changes that occurred in the justice sector – and in

⁶⁹ Including MoI, MoH, MoLabour and Social Security, MoNE, MoJ (including training department, GG of Prisons and Detention Houses), Social Services and Child Protection Agency.

⁷⁰ See final report p. 49.

particular within the MoJ – meant that much of this capacity was lost, or more precisely diverted into areas where it could not be fully exploited.

Some beneficiaries also highlighted that the EU could have provided better access to best practices and technical expertise, for example relative to legislation as part of certain reform processes, since *“this already exists in the EU so why not use it?”* This meant that beneficiaries sometimes expended resources to “reinvent the wheel”, instead of being directed towards previous EU initiatives, either in Europe itself or as part of pre-accession or development assistance elsewhere. This clearly affected the efficiency of some activities.

Beneficiaries reported very positive and constructive interactions with the CFCU, which they considered acted in good faith, however some stakeholders noted that CFCU resource capacities were problematic, in particular during earlier projects, which rendered them difficult to contact or lacking in responsiveness, and which consequently impacted on the efficiency of some projects. Some beneficiaries also described a significant lack of flexibility in CFCU approaches, with the institution *“applying the letter of the law”*, often to the detriment of projects. More problems were however reported in interactions with the EU; again, a lack of flexibility was cited as problematic. In addition, some beneficiaries noted that *“their deadlines [for responses] were very short”*, whereas the EU’s own timeframes were inconceivably long, which in turn impacted on the efficiency and effectiveness of projects.

Several beneficiaries and stakeholders noted difficulties obtaining Schengen visas for expert visits; while Turkish government officials possess “green” passports, which do not require an EU visa, other stakeholders, such as Bar Association participants, have “ordinary” travel documents. One example

was given of a visit to Sweden, which MoJ officials were able to attend without difficulty, however Bar representatives experienced enormous problems, with one participant stating: *“for this reason we couldn’t go to some events; plus it is highly degrading”*. Clearly these difficulties had impacts on the efficiency and effectiveness of certain activities. While this simply highlights an on-going existential problem for the EU relative to non-EU stakeholder participation, which is unfortunately outside the scope of the current evaluation, the evaluators consider that perhaps EUD in Turkey can establish “fast-tracking” or “pre-approval” visa procedures with Member State diplomatic missions relative to EU-supported projects.

Impact of the programming process: example

Over 30 months elapsed from the initial proposal of the “services for people with disabilities” project to the start of activities. According to various stakeholders, causes of delays included the following:

- The initial proposal needed revision to meet procedural requirements;
- The beneficiary institution (Ministry of Health) did not agree with some of the amendments to project design requested during the process;
- The World Health Organization could not initiate recruitment of the technical assistance team until funds for the posts were available.

One consequence of this situation is that a pilot “care in the community” project originally envisioned as part of this project was implemented with domestic funding.

Stakeholders repeatedly referred to difficulties related to the drafting of project fiches, and pointed to the drafting methodology itself in this regard. The SEI facility remains under-used, despite the assistance it could help provide to project planners in developing proposals that meet EU requirements. Justice projects involve a large number of beneficiaries and other stakeholders, including numerous separate MoJ units, other key Ministries (e.g. Mol), extra-ministerial beneficiaries

and project implementers. Project drafting was generally conducted through exchanges of emails, which while allowing a diversity of inputs, ironically detracted from the *weight* of the inputs thereby obtained, and whether views reflected mere opinions or genuine institutional consensus. It was also considered to be an unnecessarily slow and inefficient process, which lead to a particular kind of “project fatigue”. The evaluators consider that, at critical phases of the drafting process, “old-fashioned” meetings, with clearly identified objectives, should be convened, at which key points could be discussed. As one interviewee stated: “ *we just need to sit down and discuss these issues humanly*”.

Programming and project management

As noted throughout this report, the programming process exercised a detrimental impact on the relevance and effectiveness of many projects. The case described in the box on this page is but one example. The causes of this negative impact were the following:

- Excessively long approval process. It has commonly taken upwards of 24 months for a project to be approved and funds to be made available for implementation. Although the approval process must legitimately meet many constraints (mainly agreement by a range of interested parties; procedural controls; and financial and policy accountability) it is unnecessarily complex and time-consuming.
- Lack of procedural clarity from the beneficiaries’ point of view. The rules governing the process are complex and fully mastered only by a relatively small number of senior officials in the key institutions referred to in Chapter 2 above. Beneficiary institutions by contrast have much weaker understanding of the process, and little information about the progress of a project proposal outside the periods when their own input is requested.
- Lack of harmonisation of approval process with beneficiaries’ own administrative procedures. The IPA process takes no account of the administrative framework under which beneficiaries operate – be they Turkish institutions or intergovernmental organizations such as United Nations agencies, the Organization for Economic Cooperation and Development (OECD) or the Council of Europe (CoE). The lack of harmonisation means that beneficiaries cannot prepare for projects (for example by planning staff recruitment) before funds are actually made available. As a result, most projects experience a delay following approval, which can last months, until relevant experts are recruited and activities can actually start.

**Streamlining an approval process:
the example of the SEI**

The Project Implementation Directorate (PID) of the MEUA is currently implementing an online application tool (OLAT) to expedite the processing of project preparation requests funded from SEI. The tool allows all actors including the relevant line ministries, MEUA directorates, CFCU managers and EUD project managers to simultaneously participate in the processing of the application and follow its progress. After testing the tool in two successive stages, OLAT will be fully operational as of September 2012.

