This action is funded by the European Union

**ANNEX II**

of the Commission Implementing Decision on the financing of the annual action programme in favour of Sri Lanka for 2019

**Action Document for Support to Justice Sector in Sri Lanka**

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**ANNUAL PROGRAMME**

This document constitutes the annual work programme in the sense of Article 110(2) of the Financial Regulation and action programme/measure in the sense of Articles 2 and 3 of Regulation No 236/2014

| 1. Title/basic act/ CRIS number | Support to the Justice Sector in Sri Lanka  
| CRIS number: ACA/2019/041-735  
| financed under the Development Cooperation Instrument |
|---|---|
| 2. Zone benefiting from the action/location | Sri Lanka  
| The action shall be carried out at the following location: countrywide, however with a focus on those areas with large vulnerability pockets |
| 4. SDGs | SDG 5: Achieve gender equality and empower all women and girls  
| SDG 10: Reduce inequality within and among countries  
| SDG 16: Promote peaceful and inclusive society for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels |
| 5. Sector of intervention/thematic area | Sector 2 – Democratic Governance and Reconciliation  
| DEV. Assistance: YES |
| 6. Amounts concerned | Total estimated cost: EUR 19 274 299  
| Total amount of EU budget contribution EUR 18 000 000  
| This action is co-financed in parallel co-financing by  
| – UNICEF for an amount of EUR 750 000  
| – UNDP for an amount of USD 592 780 |

### 7. Aid modality(ies) and implementation modality(ies)

- Project Modality
- Indirect management with UNICEF and UNDP

### 8 a) DAC code(s)

- 15130: Legal and judicial development 75%
- 15150: Democratic participation and civil society 25%

### b) Main Delivery Channel

- 4100 – UN Agency, fund of Commission (UN)

### 9. Markers (from CRIS DAC form)

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### 10. Global Public Goods and Challenges (GPGC) thematic flagships

- Not applicable
SUMMARY

The spurring of repeated communal violence and the eventual culmination in a twenty-six years long civil war has affected Sri Lanka as a whole. While the post-war government has focused on economic recovery, the country’s economic model is however under strain and little has been done on social inclusion, particularly for those worst affected by the war. Recent attacks in April 2019 bear witness that communal divide is wider than earlier anticipated. In order for the country to propel its economic growth and reduce instability, it is vital to strengthen rule of law, government institutions, policies, staff capacity and the avenues by which rights-holders engage with their government. The justice sector is one where all of the aforementioned gaps are evident, and where the repercussions of these gaps affect the society as a whole.

The EU’s ‘Support to justice sector’ project’s (the Action) overall objective is to contribute to a more independent judiciary and an improved and responsive justice system in Sri Lanka. Its specific objectives are: (1) improved access to justice for all (in particular women, the poor and persons in vulnerable situations); (2) improved accountability, transparency and credibility of the justice system; (3) improved efficiency and quality of justice.

The Action also takes into account the fragility of the political/security situation as it supports institutions that are independent, with a proven/positive track record and that have a high impact on the general population. In addition, it targets those institutions within the government, where there are concrete gaps in implementation of policies and where the EU’s support can lead to higher-level policy discussion. Furthermore, the Action is conducive to foreign direct investment, private sector development and economic growth. The Action takes into consideration the support for the effective functioning of courts and other Alternative Dispute Resolution (ADR) mechanisms (e.g. arbitration) for the speedy resolution of the commercial and civil disputes.

In terms of synergies, the Action complements the ‘Strengthening Transformation, Reconciliation and Inclusive Democratic Engagement’ (STRIDE) project, through which support to Mediation Boards under the purview of the Ministry of Justice is envisaged. The drafting of this Action was done in consultation with the Government of Sri Lanka and other donors in Sri Lanka, and took into account the challenges identified by the EU during the preparation of STRIDE, ongoing thematic projects related to justice, and the comprehensive report of the United Nations (UN) Special Rapporteur on independence of judges and lawyers on her mission to Sri Lanka2.

1 CONTEXT ANALYSIS

1.1 Context Description

In 2015, Sri Lanka witnessed a change of government, which came into power on a 'good governance’ agenda but it has been losing some momentum. With the taking of office by the government, the 19th Amendment to the Constitution was introduced which sought to strengthen independent institutions and constitutionally established the Right to Information Regime. The constitutional coup in 2018 was thwarted by the Supreme Court declaring the act to be unconstitutional, demonstrating that coalition politics had not impacted judicial

independence or other accountability institutions. The ruling of the Supreme Court provided societal stability, firmly highlighting the need to cement the fragile gains in the rule of law in the case of future flouting of the constitution.

While the post-war government has focused on economic recovery, economic growth rate has been slow\(^3\). The economic model is under strain and little has been done on social inclusion, particularly for those worst affected by the war. Recent attacks of April 2019 bear witness that communal divide is wider than earlier anticipated. Vital to the country in propelling its economic growth and reducing instability, is the strengthening of rule of law, government institutions, policies, staff capacity and strengthening avenues by which rights-holders engage with their government. The Justice sector is one such field in which all of the aforementioned gaps are evident and repercussions of these gaps, can be seen in all sections of society.

Although Sri Lanka has a well-established common law based legal system, recent assessments disclose that there are compelling needs in access to justice, particularly for the marginalised groups and responsive judiciary. Responding to those needs will have a dual impact of a) reinforcing the right of access to justice by rights-holders, especially the vulnerable by providing accessible and quality services b) inducing a culture of institutional efficiency, accountability, transparency and equality that could open doors for discussions on further reforms.

1.2 Policy Framework (Global, EU)

The recommended actions are aligned with the following polices and instruments:

- EU Delegation's revised Multiannual Indicative Programme (MIP) following the Council Conclusions of 16 November 2015 and more specifically the 2\(^{nd}\) focal sector ‘Democratic Governance and Reconciliation’;
- EU Charter of Fundamental Rights art 47; Treaty of the EU Art. 21(1) (2);
- The new European Consensus on Development 'Our World, Our Dignity, Our Future' 2.4. Peace – Peaceful and inclusive societies, democracy, effective and accountable institutions, rule of law and human rights;
- Regulation No 234/2014 establishing a Partnership for cooperation with third countries (DCI instrument);
- 3426\(^{th}\) FAC Conclusions November 2015 and Council Conclusions on Human Rights and Democracy 3179\(^{th}\) FAC June 2012;
- Obj. 17 of the EU Gender Action Plan 'Equal rights and ability for women to participate in policy and governance processes at all levels;
- Joint Resilience Communication, 2017, specifically with regard to societal and state resilience and conflict prevention;
- SDG 5: Achieve gender equality and empower all women and girls;
- Sustainable Development Goal 16: Peaceful and inclusive societies for sustainable development, access to justice for all and effective, accountable and inclusive institutions at all levels and Goal 10 ‘Reduce inequality within and among countries’.

Further, the action is aligned with the conclusions of the GSP+ assessment of Sri Lanka\(^4\).

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\(^3\) E.g. the Annual Real GDP growth rate dropped from 4.8\% (2015) to 3.2\% (2018) as per the Central Bank of Sri Lanka.

1.3 Public Policy Analysis of the partner country/region

The Universal Periodic Review identifies that Sri Lanka needs reforms to address delays in the administration of justice while also stating that measures relating to access to justice, particularly for women and other marginalised categories, need to be improved. This is further reiterated in the government-UN drafted document 'Peacebuilding Priority Plan'. The 19th amendment to the Constitution reinstates the independence of 9 key commissions including the Judicial Service Commission, National Police Commission and the Human Rights Commission of Sri Lanka. Despite recognition of separation of power and rule of law, certain constitutional provisions and practices have diluted this setup.

Although Sri Lanka is party to most international treaties, the enforceability of a large number of these before national courts is conditional on passage of domestic legislation. The government has adopted several policy frameworks relevant to the issues identified in this action document.

The key recommendations of National Plan of Action to address Sexual and Gender-based Violence (SGBV), 2016-2020 include; (a) Access to Legal aid; (b) Access to justice; (c) promote and facilitate a gender sensitive justice system through dedicated mechanisms to address SGBV and minimize delays; and (d) Victim and witness protection. The National action for children (2016-2020) identifies three priorities, namely; (a) Juvenile and child-friendly justice; (b) Child labour; and (c) Children in need of protection and care. The policy highlights the need of prompt action, clear procedures and processes in the justice sector for child related issues.

