

Rule of Law Assistance in UN Peace Operations – Next Steps

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In June 2013, the UN Secretary-General published a report to the Security Council on measuring the effectiveness of the support provided by the UN system for the promotion of the rule of law in conflict and post-conflict situations.¹ The UN is in the middle of a process aimed at re-structuring internal coordination arrangements on its rule of law assistance as well as refining its tools for the planning, assessment and evaluation of this assistance. This policy briefing provides an update for rule of law practitioners and policy makers on important developments in this institutional reform process. Rather than giving a comprehensive overview, it highlights several aspects of international research and of the debate surrounding the future of UN rule of law assistance.

“Delivery as One”: Establishing the Global Focal Point

The first General Assembly High-Level Meeting dedicated exclusively to the rule of law at the national and international levels in September 2012 demanded “greater coordination and coherence among the United Nations entities and with donors and recipients to improve the effectiveness of rule of law capacity-building activities.”²

In the same month, the Secretary-General appointed the *Department of Peacekeeping Operations* (DPKO) and the *United Nations Development Programme* (UNDP) as the Global Focal Point (GFP) for “Police, Justice and Corrections Areas in the Rule of Law in Post-Conflict and Other Crisis Situations.”

Both DPKO and UNDP have co-located their rule of law teams at UN headquarters in New York. Among the priority functions of the GFP are coordinating assistance requests from host countries

Rule of Law: A Definition

“A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”³

¹ S/2013/341.

² A/66/49.

³ S/2004/616.

and providing technical assistance to UN peace operations and country teams on developing rule of law, justice and security strategies and programs. This includes support to the rapid deployment of expertise as well as the development of guidance, training and policy tools and of mechanisms for effective knowledge management. The GFP will also support fundraising activities and contribute to strengthening partnerships with Member States, NGOs, think tanks and academia, with a special focus on promoting South-South cooperation. This new policy is an important part of the Secretary-General's reform efforts and aims at strengthening the UN's ability to fill critical civilian capacity gaps in the aftermath of conflict.

Raising the Profile of Rule of Law within the UN System

*The Rule of Law Coordination and Resource Group (RoLCRG)*⁴ now has the strategic leadership role on rule of law in the UN system. Its membership has been extended and a UN strategy on the rule of law is currently being drafted.

At the field level, senior mission leaders were given the responsibility for overseeing the implementation of rule of law components and for coordinating UN country support for the rule of law. They will be held accountable for the implementation of national UN rule of law strategies and are expected to assist with the removal of political obstacles that might arise in the interaction with host country governments.

Priorities and Implementation Methods

UN partners and think tanks such as the *Folke Bernadotte Academy* (FBA) and the *Stimson Center* have accompanied the UN's internal reform process and provided feedback through specific research projects on rule of law assistance in UN

peace operations. Both the *Stimson Center* and FBA reports⁵ published in 2012 acknowledge the UN's efforts to support police, justice and corrections reform and take note of the enormous operational challenges the UN faces in many host countries. Their reports also raise legitimate questions as to whether the priorities and implementation methods of UN rule of law assistance require a review to ensure greater effectiveness and impact. Research shows that although the increase of political missions since the end of the 1990s has contributed to broadening the UN's rule of law activities, the organization's assistance in peace operations has traditionally focused on the justice chain (police, justice and corrections) and to a significantly lesser extent on public administration, constitutional and legislative reform as well as access to justice and awareness raising programs. Implementation methods primarily focus on training, infrastructure and equipment.

According to the FBA research on peace operations in Africa, the dilemma resulting from this approach is that trained police officers, judges and corrections officers are sent back to dysfunctional institutions with no adequate legal framework and, in consequence, have few or no opportunities to implement their newly acquired knowledge and skills. Assistance to public administration and constitutional and legislative reform is less visible than training initiatives and infrastructure projects and progress is often very slow given that such assistance is not merely a technical process, but complex and politically highly sensitive. There is a risk that donors underestimate the timeframe necessary to achieve sustainable results in such processes. Nonetheless, these assistance activities are potentially the most important ones because an improved legal and institutional framework can lay the foundations for the effectiveness of training initiatives, while training initiatives alone are unlikely to produce a lasting impact in public service delivery.

⁴ The members of RoLCRG are: Department of Peacekeeping Operations (DPKO), Department of Political Affairs (DPA), Office of Legal Affairs (OLA), United Nations Development Programme (UNDP), Office of the High Commissioner for Human Rights (OHCHR), United Nations Office on Drugs and Crime (UNODC), United Nations High Commissioner for Refugees (UNHCR), United Nations Children's Fund (UNICEF), United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), and the World Bank.

⁵ Durch, William J., and Madeline L. England, Fiona B. Mangan: "Understanding Impact of Police, Justice and Corrections Components in Peace Operations", 2012; available here: http://www.stimson.org/images/uploads/research-pdfs/Stimson_Police_Justice_and_Corrections_Impact_Report_FW_small.pdf; and Sannerholm, Richard, and Frida Möller, Kristina Simion, Hanna Hallonsten: "UN Peace Operations and Rule of Law Assistance in Africa, 1989-2010", 2012; available here: <http://ecbook.ecweb.se/folke/UNRoL/>.



