

UNITED NATIONS DEVELOPMENT
PROGRAMME



The Rule of Law in Fragile and Post-Conflict
Situations

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This paper outlines a range of challenges and opportunities in addressing the rule of law in fragile and conflict-affected countries. The findings and suggestions in large measure draw on the experience and lessons learned from the **UNDP Global Programme on Strengthening the Rule of Law in Conflict and Post-Conflict Situations 2008 – 2011**. The Global Programme focuses on rule of law programmes in conflict/post conflict situations and is currently being rolled out in 20 conflict affected countries.¹

The analysis in this paper addresses three different types of scenarios: conflict prevention, early recovery in the context of humanitarian assistance and post conflict recovery.

I. Conflict prevention – rule of law in fragile situations

Conflicts may be caused by or result in the breakdown of law and order, or a collapse of state institutions. Preventive measures can be taken to help strengthen local capacity to prevent conflict occurring and to support the institutional structures that support dispute resolution and democratic governance. Strengthening the rule of law can be a critical tool for conflict prevention. For example:

1. Functioning courts, and alternative means to dispute resolution, can address conflicts over land and resources before they lead to violent tensions;
2. Equal treatment before law, and equitable access to justice, can help reduce collective perceptions of marginalization of discrimination, and hence incentives towards violence;
3. Timely redress for grievances can help ease emerging tensions, especially if they involve sectarian conflicts;
4. Effective institutions for the rule of law can curb precipitants of instability, such as illicit flows of drugs and weapons.

Advancing the rule of law in fragile states as a key tool of conflict prevention however can face many challenges:

- **Identifying entry points and agents of change for conflict prevention:** Delivering the rule of law depends on institutional and human capacity to deliver in an accountable and transparent manner². Institutions in fragile states are often under-financed and poorly governed. It is important to identify entry points for assistance that are catalytic and will yield impact in the short term to prevent impending conflict, and in the long term diminish fragility.
- **Achieving broad consensus amongst stakeholders:** The strengthening of particular institutions of rule of law will achieve little if they continue to be used towards partisan purposes by the state or if the state itself is contested. Lasting reform and strengthening of rule of law will therefore only be achieved in the context of a broad consensus among key stakeholders.
- **Support civil society and empower communities.** Civil organisations, if appropriately equipped, can help establish neutral spaces for public or multi-stakeholder dialogue around weaknesses in the rule of law and the best approaches to addressing them. Neglecting the critical

¹ Burundi, Central African Republic, Chad, DRC, Guinea Bissau, Liberia, Sierra Leone, Uganda, Afghanistan, Nepal, Sri Lanka, Timor-Leste, Colombia, Haiti, Bosnia-Herzegovina, Kosovo, Iraq, Somalia, Sudan, Occupied Palestinian Territory.

² Inter alia, Line ministries: Justice, Interior, Planning, Security, Finance etc, the judiciary (courts, judicial commissions, judicial training institutes), the legal profession (bar associations, law schools, law resources), prosecutors and law enforcement (training, infrastructure) and corrections (training, regulation and infrastructure, human rights institutions, legal aid commissions, CSO providing legal services and victim support or representation)

role played by civil society reduces the ability of communities and marginalized groups to claim their rights peacefully through the justice system.

- **Situate rule of law in development planning.** National planning processes and frameworks, if effectively developed, can provide an important platform for dialogue and for the building of institutional consensus. Rule of law should thus be fully integrated into Poverty Reduction strategies and UNDAF's in support of nationally led strategies to advance and implement the rule of law.
- **Short vs. longer term interventions:** The reform and strengthening of institutions of rule of law requires a longer term effort. However, unresolved grievances and disputes may heighten tensions in the short term. While institutions of rule of law are being reformed or strengthened, short term access to justice could be provided through a provisional strengthening of means such as alternative dispute resolution, court annexed mediation systems and travelling courts, as well as using community-led approaches and paralegals.

