NEW VOICES: National Perspectives on Rule of Law Assistance
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By Asha-Rose Migiro, Deputy Secretary-General of the United Nations

To date, the voices of national actors have largely been absent from the global discussion on rule of law assistance. Indeed, it is widely acknowledged that rule of law assistance has often been piece-meal and donor-driven, resulting in conflicting approaches to developing justice and security institutions. Short-term, and sometimes superficial, gains have often been made at the cost of longer-term, sustainable reform. Also, assistance has suffered from a lack of strategic planning and coherence given the range of issues and the large number of stakeholders involved, thereby reducing impact. It is critical that we now address such challenges, and ensure that assistance is provided based on local needs and priorities. For the United Nations, it is essential that national perspectives be placed at the centre of all efforts to strengthen the rule of law at the national level in order to make support more strategic and effective.

In compiling this publication, we have benefited from the contributions and viewpoints of rule of law policy-makers and practitioners from across Africa, Asia, the Caribbean, Europe, the Middle East, and South America. It builds upon the call previously made by Secretary-General BAN Ki-moon for “a forum for national actors from recipient countries to express their perspectives on the effectiveness of rule of law assistance”¹. The insights that these national experts have provided, through individual articles and common conclusions and recommendations emanating from related workshops, indicate that national stakeholders, the United Nations and development partners all need to take concrete steps to deliberately, collaboratively and systematically improve the implementation of rule of law assistance. As such, they have the potential to appropriately inform rule of law policy makers in the future.

I am grateful to the national policy-makers and practitioners involved in this process for sharing, based on their experience, concrete views on enhancing rule of law assistance in a thoughtful and candid manner. I am confident that they will play an important role in the effort to promote the report and its recommendations to a broader audience of actors who

¹ United Nations Secretary-General 2008 report on ‘Strengthening and coordinating United Nations rule of law activities’
similarly work on rule of law assistance, both national and international alike. Strengthening the rule of law involves long-term commitment and diverse challenges; with leadership at the national and international levels, as well as a joint vision, these challenges can and will be met. Now, more than ever, it is critical that we succeed as a community in improving the quality and the effectiveness of rule of law assistance delivered globally.

Asha-Rose Migiro  
Deputy Secretary-General  
United Nations
EXECUTIVE SUMMARY

It is now widely recognized that the advancement of the rule of law is essential to the maintenance of peace and security, the realization of sustainable development, and the protection of human rights and fundamental freedoms. Rule of law assistance is a growing area of demand and significant experience has been accumulated in this field over the past 20 years. Yet, despite the centrality of the rule of law to our challenging global agenda, rule of law assistance is still too often executed in an ad hoc manner, designed without proper consultations with national stakeholders, and absent exacting standards of evaluation. A new perspective on rule of law assistance delivery is clearly needed.

The United Nations hosted a consultative process in New York resulting in this report, entitled *New Voices: National Perspectives on Rule of Law Assistance*. Sixteen national rule of law experts engaged in rule of law reform in 13 countries and regions, joined representatives from the United Nations system and partner countries to offer their respective views on how rule of law assistance can be better channeled to deliver results. The overall aim is to enhance dialogue between rule of law assistance providers and rule of law reformers in countries with a view to placing national perspectives at the centre of rule of law assistance.

This report outlines the following set of recommendations, corresponding to four major common conclusions which emerged from the consultative process. The national experts widely agreed that rule of law assistance is enhanced where: 1) national actors experience greater ownership over rule of law programmes; 2) local stakeholders are empowered; 3) assistance is coordinated and coherent; and 4) meaningful evaluations and assessment of impact are conducted. These common conclusions are based on the personal views and experiences of the national experts with rule of law assistance as articulated in the Voices section of this report.

It is hoped that the common conclusions and recommendations formulated by this informal forum of experts will serve as an important turning point towards a more effective approach to rule of law assistance. A clear call emerged for national rule of law policy-makers and experts and donor partners to come together to develop an internationally-recognized framework guiding rule of law assistance.
Common Conclusions and Recommendations

1. Where national leadership takes greater ownership over rule of law programming, greater commitment to implementing reform efforts is experienced. Thus,

   National partners should commit to:

1.1 Undertake a greater leadership role in rule of law programme design, funding, implementation, and evaluation;
1.2 Ensure that rule of law assistance is grounded in the needs of society and responds to the circumstances of the people; and
1.3 Empower credible and legitimate leaders and establish institutional incentives for undertaking reform and to enhance the efficacy of rule of law assistance.

   Donor partners should commit to:

1.4 Prioritize the strengthening of national capacities to design rule of law strategies, draft legislation, manage rule of law programmes, conduct evaluations and undertake research to enhance the effectiveness and durability of rule of law assistance; and
1.5 Rely more on local expertise and local consultants to address technical rule of law issues.

2. Rule of law assistance that draws on and empowers national stakeholders leads to a stronger enabling environment, wider political support, and more sustainable programmes. Thus,

   National and donor partners should commit to:

2.1 Promote public dialogue on legal rights and rule of law reform to empower local communities, civil society and marginalized groups to play a more active role in efforts to strengthen the rule of law;
2.2 Empower women to engage in rule of law development and target reform to meet the particular rule of law needs of women and girls; and
2.3 Commit further resources and research to develop country-specific approaches to either harmonize or unify informal and formal legal systems.

   Donor partners should commit to:

2.4 Develop detailed understanding of the social, political and cultural context in consultation with national stakeholders in designing rule of law programmes and assistance agendas.

3. Coordination and coherence in rule of law assistance leads to more efficient use of resources, wider understanding of priorities, and rational implementation of reform measures. Thus,
National and donor partners should commit to:

3.1 Apply a sector-wide approach, where applicable, and clearly articulate rule of law priorities and plans for sequencing rule of law interventions; and

3.2 Develop accountability mechanisms, pooled funding mechanisms, and partnership agreements to foster coordinated and coherent approaches to rule of law assistance.

Donor partners should commit to:

3.3 From the outset of engagement, establish nationally-led donor coordination and consultation mechanisms, including non-state actors, which direct assistance and funding, based on national rule of law strategies and priorities.

4. Greater efforts must be undertaken to measure the effectiveness of rule of law assistance in order to increase learning about successful methods and to justify new approaches to improve results. Thus,

National and donor partners should commit to:

4.1 Provide early and ample resources for in-depth and independent evaluations, based on solid baseline data and disseminate the results to all stakeholders in the national language; and

4.2 Recognize that strengthening the rule of law is a long-term endeavour; funding strategies must contemplate longer horizons for sustainable impact to take hold.
INTRODUCTION

Background

The rule of law is indispensable to meeting a vastly complex set of challenges that threaten peace and security, economic and social progress and the wider enjoyment of human rights and fundamental freedoms. While rule of law assistance has developed significantly over the past 20 years, the imperative remains to ensure that international rule of law interventions deliver results for developing countries and populations. A growing body of evidence suggests that national perspectives on rule of law interventions must be given more careful consideration for international rule of law assistance to achieve greater impact. To this end, the following report, *New Voices: National Perspectives on Rule of Law Assistance*, offers a platform for leaders at the national level to speak candidly about the impact that rule of law assistance has made in their countries and the lessons they have drawn from this experience. As they outline their experiences and delineate the way forward, what emerges is a clarion call for change in the way rule of law assistance is provided.

The United Nations is engaged in an ongoing process to strengthen the rule of law at the national and international levels. The rule of law is a concept at the very heart of the Organization’s mission. It refers to 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 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.

In follow up to the 2005 World Summit, the Secretary-General established the Rule of Law Coordination and Resource Group (the Group), chaired by the Deputy Secretary-General and

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2 *Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies, S/2004/616, para. 6; See also Guidance Note of the Secretary-General on UN Approach to Rule of Law Assistance.*
supported by the Rule of Law Unit in the Executive Office of the Secretary-General. The Group acts as Headquarters’ focal point for coordinating system-wide attention on the rule of law so as to ensure quality, coherence and coordination at both the global and the country level. It is an inter-agency mechanism consisting of the Principals of the Department of Political Affairs (DPA), the Department of Peacekeeping Operations (DPKO), the Office of the High Commissioner for Human Rights (OHCHR), the Office of Legal Affairs (OLA), the United Nations Development Programme (UNDP), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children’s Fund (UNICEF), the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and the United Nations Office on Drugs and Crime (UNODC).

The Group is tasked by the Secretary-General to, among other things, assist in the development of overall strategies for rule of law assistance; to help ensure the Organization responds effectively and coherently to requests from States for assistance; and to facilitate contact between United Nations actors involved in rule of law programming and Member States, regional and inter-governmental organizations, donors, and non-governmental organizations.³

In 2004, the Secretary-General recognized that “ultimately, no rule of law reform, justice reconstruction, or transitional justice initiative imposed from the outside can hope to be successful or sustainable. The role of the United Nations and the international community should be solidarity, not substitution.”⁴ Building on the Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies,⁵ the United Nations approach to rule of law assistance is based on common guiding principles – prepared by the Group and promulgated by the Secretary-General – that give definition to the Organization’s efforts in development, peace and security and human rights. The key principles include commitment to national ownership and support to national reform constituencies as outlined in the Guidance Note of the Secretary-General on the UN Approach to Rule of Law Assistance.

³ See Report of the Secretary-General on Uniting our strengths: Enhancing United Nations support for the rule of law, A/61/63, para. 48.
⁵ Ibid.
At the national level, the United Nations undertakes a vast array of activities to support Member States to strengthen the rule of law, including operational and programmatic support in all contexts, from crisis, peacemaking, peacekeeping, post-crisis and peacebuilding, to long-term development. The scope of engagement is wide and includes assessments, programme management, technical cooperation and capacity development carried out in accordance with national policies, priorities and plans.⁶

The United Nations works to support a rule of law framework at the national level, which includes a constitution, or its equivalent, as the highest law of the land; a clear and consistent legal system, and implementation thereof; strong institutions of justice, governance, security and human rights that are well-structured, financed, trained and equipped; transitional justice processes and mechanisms where appropriate; and a public and civil society that contributes to strengthening the rule of law and holds public officials and institutions accountable. This framework supports the core of a society in which individuals feel safe and secure, where disputes are settled peacefully and effective redress is available for harm suffered, and where all who violate the law, including the State itself, are held to account.

**Objectives and Process**

A critical component of the United Nations rule of law approach is the pursuit of strong and durable partnerships with all stakeholders to promote shared objectives and coherent programming. The most important partnerships are with the national rule of law stakeholders in countries receiving assistance. In his 2008 report on Strengthening and coordinating United Nations rule of law activities, the Secretary-General notes that, “the voices of national actors have been notably absent from the global discussion on rule of law assistance, which has been replete with international experts. Government and civil society stakeholders within recipient countries can provide substantive insight on the dynamics underlying key concepts such as national ownership. Moreover, they might question fundamental aspects of current approaches and suggest innovations to improve the likelihood of success.”⁷ The Secretary-

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⁶ See Guidance Note of the Secretary-General on UN Approach to Rule of Law Assistance.

General stresses that the United Nations can help to create space for the perspectives of national actors to be expressed candidly and robustly to the international community.

This report, *New Voices: National Perspectives on Rule of Law Assistance*, provides a platform for the voices of national experts involved in strengthening the rule of law in developing and conflict-affected countries, in order to enrich the debate on the effectiveness of rule of law assistance. It is the outcome of a consultative process which served as a forum for national actors from recipient countries to express their perspectives on the effectiveness of rule of law assistance with a view to issuing a report, as called for by the Secretary-General.

Sixteen high-level rule of law policy-makers and practitioners from across Africa, Asia, the Caribbean, Europe, the Middle East, and South America were invited by the Deputy Secretary-General to attend two workshops held on 15 – 16 December 2009 and 27 – 28 May 2010, organized by the Rule of Law Unit on behalf of the Rule of Law Coordination and Resource Group. During the workshops, these national experts joined members of the Group and representatives from international partners to explore two main themes in the discourse on rule of law assistance: national ownership and measuring the effectiveness of assistance. In this context, the importance of effective coordination and coherence sustainability, as well as local stakeholder empowerment also emerged as compelling themes.

The report consists of two main sections. The first section, *Common Conclusions and Recommendations*, provides a succinct summary of the most compelling and constructive proposals to emerge from discussions and reflects many of the insights found throughout the articles on national perspectives presented during the workshops. The second section, *Voices*, is a collection of these individual articles presented by the national rule of law practitioners in their personal capacities. These brief articles reflect experiences of reform efforts in a range of rule of law sub-sectors, including the judiciary, civil society, security, corrections, law and justice. This report, however does not explore the often complex technical questions related to implementation of programmes in these specific substantive sectors. Instead, it gives prominence to broader policy issues affecting how rule of law assistance is delivered across all sectors.

The critical insights and recommendations contained in this report are put forward by the national experts in a cooperative spirit. It is hoped that their proposals will help enhance
efforts of all national stakeholders and international assistance providers to develop more effective responses to rule of law challenges globally and at the country level.

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The United Nations is grateful to the following individuals for contributing to this report and bringing their significant expertise and experience to the discussions:

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The views expressed in this report do not necessarily reflect the views of the United Nations.
PART I: COMMON CONCLUSIONS AND RECOMMENDATIONS

This section provides an overview of common conclusions and recommendations that emerged from the consultative process on national perspectives. The findings distill the insights of a diverse pool of prominent national rule of law policy-makers and practitioners from Cambodia, the Caribbean, Kenya, Liberia, Nepal, Peru, Uganda, Nigeria, Occupied Palestinian Territory, Rwanda, Sierra Leone, Timor-Leste, and Ukraine. Their personal views and experiences on rule of law assistance in their countries and regions are offered in more detail in the Voices section that follows.

Despite the diversity of actors and countries, and the range of rule of law sub-sectors represented (e.g. prisons/corrections, security and justice, civil society, legal aid, and judiciary), a consensus emerged around four common conclusions and a set of corresponding recommendations outlined below. These conclusions and recommendations reflect the understanding that both national and donor partners have equally important roles to play in ensuring that rule of law assistance is optimized.

The national experts widely acknowledged that the rule of law is a complex field, requiring significant investments of national leadership, political will, and international assistance. Further, the national experts acknowledged that the rule of law field spans the development, security and legal disciplines and that assistance should involve independent institutions of government and many national stakeholders, including bar associations and the general public. It was fully agreed that putting national perspectives at the centre of rule of law assistance will do much to strengthen responses to rule of law challenges at the national level.

As noted above, the specific recommendations to deliver more effective rule of law assistance fall under the rubric of four common conclusions. These recognize that rule of law assistance is enhanced where: 1) national actors experience greater ownership over rule of law programmes; 2) local stakeholders are empowered; 3) assistance is coordinated, coherent and sustainable; and 4) meaningful evaluations and assessment of impact are conducted.
1. **Enhance national ownership**

The national experts unanimously agreed that where national leadership takes greater ownership over rule of law programming, greater commitment to implementing reform efforts is experienced. National ownership increases stakeholder support for reform programmes, accountability for results and sustainability. Recognizing that rule of law programming often has political implications, increased national ownership over programmes also equates to a lighter foreign footprint, and thus conveys more national legitimacy for rule of law reform efforts.

**National leadership should ensure that rule of law assistance is grounded in the needs of society and responds to the circumstances of the people.** Especially where reform initiatives challenge entrenched interests of the elite, strong and sustained national-level leadership is required. Such leadership can emerge from many parts of society, and can also be effective when coming from outside the political sphere. It is equally important for donor partners to appreciate that even dedicated national leadership might face a crisis of legitimacy in circumstances where reform is highly politicized, imposed by, or merely perceived to be imposed by, external forces.

At the same time, experience underscores the important role the international community plays in managing “spoilers” who oppose reform platforms even where strong national leadership supports rule of law development. In Sierra Leone, for example, the substantial engagement of senior United Nations representatives and ambassadors of international partners in supporting reform, including through high-level Steering Committees, helped significantly to keep reform efforts on track and overcome the negative impact of “spoilers.”

**National partners should empower credible and legitimate leaders and establish institutional incentives to enhance the efficacy of rule of law assistance.** Strong national leadership is also required to successfully introduce and mainstream reform efforts within rule of law institutions. In the Eastern Caribbean, for example, proposals for change in civil procedure rules were first met with skepticism and indifference among many in the judiciary and civil service. Due in part to this skepticism, national justice leaders, in particular the Chief Justice, began a sustained advocacy campaign in support of the planned reforms specifically
empowering change agents within the institutions who were supportive of reforms. This led to the smooth integration of the new system, which today is credited with great efficiencies.

In addition, national governments can illustrate their commitment to leadership of rule of law development by joining donor partners in investing financial resources in reform programmes. In Kenya, for example, the government is the single largest source of funding for the sector-wide rule of law programme. It also maintains a sector coordination department managed through the Ministry of Justice.

Ultimately, national leadership entails setting agendas and steering the course of reform. A common understanding of programmatic goals is the first step to effectively managing the expectations of both national and international actors. An informed national strategy, for example, can be key to the ownership and coherence of efforts, helping to eliminate duplication of efforts and cultivate agreements on the goals and purposes of assistance and the roles and responsibilities of all stakeholders. National perspectives from Uganda, Sierra Leone, South Africa, and Kenya point to nationally-owned strategies and plans developed with the support of the international community as a key element of the success of reform efforts. In contrast, in some countries which lack nationally and internationally-agreed reform strategies and plans, such as Nepal, the perception is that rule of law assistance has not taken a concrete direction or elicited results. The judiciary in Nepal considers international rule of law assistance to be guided more by the competence or convenience of the donors than the needs of the national stakeholders.

**National rule of law partners should undertake a greater leadership role in rule of law programme design, funding, implementation, and evaluation.** Indeed, strong rule of law programmes are based on detailed assessments of national and local contexts (as well as regional contexts), capacities and needs. Ideally, assessments should be undertaken by an actor perceived to be credible and legitimate to both the national and international communities. In Sierra Leone, robust efforts to develop national capacity to manage and implement rule of law programmes are identified as a best practice, and critical to the ownership and perceived effectiveness of reform. In Nigeria, by contrast, the fact that international consultants still primarily develop rule of law assessments, programmes and evaluations is identified as a key impediment to the credibility and acceptance of reform efforts.
While rule of law development involves providing international expertise to strengthen institutions and reform efforts, particularly in fragile, weak or conflict-affected States, it is critical to ensure from the outset that the capacity development needs of national actors are met in the interest of long-term nation-building. **Where possible, donor partners should rely on local expertise and local consultants to address technical rule of law issues.** In Cambodia, the widespread employment of short-term international consultants by donor partners led to the piecemeal application of legislative reform efforts. The impact of the uncoordinated efforts of multitudes of international consultants is still being felt today, fifteen years after reform efforts began, as national legal authorities struggle to interpret sometimes conflicting bodies of law and fill gaps in national capacity to draft new legislation and ensure its implementation. The primary goal of technical assistance should be to impart capacity in all areas of rule of law programming, including the capacity to lead law reform efforts and draft legislation.

**Donors should prioritize the strengthening of national capacities to design rule of law strategies, draft legislation, manage and implement rule of law programmes, conduct evaluations and undertake research to enhance the effectiveness and durability of rule of law assistance.** Given that the scope of such capacity-building is wide, rule of law development should not be viewed as a linear process; patience and flexibility on the part of both national and international stakeholders is required. Such capacity-building efforts pay long-term dividends as they ensure sustainability when assistance is withdrawn or postponed.

### Recommendations

**National partners should commit to:**

1.1 Undertake a greater leadership role in rule of law programme design, funding, implementation, and evaluation;

1.2 Ensure that rule of law assistance is grounded in the needs of society and responds to the circumstances of the people; and

1.3 Empower credible and legitimate leaders and establish institutional incentives to enhance the efficacy of rule of law assistance.

**Donor partners should commit to:**

1.4 Prioritize the strengthening of national capacities to design rule of law strategies, draft legislation, manage and implement rule of law programmes, conduct evaluations and undertake research to enhance the effectiveness and durability of rule of law assistance; and
1.5 Rely more on local expertise and local consultants to address technical rule of law issues.

2. Empower local stakeholders and beneficiaries

Beyond national leadership, rule of law assistance that draws on and empowers local stakeholders and beneficiaries leads to a stronger enabling environment, wider political support, and more sustainable programmes. It is primarily at the community and local level that stakeholders develop and institutionalize notions of change, catalyze legitimate community-level leadership, and develop faith in the institutions of governance. A strong demand for rule of law development supported by a wide range of local stakeholders is necessary for rule of law assistance to be successful. Much of the success of the transformation of post-apartheid South Africa into a constitutional state, based on the rule of law, is attributed to the strength of popular demand for law reform and the widespread involvement in the reform process. Indeed, national and donor partners should promote public dialogue on legal rights and rule of law reform to empower local communities, civil society and marginalized groups to play a more active role in efforts to strengthen the rule of law.