It is beyond the scope of the present report to review and propose amendments to the programming process. However it is clear that there is scope for the process to be streamlined. The example of the streamlining of the SEI facility (which concerns much smaller amounts of funding and is not comparable in all respects with IPA’s TAIB component) shows that streamlining is possible and can gain buy-in by the relevant stakeholders. It is also clear that any future switch to a sector-based approach to

IPA programming is likely to result in a different project approval process. Nevertheless, in the view of the evaluators, any amendment to the process should consider the following elements:

- Ensuring that only procedurally correct project proposals enter the process. Past experience suggests that delays were often related to the fact that incomplete or not fully eligible proposals were made, which subsequently required thorough redesign to meet IPA requirements. Delays and bottlenecks could be reduced by more systematic assistance to project design teams, ensuring proposals fully meet procedural requirements before submission.
- Ensuring that the progress of proposals can be monitored by all concerned parties in real time, for example through an appropriate online procedure modelled on the SEI process. This would help ensure that unnecessary delays (for example waiting for input by beneficiaries), can be reduced by making all parties aware of the expectations concerning them.
- Ensuring that procedural requirements are clearly separated from issues of policy or substantial expertise. Beneficiaries have noted that they were sometimes requested to change project proposals in ways not consistent with their internal procedures, and that some requests went against the policy advice of their own experts.
- Considering a distinction between “in principle” approval of a project, and its final approval. Many beneficiaries would be better able to plan their work if they knew that a project was approved in principle (that is, pending procedural requirements being met). Such a process could possibly be facilitated by introducing a two-stage project approval process, in which a “project concept” would be submitted initially, and would only be fleshed out into a full proposal if and when “in principle” approval is obtained. Such a two-step approach would be consistent with the future sector-based approach, partly because it would also facilitate multi-year programming.

Consultations with process engineering experts may be appropriate to assess the current process and propose ways to streamline it.

Recovery of funds

The evaluators noted with disappointment the most unfortunate outcome of the Court of Appeal (Construction) project (TR0501.07), which terminated with recovery proceedings for the entire EU component (€27 mill.), which has been repaid in full by the Turkish authorities. The evaluators strongly query the apparent intransigence on the part of EU authorities, whereby (a) the political environment leading to delays that were the basis of the recovery process, and (b) the *significant political consequences of recovery*, were apparently not adequately taken into account. The evaluators accept that EUD made significant attempts to oppose the recovery process, as did MoJ representatives at the highest level, and consider that the hard line adopted in Brussels was at the origin of this highly unfortunate development. The evaluators also strongly query the logic of recovery of the entire amount, when the majority of activities, and the capacity-building activities of the parallel Court of Appeal Project (Twinning) (TR0401.02) had already been completed, and consider that even if recovery was justified, a *reduced* percentage of the total funds should have been clawed back. Stakeholders reported considerable erosion of trust and EU-Turkish goodwill, and also indicated that the incident has had a “chilling effect” on other initiatives, with the CFCU now being overly cautious in their programming.

3.4 Sustainability

Programming aspects

The EU's assistance in the field of fundamental rights is developed in a context of on-going reforms, and feeds into an institutionalisation of human rights priorities. In this context, projects' impacts are to some extent "naturally" sustained by the development of institutions (such as the Justice Academy) or curricula (such as the inclusion of the Istanbul Protocol in some faculties of Medicine).

At the programming level, however, human rights projects do not systematically include an explicit sustainability strategy or even sustainability

The "Children First" project: an example of sustainability achieved through consistency with government policy

This project aimed at institutionalising service models that increased respect for children's rights. In the course of this project, a regulation was adopted on 10 July 2008 by the Board of Education and Discipline of the Ministry of National Education. It incorporated the results of the project on remedial education for children who have dropped out of school, creating a legal obligation to continue the education activities that had been developed under the project, using the same approach, shifting away from a punitive approach to the development of incentives for families to send their children to remedial education.

According to the project's final report, *"this programme has paved the way for a systematic change for children who missed their first chance to get a primary education, and demonstrated the commitment of the government to uphold the right to education. With the directive published, the aforementioned programme was extended until 2013, and is being implemented nationwide."* Interviews with stakeholders confirmed this report.

sustainability components. For example, the human rights reform project includes training of trainers (ToT), but project design does not foresee any related activities involving these trainers. As highlighted in the final report of this project, one of the lessons learnt is that *"there should have been a second phase which would have guaranteed that they apply their knowledge and skills in practice by training others"*.⁷¹ As it has not been the case, there is no evidence that the 500 trainers used the knowledge acquired in the ToT and actually trained their colleagues. Interviews conducted in the Human Right Board in Diyarbakir made it clear that the benefit of the training had been lost shortly afterwards. Conversely, the inclusion of a cascade component into project design proved more effective as illustrated by the detailed feedback provided by 4 physicians who participated in the ToT regarding the Istanbul Protocol, and reported the success of their subsequent training activities⁷². Similarly, the establishment of a training centre, which will incorporate project outputs into the curriculum, is likely to be more sustainable, as in the "Prison Reform" project, where 2 training centres are being set up for prison guards.

There was reasonable evidence of sustainability across the board for projects implemented within the justice sector. Even projects that did not *objectively* achieve acceptable levels of effectiveness, for example the Court of Appeal (Construction) Project referred to above, will ultimately

prove to be sustainable, in that the necessary institutional and physical structures have been put in place, and necessary political and institutional ownership and commitment have been achieved. Indeed, current budgetary allocations for the justice sector demonstrate a strong political will to

⁷¹ Support for the Implementation of Human rights Reforms in Turkey, Final Report, 11 February 2008, p. 35.

⁷² Final report of the Istanbul Protocol project, Annexe IA

continue not only the reform process itself, but also to support the fruits of such reform in the long-term; this demonstrates the strongest possible proof of financial and institutional sustainability of EU supported initiatives in the justice sector.

Related to this, stakeholders reported powerful shifts in attitudes and ways of working together (see below, section on Impacts), which provide anecdotal evidence of sustainable, and likely permanent, changes in systems and processes within the justice sector.

Some training activities in particular have already demonstrated a degree of sustainability, with modules and materials that were developed under several justice projects being integrated into all initial and on-going judicial training curricula at the Justice Academy.