The government strategy states that protection of human rights concerns of Internally Displaced People (IDPs) is key. In doing so, access to justice especially housing, land and property should be promoted. The policy states that the state shall review governance, justice and security structures to achieve greater responsiveness and accountability.

Other policies ensuring synergy include, the strategy document 'Vision 2025' with a dedicated chapter on governance and accountability and the National Human Rights Action Plan (NHRAP). The NHRAP contains action points amongst in particular ‘introduce reforms to address delays in the administration of justice’. In addition, the Government cosponsored UNHRC resolution setting out Sri Lanka’s commitments to promote reconciliation, ensure accountability and improve the human rights situation.

The Right to information Act from 2016, provides for a process to exercise the constitutional right of access to information. The Act is being used although lack of understanding of rights-holders and limited guidance by the government on its usage is an impediment.

Further, implementation of policies is suboptimal and incoherent. The justice sector has not evolved with the changing reality where rights-holders are comparatively more aware and demanding of their constitutional rights. Rights-holders have been victims of this even though mechanisms such as access to free legal aid are available.

At the request of the Government of Sri Lanka (GoSL), Asia Development Bank (ADB) is conducting a sector wide needs assessment. In this context, increasing capacity of judges and procedural improvements are already identified as requiring urgent intervention. In the past, the judiciary has been open to engagement (e.g. Gender base Violence (GBV), child rights

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5 E.g. role of the executive in appointment of Appellate and High Court Judges.

6 albeit with major gaps in the geographical coverage and quality.
etc.) with development partners depending on approval from the Chief Justice and the Judicial Service Commission (JSC). Any intervention targeting judges and courts requires approval from the Chief Justice. The appointed Chief Justice (April 2019) has, in his previous function as Attorney General, expressed willingness for engagement with the EU.

1.4 Stakeholder analysis

The selection of stakeholders was done in a manner in which, capacity reinforcement provided to them will (a) improve access to justice (b) reduce caseloads; (c) improve the quality of justice (e) improve court management to facilitate economic growth and attract investments; (d) increase accountability and transparency (f) empower rights-holders, especially women, girls, IDPs and marginalized groups and (g) favor the use of ADR mechanisms and (h) create an equitable, inclusive and representative justice system.

The Courts: The court system consists of the Supreme Court (SC), Court of appeal, High courts (Commercial and Criminal), first instance District and Magistrate courts, Labour tribunals. Further, a dedicated Commercial High Court (CHC) was established to deal with specified commercial matters and high value commercial contracts. The SC is headed by the Chief Justice (CJ) and 10 other Justices who, together with 11 judges of the Court of appeal are appointed by the President subject to the approval of the Constitutional council thereby limiting the power of the executive. Although politicisation of the justice sector has reduced sector professionals lack sensitivity in the application of codes in respect of special groups (e.g. victims of GBV, minorities etc). Challenges such as judicial time being spent on management functions (i.e. budget, payments, court management) have further contributed to the inability of the judicial system to deliver timely or quality justice.

Judicial Service Commission (JSC) and Judges institute: The JSC is a constitutionally created body comprising of the Chief justice and two senior Supreme court judges. The JSC’s mandate is appointment, promotion, transfers and disciplinary control of the lower court judges; District judges and magistrates. The JSC is open to engagement with an 'appropriate' development partner but subject to the approval of the Chief justice. The Judges institute is the training arm of the JSC. The Institute lacks technical resources in the development and conducting of tailored judicial training programs. The Judges institute has shown interest in

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7 The High court exercises commercial and criminal jurisdictions, by the 13th amendment, the Provincial High courts were established having appellate jurisdiction.
8 The Supreme court is the highest and final court of appeal. It also exercises jurisdiction in respect of protection of fundamental rights, election petitions, and it has a consultative jurisdiction on constitutional matters.
9 A constitutional body, which has political and civil society representation and includes both the Prime minister and the leader of the opposition. The Constitutional council is chaired by the Speaker of the House.
10 Appointments of appellate judges, budgets, promotions and post retirement assignments are avenues for political influence. Political pressure is generally targeted towards appellate courts, particularly those exercising constitutional and administrative law jurisdictions.
11 Total caseload in Dec 2017 - 705 075 cases in 253 courts. Cases pending in Commercial High Court – 5 580. In the context of Lower courts, average workload is 2 000 to 6 000 cases per judge/year.
12 The Judicial service Commission is a constitutional judicial governance body headed by the Chief justice who is joined by two other Supreme Court judges, appointed by the president. It is served by a 65-person secretariat. Note that the president directly appoints all apex court judges, subject to the concurrence of the Constitutional council, whiles High court judges are appointed by the president based upon recommendation of the Attorney general and the Chief judicial service commission.
13 In the past, most effective engagement has been with multilateral donors such as the World Bank and ADB due to their perceived political neutrality. Engagement with UN Agencies has been very limited and cautious as the mandate of the UN has at times brought in to controversies surrounding transitional justice issues of which too, the judiciary could be the ultimate arbiter.
receiving support and has welcomed the idea of an EU-Sri Lanka ‘peer-institute twinning’ set up. Support to the Judges institute, particularly training on making the judiciary more gender and human rights sensitive, will be of particular importance.

Ministry of Justice (MOJ): MOJ is the line ministry and the overseeing/coordinating body of policies and the interface between the executive and the judiciary. The capacity of the MOJ is insufficient while its budget execution is said to be suboptimal (12%) and it has indicated interest in staff capacity building. Further, the MOJ lacks data collection on investigation, prosecution and sentencing of cases, including cases of GBV and other areas in a manner that enables fact based analysis and decision making. These shortcomings impact interventions in areas such as access for women/girls to victim assistance and protection, and number of shelters in the state party. The Action will assess existing barriers to court based justice for women and develop alternative, less adversarial mechanisms to help GBV victims.

Attorney General’s Department (AGD): The AG’s main mandate is that of being chief legal adviser to the government and conducting of public prosecutions. All indictments, including on GBV and child abuse cases, are filed by the AG based on police findings. Although the AGD does not have investigative powers, increasingly the police and magistrates depend on the AG for guidance. This has given the AG an influential role in the criminal justice system and the work of the AGD is directly linked to performance of courts. The AGD has a heavy case backlog/bottlenecks in expediting cases, mainly due to poor capacity, processes and coordination with other agencies such as the Government Analysts’ Department (GAD) and Judicial Medical Officers (JMOs), and limited infrastructure. The AGD has indicated interest in getting assistance such as in data collection, communication, training, filing, digitisation, coordination, better application of law etc, particularly to reduce case backlogs. It is noted that a significant number of case backlogs are those related to sexual crimes targeting minors and children. AGD is required to vet each Bill drafted by the Legal Draftsman’s Department (LDD). A number of Bills have been delayed due to lack of efficient coordination between the two departments.

Government Analysts’ Department (GAD): Forensic investigations are centralised under the GAD which provides services to police investigations, to the AGD for prosecution, and to the Courts throughout the country. The GAD consists of food science and forensic science departments, the latter providing support in crime investigations. The GAD is severely capacity-constrained for its wide mandate and geographic scope. The department is open to receiving assistance both in terms of resources and training. Better coordination between GAD, AGD, police and courts is needed. The police does not have forensic laboratory capacity but has created a Scene of Crime (SOC) division working closely with GAD.

[14] Budgetary requests, including cadre requirements are routed through the MOJ. Maintenance of court infrastructure and formulating domestic laws (including those necessary to implement Sri Lanka’s international commitments) that impact justice issues are some of the key responsibilities of MOJ.

[15] The 2017 Performance report estimated 17,600 pending files relating to child abuse and the conviction rate is very low (e.g. only 161 convictions in child abuse cases in 2017).

[16] The UN Special Rapporteur’s report (2016) states that in cases involving traumatic experiences for women or children, state counsels tended to display ‘a shocking lack of sensitivity and were in dire need for training’.

[17] GAD also provides scientific analysis and examination services to departments of customs and excise, ports authority, lower government bodies and health sector institutions. As per the MOJ Performance report 2017, the number of cases pending due to not receipt of GAD reports as at 31.12.2017 is 7 168, with majority of them not relating to ‘Blood and other physiological fluids’. The Auditor General’s report highlighted that in 2015, there were 3 955 remaining samples with some being older than 10 years.