Strong local support comes only after substantial efforts are made at building relationships. Indeed, the willingness of different individuals and groups within a society to support international assistance in the rule of law area is an indicator of meaningful national ownership. Thus, garnering support involves significant levels of public consultation with local beneficiaries. It is important to invest in the dissemination of information to the many diverse groups and communities within a population. Public education on rights and responsibilities as well as on law reform efforts can help ensure that beneficiaries are able to play an active and enduring role in efforts to strengthen the rule of law. In Uganda, where awareness raising activities around law reform were reportedly not prioritized, local stakeholders are said to see rule of law programming efforts as merely a means to benefit the rich and the middle classes. Consequently, support for rule of law reform efforts is considered to be unenthusiastic among poor and rural communities.

Where local beneficiaries and stakeholders have a clear stake in the outcomes of programming, they are more likely than outsiders to develop enduring solutions to implementation challenges. Local and community stakeholders offer important insights into
local customs and needs in detail that may escape international and national-level programme designers. Thus, donor partners should commit to develop detailed understanding of the social, political and cultural contexts in consultation with national stakeholders in designing rule of law programmes and assistance agendas.

It is important that efforts to build support for rule of law interventions extend beyond a superficial engagement of “civil society” or other organized groups. In some circumstances, civil society organizations and non-governmental organizations can be driven by more narrowly defined political agendas. Nonetheless, local beneficiaries and civil society should be directly involved in the design, implementation and evaluation of rule of law reform programmes. In Peru, NGOs have not only ensured local ownership of rule of law programmes but also their sustainability. Peruvian NGOs have also played a key role in monitoring government performance, a role traditionally played by political parties in other contexts.

Successful rule of law strategies, such as those developed in Sierra Leone and Liberia, often prioritize access to formal justice institutions at the local level to build widespread support for rule of law development. In Peru, Uganda and Liberia, international and national-level rule of law actors engage informal justice mechanisms grounded in extensive local consultations. In these various contexts, it is essential to consider how informal justice mechanisms can be strengthened to respect the rights of individuals, including women and girls. As rule of law practitioners deepen their engagement, national and donor partners should commit further resources and research to develop country-specific strategies to either harmonize or unify informal and formal legal systems.

In many situations, effective strategies for rule of law development specifically empower women to engage in the rule of law sphere. In Palestine, the empowerment of women has been an extremely important element to strengthening rule of law institutions. Empowering women has also involved increasing the protection of women’s rights and making rule of law institutions responsive to their needs, particularly where violence against women and girls is pervasive. In Liberia, for example, rule of law reform efforts include the development of special prosecution units to address gender based violence. The Liberian government also recognizes that more needs to be done to recruit women for training in justice and security sectors so as to improve the gender balance and increase the participation of women in the
maintenance of peace and security in the country. In the Occupied Palestinian Territory, Liberia and elsewhere, *national and donor partners should empower women to engage in rule of law development and target reform to meet the particular rule of law needs of women and girls.*

**Recommendations**

National and donor partners should commit to:

2.1 Promote public dialogue on legal rights and rule of law reform to empower local communities, civil society and marginalized groups to play a more active role in efforts to strengthen the rule of law;

2.2 Empower women to engage in rule of law development and target reform to meet the particular rule of law needs of women and girls; and

2.3 Commit further resources and research to develop country-specific strategies to either harmonize or unify informal and formal legal systems.

Donor partners should commit to:

2.4 Develop detailed understanding of the social, political and cultural context in consultation with national stakeholders in designing rule of law programmes and assistance agendas.

3. **Ensure coordination and coherence**

Given the multi-sectoral nature of the rule of law field, national actors and donor partners must jointly and separately enhance coordination and coherence as they plan and implement their interventions. *Coordination and coherence in rule of law assistance leads to more efficient use of resources, greater sustainability, a wider understanding of priorities, and a more rational implementation of reform measures.* As a starting point, priorities for rule of law assistance must be clearly and jointly established, and specific plans developed which sequence rule of law interventions. *Thus, from the outset of engagement, donor partners should establish nationally-led coordination and consultation mechanisms including non-state actors, which direct assistance and funding, based on national rule of law strategies and priorities.* Effective coordination involves a mutually beneficial, iterative process that goes beyond information-sharing and secures the “buy-in” to all programmes of both donor partners and national stakeholders. Unfortunately, experience to date illustrates that mechanisms are often established only after the emergence of ill-timed, overlapping and duplicative efforts.
Fluctuating power dynamics in many countries necessitates the involvement of both state and non-state actors, including the private sector, in coordination efforts. Donor partners can play a useful role by providing a neutral space for the state, civil society and other stakeholders to take part in regular coordination meetings and incentivizing intra-governmental and state-civil society coordination and cooperation. Donor partners may also be helpful in holding all parties to agreed upon deadlines and keeping reform efforts on track.

The positive role that donor partners can play, however, has often been undermined by competition among donors themselves, and a lack of commitment to meaningfully coordinate and pool funds. In Liberia, uncoordinated donor assistance led to duplicative training programmes of differing quality. In many cases, trainings in Liberia offered conflicting guidance and/or treated areas of capacity building that were high on donor agendas but low in terms of national priorities. The tendency of donor partners to frequently shift priorities for funding within the rule of law field (e.g., from gender-based violence to land laws) and to fluctuate between support for government and civil society undermines sustainable and consistent reform efforts. It is also important that donors in the rule of law field recognize their own capacity limitations, and genuinely identify comparative advantages so as to rationally share responsibility in supporting reform efforts.

National and donor partners should apply a sector-wide approach, where applicable, and clearly articulate rule of law priorities and plans for sequencing rule of law interventions. A sector-wide approach facilitates national ownership and coherence, as it binds together institutions of justice and security in an overall programme of reform. It fosters cooperation and coordination across all entities, and stimulates shared solutions to overcome problems, such as the use of common information systems. Given the institutional arrangements involved, the results from sector-wide approaches are thought to be more sustainable. In Uganda, the use of the sector-wide approach is credited with offering real opportunities for measurable improvements to the corrections sector. In contrast, the lack of a sector-wide approach in Liberia has driven uneven resource allocations across the penal chain, leaving the needs of the corrections sector unaddressed.

National and donor partners should develop accountability mechanisms, pooled funding mechanisms, and partnership agreements to foster coordinated and coherent approaches to rule of law assistance. Mechanisms that promote coordination and coherence among the
various donors and national actors involved in the rule of law field are needed to avoid turf battles and unhealthy competition. Pooled funding mechanisms help ensure balanced donor support across the sector, including in areas that have been traditionally under-funded.

There are, however, challenges related to sector-wide approaches as reflected in the experience of Kenya. Ensuring sustainable support for an active and empowered civil society in a strongly government-controlled, sector-wide mechanism can also prove to be challenging. Additionally, the reform programmes of sector-wide approaches are substantially larger and involve more partners, and thus can also be less flexible and responsive to changing circumstances, particularly in situations of national crisis or disruption in the rule of law sector. It is important to have clear partnership agreements among national and donor partners which delineate how changed circumstances, such as national crisis or political disruption and interference will be managed and the implications of changed circumstances on the programme. The sector-wide approach may require that donors maintain some flexibility in their funding of rule of law initiatives to respond to changes in the political context and shifts in political will.

A key policy concern in all efforts to ensure government coherence and coordination in reform initiatives is to avoid the risk of jeopardizing judicial independence. In the context of wide-spread abuses by the Fujimori regime, the experience in Peru indicates that donor partners should choose not to engage governments where the political commitment to an independent judiciary has been severely broken. Ensuring that the judiciary maintains a degree of control over its own reform plans and financial resources can be an important tool to preserving judicial independence. At the same time, judicial independence should not be used as a shield against reform, accountability or the imperative for the judiciary to constructively work with other actors in the justice system to solve shared challenges.

**Recommendations**

National and donor partners should commit to:

3.1 Apply a sector-wide approach, where applicable, and clearly articulate rule of law priorities and plans for sequencing rule of law interventions; and

3.2 Develop accountability mechanisms, pooled funding mechanisms, and partnership agreements to foster coordinated and coherent approaches to rule of law assistance.

Donor partners should commit to:
3.3 From the outset of engagement, establish nationally-led donor coordination and consultation mechanisms, including non-state actors, which direct assistance and funding, based on national rule of law strategies and priorities.

4. **Measure effectiveness of assistance**

Greater efforts must be undertaken to measure the effectiveness of rule of law assistance in order to increase learning about successful methods and to justify new approaches to improve results. Too little attention and too few resources have been dedicated to adequately measuring impact and effectiveness of programming. In Kenya, for example, the monitoring and evaluation framework remains inadequate; overly-ambitious work plans exaggerate what can be implemented in a specific period, while monitoring and evaluation of past performance has not been used sufficiently to guide future performance.

**National and donor partners should provide early and ample resources for in-depth and independent evaluations based on solid baseline data and disseminate the results to all stakeholders in the national language.** The evaluation of rule of law efforts should be prioritized and understood as a process, not an event. It is essential to invest in the collection of solid baseline data, including administrative and perception surveys, at the design stage and before the implementation of programmes. The use of perception surveys in places such as Sierra Leone has proven useful in helping to adjust and guide rule of law programme goals.

National and donor partners should collectively develop the indicators which will be used to assess progress and define a detailed agreement on how they will be evaluated. Truly independent experts should be employed to conduct evaluations of programmes in close cooperation with programme beneficiaries, to ensure unbiased and credible programme evaluations. Donor partner policy should require wide dissemination of evaluation reports among all stakeholders and in the national language, in order to promote learning and improvement in rule of law assistance.

**National and donor partners should recognize that strengthening the rule of law is a long-term endeavour; funding strategies must contemplate longer horizons for sustainable impact to take hold.** Rule of law programmes should be lengthened to account for stakeholder inputs, to generate trust between rule of law officials and beneficiaries, and to ensure that professional values and skills are instilled and sustainable. The experience of Timor-Leste provides important lessons in this regard. The internal security crisis which took
place in 2006, involving a split in Timor-Leste’s nascent military and police forces, might not have occurred but for the short time-frame allotted to security sector reform and a proper evaluation of its impact. Useful shorter-term methods for illustrating results do exist, such as pilot or model projects.

Ensuring that government and donor agencies agree on mutual accountability mechanisms is crucial to measuring the impact of assistance, especially through the use of basket funds and budget support. Investment of significant funds in developing national capacity to maintain oversight of assistance and spending, as well as to conduct research and empirical study on the impact of reform efforts is an under-explored avenue of assistance in the rule of law field. In South Africa, Uganda and Nigeria, among others, the lack of international support for developing national research and empirical study capacity in the rule of law area was identified as an important gap in efforts to evaluate the impact of reforms.

**Recommendations**

National and donor partners should commit to:

4.1 Provide early and ample resources for in-depth and independent evaluations based on solid baseline data and disseminate the results to all stakeholders in the national language; and

4.2 Recognize that strengthening the rule of law is a long-term endeavor; funding strategies must contemplate longer horizons for sustainable impact to take hold.
This section is a collection of individual articles presented by sixteen national rule of law policy-makers and practitioners based on their personal views and experiences of rule of law assistance in their countries and regions. The national perspectives expressed hereafter are intended to constructively enhance the dialogue between donor and national partners on improving the provision of rule of law assistance, and to highlight the good practices in the rule of law field.
Rule of Law Assistance: the Uganda Prisons Perspective
By Dr. Johnson O. R. Byabashaija, Commissioner General of Prisons, Uganda

In this article, the Commissioner General of Prisons in Uganda provides an overview of the efforts of the government of Uganda and donors to develop the rule of law and due process in Uganda. Based on a sector-wide approach, rule of law efforts have achieved some notable advances in Uganda, including reforms to prisons and the establishment of good governance and accountability institutions. While challenges remain, it is important to move forward with strengthening the rule of law in Uganda.

Introduction

The period from 1966 to 1986 in Uganda can be described as a time of total breakdown of the rule of law. This period was characterized by State inspired violence, three coup d’états, the absence of law and order, a disputed national election, economic collapse and civil strife. Attempts to re-establish the rule of law began with the constitution-making exercise in 1992, which led to the promulgation of the new constitution in 1995. In 1999, under an initiative of the government of Uganda and donors, a sector wide approach to planning and budgeting was established. This marked the birth of the Justice, Law and Order Sector (JLOS).

JLOS brings together the Judiciary, Ministry of Justice and Constitutional Affairs, Ministry of Internal Affairs, Uganda Police Force, Uganda Prisons Services, Judicial Service Commission, Directorate of Public Prosecutions, Uganda Law Reform Commission, Local Council Courts, Probation Services, Uganda Human Rights Commission, Uganda Law Society, Tax Appeals Tribunal, Law Development Centre and Centre for Arbitration and Dispute Resolution. This joint structure enables communication, coordination and cooperation among all stakeholders in the administration of justice and maintenance of law and order.

The sector is supported by various donors also referred to as Development Partners, including Denmark, Ireland, Netherlands, Norway, Sweden, United Kingdom, United States, Germany (GTZ), Australia, the European Union and the World Bank. The goal of these Development Partners is to support the JLOS to attain its strategic objectives, to:

- Promote and uphold the rule of law and due process;
- Foster a human rights culture across all JLOS institutions;
- Enhance access to justice for all, particularly for the poor and marginalised groups;
- Promote safety of persons and security of property; and
- Enhance JLOS contribution to economic development.  

A number of accountability mechanisms have been established to hold both donors and the government of Uganda accountable for the results of their work. These include a JLOS monitoring and evaluation structure, which comprises an interface between the government of Uganda, donors and JLOS during the development of budgets and work plans. JLOS undertakes progress reporting to the Ministry of Finance on a quarterly and annual basis, as a trigger for the release of funds. JLOS also provides semi-annual progress reports to enable Development Partners to assess the sectoral progress of jointly-agreed undertakings. An international audit firm undertakes audits of accounts under the Sector-Wide Approach (SWAP) Development Fund. Annual review meetings that result in joint undertakings/Aide Memoires and a National Justice Forum are also held. These fora bring together the actors within JLOS Institutions, including leadership levels (Ministers and Ministers of State, Chief Justice and Permanent Secretaries), the JLOS Development Partners group, parliamentarians, and civil society organisations. The JLSO Task Force of technical offices and Development Partners undertake joint monitoring and evaluation visits every six months.

**Effectiveness of external assistance**

Donor assistance has contributed to some successful rule of law advances in Uganda. In my view, “rule of law” describes a situation in which the majority of the people in a sovereign entity agree to resolve disputes based on a set of laws and rules, and through established institutions that respect each other’s authority and responsibilities. As a result of reform programmes, good governance and accountability institutions have been established, including the Inspector General of Government, Public Accounts Committee of Parliament (chaired by a Member of the Opposition), Ministry of Ethics and Integrity, Uganda Human

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The Partnership Principles of 1999 lay the foundation for the relationship between the Government of Uganda and Development Partners. They provide for inclusion of operations under a Sector Wide Approach (SWAP). The Justice Law and Order Sector Investment Plan (SIP) is another reference for the Development Partners goals.
Rights Commission, Autonomous Office of the Auditor General and Anti-Corruption Division of the High Court and Village Barazas.

Regular and periodic national elections have been held in Uganda since 1996. Institutions for the administration of both criminal and commercial justice across the country have been strengthened, including through the establishment of specialized divisions of the High Court. Access to justice through the use of courts has been enhanced, through the creation of more magisterial areas (increased from 27 to 38), the establishment of 12 High Court circuits upcountry, the adoption of Alternative Dispute Resolution mechanisms, the enactment of the Community Service Act, and the establishment of Local Council Courts.

Adopting a sector-wide approach fosters cooperation and coordination across all the entities involved in the administration of justice. Accordingly, the prisons and corrections area has received equal attention from the international community as other parts of the justice, law and order sector. As a result, I am pleased that prisons have been well supported in Uganda and conditions in prisons have improved. The Prisons Service has been enabled to formulate its Strategic Investment Plan, which gives it a strategic direction. As a consequence of our efforts, human rights monitoring of prisons indicates that abuses in prisons have decreased. Congestion in prisons has reduced from over 500% to approximately 200%, due to increased construction and renovations. There was a reduction in remand prisoner population from over 75% to 54%. More prisons personnel are being recruited, improving the prison officer to prisoner ratio from 1:12 to 1:5. More trucks have been purchased to transport inmates to courts, thus reducing the distances inmates walk to courts. The Prisons Law of 1964 was also revised and became the New Prisons Act (2006), domesticating the UN Standard Minimum Rules for Treatment of Offenders. The United Nations Office on Drugs and Crime (UNODC) has been requested to carry out a comprehensive assessment of the Uganda Prisons Service, to inform existing gaps in the Prison Service and the way forward.

**Lessons learned and remaining challenges**

Uganda’s experience illustrates a number of conditions needed for rule of law assistance to be effective. Governments and their people must be willing to establish the rule of law, must exercise ownership over their development policies and strategies, and must coordinate development action. Respecting the need for local ownership, donors should base their support on recipient countries’ national development strategies, policies, institutions and
procedures. Where a number of donors are providing assistance, donors must be harmonized, transparent and work collectively in their efforts. The government, its partners and donors must be accountable for the results.

It is essential that donors prioritize their assistance after a comprehensive and carefully carried out needs assessment. In Uganda, there has been too much insistence by donors on prioritizing processes over the structures, quality and quantity gaps within the rule of law institutions. Currently challenges include the low number of judges, prosecutors, policemen, and prison officers, which is at far below the acceptable levels. For example, the ratio in Uganda of policeman to the population is 1:900. Prisons also need to be geographically aligned to courts and police stations to have a complete and efficient service delivery. As a result of these gaps, every justice institution is overwhelmed by the workload. A comprehensive review involving the citizenry and the justice institutions needs to be done to ensure public engagement on rule of law development and to provide solutions to tackle current challenges that are rooted in local reality and knowledge.

Local conditions within Uganda provide ongoing challenges to rule of law development. Greater attention should be given to generating the political will in Uganda to pursue sustainable rule of law reform. National legal and justice mechanisms remain weakened by the consequences of civil strife and neglect, with a lack of capacity particularly in the human resources of justice institutions. Past structural adjustment programmes have negated efficiency gains in some government institutions, which are still feeling the effects of these policies. There is also the need to strengthen what is currently weak infrastructure, especially in terms of police stations and prisons. The majority of prisons were constructed during the colonial period (ie. 1920s to 1960s). Some areas in Uganda are just emerging from civil strife, which makes progress in strengthening the rule of law challenging.

The resources available to implement the strategic objectives of the JLOS have been insufficient to date. Ultimately, however, resources can never be sufficient; what matters is the efficient use of available resources, prioritizing activities and ensuring accountability. Despite attempts to maintain accountability and measure success in rule of law programmes, the various accountability mechanisms outlined above remain weak, and need to be strengthened and supported to grow. Still to be addressed is the challenge of developing an
integrated management information system for the sector, which would facilitate informed decision-making.

Access to justice for the population overall remains limited in Uganda, with legal representation available largely only to the rich and middle classes. The population is for the most part disengaged from efforts to strengthen the institutions of justice and order, due to the lack of broad-scale civic education throughout the country. This has resulted in the perception that the population as a whole is generally not in favor of rule of law development. In addition, civil society organizations require strengthening and at present, due to their lack of capacity, are unable to play a role in much needed reform.

**Way forward**

There is much that can be done to address rule of law challenges in Uganda, which is a long-term endeavor. Clear priorities for both donors and the government need to be set. A first step towards greater clarity is to strengthen the institutions of the JLOS by carrying out in-depth evaluation of the programme to date, and re-prioritizing activities accordingly. In my view, the UN could be of assistance to this evaluation effort.

In addition, there is a need to accelerate the adoption of critical laws such as the prohibition and prevention of torture and election-related laws, and to conduct law reform in priority areas such as family justice, succession and management of estates, domestic violence, parole and life sentences.