In addition, the various books, leaflets, manuals, and informational booklets produced pursuant to the projects show clear sustainability. These are publications that have on-going usefulness and relevance, and can be easily reprinted and distributed, and contribute to the longer-term and broader impacts of project activities. Many of these publications remain freely and permanently accessible online.

Such sustainability however was in some ways serendipitous: largely absent from project design were *general strategies* to sustain projects, or what stakeholders termed “concepts of sustainability”, in particular for smaller projects. Justice projects could therefore benefit from a stronger focus on sustainability as a specific objective.

Institutional aspects

Institutional sustainability proved greatest for projects fitting into state policy. However, there was no evidence of sustainability for projects aiming at supporting civil society, since an enabling environment to allow for the development of a vibrant civil society is lacking. Activities based on a top-down approach and on State-led initiatives may bring some *ad hoc* assistance to a few actors on less sensitive issues. This was the case with the “Women’s Empowerment” project, which included a grant scheme to foster the development of women NGOs in eastern and south-eastern Anatolia regions and in the Black Sea region, by building capacities of existing organisations and setting up new ones. As soon as the call for proposals was launched, 75 new NGOs were established. Among the 36 NGOs who were awarded grants, 10 were newly established NGOs. The fact that most of them relied on technical assistance to draft their proposal (to the extent that some of them seem to be unaware of the exact content of their proposal) raises questions as to the performance that can be expected by these civil society actors under the project. For certain pre-existing NGOs who used to rely on volunteers, the project also had the negative effect of turning them away.

On the other hand, on sensitive issues and where the Turkish authorities do not demonstrate a clear political commitment to a project, projects were unable to be strong drivers of change. This is exemplified by the “Istanbul Protocol” project: before the project was concluded, all partners – MoJ, MoH, and TMA – agreed on a detailed list of follow-up activities to be implemented in order to sustain the project’s effects, however no specific action was taken by the authorities to pursue the project’s objectives once the project had ended. This was also the case of the culture-related project, which essentially consisted of one-off activities. The sustainability of some projects has also been constrained by significant staff turnover and resulting weak institutional memory.

3.5 Impact

Examples of project impacts (1)

- Court video conferencing is highly appreciated, although some stakeholders have reported significant technical difficulties.
- The Access to Justice Alternative Dispute Resolution (ADR) component is being implemented, with new laws on mediation being adopted. This is a lasting legacy of EU assistance. The project required consultations with all parties, and qualitative impacts were very high. Some stakeholders note however that there is little uptake of ADR options in practice; further EU support could be directed towards raising awareness about ADR.
- Stakeholders reported that “*we could have [done the projects] with our own budgets, but we needed that push*”. EU assistance enhanced momentum and inspiration, and helped feed into the creation of a *sense of capacity* in addition to increasing capacity *per se*.
- EU assistance provided an exceptional and highly timely opportunity for accelerated learning and capacity building within institutions. In this respect, EU support was viewed as being a “*catalyst for change*”.
- Projects provided the basis for significant legislative and institutional reforms that have extended well beyond the project execution periods, and contributed to the establishment of sustainable systemic frameworks.
- Projects contributed to changing attitudes within key justice sector institutions. Stakeholders reported significantly increased cooperation (“*we are working together now*”) and a breaking down of the “*caste*” system that existed between judges, prosecutors and private lawyers. One beneficiary noted that: “*often increased coordination was the added value of these projects*”. Beneficiaries remarked that projects helped lead to “*the creation of a common language, common values, and common attitudes*”.

Challenges in measuring impact

A key difficulty of measuring the impact of projects and their specific activities was the absence of baseline data, not only for the purposes of the current evaluation, but also in support of on-going monitoring and evaluation processes.

In addition, the impact of EU’s assistance is difficult to assess for three main reasons. Firstly, projects do not always include SMART indicators of achievement, making it hard to assess results accurately. Indicators such as “*change in the attitudes and behaviour of prison staff and inmates*” or “*raise awareness of judges*” are too vague to assess whether projects have fulfilled objectives. An improved use of SEI may be a way to improve indicators.

Secondly, projects results are generally not assessed other than from a superficial lessons learnt analysis; no thorough impact assessment is conducted⁷³. For example, insofar as training is concerned, the fact that participants state in a questionnaire that a training session will influence their work is not in itself an impact indicator.

⁷³ This is also a conclusion of the interim evaluation team, which found that “*impacts are not usually monitored by the respective contracting authorities or line ministries. There is almost no statistical data available on the extent that impacts have contributed to achieving wider objectives*”, see Interim Evaluation Report, op. cit., p. 32.

Examples of project impacts (2)

- EU assistance helped beneficiaries to develop strong relationships with EU Member State donors, with initiatives being funded that are the direct continuation of EU supported projects.
- Institutional and individual relationships with EU counterparts are highly valued, and continue to provide on-going informal technical assistance and support to justice sector professionals.
- Initiatives have been continued by Turkish authorities through specific budgetary allocation (for example increased funds for judicial training), which is indicative of strong ownership of projects, and a political willingness to continue reform processes.
- The Access to Justice “UYUP system” is very successful and won international acclaim. It is now integrated with systems such as police and land registries, hence displaying a strong multiplier effect and impacts beyond the judicial sector. User uptake has been slow and access not always easy or universal, but use is increasing, with more than half of Turkish lawyers now having electronic signatures.
- While the inputs of visiting EU experts were largely considered useful, many stakeholders considered that sending their own experts to the EU is more relevant, observing that while they can easily obtain raw information, they greatly benefit from the EU “*showing us [...] how it works in practice*”.
- Projects helped develop trust between institutions, and improved information sharing; the MEUA reported for example that it is now more comfortable allowing institutions develop projects themselves, without controlling the process.
- Institutions have demonstrated increased flexibility, and a willingness to take calculated risks and face challenges (for example the extension of the court pilot project to include a large Istanbul court, which had been generally viewed as problematic), which are clear markers of increased confidence within the sector.