[18] GAD was a recipient of training under the Korean International Cooperation Agency (KOICA) on analysis of DNA and also established a digital forensic laboratory.
Legal Draftsman's Department (LDD): LDD’s mandate is drafting of laws and regulations, and conversion of policies into laws. The capacity of the LDD is low. Further, the lack of capacity to translate into Tamil and Sinhalese is one contributor towards delays in consolidating/codifying of laws and drafting of new laws. The MOJ Performance report (2017) highlights insufficient coordination with the LDD as one of the reasons for delay in passage of bills, including children (judicial protection) bill, drafts of which have alternated between the LDD and AGD since 2015. As of 2017, 462 bills were pending with the LDD, awaiting observations of the AGD or the relevant line ministry. LDD is open to and can benefit from technical (including capacity development) and systems improvement assistance.

Legal Aid Commission (LAC): The LAC is the only statutorily mandated free legal aid service in the country. One of the least politicised legal institutions, LAC operates independently. Lack of funds and capacity limit the quality of services provided by the LAC. The LAC has a good network of local officers and its beneficiaries are predominantly IDPs, vulnerable women and children, provided their income is below the specified amount (approx. Euro100/- per month). From its 82 centres, more than 26 000 pending cases were brought forward from 2016 to 2017, and during Jan - Sept 2017, there were more than 35 000 pending cases of which merely 6 013 were concluded. LAC has the experience and has demonstrated keenness to work with the EU and to receive both technical and financial assistance.

Bar Association of Sri Lanka (BASL): The BASL is a professional body of more than 21 000 attorneys in Sri Lanka. Although BASL would be key in promoting high standards of conduct through advancing a principled approach, it has not performed its limited regulatory functions effectively. Absence of or weak continuous professional development and continuous legal education contribute to loss of capacity and low confidence by rights-holders. Support given to BASL is expected to increased confidence and new mind-set of lawyers, which form a powerful lobby with interests of their own. BASL has its own pro bono legal aid system, which can be structurally improved and better coordinated with that of LAC.

Human Rights Commission (HRCSL): The HRCSL benefits from strong Commissioners (2018–2021) but lacks financial and human resources and capacity, leading to a large backlog of cases. HRCSL’s mandate includes both investigation of individual and systemic violations and, advising the government on its commitments under international human rights treaties. The HRCSL has unprecedented access to and the right to call for information, although its recommendations are non-binding similar to the LAC. HRCSL has a well spread network and has engaged its mandate on specific concerns (e.g. GBV, child rights, IDPs, language rights etc.) and is open to assistance to enhance its effectiveness and to expand its scope – particularly on rights of women, IDPs and other vulnerable categories.

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19 Even the 19th Amendment to the constitution had many glaring discrepancies and contradictions between English and Sinhala/Tamil versions.
20 An official consolidation of laws was done in 1956 while an attempt made in 1980 was suspended due to LDD’s inability to translate. Translation capacity is an urgent need and this has a direct impact on the Tamil speaking minorities.
21 All bills have to be formally certified by the AGD with regards to its constitutionality prior to the same being presented to Parliament by the relevant subject Ministry.
23 Human rights commission and the National police commission have benefitted as a part of a 24 month, countrywide, EUR 8.1 million lSp project ‘Catalytic support to reconciliation’. The project offered support in the preparation of a strategic plan, training needs assessment, strengthening outreach and community education, strengthening investigation capacity/case management and complaints handling mechanisms, research support etc.
25 The HRCSL has high individual complaints i.e. 1400 complaints per quarter (Annual Report 2016).
National Police Commission (NPC): NPC has the responsibility for human resources that includes recruitment, promotion, and disciplinary control of the police. Expansion of the police service, during the war years (1979 – 2009), resulted in the dilution of promotion assessment methods and today the promotional systems within the police lack incentives for the police to perform their core functions. NPC also has the authority to provide capacity enhancement of police officers especially with regard to investigations in GBV and child abuse – an area, which requires urgent support. The Police commission has been accepting of Instrument contributing to Stability and Peace (IcSP) assistance such as support to communication and outreach, formulating a strategic plan and implementation strategy.

Judicial Medical Officers (JMOs): Any person or child subjected to any kind of physiological harm has to be examined by a JMO. The JMO issues a Medico Legal Examination Form (MLEF), based on which the investigating police officer forms an opinion whether a criminal investigation should be initiated. JMO is also expert witness in all criminal trials. Although statistics are limited, it is clear that Sri Lanka lacks sufficiently trained JMOs, resulting in delays and inadequate medical assessments. This is of great importance for cases concerning child abuse\(^{26}\) and SGBV\(^{27}\). It is therefore necessary to engage in the work of JMOs, which is a key player, particularly in cases related to women and children.

With regard to enhancing the efficiency of the justice sector for fostering economic development the AD targets the following:

Commercial High Court (CHC): CHC is a dedicated court that hears cases of a commercial nature including contractual disputes, the value of which is more than LKR 20 million (EUR 100 000). Issuance of practical directions or updated Judge’s manual and training with respect to commercial cases, as well as improved recordkeeping systems, development of automated case management system, information on tracking of appeals, application of relevant sections of the Arbitration act, would be of particular use. One of the ways of reducing the burden of formal court proceedings is to develop and encourage Alternative Dispute Resolution (ADR) mechanisms. The Arbitration act was intended to provide the courts only with a supervisory role however allowing for parties to invoke the jurisdiction of court only in limited occasions.

Alternative Dispute Resolution (ADR): ADR encompass two mechanisms i.e. arbitration and mediation. Commercial arbitration was encouraged as a response to the delays in court-based litigation and rapid internationalisation of commercial transactions but it is slower than the courts themselves. The arbitration process puts burden on the commercial court to expedite cases. This is because a number of arbitration awards are either contested in the Commercial court or potential litigants completely bypass commercial arbitration altogether. Commercial mediation recently saw an increase of the ceiling from 150 000 LKR to 500 000 LKR - which led to bottlenecks for traditional general mediation. A remedy would be the creation of specialized commercial mediation boards.

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\(^{26}\) According to a UNICEF study, 60.4% of the files pertaining to children in the AGD could not be processed due to absence of JMO reports.

\(^{27}\) UN Special Rapporteur observed that although the Police ordinance requires every person in police detention to be examined by a JMO prior to being presented in court, however only in 20% of the cases, this is done. The Rapporteur also noted that the JMO cadre lacks sufficient number of female officers.

[9]
Parliamentary Commissioner for Administration (Ombudsman): The constitutionally appointed Ombudsman has a direct link to the legislature and has the authority to place matters, after inquiry, before Parliament. A 2017 report indicates that Parliament had received 1380 complaints against violations of rights due to executive and administrative actions. Of these complaints, 25.5% were by women rights-holders. The Ombudsman, a former Supreme court judge, has actively sought support from the EU, particularly to developing and strengthening mechanism for systemic analysis and tracking of complaints and for trend spotting so that early intervention, through Parliament, could be initiated. The role of the Ombudsman is relatively unknown among the general public and its strengthening could result in a strong redressal mechanism for the most vulnerable, particularly women.

Civil Society Organisations (CSOs): CSOs were consulted for the formulation of this Action as their role is vital in monitoring cases pertaining to the vulnerable communities, performance of the police, of the Legal aid commission, AG's Department and the courts, and implementation of the Official languages policy. A private sector think tank has been identified as an apt organisation to analyse and disseminate information periodically. Synergies and complementarities with EIDHR and CSO and the EU funded reconciliation programme (2017) will be established to promote language skills of public servants in critical areas of public service delivery such as police stations, court rooms and health clinics.

1.5 Problem analysis/priority areas for support

The limited ‘independence’ that the governance system associates with the justice sector has resulted in weak accountability, while its related processes have identified as being some of the main causes for inefficiencies, delay and lack of transparency. Further complexities arise due to the power yielded by the institutions, with formal and informal overlaps in terms of functions. The dual challenge in working on this sector comprises of a) having to engage with multiple stakeholders in order to achieve the given outcome and b) having to work with powerful, archaic institutions making reforms challenging bearing in mind the balance of independence versus sector accountability. It is expected that improvements to targeted justice sector institutions will be a pull factor for other institutional improvements (e.g. improvements to court processes would induce a push for improvements in the work of related agencies such as the Police, National child protection authority etc.).