Another priority is to address the infrastructure needs of law and order institutions in a rapid manner. A focus on strengthening human capital is essential. This should be done in a wide effort that seeks to both improve training for staff in justice institutions, and to deliver a broader campaign to increase the sensitization of citizens about their rights and the due process involved in the rule of law. Overall, it is still difficult for us in Uganda to really assess the impact of these efforts. There is thus a need to develop Ugandan capacity to carry out empirical research that evaluates the extent of effectiveness of donor assistance in rule of law development.
Conclusion

Rule of law efforts in Uganda have clearly benefited from being approached through a sector-wide lens. Conditions in prisons and corrections have improved and advances have been made in meeting human rights standards. Experience in Uganda has shown that for rule of law assistance to be effective, government, donors and, importantly, those most affected by rule of law reforms, must work together to undertake assessments and develop priorities for assistance based on local realities and needs.
Assessment of challenges faced by the small States of the Eastern Caribbean in the implementation of Rule of Law Assistance Programmes

By Dennis Byron, President of the International Criminal Tribunal of Rwanda9

and Adrian Saunders, Judge of the Caribbean Court of Justice10

In recent times a consensus has emerged that one of the most emphatic ways of assisting developing countries is to strengthen the rule of law in such States. Although, with the help of external agencies, many programmes have been implemented in the developing world geared to this end, there have been widespread concerns that these programmes are not as effective as they could be. Between 1996 and 2005 we were directly involved in the implementation of several judicial and legal reform initiatives in the small States of the Eastern Caribbean. As such we were in a good position to evaluate the effectiveness of these initiatives. In this article we briefly assess our experiences and explore the challenges that must be overcome if full value is to be had in the implementation of such programmes.

Introduction

The justice sector in the islands of the Eastern Caribbean is like no other. When one speaks of the Eastern Caribbean in this context, one refers to nine territories comprising the six independent States of Antigua and Barbuda, St. Kitts and Nevis, the Commonwealth of Dominica, Saint Lucia, St. Vincent and the Grenadines and Grenada, as well as the three British Dependent Territories of Montserrat, Anguilla and the British Virgin Islands. Together, these States are members of a relatively loose confederation called the Organisation of Eastern Caribbean States (OECS). One of the principal areas of cooperation between the OECS members is the establishment and operation of the Eastern Caribbean Supreme Court (ECSC). The ECSC is a superior court of record with both a trial and an appellate level. Each territory is assigned at least one trial judge. The Court of Appeal, an itinerant court, hears appeals that arise from each of the trial judges. Each State also has district court judges or Magistrates from whose decisions lie an appeal to the Court of Appeal.

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9 Judge, later Chief Justice of the Eastern Caribbean Supreme Court (ESCS)(1982-2004); Judge, later President of the International Tribunal for Rwanda (2004- Present).

10 Judge of the ESCS, including as Chief Justice (ag) in the absence of Sir Dennis Byron (1996-2005); Judge of the Caribbean Court of Justice (2005-Present).
Responsibility for the appointment and tenure of the district court judges and for senior personnel in the justice sector (Crown counsel, Directors of Public Prosecution, Attorneys General where that position is not that of a Minister) is generally vested in a Judicial and Legal Services Commission (JLSC), an independent body chaired by the Chief Justice of the ECSC. The JLSC also appoints the judges of the ECSC. In a real sense therefore, the JLSC and the Chief Justice play a pivotal role in the justice sector of each of the territories.

This unique arrangement requires the JLSC, the Chief Justice and the ECSC to interface with nine different governments, nine parliaments, nine Attorneys General, nine Ministers of Justice and so forth, each of which has its own conception of what priorities should be afforded to the justice sector in his/her/their own individual territory. This arrangement makes reform efforts in this region particularly complex and challenging.

In the ten year period between 1996 and 2006, the ECSC engaged in a wide variety of measures all aimed at strengthening the rule of law in the various territories. These measures included the creation and promulgation of new Procedural Rules both for civil and criminal cases to reflect an entirely new culture and approach to the manner in which litigation should proceed through the judicial system. The old rules produced delays and backlogs and did not give the court enough muscle to drive the case flow. Modern technology, both in the court offices and in the court rooms was required to accompany this new approach. New equipment had to be acquired and installed. It was necessary to train court office staff in the use of the same. Court connected mediation had to be introduced to provide more appropriate methods of dispute resolution. In some of the territories steps were taken to establish a Family Court and a Commercial Court. And there was a miscellany of programmes designed to impart to judicial officers of every rank a new appreciation of social context in decision making. These included, inter alia, orientation programmes for new judges; the adoption of a judicial code of ethics and judgment writing seminars. More than ever assistance was sought and received in building the capacity of the ECSC to deliver and sustain all these programmes.

**International rule of law assistance to the Eastern Caribbean**

It was impossible to undertake these reforms without a tremendous infusion of external funds. The OECS members, individually and collectively did significantly increase their contributions to the

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11 These circumstances, while worthy of further analysis, go beyond the scope of this Paper.
judiciary beyond the normal budgetary allocations accorded to the ECSC in order to help offset the enormous expense entailed in funding these initiatives. But it was always recognized that substantial assistance was necessary from donor agencies. And such assistance was provided.

The two principal sources of funding were the Canadian International Development Agency (CIDA) and the United States Agency for International Development (USAID). In each case the extent of the funding ran into several millions of dollars. Generally speaking, the CIDA funded programmes were aimed at improving the delivery of justice in the Magistrates’ courts while the USAID funded programmes were either of more general application or were geared specifically at the reforms associated with the superior courts.

There was not a single governance structure in relation to the various programmes. Nor was there a single overarching plan into which each programme nicely fitted. Some of the programmes, especially those funded by USAID, were administered directly by the judiciary itself. Typically, the judiciary would identify the precise need, draw up itself or commission the drawing up of an appropriate project proposal and, if accepted, the programme would be funded and implemented by the judiciary.

Some programmes were administered through the OECS Authority, i.e. the governance structure established to discharge the business of the confederation of OECS members. The Authority would interface both with the donor agency and with the judiciary in the implementation of the programme. The CIDA programme, which was funded to the tune of CAD 5 million and executed by a Canadian consulting firm, had its own elaborate governance structure incorporating representatives of a range of stakeholders with the judiciary playing a subordinate role.

Much was accomplished with the assistance that was received. New rules and the computerized technology to accompany them were put in place. Court reporters and transcriptionists were trained. The courts were outfitted with audio recording equipment. The mediation programme was piloted and rolled out to all the territories. And over the period of reform, there was a significant transformation of the justice sector, which would not have been possible without the generous assistance of the donor agencies and, of course, the increased allocation of funds from the local treasuries for the purposes identified. But there were also serious hiccups along the way and some programmes came to a premature end, without achieving the bulk of their fundamental goals.
Components of success

Looking back, the programmes that were successful were for the most part those that were designed to take full account of what the specific needs of the judiciary were and what were the most suitable measures that should be adopted to fill those needs. These were programmes where foreign experts were sourced for their ideas and their experience. But the foreign experts were not encouraged to arrive with a template to be imposed. Instead they brought ideas that were refined and supplemented with those of the local judiciary. Success was also assured where the Executive Authority decided to allow particular programmes to be led and implemented by the judiciary with the Executive merely playing a supporting role. Rule of law programmes invariably impact all three branches of the State. However, given the fact that the OECS and the ECSC involve nine different territories, it was not practical for the process to be micro-managed either by the OECS Authority or by any particular State within the OECS.

A critical determinant of success was the extent of involvement and sense of ownership of the personnel upon whom the programmes impacted most directly. Since many of the programmes were concerned with reforms of processes within the court itself, it was vital that the judiciary and the court staff should embrace the programmes from conception right through to implementation. In those instances where donor agencies determined themselves the nature and content of a programme and the manner in which the assistance was to be given, the programme invariably failed to meet its goals or simply never got off the ground. As an example of the latter, quite by chance, it was discovered that the Authority had been holding serious discussions with a firm from the USA that was going to provide the traffic branch of the Police Force with sophisticated electronic equipment to aid in the ticketing of traffic violators and the issuance of court summonses. It was envisaged that successful implementation of the programme would yield enormous revenues to the State. However, if the programme as conceived had been implemented, it would have had also an overwhelming impact on judicial time and resources because the volume of alleged traffic violators being brought before the court would have increased by almost 200%. The overall delivery of justice in the district courts would have been severely compromised. This programme could not have been successfully implemented without additional judicial resources or the re-deployment of judicial personnel or the re-engineering of work flows within the courts. But as between the Executive and the external donor agency or government, the Chief Justice and the judiciary were not involved in the planning phase of this programme.
The absence of a single governance structure to deliver the two sets of programmes funded respectively by CIDA and by USAID was a serious weakness that produced much duplication of effort, waste and unnecessary tensions between the respective governance structures. There would sometimes be disagreement between the two sets of decision-makers. Such was the case, for example, in the choice of software for the respective courts. In many respects the delivery of justice in the Magistrates’ Courts complements what transpires in the superior courts. All the serious criminal cases are invariably commenced and proceeded within the Magistrates’ Courts before they are tried in the superior courts. It was therefore imperative that the same software that was purchased and utilized in the superior courts should also be used in the Magistrates’ courts. A particular type of software was purchased and installed in the superior courts by those who were responsible for making such decisions. Regrettably, thereafter much time, effort and expense was consumed by the other set of decision makers in second-guessing the suitability of that software for the Magistrates’ courts. A single governance structure would have avoided that problem.

Far too much of the budget of the CIDA programme, well over three-fifths, was allocated to operational expenses. A substantial amount of this was spent on payments to overseas consultants to engage in the requisite base line studies that had to precede full implementation of the programme. Some of these studies could easily have been undertaken at less expense by persons in the host countries.

Another critical component of success was the degree of time and energy the top leadership of the judiciary invested in the programmes. Some of these reforms required a change in habits, in culture, on the part of everyone involved in the justice sector. It was therefore necessary for the leadership of the judiciary to have and to demonstrate a genuine enthusiasm for these reforms and confidence in their usefulness. This in turn required the enlistment, involvement and encouragement of change agents from among the various stakeholders to reinforce support for the programmes and counter negative criticism. The adoption of new civil procedure rules was, for example, not met with universal acclaim. There were many who were resistant to changes that in some respects revolutionized the practice of law. The lawyers and judges, who were supportive of the new measures, were encouraged and empowered to hold regular seminars in their respective territories to explain the new rules and to demonstrate their benefits and the way in which they would work, both to the legal profession and to the court office staff upon whom greater
responsibilities were being placed. In turn, the court office workers, who embraced the new rules, were invariably rewarded by being promoted to more responsible positions of authority.

**Conclusion**

The sustainability of the reform programme in the Small States of the Eastern Caribbean court system would have been challenged if there was not a powerful sense of ownership among a broad cross-section of stakeholders. The measures that were most effective were invariably those that were either conceptualized by persons “on the ground” or those which were implemented under the direct supervision of the Chief Justice. By contrast, programmes that reflected the priority needs of the donor agency or country (as distinct from those of the OECS member State(s) receiving the assistance) and those that were implemented through decision-making structures in which the judiciary did not play a leading role suffered from all the negative consequences that flow from the lack of a sense of local ownership and stakeholder involvement.
The Strengths and Weaknesses of International Support to Legislative Reform in Cambodia
By Sotheavy Chan, Secretary of State in the Ministry of Justice and Vichuta Ly, Executive Director of Legal Support for Children and Women

In this article the Secretary of State in the Ministry of Justice provides an overview of Cambodia’s experience with international rule of law assistance in the area of legislative reform. The views of civil society are also represented in the article through the voice of the Executive Director of Legal Support for Children and Women, a leading non-governmental organization that provides legal services for vulnerable women, children and migrant workers.

Introduction

During the Khmer Rouge regime of 1975-1979, all legal institutions were abolished and most of Cambodia’s legal actors - government officials, lawyers, judges, and academics - were killed, starved to death or forced to flee. The death toll is estimated to have reached between 1.7 million and 2 million, out of a population of approximately 7 million. After nearly two decades of civil war and occupation, the signing of the Paris Peace Agreement in October 1991 led to a new period of peace and stability for Cambodia.

A new but fragmented legal order emerged from an amalgamation of four systems: 1) the civil law system used during the French colonization period (1863-1953); 2) the transitional systems established by the United Nations Transitional Authority in Cambodia (UNTAC); 3) a newly adopted common law system; system; and 4) indigenous customary systems and traditions. Significant legislative gaps in such areas as property and criminal law were left unaddressed. In this state, the legal system was held hostage to the decrees and regulation of different ministries allowing for unchecked corruption among executive officers of the government. Indeed, at the start of Cambodia’s reconstruction period, the country faced an absence of a coherent legislative reform programme, limited capacity to manage and

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13 Legal Support for Children and Women was founded in 2002 to promote access to justice and protect human rights, including the rights of migrants. Ms. Ly is a part time lecturer on Gender Studies at the University of Pannastra.
implement the legislative reform agenda, and the total absence of any coordination mechanism in the lawmaking process.

Over the past two decades and with the aid of international assistance, extensive legislative reform was undertaken to protect the rights of citizens, including the ratification of many international conventions, UN protocols and agreements.

**Legislative reform process**

The Royal Cambodia Government’s Rectangular Strategy, the principal planning document adopted in 2004, sets forth a clear commitment to legal and judicial reforms for the country.\(^4\)

“The Royal Government will respect and promote the independence and neutrality of the judicial system as stated in the Constitution and thus the independence of the Supreme Council of the Magistracy shall be rigorously upheld and protected. The Royal Government will promote legal and judicial reforms and ensure the independence of the court system through the implementation of key policies and strategies developed by the Council for Legal and Judicial Reform, thereby enhancing the confidence of the national and international community, and closely cooperating with development partners to strengthen the rule of law, promote social justice, reduce corruption, eliminate the culture of impunity, and strengthen the culture of peace and the primacy of law.”

In furtherance of the rectangular strategy, an action plan was crafted to help address the legislative gaps in the country, in prioritizing the creation of state law, and drawing up of civil and penal codes. Specialized courts were created. The independence and neutrality of the judiciary was promoted through capacity building efforts and by initiatives to enlarge the scope of judicial responsibility. As part of the strategy, the government also committed to providing training to court clerks, bailiffs, notaries and judicial police, to enhance mechanisms for conflict resolution outside of the court system as well as to strengthen law enforcement and monitoring.

Cambodia’s strategy for drafting legislation is comprehensive and begins first with a review of all national laws and regulations, including an analysis of relevant customary and traditional laws. A comparative review of legislation from other countries (e.g. Philippines, Vietnam, Australia, USA, France, and Japan) on specific issues of concern undertaken as is a review of

\(^4\) *The Rectangular Strategy for Growth, Employment, Equity and Efficiency in Cambodia, July 2004.*
international law. Depending, however, on the accessibility and availability of these laws in Cambodia and in the Khmer language, the quality of review may differ. After data collection and analysis of case law, an outline and draft provisions are prepared and shared with relevant ministries for comments. They are then presented at different workshops.

The different stakeholders involved include relevant ministries/institutions, the National Assembly and Senate, civil society, national and international experts, the private sector, and donors. While the process aims to be inclusive public consultations could be much more participatory. For example, a draft law is often only distributed at the workshop itself sometimes consisting of over 500 articles, it is difficult to review and provide helpful comments on these drafts during the limited amount of time given at a workshop. In addition, there have been cases where supporting documents have been provided in the language of assistance, rather than in Khmer which limits a reviewer’s ability to understand the full scope of the draft legislation.

Laws that have been promulgated are then disseminated to various constituents including civil society actors through different trainings and workshops. Information could be better spread using media channels such as television and radio. Public awareness through outreach via schools, local communities, and national libraries is conducted. The Royal Cambodian Government (RGC) is in the process of exploring the use of a website for dissemination purposes. In order to help standardize drafting of legislation, the Office of the Council of Ministers has conducted research and is planning to produce guidelines for all ministries on how to draft laws.

It is necessary to complement the development of national laws with mechanisms to assess and evaluate their impact. In that regard, indicators are being developed for new trafficking, domestic violence, family and labour laws. Other evaluation and monitoring tools being developed are the use of court monitoring tools and database system, and the convening of an Annual Conference for Judges and Prosecutors.

**Donor Involvement**

Extensive donor involvement in legislative reform has supported the drafting of key laws across different ministries and institutions in accordance with international norms and standards and the legal principles found in the Constitution. The Japan International
Cooperation Agency (JICA) assisted in the development of the Civil Procedure Code and Civil Code which were adopted in 2006 and 2007, respectively. The Criminal Procedure Code (2007) and Penal Code (2009) were drafted with the assistance of the French. UNICEF and Japan supported the Law on Suppression of Human Trafficking and Sexual Exploitation (2008) and the Law on Inter-Country Adoption of Children (2009). Several donors were involved with the Law on the Prevention of Domestic Violence and Protection of Victims (2005).

Other laws that remain in the process of drafting include the Anti-Corruption Law— which is proceeding this year to the National Assembly, the Law on the Status of Judges and Prosecutors, Law on the Organization of Courts, the Law on Bailiffs, an amendment to the Law on the Supreme Council of the Magistracy, Non-suit Civil Case Procedures, Civil Code Implementation, the Law on Juvenile Justice (UNICEF and Japan), the Law Criminalizing People Smuggling (Australia) and the Law on Victim Protection (Australia).

**Strengths and Weaknesses**

The RGC commitment to judicial and legal reform has led to significant new legislation that is in accordance with international standards. These efforts have been recognized by the international community and have led to greater regional and international integration as seen in its increasingly active role in the Association of South-East Asian Nations and its accession to the World Trade Organization in 2004. Cambodia has also been able to attract more investment into the country. The protection of the rights of citizens has been strengthened in several areas of legislation. Filling the gaps in the legal framework has strengthened the rule of law and assisted in eliminating corruption.

While there were positive outcomes to Cambodian reform efforts, the ad hoc and uncoordinated approach employed by the international rule of law community resulted in shortcomings that deserve our consideration.

It is important to have an effective coordination mechanism to manage the process of legislative reform. In Cambodia, international experts from different legal systems (i.e. common law and civil law) worked on drafting different versions of the same law, leading to incongruent results. There was only nominal cooperation between UNICEF and Japan in the drafting of the Law on Juvenile Justice. UNICEF supported Cambodians to draft the law, but due to a lack of capacity, Japan provided an expert to the Ministry of Justice – but no further
support. A lack of sustained consistency in legal drafting measures is a common feature of UN “coordination efforts.” The UN may not know who has been involved in the process from beginning to end. In most cases, the legislative reform process has been managed by expatriate teams acting under the direct supervision of donors and with little or no involvement of local counterparts. There is a clear need not only to involve Cambodians in the legislative drafting process, but also to develop local expertise in this specialized area of legal activity.

Conflicts can be seen between fundamental and special laws that have been drafted by different institutions and ministries through different donor and funding sources. For example, in the adoption law context, the Civil Code gives final authority for decision-making to judges, whereas the Law on Inter-Country Adoption of Children drafted through the Ministry of Social Affairs contradicted this. Now that the Civil Code has been adopted, there have been negotiations to have the Inter-Country Adoption of Children Law adopt the same outcome as the Civil Code. Another example of inconsistent drafting involves the Land Law, drafted with assistance of the Asian Development Bank, which made a clear separation between mortgage and gage whereas the Civil Code only includes mortgages. The laws have now been aligned to follow the Civil Code. Thankfully, national actors have risen to the challenge, though it has taken substantial time to re-revise our laws.

Cambodia has struggled to implement different legislative reforms due to a lack of UN coordination. The Law on the Suppression of Human Trafficking and Sexual Exploitation, which is like a special law, is part of the body of criminal law, with provisions to punish trafficker(s)/perpetrator(s). When the Penal Code comes into force, however, some provisions will need to be repealed from the trafficking law and only the Penal Code will be used. In addition, the law on trafficking provides for prosecution but does not include provisions for the protection of victims. Thus, a new law on the Protection of Victims is being drafted. While the Civil Code was adopted in 2007, the RGC has drafted a law on the implementation of the Civil Code which includes transitional laws and the provisions of the Civil Code itself. When the Penal Code that was adopted last year comes into force, corresponding UNTAC laws will have to be completely repealed. Currently, the first Chapter of the Penal Code has been implemented to support General Provisions of UNTAC laws.
Another example of the difficulty of rationalizing our fragmented legal regime involves the Law on the Prevention of Domestic Violence and Protection of Victims (hereinafter called the “Domestic Violence law”) which is a special law that includes provisions on prosecution. For example, marital rape falls under the law, although it is not penalized because criminal law is used to penalize “rape” as opposed to “marital rape.” Many of these issues, such as the Penal Code and the Trafficking in Persons Law, fall under the responsibility of the same ministry – in this case, the Ministry of Justice – which will be responsible for ensuring coherence in the application and implementation of the various laws. In order to promote the correct application of the laws amidst these changes, there is a pressing need to ensure that judges and prosecutors are adequately trained before implementation takes full effect.

Another important challenge has been the lack of consultation on the needs of the country. Experts have often promoted their own ideas and laws without taking local needs into account. Donor aid has often been tied to particular themes that are popular (e.g. a focus on children one year or on women the next) as opposed to having the aid based on country conditions. For example, during the past 2 years there has been a strong focus on land issues and the development of a land law without a full analysis of the country’s needs. The land law also does not comply with Cambodia’s obligations under Convention on the Elimination of Discrimination Against Women (CEDAW), and merely addresses the resources needed to resolve land issues. Another example of this is the labour law, which is not compliant with CEDAW, as the drafters only focused on factory workers and failed to recognize domestic workers in that law. A few years ago there was a donor focus on HIV/AIDS, which resulted in the drafting of a law that is referred to rarely. This law is not enforced, it exists only on paper.