Thirdly, attempts to conduct such an assessment are constrained by restricted access to data. For example, under the Istanbul Protocol project, while it was planned to review torture investigations and prosecutions statistically, and to take a picture of Turkish judicial practices, the MoJ did not permit an analysis of these files, either through a file examination or via the online judicial network (UYUP). Access to data is even more challenging when the monitoring activity falls outside the scope of the project, as reported by UNICEF. This international organisation is a partner to several ministries under various projects, but they do not have access to data to track changes triggered by the models that have been institutionalised with their own technical support. This lack of transparency could be addressed in EU’s assistance through institution-building projects supporting Turkey’s evolution away from what some stakeholders called a “state-centred culture serving the State’s vested interests” and to promote initiatives aimed at addressing citizens’ needs.

It is recommended that the collection of such information be incorporated in all project design and/or inception activities, in particular in the justice sector, where reform projects often involve large investments with nevertheless readily quantifiable impacts. In addition, supporting data collection and statistical analysis within the justice sector could also form the subject of specific EU-assisted projects.

Contrasted impact of project portfolio

In spite of these challenges to conducting an accurate impact assessment, the evaluators

were able to obtain feedback from stakeholders on the projects of their portfolio, which reflects contrasting conclusions. In some instances, stakeholders assured that they had “observed changes”, for example in the way prisons are managed and prisoners treated, or for the development of a gender sensitive approach in local administrations from the South East Anatolia and the Black Sea regions⁷⁴.

However, projects alone cannot generate impact where local needs and realities are not taken into account. As an example, data collected from reports of the Human Rights Presidency suggests that the Human Rights Reform project has had a very limited effect on improving the number of complaints received by this institution, as foreseen under the project.

A Human Rights Telephone Hotline was set up at the Human Rights Presidency during the project, but data reflected in the Presidency report the following year⁷⁵ show that the investment had not made any decisive change: “*citizens complain about finding nobody when they call*”. Quantitative data show an increase in the amount of complaints, but most of them are related to the right to health and patient rights, the right to property, and the right to environment, whereas the Human Rights Association receives a much higher number of complaints on a wider range of violations. In a region, such as Diyarbakir, where there is a high rate of HR violations reported, stakeholders from the local Human Rights Board observed that only 1 or 2 complaints per month were sent to the board, and not all were relevant to human rights. The fact that citizens are not able to complain in their mother tongue constitutes an obstacle to using this mechanism. However more generally, these institutions are not credible for citizens, who know that it is unlikely that they will provide adequate redress.

Given the proportion of training among institution-building activities, the variable feedback from stakeholders regarding this activity is a subject of concern. In several instances, training is not repeated once the project is over, so it does not generate impact. As an example, one-day awareness raising training was not considered sufficient to raise proper awareness and trigger behavioural change for community leaders under the Shelters project. The impact of projects involving training could have been enhanced if budgets had been made available for continued in-service training within the beneficiary institutions, on the basis of the curricula developed by the projects.

⁷⁴ An interlocutor at the GAP administration recalled that it was a real struggle to promote a gender approach in local branches of governmental organizations, local administrations and NGOs a dozen years ago, whereas in 2012 this administration receives many training requests from local administrations on this issue.

⁷⁵ Turkey Human Rights Report (An Evaluation)” 2008, Prime Ministry Human Rights Presidency.

4. CONCLUSIONS AND RECOMMENDATIONS

4.1 Conclusions

The following conclusions arise from the evaluation:

Relevance

Overarching question: to what extent were the projects, as designed and implemented, suited to the context, the needs of Turkey and the requirements of EU accession?

Using a sector-based approach for civil society programming: a risky approach

Using a sector-based approach to programme future IPA assistance in the Judiciary and Human Rights field is appropriate where institutions are concerned. However, this approach may hamper the participation of civil society organisations if funding is subject to implementing government policy objectives. NGOs and Turkish institutions have not always experienced mutual trust and support in the implementation of their respective tasks under evaluated projects. In some cases NGOs may be involved in documenting or seeking judicial remedy for human rights violations – thus potentially setting themselves at odds with institutions which may act as the focal points for sector-based programming, such as ministries or courts.

Not all NGOs would have difficulties working with, and reporting to, an institutional focal point as part of a sector-based approach. However some NGOs may find it impossible to take part in sector-based programmes managed by institutions they deem responsible for human rights violations. The sensitivity of work in this field therefore makes it necessary to recommend that alternative sources of EU funding should remain accessible to civil society organisations working on judicial and human rights matters.

The projects in the portfolio were generally relevant to IPA objectives, in the sense that they addressed judiciary- and human rights-related concerns identified in relevant strategy documents. They clearly contributed to enhancing the momentum towards human rights reforms meeting political criteria for EU accession. In particular, the projects addressed key gaps in the understanding and implementation of European human rights instruments by the judiciary, and in the promotion and protection of fundamental rights in general.

However project design was of uneven quality, leading to some projects' failure to deliver fully on their intended outputs and results. Although projects addressed genuine needs in the judicial and fundamental rights areas, the portfolio left a number of gaps. These included, for example, support to the rights of defendants in trials, minority rights, and trade union rights. Another concern hampering relevance was that, in some cases, the projects were designed without sufficient consultations with all relevant stakeholders, particularly civil society. Greater consultation might have helped ensure more focused project design addressing specific strategic needs in the judicial and fundamental rights area.

In general, the projects were based on a sound understanding of the judicial and human rights context in Turkey, including other donor-supported activities (although the scale of IPA support in that field dwarfed other bilateral assistance). Project design was largely bottom-up – based on needs and proposals developed by Turkish institutions – although in some cases the EUD acted as a catalyst to

enhance momentum in favour of projects, particularly in relation to the promotion and protection of

human rights. Institutions' input at project design was appropriate in the sense that their needs were taken into account, but limited by IPA procedural constraints, which often led to project redesign in the course of the programming process. The lack of a sector-based programming approach also resulted in projects being mostly implemented by one ministry or institution, to the detriment of a more inter-ministry process.