For the justice sector, key challenges can be classified into 10 categories:

1. Complex procedures and weak case management systems leading to delays in the processing of cases thus resulting in denial of access to timely and efficient justice.

2. Low capacity of justice sector professionals (concentration of quality legal providers only in certain areas, pollicisation, linguistic limitations and high costs of legal services) and officials impacting quality justice.

3. Insufficient connectivity/cooperation between institutions involved in judicial and protections systems/complaint mechanisms resulting in inadequate service provision thus leading to low access to justice, reduced legal protection and violation of rights, particularly for the most vulnerable, further marginalizing them.

4. Low legal literacy (rights, entitlements and their enforcement) of rights-holders, coupled with limited transparency, accountability, and low sensitivity of protection
institutions resulting in lack of responsiveness, and rights-holders’ reduced faith\textsuperscript{28} in the system.

5. Limited access to quality legal assistance in a timely and a cost-effective manner particularly for groups living in vulnerable situations and rural populations, due to systemic impediments including language barriers.

6. Inadequate gender responsive policies and weak implementation of the existing protection mechanisms in a gender responsive manner.

7. Cumbersome and insufficient dispute management infrastructure leading to delayed and costly settlement of commercial disputes, enforcement of contracts, and effective protection of related economic and property rights.

8. Lack of efficient management structures in the institutions of the judiciary and high costs of the system while at the same time budgets are not being efficiently spent and understaffing.\textsuperscript{29}

9. Limited willingness of the judicial institutions to work with each other (silo culture).\textsuperscript{30}

10. Unwillingness of the judicial sector to engage with civil society and the media.

The highlighted challenges are in line with the rankings of the country in relevant indexes. Sri Lanka scores 0.52 in the 2019 World justice project Rule of law index, ranking 62 out of 126 countries,\textsuperscript{31} Furthermore, even if Sri Lanka’s overall score in the 2019 World Bank Ease of doing business index is above the regional average (61.22 against a South East Asia regional average of 56.71), the performance in the specific enforcing contracts indicator (the one specifically relating to commercial justice) stands instead well below the regional average: Sri Lanka scores 41.16 against a regional average of 43.44, ranking 164 out of 190 countries\textsuperscript{32}.

The backlog of cases (a total caseload of 705 075 countrywide) that has built over a period of time in the courts as well as key institutions such as the AGD has the potential to paralyse the system in the medium term even at its current rate of operations. In the context of backlogs, the Attorney general’s department has been identified as having a lack of sensitivity, particularly while dealing with cases such as rape and child abuse whereas 70% of the case backlog is in historic sex abuse cases. In addition, it is estimated that there are ca 5 000 criminal cases related to child sexual abuse pending trial in the courts, while another 17 500 child sexual abuse cases are pending in the AGD, with an average delay of 6-8 years.

\textsuperscript{29} A prime example of the lack of overall capacity is reflected in the 2017 national budget, where key actors such as the Attorney general’s department received EUR 6.7 million of which barely 69% was spent, whereas other crucial departments such as Department of legal draftsman and Department of government analyst received a mere EUR 697 000 and EUR 1.8 million respectively, of which 89% and 94% was spent. Similarly the expenditure of the independent commission such as the Human rights commission and the National police commission was 64% and 63% respectively indicating challenges in implementation. A systematic assessment of the financial cost of the judiciary in comparison to other countries has not yet been undertaken.

\textsuperscript{30} Institutional arrangement has not undergone a strategic revision particularly from an efficiency and effectiveness angle. Many of the institutions are weak and lack a required degree of sophistication in carrying out their respective mandates.

\textsuperscript{31} with a deteriorating trend mainly due to the civil justice and criminal justice factors (lack of accessibility and affordability of justice, unreasonable delays, lack of enforcement of judgments, lack of timely and effective adjudication etc.).
The manner in which the sector stakeholders and decision makers are dispersed has made it very challenging to achieve desired outcomes as many of the past interventions have been with a very narrow focus targeting one or two institutions instead of having a comprehensive approach. Key sector professionals such as judges, lawyers and state counsels are not subjected to adequate, formal, and regular continuous professional development initiatives especially in relation to areas such as GBV, child and minority rights.

The government over the years has on many occasions cited the need for a more efficient justice sector, a sentiment that was reiterated by a number of Chief of justices and the current Attorney general. The application of the recently enacted Right to information act and the National audit act is however yet to gain traction in relation to the justice sector.

Rule of law, supported by an efficient judicial system, will be the foremost factor that will have a significant impact towards establishing ethnic harmony, reduce ethnic grievances and discrimination, and will be key in securing property rights and enforcing contracts, which in turn are critical factors for investment and commerce, and hence poverty reduction and economic growth.

The action will engage in all 10 areas of challenges outlined above. This is based on the thinking that it is insufficient to just work on isolated elements of the judiciary value chain as solving a problem in one element of the chain is likely to create more problems downstream and therefore issues need to be tackled simultaneously and in close coordination with other assistance programmes.

The current action will assist in asserting the independence of select institutions irrespective of the party politicking. Working on the judiciary could thus provide a platform for confidence building in public administration, where political feuding is separated from essential service provision. This could also provide a potential leap board for the EU to engage dialogue on systemic reforms.

### 2 RISKS AND ASSUMPTIONS

<table>
<thead>
<tr>
<th>Risks</th>
<th>Risk level (H/M/L)</th>
<th>Mitigating measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Changes to the heads of targeted institutions and the Cabinet of ministers/portfolios may result in hurdles in programme management and implementation</td>
<td>M</td>
<td>The EU monitors/engages with administrative actors to pre-empt negative impacts to policy and programme initiatives. There will be fluidity to make adjustments to activities, as required, to correspond to context changes. If there is no continued political and/or administrative buy-in for a particular activity/output, then funds can be diverted to the remaining components. The alternative activities/outputs will nevertheless contribute substantially to the expected outcomes. The appointment of...</td>
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<tr>
<td></td>
<td>the current Chief justice in April 2019 with a 5-year tenure will enable program consolidation. Further, the AG has also been recently appointed (indefinite term) as has a new president of the BASL (for a period of 2 years).</td>
<td></td>
</tr>
<tr>
<td>Lack of independence of and increasing politicization of the public sector and lack of a merit-based system for the public service, may increase challenges to institutional, and service delivery reforms in the public sector, particularly at an outcome results level.</td>
<td>M/H</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The whole of sector approach, including policy dialogue, technical assistance, information to the public and key parliamentarians will assist in limiting politicization to a great degree as there will be a system of checks and balances.</td>
<td></td>
</tr>
<tr>
<td>Change in the members of the independent commissions may result in a change in course (priorities, strategies, etc.) of these commissions.</td>
<td>L</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The current Human Rights Commissioner has recently been reconfirmed for a period of 3 years and the Legal aid commission president with an indefinite employment term and has stated that he will continue in his post over the coming years. However, to circumvent future challenges, the intervention we will try to strengthen the institution through technical assistance in order to be less individual reliant, and in order to enable the commissions to be able to perform their tasks irrespective of the change in the leadership.</td>
<td></td>
</tr>
<tr>
<td>A change in government following elections in 2019 and 2020 respectively, may result in the incumbents being averse to initiatives with/solely with a governance and peace building focus.</td>
<td>M/H</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The Action has been formulated to contribute to long-term development objectives linked to SDG, 5, 10 and 16, to which Sri Lanka has subscribed. As such, the Action would span successive government terms and would be considered as an achievement to show to the electorate. Activities are formulated in a way that should appeal to any government wishing to improve the effectiveness and efficiency of the legal system. The emphasis being on technical improvements will assist the programme further. Independence of the judiciary will also contribute to shielding the programme. See also response to risk no 1.</td>
<td></td>
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<tr>
<td>Interference from various segments of the central government, resistant to an agenda of strong justice mechanisms in place and risk of</td>
<td>M</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Regular dialogue with the government on the benefit of timely and efficient delivery of justice, particularly for women, children, IDPs and the vulnerable, which</td>
<td></td>
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</tbody>
</table>
interethnic tensions that negatively impacts access to justice (particularly by minorities) post Easter Sunday attacks.

will not be perceived as a threat.

Public statements including joint statements on societal harmony/tolerance in addition to regular dialogue with the government. Building synergy between EU programmes particularly between the reconciliation programme that has a strong language component and the current justice sector programme (specifically the component on access of justice).