There have been examples in the past of multiple experts working successively on the development of one law, without long term involvement. The Domestic Violence law was drafted over many years and involved a number of experts, beginning with an expert in India, and finishing with two different German experts. As a consequence, at the final stage of review in 2005 before the National Assembly, the last expert had difficulty defending the law due to the short-term nature of her engagement in the process. Another example involves a team of Japanese legal experts who wrote the original draft of the Civil Code in Japanese with funding from Japan. Since a Khmer-language version of the law was presented to the Council of Ministers in June 2009, international land law experts have been debating the implications.
of the translated law, particularly where the wording appears inconsistent with the intent of the law.

Ongoing technical support is needed to ensure proper implementation of newly drafted or revised laws. Piecemeal and uncoordinated efforts do much to mitigate progress. In this regard, international assistance should rely less on foreign technical experts, and more on long-term engagement and capacity-building to ensure sustainability and national ownership. The formation of working groups to review draft laws, comprised of experts from all stakeholders across the different institutions is a potential means of addressing this issue. Inclusion of members of civil society in these working groups could be improved.

**Conclusion**

National reconstruction of our country requires that we establish a legal framework for the country. The RGC’s national strategy developed in 2004 is grounded in the government’s commitment to the establishment of good governance and the rule of law. With significant resources and technical assistance from various donors, different Ministries have been able to prepare and pass legislation in several key areas since reconstruction began after 1993. However, consultations amongst the major donors as well as with the concerned Ministries were too limited throughout the reform process. Many initiatives were driven by donors and managed by expatriate teams of draftsmen acting under the direct supervision of donors, with little or no involvement from our nationals.

Based on these experiences, it is clear that reform must be based on a nationally-driven process. For legislative reform to take hold and be sustainable, it is critical to not only involve Cambodians in the legislative drafting process, but also to develop our local expertise in this specialized area of rule of law activity. This process is far from over as work continues to ensure that necessary implementing decrees are also passed. As we move ahead with our law reform agenda, international technical support toward the effective implementation of legislation must contemplate the need to strengthen our local capacities.
Measuring the Effectiveness of Rule of Law Assistance in Nigeria
By Innocent Chukwuma, Executive Director, CLEEN Foundation, Nigeria

In this article the Executive Director of the Center for Law Enforcement Education Foundation (CLEEN) a rule of law foundation, examines the effectiveness of rule of law assistance in Nigeria. He looks at the objectives of and constraints on rule of law projects supported by donors in Nigeria, and discusses the conditions needed for external rule of law assistance to be effective.

Introduction

The reference point for any discussion today on the effectiveness of development assistance has to be the Paris Declaration on Donor Effectiveness, which in its Statement of Resolve stresses that, “while the volumes of aid and other development resources must increase to achieve goals, aid effectiveness must increase significantly as well to support partner country efforts to strengthen governance and improve development performance.” It is arguable that in no other development assistance sub-sector is the need to demonstrate the effectiveness of bilateral and multilateral support more urgent than in the field of international rule of law assistance. This point was underscored in the 2008 report of the Secretary General on Strengthening and coordinating United Nations rule of law of activities (A/63/226). The report identified the sector as an area of assistance that has often been piecemeal and donor-driven, resulting in the contradictory development of justice and security institutions, and short-term gains at the cost of longer-term, sustainable reform.

Nigeria remains a classic example of questionable aid effectiveness in the field of rule of law. In the last 10 years of elected civilian government, the country has reportedly received over US$100 million of aid from bilateral and multilateral institutions and private foundations in the areas of strengthening the operation and integrity of rule of law institutions, such as the judiciary, prisons and police organizations, and building stakeholder confidence in them. And yet the effectiveness and impact of this support (especially that of bilateral and multilateral


15 Paris Declaration on Aid Effectiveness adopted at the high level forum in Paris between February 28 and March 2, 2005, para. 1.
agencies, which accounts for over 80 percent of overall support) have remained a hot topic of animated discourse by national actors.

The result is that there has not been a significant improvement in the perception of ordinary people and informed opinion holders in Nigeria on the programmes’ impact on the effectiveness and efficiency of rule of law institutions. Four out of every five Nigerians still make use of the informal justice system in resolving their disputes, indicating a vote of no confidence in the formal justice system. Episodic improvements have been achieved, largely due to the work of local NGOs. However, they have revolved around project cycles and often been reversed as soon as the projects are concluded.

**Goals of rule of law programmes and their constraints**

There are three broad categories of donors active on rule of law support in Nigeria. These are multilateral donors (such as the United Nations, European Union and World Bank), bilateral donors (such as the UK’s Department for International Development and USAID) and private foundations (such as MacArthur Foundation, Ford Foundation and Open Society Institute). Each of these donors has supported one or more rule of law related programmes in the last 10 years of elected civilian government in Nigeria. Over 80% of aid for rule of law in Nigeria has come from bilateral and multilateral agencies, and 50% of total development assistance has come from the European Union (EU).

Some of the objectives and goals of rule of law assistance that have been implemented or are being implemented include:

- Improving the operational capacity and effectiveness of justice institutions in the areas of investigation, prosecution and adjudication, and reducing undue length and complexity of procedures for resolving disputes;
- Improving the accountability and service delivery of rule law institutions;
- Ensuring that the rights of victims and defenders are respected by formal and informal justice systems in the country;
- Improving respect for the sanctity of contracts in commercial transactions;
- Enhancing community safety, security and access to justice, especially for vulnerable groups, such as women, children, ethnic minorities and the disabled;
- Promoting the use of alternative dispute resolutions mechanisms;
Reducing the negative perception of the justice system and the integrity of officials, as well as corruption in the system, and building community trust and confidence in the judicial system; and

Developing and implementing a strategy and action plan for a comprehensive justice reform program, with targeted and measurable results.

The forgoing goals and objectives are germane and responsive to the identified needs of the country. Yet they are often uncoordinated and the overall resources available for their implementation are severely limited, considering the size of the country and enormity of the rule of law challenges it faces. It is an open secret that funds available for development assistance work in Nigeria, including the field of rule of law, are generally low. Donor support constitutes less than two percent of the country’s Gross Domestic Product (GDP). Compared to other donor dependent countries, where external support constitutes over 50% of their GDPs, Nigeria could be said to have received limited assistance in the area of rule of law and other sectors of need, which may impact the effectiveness of the programmes’ overall goals.

Furthermore, the limited resources available for rule of law assistance in Nigeria are further challenged by the hefty overheads which come with external support. These include high salaries/consultancy fees, support for the expensive life styles of personnel and consultants, paid vacations in countries of choice, and most importantly, markups by the companies and organizations implementing the projects, which must stay in business. At the end of the day, it is debatable whether up to 30% of the limited resources are actually used to render services to the direct beneficiaries of rule of law assistance programmes – the poor and other vulnerable groups.

Conditions needed for rule of law assistance to be effective

It is widely acknowledged that rule of law is a complex and broad field, involving often disparate and uncoordinated activities held together under the rubric of rule of law assistance.

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16 In one typical instance in Nigeria, the programme manager of a rule of law project supported by a bilateral donor agency with an office in Nigeria spent three consecutive years living in the Hilton Hotel Abuja, which is the safest and most convenient hotel in Nigeria. The permanent room, which by the way earned him Hilton Platinum Card, was retained for him even while he was out holidaying with his family for weeks in the Caribbean on numerous occasions. The cost of this was included in the amount of money spent on rule of law assistance in the country.
or even justice sector reform. Thus, any prescriptive approach to determining the conditions that are needed to ensure effectiveness of this assistance is bound to be challenged. Drawing from literature in this field of practice as well as my own experience, however, a number of conditions appear to be fundamental for rule of law assistance to be effective.

**Strong national capacity to lead and manage development assistance**

There is a need to strengthen the oversight capacity of national authorities to lead and manage development support, including rule of law assistance, and to contribute meaningfully in the planning and coordination of funding activities of donor agencies. The lack of capacity in this regard has imposed severe restrictions on the growth of donor aid in Nigeria. Before any development assistance is implemented in Nigeria it is usually approved by the National Authorizing Officer (NAO). In granting such authorization, the office of the Minister is expected to review the programme, and ensure that it aligns with national priorities and stands to benefit the people of the country. However, a combination of lack of institutional/management capacity and sheer bureaucratic laxity have made it difficult for the office to play its oversight role effectively and to ensure the effective implementation of donor assistance. The result is that the NAO has approved many projects and programmes that have no direct benefit to the Nigerian people, leading to the failure of such projects to realize their stated goals and objectives.

An example of this was a rule of law programme implemented by a UN agency in Nigeria. As midterm programme review revealed that after over a year in which millions of dollars were spent developing application software to aid the work of a government agency, the software

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17 The National Authorizing Officer (NAO) is a mechanism for accountability of donors in the implementation of donor assistance in Nigeria. The NAO is a senior government official appointed to represent the country in all the operations financed through the European Development Fund (EDF), in accordance with the Cotonou Agreement on development aid. In Nigeria, the NAO is the Minister of National Planning. In close collaboration with the Head of the European Commission’s delegation, the NAO is responsible for the preparation and submission of programmes and projects; the examination and completion of tenders for approval by the Head of Delegation; the coordination, monitoring and assessment of projects and programmes funded through the EDF; and ensuring the proper execution of projects, programmes and disbursements of EC funding in the country. If these functions are effectively carried out by the NAO, they would ensure significant accountability in the implementation of the programmes supported by the EU in Nigeria, which is the most important donor in Nigeria and accounts for over 50% of development assistance in the country. However, the NAO and by extension the Ministry of National Planning is challenged by a huge institutional capacity deficit, which prevents it from contributing meaningfully to the planning, implementation, coordination and oversight of EU funded projects in Nigeria and imposes severe restriction on growth of EC/Nigeria cooperation. The result is that the EC delegation in Nigeria now prefers handing over the implementation of its development assistance in Nigeria to international organizations, especially UN agencies, which are not directly accountable to national authorities.
could not be used because its development did not factor in the specific needs of the agency. In the Nigerian context, there is therefore a need to strengthen the oversight capacity of the NAO.

**Local ownership of rule of law assistance, including implementation by civil society**

For rule of law assistance to be considered effective by beneficiaries and stakeholder communities in Nigeria, there is a need to ensure local ownership of the process, which means involving representatives of stakeholder communities in every phase of the process – conception, planning, design and implementation. This is important because local stakeholders bring to the table knowledge of local context and conditions, legal systems and cultures of change, which are critical in ensuring the success and effectiveness of rule of law assistance.

However, the term ‘local ownership’ has been widely abused in Nigeria and is often found multiple times in country strategy papers of donor agencies. Yet it is rarely adhered to in the design and implementation of most programmes. No amount of politically correct consultation with the potential beneficiary community can satisfy this requirement if most rule of law assistance programs are decided on and designed abroad for implementation in recipient countries. This practice raises concerns about programme quality and effectiveness.

Involvement of credible civil society groups in the implementation of rule of law assistance programmes contributes not only to ensure local ownership of such programmes but also their sustainability. This is especially true when the commitment of recipient country governments is not very strong, as is often the case in Nigeria. Civil society groups contribute by pressuring the government to fulfill their counterpart obligations under such projects through advocacy work as well as by rendering capacity/technical assistance to government agencies and local communities in the implementation of the programme.

**Engagement of local personnel to drive implementation**

The engagement of local personnel to drive the implementation of rule of law programmes would ensure that the most experienced people with sound knowledge of the local context are involved. Instead, the current practice is to condition a portion of assistance for use on donor country ‘expert’ consultants and firms, who dominate decisions of who to employ,
often basing these decisions on factors of self-interest instead of competence, experience and professionalism.\textsuperscript{18} In many cases, friends and associates of the implementers of programmes are hired to conduct evaluations, and they produce reports that suggest that the programmes are well implemented with great impact, without any concrete evidence to show on the ground. It is thus important to contract truly independent experts to conduct evaluations of rule of law assistance programmes and to give them a free hand to carry out the assignment.

**Effective coordination among rule of law assistance donors**

It is important for donors supporting rule of law at present in Nigeria to be coordinated to maximize the effectiveness and impact of their assistance, and also to ensure that the Nigerian government adheres to its obligations under the cooperation agreements signed with donor agencies.\textsuperscript{19}

Currently, there is no specific strategy or mechanism for donor coordination on rule of law in Nigeria. What exist, at best, are episodic meetings of donors supporting justice sector reform in the country, which includes major players such as DFID, EU, World Bank, USAID and UNODC. These meetings are not always well attended or inclusive of representatives of beneficiary governments, institutions and civil society. At these meetings, summary briefings are given and discussions held on current activities and future plans of participating donors, which may include rule of law assistance. The consequence is that donor agencies rendering rule of law assistance in Nigeria constantly face the risk of unnecessary duplication of efforts and are unable to optimize the impact of resources committed to the sector.

Project Steering or Advisory Committees, consisting of major stakeholders in government, donor agencies and civil society, depending on the project, provide some oversight through policy advice and guidance to project implementers. They are not, however, statutorily


\textsuperscript{19} Cooperation agreements between Nigeria and donor countries, agencies or foundations are another mechanism for donor accountability. The agreement is supposed to state clearly what the intended support covers, who are the target beneficiaries, the framework for implementation and timing of periodic monitoring and evaluations. The Ministry of National Planning is responsible for representing Nigeria in the negotiation of the country agreements as well as exercising oversight functions to make sure that the terms are respected to the benefit of Nigerian people. In practice, however, this is rarely done because of capacity challenges, among other factors. The result is that as soon as the agreements are signed the agencies are free to do whatever they like with their support, which in many cases adversely affects the effective implementation of the programmes and their impact on target beneficiaries.
required and members are volunteers who meet infrequently and have only advisory roles. Experience shows that if members of such committees feel their suggestions are consistently ignored, they will likely resign or fail to attend meetings. I was a member of one such committee. On one occasion a member raised an issue that annoyed the convener, and he simply adjourned the meeting and nothing happened. The consequence is that there is an absence of effective accountability in programme implementation.

Another area in which donor coordination could assist in improving the effectiveness of rule of law assistance in country is in leveraging the political influence of donor agencies and their home governments to ensure that the Nigerian government’s commitment to observing the rule of law is taken seriously, and to enhance dialogue with Nigerian political leaders at the highest levels of government. This has become very important given increasing public skepticism about the political will and leadership drive of the current Nigerian government to follow through on its commitments.

**Allocation of adequate resources and time**

Similarly, the implementation of rule of law assistance programmes in Nigeria requires the allocation of adequate resources and time to enable their full realization, instead of the present situation, where limited resources are available and inadequate time given for their implementation, which adversely impacts their effectiveness. The typical cycle of development assistance programmes used by many bilateral and multilateral agencies in Nigeria is three to five years, which may be renewed or not. This can be problematic in terms of the implementation of rule of law programming in a country like Nigeria and by extension many developing countries in three significant ways.

Firstly, rule of law assistance programmes challenge in several ways the existing legal tradition, culture of delivering legal services, and bureaucracies of recipient countries, in order to improve services to the needy. Yet these are traditions and cultures that developed over time and seeking to change them through programmes that hardly last beyond five years can be difficult. Secondly, some of these programmes were, in my view, designed mostly by external consultants without full appreciation of the scale of logistics and infrastructural challenges confronting Nigeria as well as the culture of doing business in the country. This leads to severe delays in the implementation of the programmes and then a rush to complete them, in order to meet the deadline and apply for another project. Lastly, the field of
development assistance, including rule of law, is dominated by a group of short-term consultants who are repeatedly engaged by their friends and colleagues in bilateral and multilateral agencies. At any particular time, they have short term contracts in Kosovo, Sierra Leone, Liberia, Haiti, Côte d'Ivoire, Democratic Republic of Congo and other trouble spots in the world, which they must juggle to accept another contract. The consequence is often that they keep postponing the execution of old contracts in order to travel and accept new ones, and by doing so delay the implementation of the projects, which frustrates national partners and adversely affects the effectiveness of the programmes.

In my view, the failure to meet these conditions has resulted in rule of law assistance that is questionably effective and unsustainable in Nigeria.

**Conclusion**

This article presents the views of a national actor on the effectiveness of rule of law assistance in Nigeria, including the conditions needed for such assistance to be effective.

However, even if all the conditions highlighted herein for improving rule of law assistance in Nigeria by donor agencies are met, it is still necessary to sound a note of caution. Ultimately, the decisive factors in strengthening respect for rule of law within any country, including Nigeria, are the government and the people of that country. Unless the government takes the lead by allocating its own resources to promoting the concept, guaranteeing its citizens the right of access to justice, consolidating democracy in the country, and encouraging its development partners to do the same, no amount of external rule of law assistance can do this for the people. Similarly, unless the citizens are willing and prepared to hold their elected and appointed leaders accountable to the law, and insist on exercising their franchise to determine who presides over the affairs of their country, external assistance cannot achieve this.
Lessons Learned from Developing Rule of Law Institutions

*in Timor-Leste*

By Francisco Guterres, *Secretary of State for Security of Timor-Leste*

In this article the Secretary of State for Security lays out key lessons learned from his experiences working with international organizations to develop rule of law institutions in Timor-Leste. He emphasizes that for assistance to take root in a country, it must be based on a long-term approach to supporting and realizing nationally driven efforts.

Introduction

The relationship between international assisted and national reform efforts in this area is an issue that we Timorese have a lot to say about. The past decade has seen a combined national-international effort to develop and establish rule of law institutions in our new country. Indeed, currently, it is a topic of utmost relevance as the Government and the United Nations are in the process of negotiating future arrangements on policing. Indeed, in many respects, Timor-Leste should be considered a ‘laboratory of learning’ for both international organizations and fellow young states on this matter. We have had many successes and other efforts not so successful, some processes and practices worth repeating, and others that are worth not repeating.

First, some background on Timor-Leste and the interrelationship we have had over the last ten years with international organizations, in particular the United Nations. Our nation was conceived with the assistance of the United Nations, after four hundred years of Portuguese colonial neglect and nearly a quarter century of brutal Indonesian occupation. The UN supervised the ballot in 1999 in which Timorese voted in overwhelming numbers to be an independent nation once again. Our nation was reconstructed with the help of the United Nations. The United Nations helped establish an indigenous policing capacity and develop the legal institutions in the country.

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20 The Secretary of State for Security in Timor-Leste is the civilian who is in charge of many of the internal agencies in the security sector. His responsibilities include the Timorese police, border management, civilian protection, immigration, building security, and the fire brigade.
Since our independence was restored in May 2002, the United Nations has helped us to walk on our own two feet. It continued to provide support to the police and to develop legal and judicial capacity. In 2006, when our nation fell down, it helped us dust ourselves off and walk forward in the right direction. The events of 2006 revealed that there was little substance to our security institutions beyond uniforms and weapons. The ‘crisis’, as we Timorese call it, began with the dismissal of members of the defence force but quickly escalated to encompass the police and other institutions of the state. Thirty-seven Timorese died in the violence, thousands of homes were destroyed and 100,000 people – about 10% of the population – were displaced from their homes.

We Timorese have a saying ‘lao ba oin’ (walk in front) to mean that all is going well, and, as we approach the new decade, I believe that we are very much ‘lao ba oin’, walking in the right direction. We are currently, in full partnership with the United Nations mission in Timor, engaging in a process of gradual handover of policing responsibilities. Four of the thirteen districts and three of the thirteen units have been handed over already. We anticipate that this process will conclude this year.

Maximizing our efforts

Timor-Leste has experienced over a decade of rule of law assistance in which international-assisted and national efforts have worked in full partnership and, at times, have worked at cross purposes to each other. What can we say about the relationship between international-assisted and national reform efforts?

I think we all agreed that it is optimal for these efforts to liaise and complement each other as much as is possible. Doing so acts as a ‘force multiplier’ – it means that ‘owned commitment’ on the part of the national government can become reality through financial, logistical and human support from the international community. I think of the elections in Timor-Leste in 2007 as a case in point. The need for presidential and parliamentary polls was something that was agreed upon by all members of the Timorese social spectrum but we may not have had the ‘means’ to affect our ‘intentions’. Through support of United Nations electoral experts, United Nations volunteers, United Nations Police and United Nations equipment, we were able to realize our dreams. Together, we managed to re-affirm that most important element of the rule of law: democratically elected institutions.
So, working together can maximize our efforts. At the same time, working at cross purposes can minimize gains or even destroy that which has been achieved. The result is a lot of wasted human effort. I think of the various competing agendas that were ongoing after 2006 to create a ‘vetting’ process for Timorese police officers. The then Minister of the Interior had a plan, other arms of government had a different plan, the UN Police (UNPOL) had a plan. The result was lots of angst, sniping and confusion but no workable, clear plan. We struggle with the consequences of such non-clarity to this day.