While some projects focused on the protection of women's rights, the projects in the portfolio failed to include a systematic, consistent approach to gender mainstreaming. Training projects often addressed overwhelmingly male audiences and failed adequately to highlight gender rights issues. Other capacity building projects, excluding those that almost exclusively addressed the situation of women, failed adequately to integrate gender concerns in the judicial and fundamental rights areas.⁷⁶

The long delays in the programming procedure have weakened the relevance of some projects, because needs identified in project fiches were addressed in part via other means. In some cases, policy innovations and pilot approaches that beneficiaries intended to implement with IPA-funded projects were implemented through other processes, lest political will for implementation be lost.

It is concerning that the IPA programming process, by causing long delays, hampered the very build-up of a political momentum for judiciary and human rights reform that the IPA should foster. The evaluation clearly demonstrates that the programming delays have almost invariably weakened the relevance of the projects and sometimes forced a redesign during the implementation period, thus further complicating IPA's performance.

Project risks were generally low, and many projects had minimised risks by focusing on activities such as training, that were relatively independent of policy changes at beneficiary institutions. However, risks remained in some projects, in that they sometimes anticipated reforms that were subsequently delayed, or conversely came too late to accompany the introduction of new policies. Risks were greater in relation to projects involving civil society, largely because of lack of trust and of a thin record of joint work between state institutions and NGOs, and because NGOs were rarely involved in detail at project design stage.

The project-based approach taken to date by IPA TAIB therefore served the reform process well. However a sector-based approach, if adopted in future, could contribute to mitigating some of the concerns highlighted above, by making the programming process more predictable and encouraging joint projects between institutions. Such an approach could also help encourage greater collaboration on judiciary-related projects between institutions and civil society organisations, including professional groups such as bar associations. However, a sector-based approach would be ill-suited to supporting civil society-led human rights projects, because it would jeopardise the independence of these organisations.

Effectiveness

Overarching question: to what extent were the projects, as implemented, able to achieve objectives and goals in support of IPA and Chapter 23?

The projects in the portfolio have undeniably produced a wide range of important outputs in relation to the judiciary and fundamental rights. They have enhanced the effectiveness of the court system and the capacity of judges and prosecutors to take into account European and other applicable human

⁷⁶ Commenting on an earlier version of this report the EC noted that an action plan for gender mainstreaming in IPA assistance was being formulated.

rights standards. They have contributed to the protection and promotion of key human rights, particularly for vulnerable groups such as people in detention, children and youth, and also for women at risk of gender-based violence. They have helped enhanced the exercise of cultural rights and raise awareness of human rights among law enforcement institutions. To that extent, they have contributed to democratic progress in Turkey and therefore to the absorption of the *acquis* in relation to judicial and fundamental rights affairs – even though continued reforms and further implementation of past ones remain necessary.

However, in a context of continued distrust between national institutions and independent human rights actors, as well as by a lack of will on the part of the authorities to implement some human rights reforms, the effectiveness of EU assistance in relation to human rights remains weak. An additional concern is that, while most planned outputs were delivered, they did not always bring about the expected results or outcomes, in particular in cases where projects touched upon sensitive human rights issues and where they involved cooperation with civil society organisations.

Projects were generally implemented as planned and achieved expected results. However project design was sometimes flawed, with unclear or overambitious objectives not consistent with the duration of the implementation period. This concern was heightened by the fact that delays in starting some projects reduced the time available for implementation. Outputs and results were largely consistent with plans, although quality was sometimes poor (for example when technical assistance obtained through twinning was not of a sufficiently high standard).

Cooperation between civil society and institutions was rarely optimal, and government institutions tended to dominate the implementation of projects, even when civil society input was specifically sought. Civil society representatives were often less than full participants in activities, partly as a result of preventable procedural problems (failure to obtain visas for study tours, for example), but mainly because of a lack of will on the part of the authorities to cooperate fully with civil society.

EU monitoring mechanisms were appropriate and the EUD in particular monitored projects closely, sometimes intervening in activities (for example to support civil society participation).

Efficiency

Overarching question: to what extent was there a reasonable relationship between resources expended and project impacts?

Generally, taking into account the human resources needs of project management and the management processes of beneficiary organisations, the projects demonstrated an adequate level of delivery of results in view of available resources. Some projects were able to achieve a significant multiplier effect, such as piloting initiatives that were subsequently replicated with domestic funding. Administrative costs were high, as were transaction costs related to contracting. However, civil society involvement helped enhance efficiency and accountability in many projects.

The management of individual projects met IPA requirements, although staff turnover was a concern. The programming process involved long procedural delays, which led *inter alia* to some projects being implemented by different teams to those that had designed them. The lack of familiarity with IPA process on the part of some SPOs also led to unnecessary delays. The lack of consistency between IPA administrative and accounting rules and those of beneficiaries, such as Turkish institutions and intergovernmental organisations, also led to delays and challenges in implementation, for example in relation to timely staff recruitment.

Overall, the lengthy programming process was the most significant challenge to efficiency because it affected the overall performance of each project. Although the process did ensure projects' conformity with IPA administrative requirements, it added little value to the projects themselves in terms of meeting Chapter 23 or other strategic objectives in relation to judiciary and human rights matters. In some cases, it took as long to programme a project as to implement it. The excessive complexity and length of the process hampers the timely implementation of IPA in relation to judiciary and human rights matters. Efficiency could be significantly boosted by reviewing the process and by ensuring high-level political support for a more streamlined programming practice.

Sustainability

Overarching question: to what extent did the projects create what is likely to be a continuing impetus towards democratic development and fulfilment of political criteria?

Many projects have displayed appropriate levels of sustainability, by implementing activities likely to be continued or to exercise a continuing influence on the beneficiary's operations. Projects that have set up pilot approaches on some human rights issues (probation, juvenile justice, support to the mentally disabled) put in place conditions that facilitated follow-up by beneficiaries themselves or by new projects. Some training projects also contributed, in the main, to sustainability, when new curricula were integrated into subsequent staff training.