Assumptions

- Government is at best supportive and at worst non-interfering, in the different programme components and is committed to strive for improved justice (at least for the grassroots') through better and coordinated management of the various institutions in place.
- Government is willing to consider aspects of reform in the sector that will have a long-term positive impact.
- Influence of extreme views resisting change remains within manageable limits.
- Unwillingness of actors in the judiciary to work together can to some extent be overcome.
- Commitment from the Chief Justice/Judiciary would minimise external interferences.

3 LESSONS LEARNT AND COMPLEMENTARITY

3.1 Lessons learnt

The programme builds on lessons from the ongoing IcSP project ‘Catalytic Support to Peacebuilding Sri Lanka’ through which support to transitional justice mechanisms is being provided, including support to the independent commissions i.e. Police commission and Human rights commission. One of the takeaways from the project is that support to independent commissions should build on the existing needs assessments that were conducted and should support implementation of already developed policies. In addition, assistance in building capacity including comparative research, public outreach, data collection, policy-making, gender mainstreaming in applicable policies, have potential for maximum impact. The support to Legal aid commission builds on the successful implementation of three thematic projects (EIDHR/CSO-LA) on access to justice. The main finding of the support given was that, despite being a well-managed and independent organisation; there was lack of capacity at the grassroots’ level, particularly quality of assistance and reluctance to take on criminal or fundamental rights cases. A large number of people33 were assisted by the commission but mainly in matters related to divorce and labour affairs. The varying needs of the vulnerable population are however large and range from property rights/disputes to human

33 Vulnerable women mainly and to a great extent children. E.g. one project worth ca EUR 300 000 witnessed the following results: 2 000 people received one on one counselling, 3 500 received missing documentation (birth/death/marriage certificates), 700 people received court representation on civil, political rights and housing, and 300 people were provided victim support at police stations.
rights and fundamental rights violations. In order to provide quality assistance, it is imperative for the commission to be able to process a diverse range of complaints for which capacity, greater geographical coverage and knowledge of the citizens of the available services, is necessary. Other initiatives such as the bilateral support provided by the EU-Support to District Development Programme (SDDP) highlights the urgency in addressing the justice sector, given the benefits the vulnerable communities in particular women and children will reap. More specifically, supported through the EU-SDDP, the women and child desks at police stations were an important initiative, appreciated both by the State authorities and the general public. This has increased the appetite for a more gender responsive approach to police services and the recognition of a (gender) gap in activities implemented by the police.

3.2 Complementarity, synergy and donor coordination

Key development partners in the country include Asian Development Bank, Japan International Cooperation Agency, the World Bank and Agence Française de Développement as development financing institutions and Australia, Canada, Germany, the EU, India and the USA as bilateral partners. With regards to support to reform in the justice sector, USAID and to some extent UNDP are the only actors with varied actions being undertaken across the board. The ADB is providing technical assistance to develop a comprehensive Strategic action plan for the justice sector focusing mainly on civil and commercial law. UNICEF is also active in supporting actions that target protection and promotion of children’s rights in the context of timely delivery of justice. Learnings and more specifically observations on gaps and opportunities of these agencies have been taken aboard in the drafting of the Action. In addition, Canada offers language training to representatives of the judiciary and police so that they can interact better with non-Sinhala speakers. The UK has been providing assistance in the field of human rights, support to the LDD and capacity building of the judiciary and was consulted in the drafting of this Action. Furthermore, the EU is part of the Working group on reconciliation. It meets regularly as a forum for exchange of information, overall coordination of donors supported projects and update on issues which include transitional justice. It is also envisaged that a dedicated regular donor coordination the justice sector will be set up in addition to the EU participating in steering committees that will be a result of the support to the justice sector.

The action is also shaped by an ongoing IcSP project, implemented by UNDP, UNICEF and UN HABITAT i.e. ‘Catalytic support to peacebuilding in Sri Lanka’ and the AAP 2018 ‘STRIDE’ project. In the context of the IcSP initiative, support to two independent commissions i.e. Police commission and the Human rights commission is already being provided and the suggested activities in the Action document will build upon work that has already been undertaken. With regards to STRIDE, work in the field of justice will commence at the grassroots level through support to mediation boards. The latter is expected to go hand in hand with access to justice work at the ground level. As the general mediation boards also undertake commercial mediation thus causing bottlenecks due to lack of training/knowledge/workload, the current Action document through the learnings of STRIDE aims to support specialised commercial mediation boards, which will impact both the general mediation boards and the Commercial high courts positively.

EU support to the justice sector is also grounded on in several small-scale actions supported through the thematic instruments. It is to be noted that there have been 3 successful initiatives that targeted access to justice via the Legal aid commission. The action will complement the
EU programme ‘Strengthening reconciliation processes in Sri Lanka’, focused on non-recurrence of violent conflict, implemented by GIZ and the British Council. More specifically the component of the aforementioned programme that aims at reducing language barriers that deter access to public services, will be crucial.

4 DESCRIPTION OF THE ACTION

4.1 Overall objective, specific objective(s), expected outputs and indicative activities

Overall Objective: The overall objective is to contribute to a more independent judiciary and an improved and responsive justice system in Sri Lanka.

Specific objectives/outcomes are:

SO 1: Improved access to justice for all (in particular women, the poor and persons in vulnerable situations).

SO 2: Improved accountability, transparency and credibility of the justice system.

SO 3: Improved efficiency and quality of justice.

The expected outputs are:

EO 1.a. More efficient and accessible legal aid (i.e. legal representation) for vulnerable communities, with a specific focus on women, IDPs, PwDs and children.

EO 1.b. Strengthened capacity of independent institutions to scrutinise government performance and support individuals in claiming and defending their rights.

EO 2.a. Promoted and improved access to legal information to professionals, CSOs, individuals and watchdog/accountability organisations including on justice sector performance for the public.

EO 2.b. Increased capacities of different justice sector actors to develop and enforce codes of ethics and professional conduct.

EO 3.a. Increased management, administrative and technical capacities and improved processes of the justice actors, including the Ministry of justice, judiciary, courts including commercial courts, prosecution services, and lawyers, to meet the justice needs of the population.

EO 3.b. Established mechanisms/platforms for improving cooperation and coordination between justice actors.

The indicative activities are:

The activities under output 1.a. Efficient and accessible legal aid (i.e. legal representation) for vulnerable communities, with a specific focus on women, IDPs, PwDs and children, are:

1. Enhance the capacity of LAC to increase its scope in providing of free legal aid centres in the country.

2. Improve the capacity of lawyers working on pro bono cases for women and people in vulnerable situations.

3. Improve knowledge and capacity of state appointed lawyers working on criminal justice.
4. Enhance level of awareness of specific rights, entitlement/obligations of the rights-holders.

5. Improve quantity and quality of interpretation and translation services at all stages of judicial proceedings; police forces should also have access to quality interpretation and translation.

6. Improve level of awareness of CSOs involved in access to justice, defence of human rights, and women’s rights and their dialogue with duty-bearers.

The activities under output **EO 1.b. Strengthened capacity of independent institutions and Commissions to scrutinise performance and support individuals in claiming and defending their rights,** are:

1. Conduct system reviews and individual institutional assessments of each of the targeted independent institutions to assess their current status, gaps in achieving their mandate and their potential for reform to achieve the stated outcomes.

2. Review of procedures and procedural norms with a view to streamline business practices, including location of barriers contributing to backlog.

3. Support the independent commissions to establish and/or develop grievance handling mechanisms capable of generating complaints related data for decision making.

4. Support the establishment and implementation of a plan of action to improve women’s role including representation (e.g. National police commission) in areas that it is lacking.

5. Developing means, mechanisms and methods for engagement with and educating the public on justice and accountability issues and to facilitate easier and better access to the justice system.

6. Ensure systematic collection and analysis of data on all forms of gender-based violence against women, disaggregated by age, ethnic group, region and relationship between the victim and the perpetrator.

The activities under output **EO 2a. Promoted access to legal information to professionals, CSOs, individuals and watchdog/accountability organisations including on justice sector performance for the public,** are:

1. Capacity building of institutions in collecting sex disaggregated data (age, gender, income, vulnerability ranking etc.) in their field of work.