2. Early recovery – Rule of law in active conflict situations

Violent conflict replaces the rule of law with the rule of force, and hence significantly erodes or destroys a society's ability to manage internal conflict. In particular:

- Constitutional rights are often superseded by emergency laws and civilian courts or *ad hoc* military courts.
- Parties become habituated to addressing disputes through violence rather than through negotiation or adjudication.
- Military expenditure dominates budget allocations, at the expense of the provision of basic services³.
- In addition to the erosion of formal systems, traditional mechanisms for conflict resolution are lost to communities that have undergone significant attacks or displacement. **In North and South Kivu in Eastern DRC**, traditional leaders have been displaced from their zones of influence and the social groups which they represent. As a consequence, communities have been deprived of familiar, functioning dispute resolution mechanisms. In addition, the increased circulation of small arms increases the number of violent incidents. With both formal and informal systems for the rule of law either eroded or collapsed, and with multiple local tensions and conflicts continuing, unaddressed grievances and disputes accumulate.
- Gender Based Violence⁴ (GBV) presents a challenge of particular concern. Sexual violence rapidly escalates during armed conflict. A recent survey reveals the extent of human rights abuses suffered by the population of Eastern DRC, including sexual violence and fear of government soldiers and militias alike.⁵ Women who are raped are further disempowered by stigmatization and exclusion from families, villages and communities.

In the context of ongoing violent conflict, the first steps towards reviving or conserving capacities for the rule of law can be taken through early recovery efforts, which are carried out in the context of a humanitarian relief operation. These steps can include:

³ In Somalia, armed conflict absorbs almost all public resources. Guinea Bissau spends more than 30% of the national budget on its army - a greater proportion of military personnel per capita than any other developed country

⁴ Definition at Article 1 and 2 of UN Declaration on the Elimination of Violence against Women. 20 Dec 1993 A/RES/48/104

⁵ Between September 2006 and October 2007, 27,000 cases of sexual violence were reported, according to UNFPA. Source: Living With Fear. This report presents the results of a population survey undertaken by the Human Rights Center (HRC) at the University of California, Berkeley, the Payson Center at Tulane University, and the International Center for Transitional Justice (ICTJ). Focusing on areas most affected by conflict in eastern DRC, surveys were conducted from September to December 2007 among a sample population of 2,620 individuals in the Ituri district in Oriental province and the provinces of North and South Kivu.

- **Identifying entry points that will limit or bring an end to the violence and violations.** Even during an active conflict, rule of law assistance can be predicated on empowering national stakeholders and institutions to curb the violence and address injustices. To this end, programming should empower national stakeholders (rule of law institutions, civil society, community-leaders and displaced populations) to *counter* violence through peaceful conflict-resolution mechanisms. This addresses the immediate needs for enhancing security and justice, while also paving the way for institutional reforms in the post-conflict recovery phase. In **Somalia**, UNDP supports a major legal aid network of women lawyers, who represent marginalized and poor populations affected by the conflict as well as prisoners. An average of 50 cases are handled every month in Mogadishu by the legal aid network, providing legal representation in the local courts and securing convictions, as well as the release of unlawfully detained from custody and prisons. In addition, awareness raising and educational activities are carried out with a particular focus on training the police on human rights and the administration of justice.
- **Empowering communities especially women, youth and displaced populations.** Special attention should be given to support the implementation of rule of law for displaced and war-affected communities especially women and youth. Identifying local civil society groups and appropriate policing/legal aid/legal representation mechanisms may be difficult and may require proactive engagement by rule of law officers on the ground. However, by harnessing local knowledge, the resulting efforts to seek, obtain and deliver justice can catalyse a process of community empowerment. UNDP rule of law programming in **Eastern Chad and Sri Lanka, and Colombia** demonstrate the value of this approach
- **Partnering with humanitarian actors.** Providing early recovery on rule of law in on-going conflicts requires partnership with humanitarian actors.⁶ This is done by situating protection (physical and legal) within a broader notion of the rule of law and strengthening national capacity to respond. A good example of this is **the UNDP Darfur rule of law programme**, which empowers both communities and local justice institutions to counter the violence through peaceful conflict-resolution and justice mechanisms. IDPs are trained as paralegals, lawyers are empowered to represent displaced before the courts whilst local police, prosecutors and judges receive training and support to identify violations and address impunity. Since 2004, UNDP has provided training to 40,000 local police, army, rebels, rule of law officials, civil society and IDPs. It has established a strong Legal Aid Network consisting of 60 Darfuri lawyers, as well as Legal Aid Centers in 7 IDP camps. The legal aid lawyers have taken on 2,550 cases and have achieved successes such as rape and murder convictions, acquittals of women charged with adultery (*zina*), and the release of people held in arbitrary detention.
- **Engaging international police and peacekeepers.** Relationships need to be built across organisations to optimise all protection efforts on the ground. During an armed conflict, the notion of “protection of civilians” establishes coordination amongst the humanitarian, development and peacekeeping departments of the United Nations. Collaborative partnerships can take the form of joint programmes with DPKO and the UNCT to train peacekeepers and police in delivering protection and respect human rights among national armed and uniformed counterparts to respect human rights. A joint programme was carried out with the AU, UNAMID and UNCT in Darfur in 2006. In **Liberia**, UNDP together with the UN mission in Liberia (UNMIL) has supported the government in designing and operationalising a five year strategic plan for the Liberia National Police (2008-2013). With the support of several donors, UNDP has played a key role in facilitating the establishment of the Emergency Response Unit within the Liberia National Police. To date, 212 police have graduated from National Police Academy and a new batch of 125 recruits has just commenced training.