Sustainability was more challenging in relation to civil society projects because NGOs often lack the capacity to maintain activities without project funding. In terms of broader sustainability, there was no evidence that projects aimed at supporting civil society were sustainable because the enabling environment to allow for the development of a vibrant civil society was lacking. This concern existed, though less acutely, in the case of projects implemented in cooperation with intergovernmental organisations, because these are also dependent on project funding. However, the projects have also contributed to more cooperation between these organisations and Turkish institutions, which in itself is a factor of project sustainability.

The highest levels of sustainability were achieved by those projects that were most closely aligned with domestic policy priorities. Those projects were most effectively mainstreamed into the work of beneficiary institutions, for example in relation to places of detention, the rights of children and juveniles, and to some extent the protection of women victims of abuse.

There is scope to enhance sustainability, in particular through a sector-based approach. However, two conditions should be met for such an approach to have a beneficial effect on sustainability: priorities should be agreed at the senior political level by the Turkish authorities, and the programming process should be streamlined in such a way that it does not lead to excessive delays, as these make it impossible to address priorities in a timely manner.

Impact

Overarching question: to what extent have the projects put in place processes and procedures conducive to improved fulfilment of political criteria and democratization?

The projects have achieved many undeniable elements of impact. These include new practices and policies consistent with Chapter 23 of the *acquis*. The understanding of European human rights standards by judicial officials and others has been significantly enhanced and understanding of the ECHR demonstrably deepened. The skills and effectiveness of civil society organisation have also

been enhanced by involvement in projects, as has their capacity to interact with authorities at local and national levels.

It is not possible at this time to give quantitative indications of the impact of the projects, partly for lack of clear relevant baseline indicators (for example on pre-IPA understanding of ECHR). Project fiches lacked such baseline data, and projects did not include the compilation of such data into proposed activities. However some areas relevant to the judiciary and human rights domains, such as conditions of detention and juvenile justice, have demonstrably improved in the period under consideration. Direct attribution of the improvement to the specific projects in the portfolio is not possible but the projects have doubtless contributed to these impacts, which were fully consistent with their objectives.⁷⁷

Obstacles to achievement of impact remained, however. These included weak sharing of information among institutions, which made it difficult for beneficiaries to obtain complete statistical information or reports about issues of concern. Impact was also weakened by limited cooperation among ministries in the broader security sector (the Ministries of Justice, Interior, Defence), and with other ministries (Health) and institutions (Human Rights Presidency).

Portfolio

Overarching question: did the performance of the portfolio constitute a significant contribution to the advancement of Turkey's pre-accession agenda in relation to Justice and Human Rights?

There is no doubt that the projects contributed in a significant and demonstrable way to the implementation of pre-accession reforms in the fields of judiciary and fundamental rights. This is made clear in project documents and confirmed by EU and Turkish stakeholders. IPA was key to achieving this contribution because of the size of the funding it made available to Turkey, and because of its largely Turkish-focused programming process. These two features are unique to IPA and set it apart from all other donor processes in Turkey.

However the programming process, as highlighted above, is performing in a manner that is too slow, opaque and unwieldy to constitute genuine added value to the pre-accession process. Whereas the DIS as such is an appropriate system to implement pre-accession assistance, the excessive complication, length and non-transparency of the programming process deprive the assistance of some of its added value.

Programming

Overarching question: how can the IPA programming process be improved in ways that are relevant to the Justice and Human Rights agenda?

The recommendation section below suggests ways in which procedural weaknesses could be addressed. These weaknesses include the following:

- Long and complicated programming process, caused *inter alia* by:

⁷⁷ The EC noted in a comment on an earlier version of this report that project fiches have improved in recent years, partly by including more analysis of the baseline situation projects seek to address. Assessing this development is outside the scope of the present evaluation.

- Consecutive consultations of institutional stakeholders (NIPAC office, CFCU, EUD, EC), which lead to long periods where beneficiaries are hardly involved and are not aware of what is going on;
 - Lack of adequate process management and structured consultations, which impair ownership and active participation;
 - Continued lack of capacity of beneficiaries to draft good project fiches;
 - Continued underuse of the SEI for programming;
 - AP, PRs, NPAA, MIPD which provide incoherent strategic guidance to the programming process and insufficient basis for planning;
 - Regular changes in programming procedures;
 - A heavy reliance on direct grant agreements, which does not always deliver the intended results, nor always strictly follow the requirement that such grant agreements be provided to the sole or most credible providers of these services.
- Unwieldy implementation of projects, due *inter alia* to:
 - Delays in tendering and contracting due to involvement of many actors and internal consultation procedures;
 - Conclusion of many contracts at the tail-end of a contracting period fixed in the Financing Agreement (when there is a risk of losing the EU contribution);
 - Frequent and time-consuming *ex-ante* approval procedures.

These factors combined to cause unacceptably long lead times for programming – up to 3 years between project identification by the beneficiary and kick-off of related contract implementation. They also caused a loss of substantial amounts of allocated funds (over 20% of the budget of the evaluated portfolio of projects), due either to non-contracting or to non-disbursement. This undermined the institutional ownership of projects and reduced the relevance, effectiveness, impact and sustainability of the projects. These patterns have frustrated the development of credible project pipelines.

In terms of donor coordination, the EU is clearly the lead donor in the area of Justice and Fundamental Rights. While there are exchanges of information between donors through informal meetings, these remain relatively *ad hoc* and do not include processes that would make coordination more effective, such as a shared projects database or similar coordination platform.

4.2 Recommendations on programming

The recommendations stemming from this evaluation are addressed to the EU and Turkish institutional actors involved in IPA implementation. They take into account the possibility confirmed by several interviewees that IPA programming in general, and in relation to JHR in particular, will be reorganised along sector-based programming lines.