2. Support in the analysis of data in order to strengthen the quality decision making and performance review.

3. Disseminating of data to the wider public including CSOs, media, other accountability institutions.

4. Regular and updated monitoring of the various statistics and performance of the identified institutions, in order to provide the wider community with quality information.

The activities under output **EO 2b. Increased capacities of different justice sector actors to develop and enforce codes of ethics and professional conduct** are:

1. Support the introduction and improvement of policies, manuals, procedures and processes of the Judicial service commission.
2. Assist the Ministry of justice and other targeted justice sector institutions in updating policies, legislations and regulations.

3. Assist in developing transparent and non-discriminatory human resources policies at all level of the justice system and administration (e.g. recruitment and promotion procedures, language requirements for certain positions etc.).

4. Support the establishment and implementation of a plan of action to improve women’s representation in areas that it is lacking, ensuring in particular representation of women at higher levels in the justice system.

5. Develop codes of conduct for sector professionals (e.g. revising the Judge’s Manual, separate Codes of conduct for State counsel and lawyers) and those of other accountability institutions.

6. Provide assistance for the development and delivery of a formal continuous professional development program targeting judges and lawyers.

The activities under output **EO 3.a Increased management, administrative and technical capacities and improved processes of the justice actors, including the Ministry of Justice, Judiciary, courts including commercial courts, prosecution services, and lawyers, to meet the justice needs of the population, are:**

1. Capacity building of justice sector personnel and those of targeted institutions in relevant areas including administration, transparency and accountability, sensitivity and responsiveness particularly in dealing with issues/cases relating to GBV, child abuse, IDP rights and those of marginalized communities including international laws relating to criminal justice.

2. Initiate safe rooms for statements especially for youth, girls and women.

3. Support the establishment of residential institutions for children survivors/victims that are separate from those institutions that target children in conflict with law.

4. Review and improve existing work processes including those pertaining to commercial cases/business case resolution.

5. Develop IT based resource centers and improve legal literacy for the benefit of justice sector professionals and systems users.

6. Introduce at a pilot level court administrators to assist judges in the management of the courts.

7. Provide support to enhance capacity for legislative drafting, consolidation of laws and translations, and to make available laws and subsidiary legislation accessible to the public.

8. Set up peer to peer contacts, on a pilot level, with courts in other more developed countries to assist Sri Lankan judges in making their courts more efficient.

9. Enhance sensitivity and responsiveness, by training, of 'first point of contact' individuals such as JMOs, police officers, other similar professionals especially of girls and women victims of violence approaching the legal services.

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34 Includes conflict and gender sensitivity.
10. Develop training modules for lawyers, judges, mediators and business intermediary institutions such as chambers of commerce on alternative dispute resolution (ADR) (e.g. business mediation, arbitration and settlement techniques) in particular on commercial mediation. Assess the feasibility of establishing specialized mediation boards.

11. Inform the business community about alternative dispute resolution mechanisms for business disputes.

12. Expose the business and legal community to business ombudsmen in other countries and assess feasibility of establishing one in Sri Lanka.

13. Assess the feasibility of setting up an international arbitration scheme and if appropriate take steps in implementing these.

14. Review and enhance pre-trial procedures and introduce court-based mediation.

15. Study the reasons for backlog and if necessary establish a special unit in the Attorney general’s department to expedite the handling of cases of sexual and GBV, with clear and proper guidelines for the investigation of crimes and the prosecution of perpetrators, including victim-oriented protocols that respect women’s and children’s rights.

16. Ensure systematic collection and analysis of data on all forms of gender-based violence against women, disaggregated by age, ethnic group, region and relationship between the victim and the perpetrator.

The activities under output 3.b. *Established mechanisms/platforms for improving cooperation and coordination between justice actors* are:

1. Review and revise coordination protocols and establish new protocols where it is necessary.

2. Strengthen sector secretariats in order to fulfil their coordinating role.

3. Strengthen dialogue/coordination within the branches of the justice sector for instance on implementation of the relevant sections of the Human rights action plan and the Gender based violence action plan.

4. Support coordination in order to ensure that there are evidence based assessments such as sector strategy, investment plan, evaluation of the sector strategy, expenditure reviews and other related assessments.

5. Consolidate the role of the National authority for the protection of victims of crimes and witnesses, principally through training.

6. Support establishment of IT based coordination and communication mechanisms.

4.2 **Intervention Logic**

The intervention logic is based on the assumption that weaknesses in the justice and accountability sectors are major constraints for an improved accessibility and quality of service delivery. The set of problems that affects the effectiveness, transparency and accountability of the justice sector and the lack of trust of the rights-holders in the system call for a two-pronged strategy. Capacity building of the targeted judicial institutions and independent commissions, improved coordination, training of judges, review of procedural
norms, practice and management of court cases both at national, provincial and district level, capacitating JMOs and other key actors, providing alternative methods of delivering justice, improving processes including those pertaining to the Commercial court/ business case resolution, are expected to reduce the serious backlog of court cases and quality of the services provided by the duty-bearers. On the second front, addressing practical barriers of rights-holders approaching the justice system like geographical access to legal aid centres, access to qualitative assistance, improved knowledge of process and rights/responsibilities, is expected to improve the experience of people thereby increasing trust in the judiciary. Specific attention will be given to both disadvantaged groups such as women, economically disadvantaged communities, children, people with disability, minorities, IPDs, etc. on the one hand and the business community on the other hand. The Action is based on the assumption that increased confidence of the rights-holders in the institutions as well as improving capacity/skills at the level of service providers will establish a justice system responsive to the rights of the people. This is also expected to indirectly promote inclusive growth and ultimately economic development. Overall, institutional change in the justice system is expected to happen slowly bearing in mind established attitudes, entrenched interests and overlaps in terms of institutional responsibilities as well as resistance to change. Political meddling is a permanent risk. It is therefore expected that some of the proposed activities may fail but is difficult to predict beforehand which ones exactly these will be. The strategy to counter these obstacles will be to adjust activities in a flexible manner, to benefit from windows of opportunities and above all to work in a way where some activities are totally disconnected from others in terms of likelihood to succeed. In other words, correlations and links will sometimes be avoided instead of being sought. The design and implementation of any measure should be done in consultation with all key stakeholders, in particular, judges, lawyers and State counsels. An approach of varying engagement with the stakeholders will be followed: The more they are willing to reform, the more they are willing to improve their service delivery and transparency, the stronger the EU engagement will be.

While the programme will focus on the identified institutions, it is not excluded to work with other institutions of the judiciary taking in account the value-chain approach (inviting them for trainings for instance).

An inception phase of up to 6 months will be implemented during which baselines will be established and activity/reform plans with all participating institutions developed.

4.3 Mainstreaming

Rights Based Approach: The Action adopts a rights based approach. It will strengthen the capacity of the duty-bearers of the targeted institutions to be more responsive /accountable, transparent and inclusive, and applying all rights to the public. Although the Action is aimed at primarily public institutions and professional bodies, it includes support to civil society in particular the media. This will target the demand-side with the ultimate goal of improving knowledge and holding accountable duty-bearers vis a vis the wider public.

Gender: Studies have highlighted the lack of available data in measuring women's access to justice, and women's experience of law and justice continues to be poorly documented. In the civil legal system, women have equal rights to participate in the judiciary system however women represent a mere 23% of the judiciary. In addition, women constitute more than 70% of those studying the law and yet this materialises to only approximately 30% of those who practise law as a profession. Further, no woman has ever achieved top ranks within the police
force. Factors that affect women's access to justice include lack of awareness of rights, fear of legal processes and socio-cultural norms. The low ratio of women in the police force i.e. 11% often prevents women from reporting crimes. Language is a barrier for women from minority communities who experience challenges in a justice system composed largely of Sinhala speakers. The Action will respond by aiming at ensuring representation of women and youth in multi-stakeholder dialogues and capacity-development activities. It will facilitate gender-focused research and data collection for responsive decision making. The Action will also aim at ensuring gender-balance in programme staffing including at management levels.

**Conflict-sensitivity:** The aim of the Action is to work in ways to minimize negative impacts (do-no-harm) and maximise positive impacts (promote peace). This will be achieved by supporting research including data collection, analysis, and baseline studies in order to ensure better evidence and context assessment. Results of the analysis will be made public and will thus be a pressure point for improved processes. Formulation of strategies will be undertaken in close consultation with key stakeholders. Strategies will be designed with in-built flexibility to allow for adjustments based on changing context. The Action will strengthen the capacity of the judiciary institutions to be more conflict-sensitive. The programme will ensure that language skills, in particular, frequency and quality interpretation/translation is carefully integrated. Strengthened and independent justice sector per se would be a strong factor in sustainable management of conflicts.