The question, therefore, is how to create conditions whereby one can maximize partnership and minimize the working at cross purposes. We must note that this is ‘easy to say, but difficult to do’. The priorities of elected governments – to govern on behalf of the people and, ultimately, to win re-election from the people – are not necessarily the same as those of United Nations peacekeeping missions – which answer to specific mandates and have their own internal decision-making calculus which affects their decision-making. What is happening currently and the differences we and the United Nations have had over the nature, pace and process of the handover from United Nations police to Timorese police reflects the fact that we each have different constituencies to serve and interests to uphold.

**Lessons learned from my experience**

In trying to answer the question of how to enhance the relationship between international-assisted and national reform efforts, I offer seven lessons or means by which one could do so grounded in my personal experience.

The first is, as much as possible, to ensure that international reform efforts are not simply ‘conducted’ in the English language. I am lucky enough to be able to speak good English but many of my fellow Timorese do not. We speak Tetun as our lingua franca, with our other national language being Portuguese. Despite this fact, sometimes we find that documents are prepared only in English, thus disenfranchising the majority of people for whom reform is meant to be of assistance. The rebuilding, reconstruction and reform (‘RRR’) – the plan prepared by UNPOL as the basis for a reform process in Timor – was prepared in English, delivered in English and never translated into any other language. Can it be any surprise that the plan did not take root?
The second is that it is important that international advisers – who are often crucial – stay for as long as possible. In our experience, advisers that spend longer have the time to develop relationships of trust and mutual respect with their Timorese counterparts. Sometimes – and I’m sure Timor is not alone in this – countries receive many advisers who stay for a short time, which means they are less useful than they would like to be. Somewhat even more absurdly, some advisers do not sit with their national counterparts. We have many such instances in the office of the Secretary of State for Security where we have ‘advisers’ attached to the office that we never see. The benefits of a long-term approach are that relationships, trust and mutual reliance are developed.

The third is that it is important to work with, and enhance, national initiatives, no matter that it will often take longer and probably be messier. Although one may not think it at the time – particularly when there seems no movement – I believe that these national processes often have longer roots. The Timor-Leste National Security Policy is a case in point. This is a process initiated by the incoming government in 2007 and only now – two years later – do we have a draft that we are able to present to the Council of Ministers (the equivalent of a cabinet). It is a process that I am sure many of our international friends would have preferred to have happened quicker but yet, through consultation, discussion and debate it is a process through which we have arrived at a comprehensive document agreed to by all parties. I pay tribute to the patience of the United Nations mission, most particularly the UNDP component that provided us the funding but also the space to have our discussions.

The fourth lesson is to understand that building up the rule of law is as much about developing and perfecting the ‘software – the policies and procedures that make all organizations work, and the humans to operate them – as it is the ‘hardware’ – the logistics needed to make an organization work. This software does not come ‘off the shelf’ but needs to be developed slowly and patiently over many years. Oftentimes, changes can be hard to detect within the lifetime of a peacekeeping mission and often not come fast enough to satisfy the requirements of a Secretary-General’s report. It requires patience, time and perseverance.

Fifth, is that we – as civilian ministers and as chiefs of police – must take the ownership that comes with the office. We know the country, its people, its language and its history much better than anyone else possibly can. It is up to us to set the strategic course; no one else can
do this for us. With ownership comes responsibility. Oftentimes this may make us very unpopular. The nature of making decisions and setting plans is that one hopes for the maximum benefit for the society, but we should know that we will encounter resistance to change.

Sixth, leadership requires that we find a way to marshal and direct incoming assistance. In Timor-Leste, we have been blessed with many forms of assistance that has come in many shapes and sizes. We are grateful for it. But, to maximize this assistance, it is important to direct it, not to let it direct you. Each week, I meet many individuals and donors who want to do this, want to do that, want to do it here, want to do it there. I must say to them ‘wait’, and ensure that their plans fit in with my plans, not the other way around. My model is that donors should complement – but not seek to take over or direct – the government’s effort.

Seventh, this is an undertaking that takes a commodity that we never have enough of: time. The painful lesson of Timor-Leste in 2006 is that we – and the international community – felt the police were ready too soon. To our cost, we found out that we were both dead wrong. We must not forget that lesson again.

**Conclusion**

Police reform is a task of continual improvement and incremental positive change and, to some extent, a process that has no end. It is a process essential to state-building, securing the peace, and securing the development and one that must remain at the forefront of our attention. I want to recall the words of our Prime Minister, Xanana Gusmao, who, echoing the words of the former United Nations Secretary-General, noted that without security there can be no development. I think his words underscore the long-term importance of building up nationally owned rule of law institutions, and of keeping faith with the task. The long-term approach is crucial.
Establishing the Rule of Law in the Occupied Palestinian Territory

By Dr. Ali Khashan, Minister of Justice, Palestinian National Authority

In this article, the Minister of Justice examines the development of the rule of law in the Occupied Palestinian Territory. He looks at Palestinian efforts to establish a systematic and coordinated approach to strengthening the justice system, including the establishment of legal and judicial structures and institutions, and the positive role of gender empowerment, recognizing the long-term nature of the reform agenda.

Introduction

The fundamental foundation of our government, as set by President Mahmoud Abbas, and implemented by Prime Minister Salam Fayyad, is the rule of law. Authority, as stipulated in the directives of President Abbas, does not belong to any individual. It has become a responsibility whereby the individual serves the collective, based on existing rules and laws. We are committed to establishing a legal order in which every citizen enjoys equal rights and duties, and lives in freedom and dignity.

The rule of law is about justice and peaceful conflict resolution. It is about human rights and the protection of human dignity. It upholds the highest legal and moral imperative of nations, and is universal and owned by all. Yet national ownership cannot be taken for granted. Prime Minister Fayyad has supported President Abbas’ commitment to promoting the rule of law. Through his leadership we have undertaken the rehabilitation of law enforcement bodies, the consolidation of the security forces, and are committed to spreading the principles of accountability and transparency within all Palestinian National Authority institutions. Prime Minister Fayyad knew his mission would not be easy. Nevertheless, he took the challenge, supported by a President whose deep and unshaken belief in the rule of law and democracy is clear and known to every Palestinian, and backed by an international community that has learned to appreciate his work and that of his team.

In follow-up to the Annapolis Conference and the subsequent Paris Conference of donors to the Palestinian Authority in December 2007, there has been accelerated donor engagement in rule of law in support of the peace process with increased financial commitments. Key donors for rule of law programs include CIDA, EU, UNDP and World Bank. Previously, donors
kept repeating their projects under different names. This resulted in a lot of training but in reality it benefited only a few people. The environment has now become sufficiently conducive for collective efforts and genuine partnerships.

**Vision for developing the justice and judiciary in Palestine**

We have learned from past experiences that a strategy is needed to make sure that the different parts of the rule of law architecture do not work against each other. We recognized the need to change the mentality, the need to deal with security and justice together, and the need to develop projects together. The problem of torture in prison, for example, needs to be tackled by both the Ministry of Interior and Ministry of Justice. In order to facilitate a coordinated approach, we developed a road map that we believe can lead to justice for all. In November 2009, our Ministry together with the ministries of planning and administrative development in the Palestinian National Authority (PNA) endorsed a new programming framework, the “Justice Sector Strategy” with the goal to extend to the Ministry of Justice support for institutional capacity development, and to develop a comprehensive access to justice strategy engaging actors at all levels.

The Palestinian government has worked to develop the strategy based on agreements among the various justice sector institutions in order to enable the institutions to secure public confidence in the judiciary and strengthen the rule of law in Palestine. It is based on two fundamental pillars. The first pillar is linked to the principle of the rule of law, which means the subordination of all authorities, agencies, bodies, institutions and persons to the law. The second pillar is to support the independence of the judiciary. The Ministry of Justice, the High Judicial Council, and the Attorney General jointly developed the Justice Sector Strategy to carry out sector planning and priority-setting with the support of the Ministry of Planning. In strengthening the complementary relationship among the three justice sector institutions, we intend to bridge the gaps, eliminate duplication of roles, and reinforce the concept of coordination.

With this strategy as the foundation, we aim to provide access to justice throughout the Palestinian territories. The Program of Assistance to the Palestinian People, supported by the UNDP was launched in March 2010 with the ultimate goal of rehabilitating and empowering the judicial system in Palestine. The three-year program will extend the outreach of legal aid services and legal awareness programs throughout the occupied Palestinian territory,
improving gender and juvenile justice conditions, exploring engagement with the informal justice systems and its linkages with the formal system, and rebuilding public trust in the justice sector. In every governorate, there will be a justice compound that offers services to all people. There will be a computerized network of connection among all bodies and institutions that fall under the umbrella of the justice system in Palestine.

**Ensuring sustainable reform**

Our goal is to achieve sustainable support that guarantees the implementation of the rule of law not only for today, tomorrow or the next decade, but for as long as it takes to serve future generations of the Palestinian people. Political will needs to be supplemented by effective implementation by all sectors involved, including support to the judicial system. The adherence to the rule of law by law enforcement bodies and security personnel is essential for democracy and human rights. Court orders and verdicts should be implemented by the security services and the executive authority without obstruction, regardless of who is affected by the decision.

Currently, there is a legislative and judicial vacuum with the absence of a fully functional Palestinian Legislative Council (PLC) due in part to Hamas’ takeover of the Gaza Strip in June 2007, and the fact that the term of the council ended in January this year. Historically, the Palestinian people have lived under different sets of laws and regulations. Palestinians inherited laws from the Ottoman rule that lasted in Palestine until the end of World War I. A British Mandate and its set of laws, some of which are still applied, were replaced with a Jordanian mandate in the West Bank and an Egyptian mandate in the Gaza Strip. This situation continued until the founding of the PNA in 1994, when every effort was made to unify the laws in both areas. The PLC passed 47 different laws before it came to a standstill in 2006 when the split re-occurred between the West Bank and the Gaza Strip. There is thus a need to modernize the existing laws. However, this should not be done by using a “copy and paste” technique from international laws or legal templates. Legislative and legal reform must be tailored to the needs of the population and developed with a view to effective application.

Restriction of movement creates additional impediments to strengthening the rule of law. Every Palestinian wishing to leave the West Bank needs to obtain a permit from Israel prior to departure. According to Palestinian records, there were cases in which criminals evaded imprisonment simply because they could not be brought before a judge in due time. When a
lawyer lives in a West Bank city and the trial is held in another city, he or she is sometimes obliged to overnight prior to the session to make sure that he or she gets to court in time for deliberations. If not, the lawyer is likely to get hindered at army checkpoints and miss the trial.

A key component of the follow-up by the international community to the Annapolis and Paris meetings has been an effort to work with the Palestinian Authority in the West Bank to build the capacity to establish and maintain law and order and to restructure the Palestinian police and security services. The Palestinian security forces, which constitute the bulk of the law enforcement bodies in the PNA, came mostly from para-military and revolutionary PLO factions, the largest of which is FATAH, the Palestinian National Liberation Movement. The six years that passed between the PNA founding in 1994 and the outbreak of the second Palestinian uprising in September, 2000 were a period in which many mistakes were made, due to a lack of coordination among various security apparatuses and the fact that the PNA was not more than a premature infant in the incubator. Even in an ideal environment, one cannot expect the PNA to have reached the level of a functioning state in six years.

Public trust in the judicial system has increased over the past years, and mainly since Prime Minister Salam Fayyad took on the improvement of the rule of law in 2007. An important focus has been targeting Palestinian women and youth to improve their performance and build their capacities in all fields. Supporting gender empowerment is important to achieving women’s full and equal participation in the economic, social and political spheres of our society. A high degree of illiteracy plagues Palestinian women, with 50-70% of the female population thus excluded from accessing the rule of law. We are committed to defending and promoting women’s rights. Education is crucial in this regard. We have developed the Justice for the Future project to bolster the talent of female youth. From high school, the 60 best students are chosen to attend law school each year, with a minimum quota of 50% women. They also receive courses in human rights, English and information technology and participate in study abroad programs. In a span of 3 to 5 years, 300-500 people, many of whom are women, will become active in the judicial system as judges and prosecutors. Through the Justice for the Future project, we are revolutionizing the role of women in the legal system in Palestine. When the first school of law was established in the mid 1990s, the goal was to have 50% females. Now, almost 55% of law students are women.
The need for improved education in this respect is not limited to women and youth. National government as well as regional actors should also receive continued education and training, including on human rights standards, to bridge the gulf between theory and practice of legal standards. Adopting legislation and supporting reform are not always the same and it is important to develop the capacity to implement laws, instilling empowerment through education.

**Conclusion**

It is essential to note that time cannot wait indefinitely for us. On the national level, we continue to work for the achievement of a national reconciliation agreement so that we can all live in a law-abiding society, not in a society that is governed by outlaws. The challenges ahead of us cannot wait either. Building our institutions cannot be deferred to later. We believe our role is to prepare the groundwork, to push for more capacity-building programs within all branches of the judicial system, as well as in different ministries and public sector institutions. We are embarking on a new road map to justice, constitutional legitimacy, and a state of law. We are working in the same country for the same objectives. It is about time that we all work together, shoulder to shoulder. We owe it to future generations. One day of justice is worth 100 years of prayer.
International Assistance to South Africa’s Post-Apartheid Conflict
Constitution-Making Process

By Brigitte Mabandla, Former Minister of Justice and Constitutional Development

In this article, acknowledgment and recognition is given to the key role played by donor agencies and multilateral organizations in South Africa’s reconstruction process before and after the 1994 elections. The review of the constitution-making process in South Africa points to the fundamental principles that should be followed in emerging democracies across the world and remain core elements of any transition process: nationally-driven methods work best when communities are included in a diverse and dynamic process involving public participation and when mainstreaming a human rights based approach.

Introduction

The history of the rule of law assistance in South Africa involves, to a large extent, supporting fundamental social and economic transformation, eradicating the apartheid legacy, and reconstructing a just and democratic state. Central to this change were negotiations, which were followed by national elections and the establishment of a democratic state.

South Africa remains eternally grateful to neighboring countries for the support they gave in the fight for justice. Of importance, they provided refuge to thousands fleeing the tyranny of apartheid rule. Similarly, South Africans are mindful of the contribution made by millions of anti-apartheid activists in the dismantling of apartheid.\(^2\) I personally remain immensely grateful for the help we received from, amongst others, CIDA, the Swedish International Development Cooperation Agency (SIDA), the Ford Foundation in the United States of America as well as UNICEF\(^3\), in our work for the advancement of human rights in the early

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\(^{22}\) The anti-apartheid campaign consisted of a plethora of initiatives, organizations, and individual persons such as World Leaders against Apartheid, Conferences against Apartheid, United Nations and Agencies, Other Intergovernmental Organizations, Countries and Regions, Public Organizations, Boycotts, Campaigns and Arms and Oil Embargoes. See [www.anc.org.za](http://www.anc.org.za), “Historical Documents” about the role of the African National Congress (ANC) and its allies during the struggle for liberation or directly connected with the ANC.

\(^{23}\) These donor agencies provided assistance in the area of policy development for post-apartheid South Africa at the University of the Western Cape, in particular the advancement of women’s’ rights and children’s’ rights at the
1990’s. Donors to South Africa from the early 1990s subscribed to the national agenda of eradicating the legacy of apartheid, building a constitutional state and promoting justice and equality of opportunity. The reform efforts have been massively successful. A key component of this success is that national consensus was cultivated across the political divide and promotes the values entrenched in the Constitution of the Republic of South Africa, 1996 (the Constitution).

Before the onset of negotiations, the National Party, which was then the governing party, and the African National Congress (ANC), signed an agreement, the Groote Schuur Minute, which was a seminal document because it provided a national framework for negotiations to which international assistance responded. The agreement provided the following: “The government and the African National Congress agree on a common commitment towards the resolution of the existing climate of violence and intimidation from whatever quarter as well as a commitment to stability and to a peaceful process of negotiations”. The principles embodied in the guidelines promoted the establishment of a democratic, non-racial and non-sexist state. The post-apartheid Constitution, signed into law in Sharpeville on 10 December 1996, is home-grown, informed by the experiences of the diverse people of South Africa. The preamble of the Constitution affirms that South Africa belongs to all its people and incorporates the principles set out in the Groote Schuur Minute that South Africa shall be non-racial, non-sexist and democratic.

Accordingly the rule of law assistance in South Africa has been premised on the opposite dynamic found in most donor-beneficiary relationships. In the assistance framework, it is the State and local NGOs, and community-based organizations (CBOs) who have taken the lead. Foreign assistance therefore came in as ‘enablers’ to help carry out the agenda for change that was set out by South Africans.

**Experiences from post-apartheid constitution-making**

The development of a constitutional framework post-1990 in South Africa was a foundational point in the rule of law development of the country. It is well documented that there had

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24 See Groote Schuur Minute dated 4 May 1990.
been resistance and struggle against apartheid over many decades. This was a struggle supported by democrats and anti-apartheid activists the world over. Change occurred in 1990 when talks towards a negotiated settlement commenced. From the onset, negotiations revolved around a constitutional framework, with the rule of law premised on democratic principles and human rights. The fundamental objective was to move South Africa from an unjust system to one that was just and accommodating of all South Africans in their diversity. Initially those involved were persons belonging to anti-apartheid formations such as liberation movements, human rights organizations, special interest lobbies, trade unions, religious organizations, women’s movements, youth and child rights organizations. All national groups were involved in the anti-apartheid struggle. In effect many of those closely linked to the government of the day supported the status quo. As soon as negotiations began, however, the majority of people in the country supported constitutional negotiations for a democratic dispensation.

The international community contributed massively to the reform process. From 1990 up to the elections of 1994 many governments provided South Africans across the political divide the opportunity to study constitutional and governmental systems in their countries. They organized numerous conferences on constitutional issues. At the onset of negotiations it was difficult for the authorities to move from some aspects of their policies, but within two years of negotiations there developed a meeting of the minds across the political spectrum of all those who were negotiating.

Civil society was widely involved. In fact, this was a time for public discourse about all types of policies. It was a time for formations within civil society to enjoy the freedom that negotiations brought. There were numerous seminars and workshops across the country. It was indeed the height of intellectual activity as never before. The dynamic interaction of people as they shared ideas and engaged in debates had a huge bearing on negotiations. Thus women, media, children, religious groups, gays and lesbians all maximally used the occasion to lobby for their interest and rights.
The Negotiations Process

Negotiations in South Africa occurred in two phases. The pre-1994 negotiations began in earnest between the two protagonists, the National Party and the ANC, and related largely to the creation of an environment conducive to negotiations. It was thus about the cessation of hostilities and providing operational guidelines for the armed forces. The Harare Declaration adopted by Member States of the then Organization of African Unity (OAU) in 1989, contained “the first real vision of a transition to democracy and setting out a basis for negotiation to take place and spoke of a climate conducive to negotiation”.

The next stage of this phase was the establishment of a platform for negotiations known as the Convention for a Democratic South Africa (CODESA) which involved all interested political formations. Issues dealt with were of strategic importance to the configuration of a future state. Some of these related to the alignment of the armed forces, including both statutory and non-statutory forces. Even though it was understood that the constituent assembly would consider the final constitution for South Africa, CODESA discussed the constitutional framework and entertained extensive discussions around important elements of the constitution. In this regard the characterization of the state was considered and the important question was whether it should be a unitary or federal state. Geographic configuration and allocation of powers to the various tiers of government was also considered. Of importance also were discussions about an appropriate electoral system. Technical committees were established to provide assistance to negotiators. Many political parties made use of local and foreign expertise, I believe that a lot of foreign resources, both financial and technical, were provided to negotiators at this particular stage.

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25 It had taken nearly two years of talks almost exclusively between the ANC and the NP to address the obstacles preventing multi-party negotiations. The path to multilateral negotiation was now open. The only remaining issue was to agree what exactly the parties would be negotiating. The importance of this phase was the commitment to the process of negotiation displayed by each party, by jointly defining the objectives of the negotiation; each party had a stake in the process itself. See Soul of a Nation, Hassen Ebrahim.

26 The Convention for a Democratic South Africa (CODESA), under the chairmanship of the judges Michael Corbett Petrus Shabor and Ismail Mahomed, began with a plenary session on 20 December 1991, almost two years after the unbanning of political parties and the release of Nelson Mandela. The first session lasted a few days, and working groups were appointed to deal with specific issues.