Programming process

The EU and Turkey should amend the programming process with a view to:

- Streamlining the process and enhance its transparency to beneficiaries;
- Shortening lead times significantly;
- Strengthening the ownership of programmes and projects by relevant institutions; and
- Optimising the role of the coordinating institutions.

To that end, representatives of the relevant institutions should amend the process, setting objectives to be achieved in relation to improvements in each of the above four areas. In the context of a forthcoming sector-based programming approach, it is recommended that any amendments take the following elements into account:

- The ownership of programmes and projects of the relevant beneficiary institutions can be improved by upgrading the role of the current sector working groups to that of Sector-based Quality Support Groups (SQSGs). Each SQSG should draft and regularly review and update the sector's pre-accession strategy, the related planning of IPA assistance as well as the resulting multi-annual sector project pipeline. Only then, project beneficiaries will develop project fiches for which support from the SEI will have to be identified well in advance by the SQSG and mobilised in a timely manner by the MEUA and CFCU.
- Project fiches development should be continually monitored by the SQSG. Project fiches should also be checked for attention to cross-cutting issues before submission.
- Optimising the role of coordinating bodies at the national level implies increasing the effectiveness of MEUA to steer and control the programming process, including through consultations with institutional and civil society actors. Considering that the NIPAC Office has been given this mandate, there is a need to strengthen its process management capacity to effectively implement it. In addition, there is a need to genuinely rationalise the coordination process by conducting these activities as much as possible in parallel and not in sequence, thus reducing the time used exclusively for coordination (specifically decision making) to a minimum.
- As noted above⁷⁸, it is important to systematise stakeholder consultations on programming and project implementation. Responsibility for this should be taken by the MEUA, which should ensure that the widest possible range of stakeholders are involved. Consultation could for example take the form of an annual forum, in which recent developments in IPA JHR projects are reviewed, and future plans outlined and debated. Nevertheless, on-going consultation with civil society on JHR projects should remain a task implemented by all the key actors (EC, MEUA, CFCU, line ministries and other institutions).
- In the judicial reform field, projects addressing military and civilian justice are designed in isolation from each other. This is justified to the extent needs on both sides are different, as are legal frameworks and policies. However, there is scope for the assistance process to encourage more dialogue between military and civilian justice practitioners. It is therefore recommended that future programming should encourage mutual information about projects between military and civilian justice institutions, and consider including joint activities where relevant (for example in relation to training on European human rights).

By introducing the above recommendations, the programming process in Turkey could benefit in terms of quality, accountability, and timeliness. The latter is illustrated by the programming timetable proposed below which reduces the entire process from 18 months to 12.⁷⁹

⁷⁸ See Section 3.1, item on stakeholder consultations.

⁷⁹ The evaluators are aware that the implementation of these recommendations on programming places a heavy burden on the MEUA, as it would need to assume a greater process management role.

	2010												2011															
	Month:	J	J	A	S	O	N	D	J	F	M	A	M	J	J													
	6	6	7	7	8	8	9	9	10	10	11	11	12	12	1	1	2	2	3	3	4	4	5	5	6	6	7	
1. Sector planning phase	< 3 months >																											
1.1. Draft/review sector strategy by Turkish Quality Support Group (QSG-TR)	x	x	x																									
1.2. Draft/review multi-annual sector based planning (incl. project pipeline)			x	x	x																							
1.3. Monitor implementation of sector plan (incl. actual project pipeline)																												
2. Project pre-selection phase	< 3 months >																											
2.1. Establishment of 1st draft Project Fiches by pot. beneficiaries																												
2.2. Review of 1st draft Project Fiches by MEUA																												
2.3. Agreement on list of projects to be further developed																												
3. SEI support (optional)	< 2 months >																											
3.1. Procurement of technical assistance for project preparation/consistency check																												
3.2. Deployment of TA to support project fiche drafting / consistency check																												
4. Project Development Phase	< 3 months >																											
3.1. Discussion in working groups for PF preparation																												
3.2. Drafting of full Project Fiches																												
3.3. Review of full draft of PF by MEUA and CFCU, submission to EC																												
5. Annual Programme Adoption	< 3 months >																											
5.1. Quality Support Group (QSG-EC), EUD, EC Inter-service consultations																												
5.2. Signature of Financing Agreement - as required																												
Summary of involvement by actor																												
involvement of QSG-TR : continual																												
involvement of (potential) beneficiary : 3.5 months																												
involvement of other players : 6 months																												
monitoring by EC/EUD/QSG-EC : continual																												
deployment of technical assistance from SEI (optional)																												

Note that the EUD and the Commission Services are assumed to be able to continuously monitor the process and actively involve themselves at any stage or at agreed points in time without interfering in the national programming time-schedule.

The NIPAC and the Commission should agree on the above outlined sector-based approach. The NIPAC should subsequently take the necessary measures to ensure the adequate and timely implementation of the above-mentioned recommendations.

Civil society and sector-based approach

A move by IPA to a sector-based programming approach could enhance the coherence and overall effectiveness and impact of IPA assistance in relation to the judiciary, especially if effective cross-sector coordination is built in at the outset, with the security sector in particular.

However, a sector-based approach may be detrimental to the programming of civil society-led human rights projects and programmes. This is partly because human rights do not constitute a sector *per se* (they are much closer to a cross-cutting issues). However the key concern is that the approach would risk placing civil society human rights activities under the supervision of sector supervision actors such as SQSG, which would be incompatible with the independence of the civil society sector. Given the human rights situation in Turkey and the pressure experienced by human rights actors, that approach would therefore make it virtually impossible for independent NGOs to be part of sector-based programming (see also box in section 4.1 above).