**Environmental sustainability:** The proposed action will not directly impact negatively on the environment. It may where appropriate, address environmental law and court cases as examples and consider ways to strengthen actions in the legal system to protect the environment.

### 4.4 Contribution to SDGs

This intervention contributes to the achievement of SDG(s) 16 as it aims to ‘promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.’ The SDG contains targets specifically relevant to human rights, such as: (a) Ensuring public access to information and protecting fundamental freedoms, in accordance with national legislation and international agreements; and (b) Strengthening relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime. The Action also contributes to SDG 10 ‘Reduce inequality within and among countries’ and SDG 5 ‘Achieve gender equality and empower all women and girls’.

### 5 IMPLEMENTATION

#### 5.1 Financing agreement

In order to implement this action, it is foreseen to conclude a financing agreement with the government of Sri Lanka.

#### 5.2 Indicative implementation period

The indicative operational implementation period of this action, during which the activities described in section 4 will be carried out and the corresponding contracts and agreements implemented, is 54 months from the date of entry into force of the financing agreement.
Extensions of the implementation period may be agreed by the Commission’s responsible authorising officer by amending this Decision and the relevant contracts and agreements.

5.3 Implementation modalities

The Commission will ensure that the EU appropriate rules and procedures for providing financing to third parties are respected, including review procedures, where appropriate, and compliance of the action with EU restrictive measures35.

5.3.1 Indirect management with UNICEF and UNDP

This action may be implemented in indirect management with UNDP and UNICEF under one contract. This implementation entails achievement of SO 1: Improved access to justice for all (in particular the poor and persons in vulnerable situation, limited number of components for SO 2: Improved accountability, transparency and credibility of the justice system and SO 3: Improved efficiency and quality of justice. In the current setting, UNDP has been taking the lead in criminal justice sector reform over the past few years, with access to the highest level of judiciary whereas UNICEF already has presence in some of the key institutions dealing with cases pertaining to women and children.

The envisaged entities have been selected using the following criteria:

- Proven track record and presence in the country, robust understanding of key government stakeholders, technical expertise in the relevant/specific field, gender responsive rights-based approach expertise, institutional standing and acceptance by key government agencies, positive working experience with the EU in Sri Lanka and/or in the region, development-oriented approach with an apolitical stance in the country, market and private sector awareness, willingness to accept EU's leading role in policy dialogue with the government and willingness to provide sufficient visibility to the EU.

If negotiations with the above-mentioned entities fail, the action may be implemented in direct management in accordance with the implementation modalities identified in section 5.3.2.

5.3.2 Changes from indirect to direct management mode due to exceptional circumstances

A service contract under direct management will be procured if negotiations with UNDP/UNICEF fail.

5.4 Scope of geographical eligibility for procurement and grants

The geographical eligibility in terms of place of establishment for participating in procurement and grant award procedures and in terms of origin of supplies purchased as established in the basic act and set out in the relevant contractual documents shall apply subject to the following provisions:

35 www.sanctionsmap.eu Please note that the sanctions map is an IT tool for identifying the sanctions regimes. The source of the sanctions stems from legal acts published in the Official Journal (OJ). In case of discrepancy between the published legal acts and the updates on the website it is the OJ version that prevails.
The Commission’s authorising officer responsible may extend the geographical eligibility on the basis of urgency or of unavailability of products and services in the markets of the countries concerned, or in other duly substantiated cases where the eligibility rules would make the realisation of this action impossible or exceedingly difficult.

5.5 **Indicative budget**

<table>
<thead>
<tr>
<th></th>
<th>EU contribution (EUR)</th>
<th>Indicative third party contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.3.1 - Indirect management with UNDP &amp; UNICEF</td>
<td>16 200 000</td>
<td>USD 592 780 (UNDP) EUR 750 000 (UNICEF)</td>
</tr>
<tr>
<td>5.7 - Monitoring</td>
<td>800 000</td>
<td>N.A.</td>
</tr>
<tr>
<td>5.8 - Evaluation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.9 - Audit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.10 - Communication and visibility</td>
<td>300 000</td>
<td>N.A.</td>
</tr>
<tr>
<td>Contingencies</td>
<td>700 000</td>
<td>N.A.</td>
</tr>
<tr>
<td>Totals</td>
<td>18 000 000</td>
<td>EUR 1 274 299*</td>
</tr>
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*Estimate

5.6 **Organisational set-up and responsibilities**

An overall steering committee will be established to be co-chaired by the EUD and the Ministry of justice (the JSC). It will include all targeted institutions of the judiciary, UNDP and UNICEF and will meet every 6 months. Once a year, an additional Advisory committee will be held to be co-chaired by the EUD and the government plus other stakeholders including representatives of the judiciary, civil society and the private sector plus UNDP and UNICEF.

5.7 **Performance and Results monitoring and reporting**

It is envisaged that systemic data collection will be undertaken by the entrusted entities and shall be done based on established questionnaires, in consultation with the EU. The data will be disaggregated by sex, age and disability/social group, and type of case: criminal, civil or administrative – as applicable. To ensure stakeholder participation, prior and during data collection, the methodology and a clear understanding of the purpose of data collection shall be shared with key including incorporating any inputs on the questionnaire that will be developed. Studies to set baseline data and targets will be conducted by the entrusted entities during the inception phase of project implementation.

The day-to-day technical and financial monitoring of the implementation of this action will be a continuous process, and part of the implementing partners’ responsibilities. To this aim, the implementing partner(s) shall establish a permanent internal, technical and financial monitoring system for the action and elaborate regular progress reports (not less than annual)
and final reports. Every report shall provide an accurate account of implementation of the action, difficulties encountered, changes introduced, as well as the degree of achievement of its results (outputs and direct outcomes) as measured by corresponding indicators, using as reference the Logframe matrix.

SDGs indicators and, if applicable, any jointly agreed indicators as for instance per Joint Programming document should be taken into account.

The report shall be laid out in such a way as to allow monitoring of the means envisaged and employed and of the budget details for the action. The final report, narrative and financial, will cover the entire period of the action implementation.

The Commission may undertake additional project monitoring visits both through its own staff and through independent consultants recruited directly by the Commission for independent monitoring reviews (or recruited by the responsible agent contracted by the Commission for implementing such reviews).

5.8 Evaluation

Having regard to the importance of the action, a mid-term and final evaluation will be carried out for this action or its components via independent consultants through a joint mission contracted by the Commission.

The midterm evaluation will be carried out for learning purposes, in particular with respect to lessons learnt and provide information on nature, extent and where possible impact/sustainability of the programme. The evaluation will aim at assessing the programme design, scope, implementation and capacity to achieve the expected outcomes. The final evaluation will be carried out for accountability and learning purposes at various levels (including policy revision), taking into account in particular performance against results by comparing start and end data. Possibility of replication of intervention to other provinces and the effectiveness of strategies used will also be assessed. Specific attention will be given to the assessment of impact on gender relations and the respect of the 5 rights-based working principles (applying all rights, non-discrimination, participation, accountability and transparency).

The Commission shall inform the implementing partner(s) at least 60 days in advance of the dates foreseen for the evaluation missions. The implementing partner(s) shall collaborate efficiently and effectively with the evaluation experts, and inter alia provide them with all necessary information and documentation, as well as access to the project premises and activities.

The evaluation reports shall be shared with the partner country and other key stakeholders. The implementing partner and the Commission shall analyse the conclusions and recommendations of the evaluations and, where appropriate, in agreement with the partner country, jointly decide on the follow-up actions to be taken and any adjustments necessary, including, if indicated, the reorientation of the project.

Indicatively, two contracts for evaluation services shall be concluded under a service contract in the second year and last year of implementation of the programme. In addition, implementing partners may also carry out their own internal evaluations the findings of which should be shared with the Commission.
5.9 **Audit**

Without prejudice to the obligations applicable to contracts concluded for the implementation of this action, the Commission may, on the basis of a risk assessment, contract independent audits or expenditure verification assignments for one or several contracts or agreements.

It is foreseen that audit services may be contracted under a framework contract.