27 Technical committees consisted of non-party political experts. Instead of orally presenting their views in the Negotiating Council, parties made written submissions that were then considered by the Technical committees. This was considered to be a major improvement because the reports from these committees included formulations that took everyone’s views into account, and the committees could act as compromise-seeking and deadlock-breaking mechanisms. See generally www.sahistory.org.za, Constitution Making in South Africa.
Attempts by South African women to inform the post-apartheid constitution-making process began even before the negotiation process took off in earnest. In 1990, for example, a series of workshops were held on the Charter for Women’s Rights and ways in which it could be built into a post-apartheid constitution. These workshops culminated in a historic conference “Putting Women on the Agenda”, where women of various political affiliations, professions and classes focused on the status of the Charter for Women’s Rights vis a vis a post-apartheid constitution.  

Sadly women were initially excluded by many political parties to CODESA. Women mobilized for their participation in negotiations and to this end formed a movement called the National Women’s Coalition comprising women from all political parties. Submissions were made to CODESA advocating fiercely for women’s involvement in the negotiations in accordance with CODESA’s commitment to establish a non-racial, democratic and non-sexist South Africa. This led to the establishment of a special Gender Advisory Committee as part of CODESA. Its task was to advise on the gender implications of the issues before the negotiators. Upon reflection, almost eighteen years since CODESA, women’s participation in the decision-making processes of post-apartheid South Africa, as evidently seen today, is the net result of the remarkable efforts of women in the Coalition.

Post 1994- Constituent Assembly process

After the 1994 elections, Parliament established a Constituent Assembly to begin negotiations for a new constitution, and to draft and approve a permanent constitution by 9 May 1996. All political parties represented in Parliament were part of the Constituent Assembly. Technical committees were set up to assist the various committees of the Constituent Assembly. These technical committees were made up of local experts, lawyers, economists, sociologists, and human rights specialists with expertise in the various areas of human rights.


29 In appointing their delegations to the working groups for the negotiations, all political organizations failed to increase the number of women participating, resulting in very few women delegates being appointed, which caused a huge outcry. See “Women Shaping Democratic Change, “Dr. Frene Ginwala at an International Workshop held at the Friedrich Ebert Foundation, (2002).

Donor assistance was made available to the committees negotiating the Constitution. People specializing in gender matters were active and helped in the conceptualization of our Bill of Rights. South Africa’s Bill of Rights embodies socio-economic rights and the big question at the time was whether such a bill of rights would be justiciable. Ultimately, the winning argument was that socio-economic rights should be included in the Bill of Rights to ensure that the State provides resources to address the socio-economic needs of the people. The Constitution thus enjoins the State to take positive action to protect, promote and fulfill the socio-economic rights of the people of South Africa. An important debate also occurred around equality and, in the end, substantive equality was the concept that evolved from intense deliberations about this social right.

Difficult areas in the constitutional negotiations related to the land question, the protection of minority rights, protection of South African languages, allocation of powers to the different spheres of government, i.e. national, provincial and local, the creation of the nine provinces and defining the boundaries of each of the nine provinces. The Constitution also defines the powers of the executive parliament and the judiciary. New entities were established in terms of the Constitution which included the Public Protector, the Human Rights Commission, the Commission for Gender Equality, the Auditor-General, the Independent Electoral Commission and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

The rule of law in post-apartheid South Africa

The Constitution occupies a place of pride in the national discourse. It is the one policy that South Africans have consensus on. It is thus proper to say that South Africans accept that theirs is a constitutional state. Our country adheres to human rights and has ratified many

31 See Chapter 2 of the South African Constitution.
32 See Chapter 4 of the South African Constitution, Parliament, section 42 to 82, Chapter 5 of the Constitution, President and the National Executive, section 83 to section 102, Chapter 8 of the Constitution Courts and Administration of Justice, section 165 to section 180.
34 Notwithstanding the increasing debates on issues pertaining to culture, land ownership etc, the broader constitutional principles and values remain are widely accepted by the South African people.
human rights treaties\textsuperscript{35} to conform to the prescripts of our Constitution.\textsuperscript{36} Our Chapter nine institutions assist in the advancement of a just society. The Constitutional Court has deliberated on some cases against the state dealing with socio-economic rights and has sometimes found against government.\textsuperscript{37} The Court has thus developed new jurisprudence on socio-economic rights, thus establishing the justiciability of socio-economic rights.

Donors continue to extend support to rule of law programmes including the reform of the judiciary and the criminal justice system, and support to public interest organizations especially those that they perceive to be advancing human rights and constitutionalism. Currently, HIV/AIDS assistance comprises the bulk of donor assistance, followed closely by those dealing with crime prevention, safety and security. NGOs working with the poor also receive assistance.\textsuperscript{38}

The South African experience illustrates the importance of national ownership of reform. In all the processes described above, conceptualization of the modus operandi was done by South Africans and where there was a need for expert advice it was obtained from both South African and foreign expertise thus creating sustainable and ideal collaborative efforts in the pursuit of progressive reform.

Change benefiting those most in need requires direct involvement of beneficiaries as part of their own empowerment; after all they are the ones who know best what the needs of their communities are. Reaching out to communities and localities and not just to those in

\textsuperscript{35} The transition from apartheid to constitutional democracy has produced an exciting and vibrant response to the development of a human rights culture in South Africa. South Africa is a party to the African Charter on Human and Peoples’ Rights, African Charter on the Rights and Welfare of the Child, Protocol on the African Human Rights Court, Protocol on the Rights of Women and other major international and regional human rights treaties and is therefore bound by its obligations to respect human rights. South Africa has ratified the Convention on the Elimination of Discrimination against Women, the Convention on the Rights of the Child, the Convention on the Elimination of all Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights. See input by the Department of Justice and Constitutional Development to the African Peer Review Process and South Africa Country Report.

\textsuperscript{36} Section 231 of the Constitution on General Provisions on International Law.

\textsuperscript{37} See Government of the Republic of South Africa & Others v. Grootboom & Others 2001 1 SA 46 (CC), Minister of Health & Others v Treatment Action Campaign & Others 2002 5 SA (CC).

\textsuperscript{38} See specifically programmes administered by the Department of Social Development, Republic of South Africa.
organized groups is essential for local ownership.\textsuperscript{39} Resources provided by donors (money or personnel) should be geared to enhance efforts of local people. It is ideal that donors at all times work with national institutions. Donors must work against perceptions that undermine local authority. In this way efforts that seek to help those in need will succeed.

This notion of ‘national’ buy-in to reform efforts cannot be emphasized enough. Nationals in the majority must be supportive. For foreign assistance to succeed in the project of improving the lives of the people it should not be imposed on the intended beneficiaries. In this regard, there need to be protocols agreed to by national government and donor agencies as well as performance and accountability agreements for receiving assistance. These processes are fine provided that goals set have been adequately discussed with the beneficiaries of the assistance. Surveys are helpful in determining impact. Empirical research is informative provided that locals are part of the research effort. It is helpful to work with national research institutes especially before assistance is provided. It is also important to establish monitoring and evaluation tools.

South Africa needs to invest more on issues involving research and development in order to dynamically address its change and development strategies. South Africa, as part of the Southern African Development Community and the African Unity (AU), has a responsibility to provide development assistance to Member States of the AU. It can and should embark upon collaborative ventures for progressive change in emerging democracies on the continent and around the world.

It is important to note that the Government of South Africa has created a framework for development assistance. South Africa has a complete Official Development Assistance programme (ODA), which is institutionalized.\textsuperscript{40} ODA is co-ordinated and managed by the National Treasury. This is to enable accountability and efficiency in the use of development assistance. The SA government became a recipient of ODA in 1994 after the first democratic elections. At the time there was no proper management framework and such funds were then used for a special programme, the Reconstruction and Development Programme. Today

\textsuperscript{39} See Gender Justice Report of Africa Regional Meeting, hosted by then Minister of Justice and Constitutional Development, Ms. BS Mabandla in collaboration with the Ministry of Foreign Affairs, Sweden, International Legal Assistance Consortium (ILAC) (2007).

\textsuperscript{40} See Policy Framework and Procedural Guidelines for the Management of ODA (2003).
international agreements are entered into for the utilization of such assistance.\footnote{See Financing Agreement signed between the Government of South Africa, represented by the National Treasury and the European Union on Access to Justice and Promotion of Constitutional Rights Programme (2009).} Line function departments are expected to provide inputs on the substance of such agreements. In 2003 the National Treasury produced a policy framework and guidelines for the management of ODA.

The Department of Justice and Constitutional Development has important programmes that use ODA. Social Development also utilizes ODA resources to develop programmes aimed at poverty alleviation. Specific programmes include, amongst others, the Tutuzela Care Centres for Victims of Crime established by the Sexual Offences and Community Affairs Unit (SOCA) in the National Prosecuting Authority (supported by USAID), the Access to Justice and Promotion of Constitutional Rights Programme supported by the European Union, the coordination and implementation of key pieces of constitutional legislation on access to information and promotion of administrative justice, supported by the German Technical Cooperation (GTZ), transformation of programmes on small claims courts, supported by the Swiss Cooperation, preparation for the implementation of child justice legislation, supported by UNDP and SIDA). There are many other examples of international cooperation in the field of human rights and constitutional democracy that may warrant a further closer examination documenting lessons learned and the need to share best practices, where possible with sister nations on the continent.

\section*{Conclusion}

Since 1994, the government has been engaged in a vigorous process of transformation that included transforming the state machinery – including the judiciary – and putting in place new institutional arrangements to facilitate a move towards a truly democratic society that is based on the principles of non-racialism and non-sexism. Dismantling apartheid’s legal and institutional architecture must remain at the heart of South Africa’s transformation programme as the challenges of post-apartheid reconstruction are immense, notwithstanding the good work carried out by the respective administrations after the 1994 democratic elections.\footnote{See Towards a Fifteen Year Review, the Presidency of the Republic of South Africa (2009).} Levels of unemployment and poverty are very high; racism, racial discrimination, xenophobia and related intolerance still persist in the South African society. The legacy of
more than three centuries of colonialism and apartheid continue to haunt us. Other urgent priorities relate to the need to strengthen initiatives on access to health care and access to adequate housing. It is important to note that the current administration is committed to addressing these challenges, which are identified as high priority areas and form the underpinning of the new programme of action encompassing government’s work.
Kenya’s Accelerated Reform Experience with a Sector-wide Approach under the GJLOS Reforms Programme

By Amina Mohamed, Permanent Secretary and Chief Executive Officer, Ministry of Justice, and Francis Maina, Director of Programme Coordination Office for the Governance, Justice, Law and Order Sectors

Reform of the governance sector stretches back to the newly independent Kenya, but efforts have been piecemeal and ad-hoc. Since 2003, Kenya’s reforms to strengthen the rule of law have been pursued as part of a comprehensive, government-led and sector-wide framework that has encompassed Governance, Justice, Law and Order Sector (GJLOS). GJLOS has involved Government departmental agencies, development partners, civil society, private sector, and through the latter two groups, indirectly engaged with the Kenyan people. During the first five years of reforms, the programme has achieved different levels of progress in diverse areas such as human rights, policing and crime prevention, access to justice, penal institutional reforms, public service delivery enhancement and accountability, drug and substance abuse, the fight against corruption, and law and policy review. Funding interruptions by development partners were an important challenge during the implementation and may be traced to a lack of a common understanding on what GJLOS can deliver, and what the programme should simply not be expected to have delivered within the short years of its first phase of existence.

The first phase of GJLOS reforms was concluded towards the end of 2009. Since then, the sector is implementing a bridging mechanism whose main components include the new constitution realization and designing for the next phase of GJLOS reforms. During the coming five years under the next phase of GJLOS reforms that commences in July 2011, the focus of reforms is geared to shift from the supply side to the demand side.

Introduction

The rule of law and justice sector was for a long time a low priority in Kenya, leading to low levels of investment in the justice chain. This is evidenced by low per capita court space, and physical inaccessibility of justice to a large number of the population, especially for the marginalized and rural population. For example, to serve a population of about 40 million, Kenya has less than 60 sitting judges, as compared to over 2000 judges in Canada. One policeman serves about 700 Kenyans today, which is a huge improvement from one police officer for over 1000 people in early 2000.
The role and engagement of informal justice systems is another interesting contextual element. In Kenya, informal justice systems have in some instances dealt with more than 50% of disputes, not just in remote parts of Kenya, but even in the semi-urban and sections of the urban centers. Whereas the above mentioned can be an indictment of inaccessibility of the formal justice system, these informal systems of justice have enjoyed the faith of Kenyans – as a baseline survey in 2006 - 2007 indicated.

The initial seeds for rule of law reform in Kenya were first planted in 1982 with the establishment of the Law Reform Commission. However, the first programmatic attempt at reform began over a decade later in 1998, when Kenya’s Attorney-General, in consultation with the Chief Justice, launched a Legal Sector Reform Committee and a Legal Sector Reform Programme. Between 1998 and 2002, the Government made several efforts to operationalize this reform programme, with limited success. Indeed, the programme failed to elicit external development partner support for three reasons. First, the Government’s commitment to reform was doubtful in the deteriorating governance scenario at the time. Second, the programme was not aligned with the Government’s national planning blueprint – the Poverty Reduction Strategy Paper. Third, by focusing primarily on the Judiciary and the Office of the Attorney-General, the programme excluded important criminal justice institutions, such as the Kenya Police and the Kenya Prison Services.

In sum, no substantive rule of law reform took place in Kenya before 2003. Successful parliamentary and presidential elections and the first formal handover of power in independent Kenya in December 2002 ushered in an era of transition, and a euphoric mood pervaded the entire nation. The new Government had been elected on its promised commitment to fight corruption and restore integrity and accountability in the management of public affairs.

The first bold steps at implementing far reaching reforms was when in November 2003, the Government launched the Governance, Justice, Law and Order Sector Reform Programme. Reflective of the collective reform mood, the programme was initiated with the full support

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45 GJLOS Short Term Priorities Programme (STPP), Programme Document (November 2003).
and participation of international development partners, civil society organizations and the private sector.

**Governance, Justice, Law and Order Sector Reform Programme (GJLOS RP)**

SWAP

The GJLOS RP is designed as Kenya’s first-ever Sector-Wide Approach (SWAP), with sector priorities focused on the areas of governance, human rights, justice, law and order, safety and security and reform-oriented capacity building. The aim of the GJLOS RP is to reform and strengthen sector institutions to ensure better protection of human rights, rational, responsible and transparent governance, and fair treatment for all citizens.

Through the SWAP approach, and supported by more than 15 international development partners, the mechanism aimed at breaking down the silo approach and reduced turf wars that hitherto held back any form of meaningful collaboration amongst reforms implementing institutions in the sector. GJLOS was thus launched as a far-reaching, ambitious programme, which initially involved the participation of over 30 Government departments and agencies spread across 7 Government ministries. These 30 participating departments include among others the Kenya Anti-Corruption Commission, the Department of Public Prosecutions, the Kenya Police, the Kenya Prisons Service, the Immigration Department, the Kenya National Commission on Human Rights, the Judiciary, and the Kenya Law Reform Commission. It is coordinated by the Ministry of Justice, National Cohesion and Constitutional Affairs.

In terms of personnel, the GJLOS RP effectively covers over 120,000 civilian and uniformed personnel in the Kenyan public service, which represents roughly 60 per cent of the

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46 While it builds on progress made in the previous decade in legal and judicial reform, GJLOS RP is different from previous reform efforts because, first, a deliberate effort was made to align it with the Economic Recovery Strategy for Wealth and Employment Creation (ERS), and thus create a linkage between economic reform and rule of law reform. Second, it recognized for the first time that governance reform is at the core of economic development. Third, it introduced for the first time into the national planning discourse the notions of human rights protection and the promotion of a democratic and accountable political culture.

The Economic Recovery Strategy for Wealth and Employment Creation (ERS), was initiated in the direct aftermath of the election the ERS and launched by mid-2003. It identified governance as one its core pillars and emphasized anti-corruption legislation, better rule of law and the promotion of respect for human rights as foundations for recovery.
traditional (excluding Teachers) and uniformed Kenyan civil service, and one-fifth of Kenya’s overall public service.47

From July 2004 to December 2005, the ‘Short Term Priorities Programme’ focused on injecting resources into the sector in order to achieve “quick wins”, especially infrastructure development and rehabilitation of dilapidated and run-down rule of law institutions, as well as basic capacity building. While GJLOS reforms did not start with the benefit of a blue-print, the programme office played an important role in steering the programme through ‘learning by doing approach’ for the first two years of implementation. The medium term strategy was then developed and effective from 2006. The ‘Medium Term Strategy’, lasted from January 2006 until 2009 with an intended emphasis on a progressive, deeper reform agenda for the sector, around policy, law, systems, service delivery and public participation.

In financial terms, the total investment in the programme for these first five years of GJLOS reforms has been a little over the equivalent of 100 million US dollars, of which 2/3 represents Government investment and 1/3 represents investment by international development partners.48

**National ownership of GJLOS Reform Programme and Engagement with Development Partners**

From the foregoing, it is clear that the Government is the single largest source of funds for the programme – accounting for nearly two-thirds of all funds absorbed by the GJLOS RP since inception. By far this is the most important indicator of the Government’s buy-in and commitment to this sector. Additionally, the Government has availed further resources for integrating and mainstreaming GJLOS reforms in a number of ways. First, a sector coordination department was established, fully funded and managed through the Ministry of Justice, National Cohesion and Constitutional Affairs. GJLOS RP has then been aligned with Government policy blue-print – the vision 2030, and with the strategic plan of the Ministry of Justice and Constitutional Affairs. A further important show of commitment by Government came about through the creation of a GJLOS sector for planning and budgetary purposes. Before this, GJLOS was not a true SWAP and could not feature clearly in Government policy

47 GJLOS Programme Coordination Office: Analysis of National Budget Estimates.
48 Source: GJLOS Programme Coordination Office Estimates & Government of Kenya Progress Reports.
discourse. As a result of this, GJLOS sectoral performance indicators are aligned with the national investment policy indicators. This development has allowed the sector institutions and Government agencies to prioritize together and to build harmony between their priorities as they bid for funding through the planning and budgetary processes. A further advantage is that GJLOS reform agenda has been mainstreamed into the broader Public Sector Reforms agenda, creating institutional linkages and sharing processes and systems. At the district and other decentralized levels, integration is ensured through robust GJLOS institutional structures and through information and communication sharing.

Development partner engagement has been governed by joint statements of intents (JSI). For the Short Term Priorities Programme, “a joint statement of intent for a group of bilateral and multilateral donors was signed in April 2004 by 14 international development partners, with the Government of Kenya countersigning as an “observer”49. In November 2005, in view of the Medium Term Strategy, a second “joint statement of intent between the Government of Kenya and a group of bilateral and multilateral development partners for improved harmonization, alignment and coordination in support of the programme” was signed. The JSI was particularly very useful in helping to reduce transaction costs for the Government and donors through, for example, creating a basket. The use of a single strategy document and annual work plans allows the use of a singular implementation mechanism, a unified monitoring, evaluation and audit mechanism.

The programme has contributed to significant achievements with long-term effects on this sector:

1. Development and adoption of critical laws, policies and regulations;50
2. Creating the necessary goodwill and ownership of reform at a technical level;

49 Netherlands, DFID, Denmark, Sweden, Norway, CIDA, Finland, USAID, EU, GTZ, UNDP, World Bank, UNODC, UN-Habitat, UNICEF.

50 36 policies, laws and regulations have been developed in areas such as legal education, legal aid, human rights reporting, prosecution policy, community policing, civil registration, orphans and vulnerable children and correctional services. The “Sexual Offences Act” and the “Political Parties Act” were facilitated by the programme. Both the “National Anti-Corruption Action Plan” and the forthcoming “National Policy and Action Plan on Human Rights” received extensive programme support. The successful implementation of citizen scorecard initiatives for the Department of Immigration, Civil Registration and the National Registration Bureau has led to enhanced service delivery. A pilot campaign was carried out through media and information dissemination to raise public awareness on the risks and effects of negative ethnicity on nationhood. Ten pilot Child Protection Units have been constructed at selected Police Stations around the country. Support was given to the establishment of mobile courts in remote, scarcely populated areas in North Eastern, Southern and Eastern parts of the country. The re-establishment of law reporting was facilitated after a 20-year gap.
3. Enhancing institutional collaboration, creating a sectoral orientation towards reform and opening up the sector to new, external ideas and inputs;

4. Training and building capacity for over 23,000 public servants;\textsuperscript{51}

5. Modernizing and retooling institutions through provision of vehicles, motorcycles, computers and toolkits;\textsuperscript{52} and

6. Introducing modern and adaptive management processes and systems for planning, reporting, monitoring and evaluation.

The programme has also transformed reform paradigms by offering the opportunity for thinking beyond money and projects, to building institutions, leadership, policies and enduring attitude change.