⁶ Humanitarian IASC partners, including OCHA, OHCHR, UNHCR, UNICEF and partner NGOs.

3. Post-Conflict Recovery – Rule of law in peacebuilding situations

In the aftermath of a conflict and during post-conflict recovery, the restoration of peace, justice and development is inextricably linked to the restoration of the rule of law. Of the 34 countries furthest from reaching the MDGs 22 countries are in, or emerging from, conflict.⁷ Socio-economic development will be impeded without access to peaceful conflict resolution mechanisms. The recently released report of the Secretary General on “*Peacebuilding in the Immediate Aftermath of Conflict*” highlights this point and the importance of rule of law in this regard.

The challenges of reviving the rule of law can be seen in Eastern Chad, where high levels of insecurity in the East are undermining the role of an independent and functional judiciary. A number of magistrates have fled to the State Capital, N’Djamena. This has severely reduced the options for due process under a court of law in Eastern Chad. Due to the shortage of magistrates, the local administration (*sous-préfets*) is trying to fill the gap. Members of the administration however lack legal training and are unable to maintain the boundaries between their judicial and executive functions. The judicial police in the East are said to be untrained and unresponsive to judicial authorities - functioning as soldiers rather than as police.

More broadly, some of the challenges and opportunities to post conflict recovery in the rule of law sector are as follows:

- **Long term commitment from international partners:** Re-establishing the rule of law requires the rebuilding and reform of key institutions. This in turn requires sustained support by international institutions, multi-lateral organisations and bilateral partners. Well researched baselines, clear benchmarks, and periodic monitoring and evaluation are therefore critical to programmes to rebuild the rule of law.
- **Access to justice and security at the community level:** Balancing efforts between the community and the national level is important in creating broader institutional and structural reforms. Community policing and legal aid provide for quick peace dividends that can also be measured in the short and medium term. Gradual and incremental changes such as the number of convictions achieved under a local court of law are relevant indicators of progress. In **Kosovo**, UNDP’s focus on strengthening the legal profession and security agencies in Pristina is balanced by a Kosovo-wide access to justice programme developed in partnership with the Legal Aid Commission and NGOs.
- **Comprehensive institution building.** A sustainable approach to rule of law programming requires a comprehensive investment in national rule of law institutions encompassing both justice and security sectors. However, this investment may not show tangible results in the short term. Investment in the creation of a new group of judiciary professionals will need to be long term and may not show immediate outputs. For example, UNDP programmes that are training young Serb and women lawyers in **Kosovo** will produce a professional and representative legal profession in 5-10 years time; investing in the training of cadres of young, local judges in a fledgling state like **Timor-Leste** will produce a professional judiciary only 10 years later.
- **Enhancing women’s security & access to justice.** Rule of law programming should be designed to provide physical and legal protection to women and girls victimized by violence to reclaim their rights, while also developing women’s own capacity to be security and justice actors. Collaborative partnerships are central to translating Security Council Resolutions 1325 and 1820 into action, bringing together UN agencies and DPKO to address impunity of gender-based violence. The *UNDP Eight Point Agenda for Women’s Empowerment and Gender Equality in Crisis Prevention and*

⁷ *Investing in Development: A Practical Plan to Achieve the MDGs*, UN Millennium Project (2005).

Recovery⁸, the inter-agency UN Action against Sexual Violence in Conflict and its campaign: *Stop Rape Now*⁹ is among the vehicles and tools for joint action at global and in-country level. Major programmes with a strong component of women's security and access to justice at community level are being rolled out in partnerships in all priority countries identified in the UNDP Global Programme, including the Central African Republic, Liberia, Sierra Leone, Sri Lanka and Timor Leste.