It is therefore recommended that, in the context of the transition to sector-based programming, funding for civil society human rights projects and programmes should be administered in a separate and case-by-case manner, for example through project programming, preserving both the independence of civil society and the need for accountability under EU rules, while at the same time encouraging partnership between civil society and government, and collaboration where appropriate. It is recommended that the EU, following consultations with relevant stakeholders, support the

development of a de-concentrated⁸⁰ financial tool, adequately supported by EC staff, to assist civil society organisations working on human rights, possibly building on the CSF Turkey window.⁸¹

Programme implementation recommendations

The NAO should take appropriate measures to remedy the long-standing practice at the CFCU to conclude the majority of contracts just before the expiry date defined in the FA. Procurement plans and internal procedures at the CFCU should be adapted accordingly. In this respect, it is important to note that the capacity previously used to implement the programmes under IPA components III and IV is still at the disposal of the CFCU. It is therefore necessary to maintain current staff levels at the CFCU.

To effectively address the sustained underutilisation of the funds allocated under Financial Agreements specifically but not exclusively in relation to JHR, the NAO should develop effective mechanisms to actively monitor the usage of these funds on a regular basis. Procedures at the CFCU should be adapted accordingly. In particular, since NF has at all times access to fully updated information in this regard, the management of the CFCU should be requested to address the issue explicitly in the joint review of the procurement plan with the NAO Office.

Monitoring recommendations

The NIPAC should take effective measures to address the under-performance of the national monitoring system for IPA TAIB, specifically but not exclusively in the area of JHR. In this respect it is recommended that the FCD of the MEUA upgrade its present staff capacity by intensifying its participation in the current ROM training and in other related training. FCD staff should in this context in addition be attached to one, or maximum two, SQSGs and actively participate in the work. Procedures at the MEUA – FCD should be adapted accordingly.

4.3 Recommendations on project design and management

The following recommendations stem from findings related to individual projects. They are independent of whether a sector-based approach is taken in future. The recommendations stem from the conclusions set out in section 4.1 above. They are addressed to all relevant national IPA stakeholders. The MEUA and CFCU should ensure that potential beneficiaries receive relevant information at the start of their involvement with project design.

Project design

- Provide specific *and on-going* capacity building relative to IPA procedures, and particularly to the specific requirements of EU funding and CFCU/MEUA expectations, procedures and monitoring. In particular, ensure the readiness of beneficiary institutions to develop project concepts and designs that are realistic and meet procedural requirements (see also

⁸⁰ In comments on an earlier draft of this report, the EC stated: “Should it be agreed that civil society projects are not suited to the sector approach, then de-concentrated projects should include among their priorities dialogue with Turkish authorities, as this remains a particularly sensitive area in need of development and improvement. The impact on needed resources within the EUD to manage such additional de-concentrated projects should be carefully assessed in order to ensure their successful implementation.” The evaluators concur with this view.

⁸¹ In making this recommendation the evaluators are aware of the existence of a range of other EU funding mechanisms for civil society organisations working in Turkey on judiciary and human rights issues. These mechanisms, such as the European Instrument for Democracy and Human Rights (EIDHR), have a long-standing and positive record in Turkey and are likely to continue being implemented.

recommendation in the previous section on the use of SEI to support the preparation of project fiches).

- Ensure that project fiches reflect programming priorities in the justice sector and in relation to human rights concerns. This should include, at the time of writing, addressing gaps such as the rights of defendants, minority rights, economic, social and cultural rights, as well as reinforcing the effectiveness and availability of complaints mechanisms for victims of human rights violations and abuses.
- Ensure that project fiches are based on a detailed identification of needs and capacities, and that needs are re-assessed during the project inception stage and at appropriate intervals throughout project implementation. In particular, institutions' views of their own capacities and needs should be assessed against objective and external expert opinion.
- Ensure that project fiches systematically address cross-cutting issues, and in particular that gender issues are systematically mainstreamed.
- Ensure broad stakeholder involvement at all stages of project design and implementation. Use stakeholders to develop appropriate indicators of success for each project result or outcome, incorporating qualitative aspects in particular.
- Ensure that timeframes and project targets take into account institutional and stakeholder capacity, and political and other risks. In particular, project objectives should take account of the probable long time-lag between project design and implementation.
- Clarify partner and stakeholder roles and responsibilities in the design of projects, and ensure this is reflected in partner selection.

Project implementation

- Ensure the introduction of an effective inception stage into projects – that is, ensure that the first few months following approval of a project are dedicated to a review of its design, with a view to addressing any challenges that have arisen in relation to the project's objectives since the original proposal was submitted, and to reducing emphasis on aspects that may already have been addressed. Such a stage should conclude with a formal restatement of project objectives, incorporating any modifications that have been seen to be appropriate, and drawing any appropriate conclusions in relation to project funding.⁸²
- Direct project beneficiaries and their EU Member State partners towards wider sources of best practices and expertise, either in Europe itself or where pre-accession or development assistance has been provided elsewhere.
- Consider requesting project teams to negotiate with relevant EU Member State diplomatic missions the "fast-tracking" or "pre-approval" of visa applications for representatives of beneficiary organisations, when these involve study tours or attendance at meetings in EU

⁸² Commenting on an earlier draft of this report, the EC suggested that this recommendation could be implemented in 2013.

countries. Representatives of civil society organisations involved in projects should be included by this process.

- Ensure that projects make the best possible use of existing expertise in Turkey and incorporate appropriate local expertise in the implementation of projects. In particular, consider inviting representatives of institutions that have benefited from IPA project support in recent years to contribute to subsequent projects.
- Incorporate the collection of baseline data in all project design and/or inception activities. Support data collection and statistical analysis activities within the justice sector, and in relation to human rights violations and abuses.

ANNEX 1: TERMS OF REFERENCE

ANNEX 2: LIST OF PEOPLE INTERVIEWED

ANNEX 3: MAPPING OF JHR PORTFOLIO

ANNEX 4: LIST OF ACCESSION PARTNERSHIPS' PRIORITIES

ANNEX 5: LIST OF ALL JHR-RELATED PROJECT, 2004-2011