While we recognize that we have made progress, considering where the sector was coming from in 2003, we also appreciate that much more needs to be done to ensure that the reform programme contributes to national development outcomes, and ultimately, that it has an impact on the daily lives of Kenyans. To a large extent the first phase of GJLOS RP was first viewed as an aid administration instrument rather than an instrument that supports deep reform. By the end of this first phase, there was an achievement of deeper appreciation that effective reforms were about continuous transformation of how implementing agencies carried out their mandates on a daily basis.

**Addressing challenges going forward**

A key implementation challenge during the first phase was the intermittent programme disruptions that arise from external events. In our view, a negative outcome of a harmonized approach among international partners has been that in the case of disagreements, donors have tended to herd, and thus to pursue a common position to the detriment of the Government-led strategy. The GJLOS RP has experienced three such programme disruptions since it began. First, in February 2005, when the former Permanent Secretary for Governance

\textsuperscript{51} Extensive sensitisation and awareness creation took place across the sector in the areas of anti-corruption and human rights (e.g. development of human rights training manuals for the Provincial administration, Kenya Police and Kenya Prisons). Another critical area of capacity-building has been government planning processes.

\textsuperscript{52} Working tools and equipment were provided to support the decentralization of the State Law Office into mini-State Law Offices.
and Ethics resigned from Government, precipitating a withdrawal by two development partners (United States and Germany) who withheld their funding to the Short-Term Priorities Programme. The second interruption occurred after a raid against the second largest broadcaster in March 2006. Development partners were at the time quick to apply the breaks and a general slowdown in implementation of activities was experienced. The third and rather lengthy interruption occurred after the elections related violence of early January 2008. As such, it is estimated that the programme lost almost 2 years of reform implementation out of the five that constituted the first phase.

From a programmatic perspective, these interruptions were illustrative of a need for an effective dispute or conflict resolution mechanism in the programme design. The JSI is an instrument that, in hindsight, offers multiple interpretations of individual paragraphs, and does not provide any modalities for re-engagement between Government and donors following a dispute.

Unlike, for example educational or health sector reform, reform of rule of law institutions is necessarily about reforming institutions of state power, which are themselves instruments for use by the holders of state power. At the same time, it has often been misconstrued that specific negative actions or inactions of a GJLOS institution contradict the bold objectives of GJLOS reform, and thus have wrongfully been interpreted as lack of commitment to reforms. For example, the Kenya Police, the Judiciary and the State Law Office have all, in one way or another, been indicted in the post-elections problems that Kenya experienced in 2007 – 2008. These occurrences have generated heated debate and considerable anxiety. Still, there has been the wider debate as to whether it is possible, or even desirable, to separate political governance from the programmatic nexus which requires considerable re-thinking of the reforms framework. These are questions that have tested Kenya’s own commitment to reforms and its relations with donors on GJLOS reform.

While there is consensus on the need for coordination and cooperation at an administrative level, this is less so when it comes to coherence in terms of reform programme design and content. This can in part be explained by different donor agendas towards rule of law reform – the differences in interests can be as varied as the different GJLOS themes, spanning from human rights to anti-corruption, access to justice, chain of justice reform, safety and security reform. In Kenya’s experience, we have found that some donors still prefer a project-based
approach to a programme-based SWAP, since results are more easily demonstrable for the former. There are still more that are less willing to invest into long term reforms and are looking for short term results. Some are further wary of a single work plan, for which a basket fund is the financing basis, as each donor then shares success and failure and is individually less visible.

Another challenge area has been with Non State Actors (NSAs) consisting of private sector entities and civil society organizations. Their participation in the programme has remained below expectation – yet in the programme design they had a clear mandate of enhancing the programme’s accountability and relevance to Kenyans. The initial enthusiasm shown by these NSAs for the GJLOS RP gradually waned over the years, and a heavy cynicism now persists. All through its first five-years, the programme has sought to engage with non-state actors at the programmatic and policy level. A few of the civil society and private sector organizations have remained very faithful and as such have been extremely helpful through their active engagement with the programme all along. Going forward, strategies and principles of effective engagement will form an important component of the new design framework.

Another major challenge facing GJLOS during these formative years was the lack of a unifying policy. One way the Government is trying to bring overall policy coherence to this multi-dimensional framework is through the development of an overarching GJLOS policy framework that will provide the broad forward direction in terms of the principles pursued in the reforms agenda. Work on this policy framework is highly advanced, and it is expected to be a core input into the design of the next phase of the GJLOS RP.

Another important lesson is the need to manage results. This has been the programme’s Achilles heel; results are still monitored at an output, rather than outcome or impact level, and the programme’s monitoring and evaluation framework remains deeply inadequate. Over-ambitious work plans have exaggerated what can be implemented in a specific period, while monitoring and evaluation of past performance has not been sufficiently used to guide future performance. A clearer view of the results would make for a more settled JSI or agreement between Government and donors.

At a more technical level, slow absorption of funds is often due to the slow speed of procurement in comparison to planned activity, owing to weak capacity and elaborate procedures for procurement and contract management, and limited flexibility in their
application, meant to defeat/reduce corruption. Ministerial agency capacities and under-capacitated coordinating function have also hampered implementation.

On mutual accountability, this must be closely linked to results and actions. On occasion, we have felt that accountability has been rather lop-sided against the Government. As we move forward, we will need to find a process and structure that better promotes accountability within Government, among donors and between Government and donors.

**Conclusion**

The need for reform in the Governance, Justice, Law and Order sector is of higher priority than ever. With the end of the first phase of the programme and the ongoing design of the next phase of reforms, a fundamental question is what should motivate the continuation of the reforms momentum in the GJLOS sector. Part of the answer lies in the shift of emphasis from the supply side to the demand reform priorities.

In line with the Accra Agenda for Action on Aid Effectiveness, there is a recognition that a future, successful GJLOS RP is one in which the Government works more closely with donors to build more effective and inclusive partnerships, with civil society, grassroots organizations, the private sector and other development actors.

We firmly believe that great potential exists to enhance international development assistance towards rule of law reform. While donor coherence and coordination as well as respect for the principles of aid effectiveness are important, Governments the world over must take the lead and responsibility in the pursuit of reforms that truly reflect development priorities in the context of their respective national rule of law frameworks.
This article examines the challenges faced by Ukraine in developing national ownership of rule of law reform efforts in the context of engagement with the EU and post-communist transition. The Director of the Rule of Law Programme of the International Renaissance Foundation, a non-governmental organization, outlines the difficulties that have been faced in implementing legal and judicial reform, and highlights new initiatives that emerged to make external rule of law assistance more effective and sustainable.

Introduction

Ukraine is one of the biggest recipients of international assistance in Eastern Europe. Currently, there are six ongoing rule of law projects from the Council of Europe (CoE) and the European Commission. Other donors include United Nations Development Programme (UNDP) and a range of bilateral donors such as the USA, the UK, the Netherlands, Germany, Canada, Switzerland and Sweden. Within the field of rule of law, major priorities are the support to the judiciary (USAID), criminal justice (Organization for Security and Co-operation in Europe, Canadian International Development Agency, Swedish International Development Cooperation Agency, the US Justice Department), and access to justice (the Dutch Matra programme, Open Society Institute). There is a positive environment in the country in terms of political and legislative acceptance for any type of donor activity. However, there is a considerable lack of national ownership and sustainability of rule of law efforts.

The main driving force for reform in the country (and generally in the region) is the aspiration for European integration. Ukraine benefits from its status as a priority partner country within the European Neighbourhood Policy of the EU, which was formed to avoid the creation of a new barrier after the EU’s enlargement to the east. The EU-Ukraine Cooperation Council endorsed a joint EU-Ukraine Action Plan on 21 February 2005. It provides a comprehensive and ambitious framework for joint work with Ukraine, in all key areas of reform. Ukraine

53 Mr. Romanov has been the Director of the Rule of Law Programme since 2002. In 2005 he was appointed to the National Commission on Strengthening Democracy and the Rule of Law and from 2005-2007 he was the Chairman of the Subcommittee on the Rule of Law.
joined the Council of Europe in 1995. Since then it remains under the monitoring of its Parliamentary Assembly. At the same time, Ukraine has repeatedly been criticized by international organizations (including UN agencies and treaty bodies, the Council of Europe, and the European Union) for systematic failure of fulfilling its international commitments.

Reform has proved difficult to implement in practice due to the mind-set of old practitioners. The actors responsible for ensuring the rule of law, such as the Supreme Court, Attorney General’s office and bar association, have been resistant and even opposed to reform. Simply put, the legal and justice system remains weak. Approximately 65% of defendants are not represented by lawyers. Over the years of receiving assistance, it has become apparent that the entire legal and justice system is in need of an overhaul and that single donors could and should not act unilaterally. Yet, political instability and the lack of political will have made it difficult to ensure effective implementation of reform efforts. We have a number of commitments unfulfilled, donor support is often oriented to promote initiatives that are not known by the population, and there are no clear priorities among the authorities. At the same time, positive examples of reform efforts indicate we are integrating some lessons learned from experience to date.

**Challenges of ensuring national ownership in the context of EU integration**

For Ukraine, the challenges facing the newly independent country building democracy after a totalitarian regime were unique in a historical context, but shared among many countries in the region. The experience in Ukraine has been that many donors simply replicate mechanisms they used in other countries in the region. After independence, the EU and European countries soon took on a prominent role in donor activity in Ukraine, fueled by the country’s eagerness for closer economic ties. The EU has not yet offered Ukraine the possibility to join the EU, but instead has built an active partnership. This combination has, however, led to an often unbalanced and short-sighted approach to the country’s rule of law reform, including a lack of national ownership.

Many donors are using the same instruments of assistance and the same priorities as previously used for EU accession countries. At the same time there is no accession agenda for the Ukraine. This has a negative effect on the attitudes from political leaders towards international reform efforts. Advice and expertise provided by foreign experts have thus limited impact on ultimate decision-making. In addition, from the national perspective,
international donors often demand additional resources to fill their current needs, and the actual effect of their assistance does not necessarily always trickle down to the country itself.

The close partnership between Ukraine and the western European nations, including the EU, has also made the pursuit of general and comprehensive rule of law strategies more complicated. Cooperation by different parts of the government and the judiciary with each international institution leads to creation of different action plans. Different European bodies often issue conflicting reports with the effect that different national authorities, working under a silo approach, hurry to adjust their strategies and action plans accordingly, without the input of civil society. To make matters worse, different parts within the same government body have been known to simultaneously prepare different and conflicting action plans or sometimes adopt the same strategies under different names.

A main obstacle for advancing the rule of law agenda has been the unstable political situation in the country. Political parties often focus on short-term priorities and get "locked-into" their pre-election promises, and are not ready to present or support long-term political agendas for reforming the country, including for legal reform. For a country with a struggling political system, it is hard to keep reform on track over a longer period. Since elections have taken place every two years since independence, it has proved nearly impossible to manage consistent reform strategies, aggravated by the uncoordinated approaches by different ministries. The parliament has also effectively been isolated from the systematic work of the government.

Most donors have taken what I call a “traditional approach” to rule of law assistance and promotion, partnering mostly with governmental agencies. In my view, this is partly the reason why public awareness of and support for reform in the Ukraine is so low. A key obstacle for ensuring effectiveness is the lack of legitimacy of reform efforts. After 18 years of independence, half the population still does not understand reform initiatives and does not feel they are taking place. It is important not only to hear the voices of state representatives, but also to set up a national dialogue on what kind of solutions would be effective and informing the population about reform actions. It is difficult to promote reform that is not understood and will therefore not be accepted by the people.

We have also fallen into the trap of how easy it seems to be to show progress in legal reform through adopting laws, but ignoring their implementation and thus the impact on long-term
rule of law reform in the country. Every year, nearly 300 laws, including amendments to existing acts are being adopted in Ukraine, as well as ten times as many sub-laws. Some years back, reform initiatives focused on human rights activities, including the adoption of a law on women’s rights. However, this legal reform was never coupled with a long-term strategy and after the law was adopted, many donors moved on to other focus areas and so did the national authorities. Its implementation and real impact remain limited.

Civil society, unfortunately, has not been deeply involved in the planning stages of legal and justice reform efforts. While civil society organizations are active in different spheres of public life in Ukraine, most of their activity covers elections and human rights monitoring, legal assistance for vulnerable groups, and human rights litigation in national and international jurisdictions. The State has so far generally tolerated their role and sometimes welcomed their impact. However, national legislation does not allow them to formally act in the general public interest. The relevant legal act restricts the areas of activity of non-governmental organizations. Their role is limited to the protection of rights and the legitimate interests of their own members.

**Have we internalized lessons to improve reform efforts?**

We have learned many lessons from the 18 years of efforts in Ukraine. It is now clear that donors must align their efforts to some degree, and that reform should be based on a deep understanding of the particular needs of a country and not merely reactive to the demands or requests of international donors. We have also learned that better assessments need to be carried out in consultation with local and national partners, including civil society organizations, before reforms are initiated.

A national dialogue should also take place at an early stage to then trigger and shape reform initiatives. In this regard, Ukraine provides a positive example for neighbouring countries to learn from ways for establishing a sustainable dialogue between governmental agencies and civil society organizations. After the pro-democratic candidate’s dramatic victory in the 2004 presidential elections, a number of new advisory bodies were established. The new president set up a separate consultative body for developing strategies in the area of rule of law reform - The National Commission on Strengthening Democracy and the Rule of Law. The idea was to bring together and align different international commitments, and have both civil society
organizations and the government represented. A number of non-governmental activists were appointed as members.

Within just one year of its establishment, concepts for major reforms were elaborated on the judiciary, criminal justice and legal aid. Based on those concepts, the government elaborated a draft law on the judiciary, a draft Criminal Procedure Code and draft legal aid law. International donors offered sufficient expertise. For the first time, comprehensive strategies, which do not contradict each other and which are in accordance with international standards appeared in the country. They became new elements for measuring success in implementing legal reforms. The setting-up of The National Commission on Strengthening Democracy and the Rule of Law as a consultative body in the President's office has given a chance for real exchange of different views on reform priorities in the country.

An example of a well-coordinated reform is the initiative to establish a legal aid system. The reform was initiated by the National Commission and supported by the Ministry of Justice, human rights NGOs, donors and the Bar Association. The national authorities began their reform efforts by implementing pilot programmes on the basis of recommendations from international donors in a few select regions. These pilot programmes gave useful information on the resources needed for full-scale implementation. Thereby the main reform programme could be adjusted based on the experiences from within the country and coupled with capacity-building. This also proved to be an effective method for securing the important political will for reform, as the positive impact was more apparent.

There are also positive examples of reform efforts that have emerged from the grassroots level. In 2005, the Ministry of Interior set up a mechanism for sustainable dialogue with human rights organizations followed by the setting-up of the Public Council. The same mechanism was later used for the regional police. The police allowed non-state actors to form monitoring groups and made places of detention available to them. This work began without any arrangements from parliament and was not related to the government’s obligations with respect to the implementation of the Optional Protocol on the Convention Against Torture. It was, however, quickly realized that there should be a more permanent structure within the whole police system. Accordingly, the Ministry established a Department of Human Rights Monitoring.
Conclusion

Ukraine has faced considerable challenges as a newly independent country undertaking significant reform efforts amidst aspirations for integration in the EU. Now, nearly two decades since independence, Ukraine has learned a number of key lessons in implementing reform programmes, though the challenges of ad hoc measures and a system that is reactive to donor demands still remain. Some positive examples of more coordinated and coherent reform initiatives are emerging, illustrating the importance of cooperation between national government and civil society for effective reform.
In this article, the Executive Director of Due Process of Law Foundation reviews the legacy of the Fujimori regime on judicial reform in Peru, highlighting the important role that international organizations can have in domestic reform efforts. She maintains that international organizations should require a minimum level of respect for the independence of the judiciary by the government as a condition for support to rule of law projects. She further highlights that for reform to take root in the country, it must be more grounded in the local reality and seek to strengthen the relationships between the formal and non-state justice systems.

Introduction

The Peruvian judicial system has long been mired in corruption and inefficiency, hampered in part by an internal armed conflict and the spread of drug trafficking. In the last few years there have been serious attempts to improve the system, which have brought about important changes. Unfortunately, political pressure on the judiciary, especially in some high profile cases, makes it hard to improve the Peruvian society’s perception of the justice system, and of course, improve the judicial system itself.

Currently, international cooperation in the rule of law sector in Peru is oriented either to the state or to NGOs. In the first group, we find mainly the World Bank, the Inter-American Development Bank and also country cooperation agencies such as USAID, GTZ (Germany), AECI (Spain), ACDI (Canada), COSUDE (Swiss) and the EU. Among the group of private donors supporting civil society groups working on rule of law in Peru we find an important support from the Ford Foundation and Open Society. There are also many small European donors

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54 The Due Process of Law Foundation (DPLF) is a non-governmental organization based in Washington, D.C., founded by Professor Thomas Buergenthal – a judge of the International Court of Justice – and his former colleagues from the United Nations sponsored Truth Commission for El Salvador. DPLF is devoted to promoting institutional reforms within national judicial systems in Latin America to make them more independent, transparent, accountable, accessible to all equally and therefore more capable of protecting fundamental rights, especially for those most vulnerable in those societies.
which mainly support groups in the interior of the country. USAID, GTZ, and ACDI also have small programs for civil society groups.

**The Fujimori legacy**

When Alberto Fujimori – the former Peruvian President recently condemned to 25 years in prison for corruption and human rights violations – won the presidential elections in 1990, the Peruvian judicial system was in deep crisis. For decades, it had been characterized as corrupt and inefficient. Courts were poorly managed provoking enormous case backlogs and extreme delays, judges were insufficiently educated and badly compensated, and the buildings where they carried out their work were crumbling. To make things more complicated, the appearance of guerrilla groups (e.g. Shining Path and Túpac Amaru Revolutionary Movement) and the spread of drug trafficking provoked a wave of new kinds of cases that judges were unable to resolve.

President Fujimori had a plan: he wanted exceptional powers from the Peruvian Congress to reform the judiciary and fight against terrorism. As the Peruvian Congress would not give him the powers he wanted, on April 5th, 1992, Fujimori dissolved the Congress, suspended the Constitution, and fired almost two hundred judges, including all Constitutional Court members and 13 Supreme Court justices.

These dramatic measures were initially supported by a critical mass of Peruvian society, fed up with the inefficiency and corruption in the judiciary. But soon it became clear, even to those who initially supported these measures that Fujimori’s real intention was to control the judicial branch. All of the fired judges and justices were replaced by provisional appointees subject to dismissal and transfer at any moment, creating an atmosphere of dependence on political power. Additionally, “faceless courts” with anonymous judges presiding over trials from behind mirrors were created to handle terrorism cases. Both of these moves allowed Fujimori to manipulate the judicial system in a manner accountable to no-one.

In 1995, a second phase of Fujimori’s judicial reform started with the creation of an “Executive Commission” in charge of the judicial reform process. This Commission was made up of three Supreme Court members and an Executive Secretary who was a former commander of the Peruvian Navy. The commission was provided with extraordinary powers
including the power to establish courts, appoint judges and manage the budget. Its chairman had an open and close relationship with President Fujimori.

In December 1997, the World Bank approved a judicial reform project for Peru with a loan of $22.5 million US dollars.\(^55\) Only a few months after the project’s approval, the government’s persistent interference in the judicial branch prompted the World Bank to announce it would postpone loan disbursements pending the government’s restoration of conditions necessary for the project to meet its goals. After failing to correct the situation, and faced with a probable adverse decision by the Bank, the Peruvian government requested cancellation of the project. The Bank formally cancelled the project in September 1998, before implementation ever began.

Over the next few years the judiciary was fully controlled by Fujimori and his main advisor, Vladimiro Montesinos, who bribed politicians, broadcasters, artists, and even judges with thousands of dollars, in cash, given during meetings in his office. By this point, international cooperation agencies, with few exceptions, had stopped supporting the Fujimori regime. The meetings with Fujimori’s advisor, Montesinos, were recorded by hidden camera, and aired on television years later. After the release of the first video in 2000, Fujimori fled the country and resigned the Presidency by fax from Malaysia. The swiftly established transitional government called new elections that same year in which Alejandro Toledo was elected President.

It was during Toledo’s presidential term that a Truth and Reconciliation Commission was established and, for the first time, officially documented and exposed the atrocities committed by guerrilla groups and State agents during the 20 years of internal armed conflict. There was unanimous support from international cooperation agencies for this initiative.