- **Transitional justice to address war crimes:** Transitional justice constitutes a particular challenge. It is important to ensure that capacity development of national justice institutions is not neglected, and that support is balanced between long term capacity development and support to temporary international mechanisms. Given its development mandate, UNDP's support to transitional justice processes is thus implemented in parallel to broader national capacity building programmes.
- **Strengthening both security and justice to underpin the rule of law.** Post conflict situations may offer an early opportunity to start a security sector reform process. If so, equal attention should be paid to the "softer" elements of the process – i.e. civilian oversight of security actors and management of security institutions. This is important for delivering security grounded in the rule of law, as outlined by the UN Secretary General in his 2008 report on Security Sector Reform.

4. Coordination

The challenges in addressing the rule of law in fragile and post conflict settings are immense, yet the opportunities for real impact can be realised best through working in partnership. The magnitude and depth of the needs require joint efforts and coordination by multiple actors, as highlighted in the Secretary General's report on "Peacebuilding in the aftermath of conflict". General principals and areas of comparative advantage can and should be established globally in addition to clear and visible division of labour at the country level. UN coordination under the Secretary-General's Special Representative or the Resident Coordinator is a model which works well. The greatest challenge is to mobilize resources and capacity for the UN Country Team and peace-keeping missions to deliver on the ground.

In many post-conflict countries, such as **Sierra Leone, the Occupied Palestinian Territory and Sudan**, donors, the UN and its partners work together with national actors in developing national multi-year rule of law/ justice plans, which are implemented through joint mechanisms and monitored through inclusive coordination forums. Among UN actors and partners, Rule of Law working groups are also established in-country, which provide opportunities for effective collaboration between rule of law and protection actors during and after conflict.

5. Conclusions

Justice, recovery and sustainable development are mutually reinforcing objectives. Our experience in fragile and post conflict environments has demonstrated that consolidation of peace and sustainable development cannot be achieved unless there are inclusive, nationally led structures for the administration of justice, the settlement of disputes and the timely redress of grievances. In countries just emerging from conflict, there is a particular imperative to quickly re-establish the rule of law and address past abuses.

⁸ UNDP's *Eight Point Agenda for Women's Empowerment and Gender Equality in Crisis Prevention and Recovery*: Point 1: Strengthening Women's Security in Crisis; and, Point 2: Advance Gender Justice.

⁹ In March 2007 10 UN entities launched *UN Action Against Sexual Violence in Conflict*⁹ to improve the quality and coordination of interventions to prevent and respond to sexual and other forms of gender-based violence (GBV), *UN Action* is comprised of DPKO, OCHA, OHCHR, UNDP, UNFPA, UNHCR, UNICEF, UNIFEM, WFP and WHO.

Fragile and post conflict affected states present a myriad of challenges. Weak institutions, limited resources, fragile security, a lack of institutional independence, lack of capacity and often a lack of will for political reform present a complex environment for rule of law interventions.

This paper draws several conclusions that can be applied to future rule of law interventions in fragile and post conflict states.

Firstly, rule of law programming should be placed within the broader context of justice, peace, security and development. Our approach to rule of law programming must be complementary to protection strategies, security sector reform policies, recovery and development programming, governance and domestic reforms. Advancing these mutual objectives will require creative partnerships, integrated planning, and careful sequencing of activities.

Secondly, rule of law programmes must be rooted in national needs, capacities, assessments and stakeholders. In developing a strategic approach, the initial focus needs to be on building the capacity of national institutions and stakeholders to prevent and bring an end to violations, insecurity and impunity through their own capacity and resilience. Programming should be based on principles of inclusion, participation and empowerment, and should be centred on institution building and the creation of civilian oversight mechanisms.

Thirdly, national level support and programming must be accompanied by sufficient focus on justice and security at the community level. Community level interventions can often produce more immediate results in the short to medium term, and can also provide opportunities for catalytic entry points that can bring about community based reconciliation and justice.

Lastly, our approach to rule of law programming must be comprehensive in bringing together the inter-dependant institutions that contribute to justice, peace and security. A piecemeal approach will not effectively address the complexity of the challenges posed by fragile and conflict affected states. All institutions of the justice sector: government, nongovernmental, community and national level partners must be brought together in concrete strategy that optimises the comparative advantage and skill set of each partner.

Translating rule of law into a tangible reality for those who have suffered through armed conflict remains a real and complex challenge. In order to achieve effective results, we must adopt an astute, creative and pragmatic approach to the rule of law and a collaborative approach from international actors.