5.10 **Communication and visibility**

Communication and visibility of the EU is a legal obligation for all external actions funded by the EU.

This action shall contain communication and visibility measures which shall be based on a specific Communication and visibility plan of the Action, to be elaborated at the start of implementation.

In terms of legal obligations on communication and visibility, the measures shall be implemented by the Commission, the partner country, contractors, grant beneficiaries and/or entrusted entities. Appropriate contractual obligations shall be included in, respectively, the financing agreement, procurement and grant contracts, and contribution agreements.

The Communication and visibility requirements for European Union external action (or any succeeding document) shall be used to establish the Communication and visibility plan of the Action and the appropriate contractual obligations.

The programme also aims at assisting the participating institutions in improved and more transparent reporting of their performance. Visibility in this programme will thus be divided into two categories a) EU visibility and b) Government/judiciary performance communication through which EU support to the justice sector will be made public and thus provide assistance to the implementation of the Right of information act.

It is foreseen that a contract for communication and visibility may be contracted.
APPENDIX - INDICATIVE LOGFRAME MATRIX (FOR PROJECT MODALITY) ³⁶

<table>
<thead>
<tr>
<th>Impact (Overall Objective)</th>
<th>Results chain: Main expected results (maximum 10)</th>
<th>Indicators³⁷ (at least one indicator per expected result)</th>
<th>Sources of data</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>To contribute to a more independent judiciary and an improved and responsive justice system in Sri Lanka</td>
<td>% of survey respondents that think that the justice sector works in a more efficient and more timely manner, is less biased and mostly caters to the needs of the vulnerable population</td>
<td>Baseline, midterm and end-line surveys to be commissioned by the Action</td>
<td>Not applicable</td>
</tr>
<tr>
<td></td>
<td></td>
<td>% of actors within the justice and accountability sector setup that have a more positive perception of their efficiency, performance and independence* (disaggregated by sex, age and disability/social group, and type of case: criminal, civil or administrative)</td>
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<td></td>
<td></td>
<td>% of women that think Sri Lankan justice sector response is sensitive, effective and fair</td>
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<td></td>
<td></td>
<td>Rule of Law score( as measured by the World Bank Worldwide Governance indicators **)</td>
<td></td>
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<td></td>
<td></td>
<td>World Bank Governance reports</td>
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</tbody>
</table>

³⁶ Mark indicators aligned with the relevant programming document mark with '*' and indicators aligned to the EU Results framework with '***'.

³⁷ Where not mentioned, all indicators will be disaggregated by sex, age and disability/social group, and type of case: criminal, civil or administrative.

[26]
<table>
<thead>
<tr>
<th>Outcome(s) (Specific Objective 1)</th>
<th>Country score in the World justice project Rule of law index**</th>
<th>The World justice project</th>
<th>Continued political will to improve the grassroots level justice system. (related to relatively weak / unstable segments of the governance system and possible elections' changes)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SO 1: Improved access to justice for all (in particular the poor and persons in vulnerable situations)</strong></td>
<td>Number and percentage of legal cases effectively addressed by free legal assistance centres in the country (disaggregated by sex, age and disability/social group, and type of case: criminal, civil or administrative)*</td>
<td>Baseline and midterm/end-line surveys</td>
<td>Survey results at institution level and Project annual reports</td>
</tr>
<tr>
<td></td>
<td>Response rate to the requests for legal assistance, information and representation by the free legal assistance centres (disaggregated by sex, age, social group and type of request)</td>
<td><strong>Baseline and midterm/end-line surveys</strong></td>
<td><strong>Survey results at institution level and Project annual reports</strong></td>
</tr>
<tr>
<td></td>
<td>% and types of cases handled where due processes have been followed (disaggregated by sex, age, social group and type of request)</td>
<td><strong>Survey results at institution level, if needed sample based</strong></td>
<td><strong>Independent commission data/statistics/Reports</strong></td>
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<td></td>
<td>% of complaints that meet Human Rights Commission's and Police Commission's defined timelines for complaint handling*</td>
<td>**SO2.3: Status of data and analysis produced by CSOs, media, independent experts **</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SO2.3: Status of data and analysis produced by CSOs, media, independent experts **</td>
<td><strong>Number and quality of reports, press releases and other information material disseminated by the judiciary institutions</strong></td>
<td></td>
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<tr>
<td>Outcome(s) (Specific Objective 2)</td>
<td></td>
<td></td>
<td>Limited influence of extreme views related to domestic interference</td>
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<tr>
<td><strong>SO 2: Improved accountability, transparency and credibility of the justice system</strong></td>
<td></td>
<td>Government is supportive of the different programme components and is committed to strive for improved justice sector response</td>
<td></td>
</tr>
<tr>
<td>Outcome(s) (Specific Objective 3)</td>
<td>Outputs</td>
<td>M&amp;E progress reports</td>
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<tr>
<td>SO 3: Improved efficiency and quality of justice</td>
<td>EO 1.a. Efficient and accessible legal aid (i.e. legal representation) for vulnerable communities, with a specific focus on women, IDPs, PwDs and children</td>
<td>Number and % of pending cases in the AG's department and in courts including commercial courts and court of appeal (disaggregated by type of case: civil, commercial, administrative etc.) &lt;br&gt; Number and percentage of cases resolved in the various justice institutions including those working on alternative dispute resolution mechanisms (disaggregated by different type of cases, e.g. administrative, commercial, civil, etc.)</td>
<td>Continuous monitoring of shortcomings and annual review of the policies/plans of improvements pursued Ministry of Justice reports and M&amp;E</td>
</tr>
<tr>
<td></td>
<td>EO 1.b. Strengthened capacity of independent institutions to scrutinise government performance and support individuals in claiming and defending their rights</td>
<td>% of investigations completed and number of recommendations made pertaining to registered cases (disaggregated by sex, age, and disability/social group, and type of case: criminal, civil or administrative)</td>
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<tr>
<td>EO 2.a. Promoted access to legal information to professionals, CSOs, individuals and watchdog/accountability organisations including on justice sector performance for the public</td>
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<tr>
<td>% of professionals, CSOs, individuals and watchdog/accountability organisations with access to required legal information including that on performance of the justice sector. Number of individuals from justice institutions and other stakeholders trained on analysis, presentation and dissemination of legal information</td>
<td></td>
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<td>M&amp;E progress reports</td>
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<thead>
<tr>
<th>EO 2.b. Increased capacities of different justice sector actors to develop and enforce codes of ethics and professional conduct</th>
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</thead>
<tbody>
<tr>
<td>Number of new internal procedures developed and implemented (including existing procedures) within justice sector institutions</td>
</tr>
<tr>
<td>% of trained professionals from the targeted justice sector (judges, prosecutors, lawyers etc.) who feel/can demonstrate increased knowledge in the relevant areas (disaggregated by type and sex of official, specific training)</td>
</tr>
<tr>
<td>M&amp;E</td>
</tr>
<tr>
<td>a. database of training participants (disaggregated by type and sex of official, training topic, duration and location)</td>
</tr>
<tr>
<td>b. database with results of pre- and post-training tests</td>
</tr>
<tr>
<td>c. end-line survey</td>
</tr>
</tbody>
</table>
| EO 3.a. | Increased management, administrative and technical capacities and improved processes of the justice actors, including the Ministry of Justice, Judiciary, courts including commercial courts, prosecution services, and lawyers, to meet the justice needs of the population | Number and % of staff from prosecution and investigation services trained in various specialisations of interest (e.g. gender-based violence, economic crimes, etc.) who can demonstrate increased knowledge in the relevant areas (disaggregated by sex, specialty, and institutions)**.  
Number of available guidelines, policy notes and regulations for improved court administration and case management developed / implemented with support of the project  
Number and % of cases referred to/processed through alternative dispute resolution provided by the programme | M&E  
a. database of training participants (disaggregated by type and sex of official, training topic, duration and location)  
b. database with results of pre- and post-training tests  
c. end-line survey |
|---|---|---|---|
| EO 3.b. | Established mechanisms/platforms for improving cooperation and coordination between justice actors | Number of mechanisms e.g. Memorandum of Understanding, periodical coordination meetings, new policies / regulations on specialised courts, to improve cooperation / coordination / efficiency and its eventual implementation | M&E  
Text of MoU/policy, or minutes of coordination meetings, including the list of participants |