An Example of Rule of Law Activities

“The DPKO-led mission, UNAMA [UN Assistance Mission in Afghanistan], supported the establishment in 2008 of the Afghan Independent Bar Association and a new Legal Aid Department within the Ministry of Justice. UNAMA also facilitated the finalization of the National Justice Sector Strategy to ensure effective coordination of the establishment of the justice system and the National Justice Program to implement the strategy. The UNAMA Police Advisory Unit advised and assisted the Ministry of Interior on key technical issues, and supported the Commander of Kabul police and other provinces on strategic and operational planning in co-operation with the International Security Assistance Force. UNIFEM has been promoting gender-responsive security sector reform and supporting women political leaders in an effort to increase women’s influence in peacebuilding and improve their access to justice. UNDP has a well-established rule of law program which is composed of three projects, notably Strengthening the Justice System of Afghanistan, Access to Justice at the District Level, and the Provincial Justice Coordination Mechanism with UNAMA. UNODC is supporting a multi-disciplinary program to promote criminal justice capacity-building.”⁶

Post-2015 Agenda: Institutional Accountability is Key

Police, prosecutors, judges and corrections officers hold positions of power within their societies and without internal and external accountability mechanisms, a high risk for abuse and impunity continues to exist. Regime changes in host countries and political appointments that accompany them also pose serious challenges to the continuity of public administration reform processes supported by the UN and other international actors. The 2013 “Report of the High Level Panel of Eminent Persons on the Post-2015 Development Agenda”⁷ underlines that transparent and accountable public institutions should be incorporated into the new international development agenda since they constitute a pre-condition for sustainability, especially because they are expected to help prevent the theft and waste of natural resources. A coherent and coordinated UN approach to rule of law assistance also requires a close look at the national development

strategies of host countries and at how UN rule of law assistance efforts are reflected in national and sectorial development strategies, including the allocation of adequate funding from the host countries’ national budgets. The concept of national ownership should include civil society as a key UN partner because NGOs contribute to institutional accountability by monitoring public service delivery and by promoting awareness of legal rights. UN assessments show that the contribution of civil society, for example, to improving women’s access to justice worldwide is significant.

Strengthening an Institutional Evaluation Culture

The UN system has developed a framework for evaluations and relies on results-based management and budgeting. So far, the UN does not have specific evaluation guidelines for rule of law assistance. Donors have to acknowledge that while baseline reports are crucial for monitoring and evaluation exercises that allow the UN to adjust their strategies, it takes time to produce them, given the often limited access to reliable national data in host countries. It is also difficult to evaluate the results of the UN’s rule of law activities in isolation as they are often complemented by projects and programs of other international actors. Distinguishing the exact contribution of each stakeholder might therefore prove challenging.

Conclusions

Mainstreaming the rule of law in the UN system and raising its profile in peace operations is one of the core tasks within the reform initiatives undertaken by the Secretary-General as it is closely linked with the three pillars of the UN: international peace and security, human rights and development. Important progress has been achieved through UN rule of law assistance worldwide and stakeholders who perceive that the desired impact has not been achieved should keep in mind that the situation in host countries could be worse without UN rule of law assistance. Based on decades of experience and research, a

⁶ www.unrol.org.

⁷ Available here: <http://www.post2015hlp.org/wp-content/uploads/2013/05/UN-Report.pdf>.

further review of priorities and implementation methods of UN rule of law assistance seems appropriate, specifically with regard to enabling UN peace operations to address global challenges that increasingly affect them, such as organized crime, trafficking and terrorism.

Broadening the Focus of Rule of Law

Assistance | While the emphasis on the justice chain and criminal justice systems is still important, increased efforts need to be made in legislative and law reform and in creating accountable public administrations as a pre-condition for sustainability. This focus should exist from the very beginning of a peace operation and in a development context. The “Global Dialogue on Rule of Law and the Post-2015 Development Agenda” which will take place in September 2013 in New York offers an opportunity to review the current priorities and implementation methods of UN rule of law assistance.

Monitoring and Evaluation | Although UNDP is in the process of developing a user’s guide to measuring rule of law, justice and security programs in development settings, a common language and principles for the evaluation of rule of law activities remain to be established for all relevant UN entities, as recommended by the recent Secretary-General’s report. Donors also need to be aware that rule of law experts in missions are not professional project managers and evaluators *per se*. This technical expertise and the funds to carry out monitoring and evaluation have to be made available to the rule of law components of peace operations, as well as funds to build host country capacities on data collection and analysis.

Knowledge Management and the Global Focal

Point | There is a growing consensus in the UN on the need for better knowledge management to ensure that successful models of rule of law assistance are disseminated and can be replicated in different national contexts and to prevent unsuccessful or ineffective activities from being repeated. The GFP should have a strong role in

facilitating the exchange of information between the missions and contribute to the work of DPKO’s *Best Practices Section*. Experience shows that the conclusions of important research do not always trickle down to the field level. The GFP should contribute to communicating and discussing research recommendations at the adequate institutional levels within the UN and provide guidance on their applicability in the field.

Beyond the UN – Opportunities for an International Dialogue on Rule of Law Assistance |

The UN, the EU and the OSCE are the main international organizations providing rule of law assistance in post-conflict situations. The common denominator of their rule of law assistance is support to strengthening criminal justice systems. Information exchange on rule of law assistance takes place to a certain extent, especially between the EU and the UN, but so far, no systematic dialogue on strategies, implementation methods and lessons learned exists. Promoting regular meetings on the operational and political level would benefit the conceptual development of the rule of law assistance of all three organizations.

Building Rule of Law Capacity in the Middle East and North Africa (MENA) |

Regional organizations such as the *League of Arab States (LAS)* should be assisted in their efforts to strengthen civilian capacities for rule of law assistance in the MENA region. While the *African Union (AU)* has already started a process to develop a roster for the civilian component of its *Standby Force (ASF)*, the debate within the LAS on how to mobilize civilian experts is still in its initial stages. The fragile situation in many of the countries in the MENA region urgently requires regional and local technical experts familiar with Islamic law to enhance a sense of national ownership of the rule of law reform processes in these countries.

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