However, the judiciary continued to pose a serious problem even in this new phase of Peruvian history. In 2003, the new government, tired of isolated initiatives for reform that were never coordinated, established the Special Commission for the Integral Reform of the Administration of Justice (CERIAJUS), which included representatives from state institutions, bar associations, university law schools and civil society groups, charged with the main goal of drafting a National Plan for the “re-founding of the Peruvian judiciary.”\(^56\)

\(^{55}\) For more information see: [http://www.idl.org.pe/idlrev/revistas/126/pag73.htm](http://www.idl.org.pe/idlrev/revistas/126/pag73.htm).

\(^{56}\) For more information see: [http://www.congreso.gob.pe/comisiones/2004/ceriajus/presentacion.htm](http://www.congreso.gob.pe/comisiones/2004/ceriajus/presentacion.htm).
In 2004, this Special Commission finished its work, and presented its conclusions and recommendations to the President.\(^{57}\) Their recommendations were oriented to different sectors such as access to justice, anti corruption policies, modernization of judicial offices, human resources, administration and budget and criminal justice. This cutting edge initiative was seen as legitimate and thus raised a lot of expectations. It was also the first time that such a broad and representative group of people came together and reached consensus on the best way to improve the Peruvian judicial system. Unfortunately, the Special Commission report was never implemented but stashed away in some drawer somewhere. We are still working on isolated projects and initiatives trying to promote, as always, a more independent, transparent and inclusive judiciary in Peru.

**Paving a path to reform**

Grounded in personal experience, I offer a number of essential points to enhance the relationship between international-assisted and national reform efforts. First of all, respect for judicial independence should be a key requirement for international assistance on rule of law. It is understandable that donors do not want to insert themselves into the internal dynamics of each country, but it is important to have minimum and clear requirements before granting support for rule of law projects. One of those requirements must be sincere will and political commitment to respect judicial independence and the rule of law. These days, interference in the judicial branch by other branches of the government is undertaken in very sophisticated ways and international cooperation agencies must be aware of this.

The World Bank’s final decision to suspend Peru’s loan was the right decision, but the question still remains as to why the loan was approved when the Fujimori administration’s real intentions to control the judiciary were clear, and why the final cancellation of the project took so long. The World Bank left, but many other agencies stayed and even supported the Fujimori regime.

Secondly, the involvement of national stakeholders —from design to execution— should be a critical component of internationally funded projects. Peru, as well as other Latin American countries, has seen an ever growing number of large rule of law projects designed abroad and

carried out by non-national private companies that might have the best intentions, but lack integral knowledge of the internal dynamics moving the country. It is urgent to incorporate more national stakeholders—including civil society as well as government representatives—in the design, implementation, and evaluation of the projects. In Peru, NGOs play a key role in monitoring government performance, a role traditionally played by political parties. For this reason, to design a successful rule of law project one must take into account the opinions and perspectives of civil society groups. Many of these organizations have the institutional memory of over 30 years of struggles, while the government contact person is usually somebody who has only recently been appointed to the position. Using this institutional memory will help avoid repeating the same mistakes, over and over again. When the international assistance is made through a loan instead of a grant, the process of approval should incorporate external opinions to be sure of the need and relevance of the project proposed by the bank offering the funds. We should promote a higher level of scrutiny in this kind of decision that involves current and future generations.

Thirdly, the lack of recognition of the cultural and legal diversity of our continent has been an obstacle to successful rule of law projects. International support for rule of law has focused on the official systems—made up of judges, prosecutors, courts and public defenders—while reality shows that the real coverage of our judicial systems is very limited. There are huge areas in our continent where there are no judges, prosecutors or public defenders. What happens in these areas? Are there no conflicts there? Are they not resolved? The answer is no, there are a lot of conflicts and they are resolved but in different ways. Indigenous peoples, peasants, and people living in rural areas use mostly non-state justice systems. This is the daily reality for most Peruvians.

Although these community and indigenous authorities do much of the job that our judges and prosecutors should do, and despite the fact that they are recognized by most Latin American Constitutions, these non-state or alternative justice systems have been ignored by almost everybody for years. Where they are recognized, they are often seen merely as part of the anthropology or folklore of our countries.

The final key point is that if we really want to improve justice systems in Latin America we should recognize the existence and value of non-state justice systems, and promote a higher exchange and coordination between them and the official system. It is not a matter of one
replacing the other, but of promoting more exchange between the formal and non-state systems.

NGOs have been working on these issues for years and urging judicial systems to address the need for greater coordination. An interesting initiative promoted at the highest level of the judiciaries of the San Martin and Cajamarca regions of Peru is the recently created Intercultural Judicial School58, oriented towards judges and indigenous authorities. The courses of the school include typical law subjects as well as indigenous law and different ways to coordinate between the formal and informal systems. These regional initiatives are the first of their kind and receive no international funding.

Experts, both national and international, who have more extensive knowledge of the realities on the ground, must be incorporated into the full project process, for projects to have greater impact. There appears to be a correlation between the success of the projects and the degree of on-the-ground experience of internationals and national project officers. Similarly, it is important that international assistance be based on a deeper understanding of each country’s realities and more consideration on the assessments or reports already made at the national level.

**Conclusion**

The lessons outlined in this article are drawn from Peru’s experience with judicial interference and efforts to reform a long-considered corrupt and inefficient judicial system. Reform initiatives continue to be ad hoc and lacking in coordination. To improve support for the rule of law in Peru, programmes should draw more substantially on the strength of local actors, and be grounded in the local knowledge and context. International efforts need to recognize the essential role that indigenous justice systems play in the country and the region. More focus should be given to supporting the coordination of formal and informal systems. Moving forward to improve rule of law assistance in Peru, international cooperation agencies should urge the government to re-examine the road map set out in the Special Commission report for reforming the judicial system. Such a plan would help avoid a piece-meal approach to reforming the judicial system.

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58 The San Martin school was created through Resolution No. 408-2009-P-CSJSM/PJ of November 26, 2009 and the Cajamarca school was created through Resolution No. 220-2010-P-CSICA-PJ of August 4, 2010.
Lessons from Sierra Leone in National Ownership and Measuring Effectiveness of Rule of Law Assistance

By Jonathan Sandy, Former Acting National Security Coordinator and Advisor to the President, Sierra Leone

In this article the former Acting National Security Coordinator and Advisor to the President of Sierra Leone outlines the reform programmes undertaken in security and justice during the 8 years after the conflict. He argues that these programmes have been relatively successful in facilitating national ownership, improving the performance of security and justice actors and regaining public confidence in the rule of law. He also touches on remaining challenges to these reform efforts in Sierra Leone.

Introduction

Sierra Leone provides an example of good practice. After 8 years in a post-conflict situation, the country has undergone unprecedented reforms in democratic governance aimed at advancing the rule of law, and respect for human rights and dignity. The 11 year civil war and pillage had left the institutions of rule of law in Sierra Leone severely incapacitated.

Since 2002, the country has implemented a number of reform programmes related to rule of law, including the programme on Security Sector Reform (SSR) and justice reform. Partnerships with the United Nations (UN) and other international organizations have been very important for capacity building. At the present time, international assistance on rule of law development takes place at three levels: multilateral, such as the UN and World Bank, bilateral, such as DFID and through the civil society. In reviewing these programmes, their funding and implementation, the question that practitioners and researchers continue to grapple with is the effectiveness of rule of law assistance in promoting national ownership on the ground in Sierra Leone.

Security Sector and Justice Reform

Sierra Leone has taken a strategic approach to reform in the security and justice sectors. This has involved establishing clear priorities and targets. Every year the government contracts out to a university to survey the population about the perceptions and experiences with the
police and judicial system. This has been a very important tool to help guide the development of reform strategies.

The strategy behind the SSR reform programme, entitled the “Sierra Leone Security Sector Reform Programme,” was to strengthen national security from the village level up. At the rural level, people tend to confuse the function and responsibilities of the military and police. The SSR programme’s primary goal was to succinctly define and delineate the responsibilities of the main security sector actors. Furthermore, SSR reform included reviewing constitutional provisions to combat and avoid coup d’etats, which often occur in African countries due to constitutional grievances. Specifically, reviewers and legislators identified that section 165 of the constitution of Sierra Leone had to be reformed to include a provision for security institutions, with clear, democratic oversight.

The national strategy for Sierra Leone’s justice programme, entitled the “Justice Sector Reform Strategy and Investment Plan,” (JSRIP) sets out a platform for a coherent, prioritized and sequenced set of activities to reform the operations of the justice and rule of law system in Sierra Leone. The JSRIP has gone through two phases: the inception phase (2004-2007) and the programme phase (2008-2010). The plan is budgeted at approximately 30 million USD, of which 4.5 million USD is currently unfunded.

The goals for the JSRIP are ensuring safe communities, improving access to justice, rebuilding rule of law institutions and implementing mechanisms to promote sustainability of these institutions, as well as guaranteeing efficient and effective justice service delivery. The programme outlines specific targets to be achieved. These include: reducing crime and fear of crime; improving public faith in the legal/judicial/law enforcement systems and authorities such as the local courts, paramount chiefs and local chiefs; speeding up the efficient trial and adjudication of criminal cases including those involving corruption and maladministration; reducing the number of human rights violations against juveniles in the corrections and justice systems; improving the efficient disposal of civil cases; and improving the confidence of the beneficiaries of the system in human rights and accountability.

In order to deliver on these goals, the strategy underpinning the JSRIP is to prioritize providing primary justice at the community level. Reformers have recognized that training justices of the peace is essential, given that 70% of the local people in Sierra Leone have limited access to the formal justice system, including the police. The JSRIP is also working with
the World Bank and the UN system to explore creating partnerships between the local community and the police.

The second and related priority is to decrease the backlog and delay that continues to beset the formal justice system, including civil, criminal and juvenile cases. Increasing the efficiency and effectiveness of the administration of justice requires the strengthening of the new institutional arrangements by improving the cooperation, coordination and communication among the many actors involved in the justice system.

The JSRIP ensures the alignment of justice sector plans and budgets with overall development frameworks, such as the Poverty Reduction Strategy Paper and Multi-donor Trust Funds. It also focuses on improving the relationship of the government with partners, including Civil Society Organizations (CSO) and development partners through cross-institutional structures.

**Facilitating National Ownership**

Strengthening national ownership to achieve the goals of reform programmes is extremely important. This is clear in all areas of assistance. The harder question that arises is how one measures national ownership; who specifically owns the indicators of progress and who evaluates them. Indicators are the only way of objectively verifying progress. This as well raises the issues of alignment and harmonization of reform objectives across the development field, all of which are important parts of national ownership.

A critical, often underestimated factor in facilitating national ownership is identifying and building relationships of trust and confidence among those who receive and those who provide assistance. This is essential to engender political commitment and leadership. In Sierra Leone, the President and the Vice-President identified the rule of law as paramount. Despite this critical leadership at the political level, we did face the problem of spoilers particularly once we dug to the level of defining clearly roles and responsibilities of actors in the security and justice sectors. The experience of Sierra Leone underscores that international community has an important role to play in dealing with spoilers in support of pro-reform government leadership. Critical to progress on reform was the public diplomacy by Special Representatives of the Secretary-General and Ambassadors of States, who were interested in helping to solve particular problems on the basis of trust with national political leaders. From an institutional perspective in reform programming, the high-level Steering Committees
established to oversee implementation of the rule of law reform programmes in Sierra Leone have been important mechanisms for developing relationships and supporting national leadership.

National ownership is also facilitated by clear structures and processes for reform set out with national actors playing leading roles, particularly for strategic planning and monitoring and evaluation frameworks. The development of the national capacity of the Justice Sector Coordinating Secretariat, which supports the implementation of the reform programme, has been important to establishing these processes. Increased focus is needed on the development of national capacity in the processes and structures of reform.

The inclusion and participation of many actors, particularly CSOs, in developing and implementing reform programmes is another way to facilitate national ownership. The research capacities of CSOs can be especially important to effective monitoring and evaluation of reform programmes, including tracking of public perception of and experience with the security and justice institutions.

National ownership is obviously linked to the establishment of ‘national’ priorities for reform, which should be reflective of the vision of the government and civil society. Development and reform processes are complex to implement, and getting the timing, sequencing, and prioritization right is related to facilitating a strong sense of national ownership. Another important factor is ensuring that reform objectives in the rule of law field are aligned and harmonized with the overall national development frameworks and the international assistance funding mechanisms.

Finally, building effective partnership strategies with international donors to sustain national ownership through partnership agreements is essential. Sierra Leone has been able to create integrated monitoring systems that can evaluate the implementation of partnership agreements. The government has attempted to engender trust and partnership with both the civil society and international development partners in this manner.

**Measuring the effectiveness of technical assistance**

Long-term technical support is very important. Short-term support does not help in creating and building justice systems. Long-term technical advisors in the field are necessary in order to build trust and confidence with the local population. Using the knowledge of villagers and
community leaders is essential. They are experts in their own right, and technical support and assistance should work towards mentoring these community leaders. If international actors assume that local capacity is not there, they are making a mistake. We need to mentor and coach local actors.

Furthermore long-term technical advisory support ensures that the implementation strategies of rule of law reform programmes are honed and reoriented over the life of a programme to reflect the political factors and democratic developments of the country. In Sierra Leone, we have been quite lucky. The UK committed 300 million pounds over 10 years. The UK and UN have provided tremendous, long-term support.

Sustainable technical assistance is also needed to help build effective partnerships and synergies with CSOs, parliament and other actors. Technical support should be targeted at enhancing national human resource capacity for legislative institutional development, drafting of legislation, case management and oversight functions. In Sierra Leone, support for the creation or establishment of a justice sector reform secretariat, which is responsible for the planning, monitoring and evaluation systems has proven effective. Capacity-building in strategic planning processes is particularly needed in post-conflict contexts. Related to this, measuring effectiveness of assistance is facilitated by conducting joint assessment missions among the various stakeholders and enhancing donor coordination. In the rule of law sector, strengthening intra-governmental linkages and dialogue among the various parts of the administration and the independent judiciary are crucial elements of meaningful reform.

Emerging from the experiences with security sector and justice sector reform in Sierra Leone, are a number of lessons related to the implementation of effective rule of law reform. First, concerted effort must be given to fostering political and diplomatic commitment for rule of law development. Second, it is important to create the appropriate legal and policy environment that facilitates reform. Third, driving the reform process is best done by a multidisciplinary mostly national team, such as the technical work group. Fourth, a high-level steering committee to facilitate the decision-making and provide the oversight functions is important. Fifth, the reform programme implementation framework should cover a minimum period of 5 years and be sequenced, prioritized and costed, as well as integrated with the overall development framework. Finally, sustained technical support must be ensured.
While much progress has been made in rule of law reform in Sierra Leone, there is more that can be done to improve results from our multi-year reform programming in the rule of law area. The key tasks facing the stakeholders in country are to strengthen the outcome and impact monitoring frameworks that can illustrate the changes stemming from programme interventions. The fiscal, budget and financial management processes need to be reinforced, and strategic planning and management, as well as prioritization and sequencing improved. Although it is often difficult to carve out the time, the continuous review and re-casting of the reform programme to respond to the prevailing political and social circumstances is important. One of the greatest continuing challenges to strengthening the formal institutions of justice in Sierra Leone is dealing with corruption. A related challenge is the need to determine the means by which the formal and informal systems of justice can be aligned. Additionally, there is always the imperative to enhance advocacy and communication with civil society so that all sectors of society understand the reasons for and goals of reform programmes.

Conclusion

The rule of law reform process in Sierra Leone has been fairly successful and should provide examples for other countries emerging from conflict. It has given each part of the government and the independent institutions a framework for defining a clear vision and mission statement. The programmes have encouraged transparency, probity and accountability within the institutions of justice and security and their governance. It has reintroduced practices and procedures that ensure all resources spent on justice and security are accurately accounted for. Participatory civil oversight structures of the security sector have been institutionalized. Financial management, procurement of logistics, goods and services for the judiciary and the police are subject to the national procurement act and its policy framework. Furthermore, a national aid policy has been developed to provide for aid coordination in among others, the rule of law sectors. Finally, even though Sierra Leone faces challenges in providing access to justice and security, it has been able to gradually regain the public trust and confidence in the rule of law.
The Role of Rule of Law Assistance for Sustainable Peace in the Post-Conflict Scenario

By Justice Kalyan Shrestha, Supreme Court, Nepal

In this article, the Supreme Court Justice assesses the current rule of law situation in Nepal and the links to the root causes and consequences of the conflict. He questions the insufficient focus of the international community on the importance of the rule of law. He further sets out areas of priorities for reform that could be developed in a Rule of Law Plan for Nepal developed cooperatively by all national and international stakeholders invested in peace.

Introduction

The United Nations is assisting the Nepali people to build peace in the aftermath of over a decade long conflict in the country. Assistance has focused on many areas, such as supervision and monitoring of the peace process, constitution drafting, human rights protection, and improvement of the justice system. The presence of the United Nations, including the Office of the High Commissioner for Human Rights (OHCHR), the United Nations Mission in Nepal (UNMIN) and United Nations Development Programme (UNDP) has, to my understanding, helped my country move forward with the peace process. Though the current political dynamic has stalled the progress in integration and rehabilitation of the insurgents as well as the drafting of the constitution by the Constituent Assembly, I hope that with international support and goodwill we will be able to chart out a new chapter for a democratic, federal republic of Nepal.

Nepal was by and large a traditional society where the rule of law was a foreign idea until the 1950s, and up until 1990, the faith in the principles and values of the rule of law remained superficial. It was only after the promulgation of the 1990 Constitution, which aspired to transform the rule of law and human rights into living reality by establishing a constitutional monarchy, a parliamentary democracy, an independent system of justice in the country and protection of fundamental rights, did we begin to make sincere efforts to establish a rules-based society. As a corollary, we tried to internalize international norms and values of human rights into the domestic legal system by acceding to many human rights instruments including the six main instruments, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International
Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention against Torture and other Cruel, inhuman or Degrading Treatment or Punishment (CAT). However, this experiment with democracy, human rights and rule of law was short lived. Nepal plunged into violent conflict in 1996 that lasted for almost a decade. The Comprehensive Peace Agreement signed in November 2006 formally ended the conflict and opened up a new chapter in our national journey. During the last three or four years we have made some monumental achievements including the transformation of the country from a monarchy to a republic, laying the foundation for a more inclusive society by opening avenues for equitable representation and empowerment of the marginalized in the Interim Constitution 2007. I hope that these values will be further fortified in the new Constitution to be unveiled in the near future.

The rule of law in Nepal

The Nepali Judiciary today operates under the Interim Constitution of 2007 as an independent third wing of the state that exercises judicial power as per the constitution, laws and recognized principles of justice. The Supreme Court of Nepal is the highest court of the country vested with both ordinary and extraordinary jurisdictions. Under the ordinary jurisdiction, the Supreme Court hears final appeals from the lower courts, and under its extraordinary jurisdiction it conducts judicial review of the executive and legislative action. Another interesting feature of the Supreme Court is its power to hear public interest petitions. Any publicly spirited citizen having a meaningful relation to the matter can file a petition for the resolution of any constitutional and legal question that involves any dispute of public interest or concern. The Supreme Court can issue necessary orders for the settlement of disputes or the enforcement of rights. The Judges of the Supreme Court and all other subordinate courts in the three tiered structure of the judiciary are appointed by the Chief Justice on the recommendation of the Judicial Council, a constitutional body created for the appointment and disciplining of judges. The Chief Justice is appointed by the President on the recommendation of the Constitutional Council.

Below the Supreme Court, there are 16 Courts of Appeal in the intermediate rung and 75 District Courts which are the courts of original jurisdiction. In addition, there are special courts and tribunals which exercise jurisdiction in specific areas, such as labor, revenue and
corruption. The other law enforcement agencies are police, government attorneys, and prison officials. A vibrant Bar Association with more than 10,000 members assists the delivery of justice in Nepal.

When I look back and examine the causes of conflict in Nepal the obvious reasons seem to be the poverty and discrimination, resulting in exclusion and alienation of people from the political and social mainstream. As I dig deeper, the root cause appears to be either the non-existence or non-abidance to the rule of law. For a long time the rulers and their kith and kin were considered to be above the law. They also used the law to amass resources of the country for their own benefit. The common people – the tilling farmers, artisans, traders – were deprived of the basic necessities of life. The successive constitutions promulgated since 1950 declared a number of rights, but either the lack of seriousness or absence of resources affected their enforcement. As a result, equality of access to resources and equality of result, which is the core of substantive equality, were not achieved. For instance, even though the 1990 Constitution provides a relatively bold framework of rights, the rights of the people remained violated. The protective measures envisaged in the Constitution for mainstreaming the excluded community were not operationalized.

Conflict in a democratic society, to my mind, is the result of the inability of the rule of law to protect the rights of the marginalized people. The normative framework of the rule of law was not realized to provide sufficient protection and proscribe discrimination, and remove inequality, disparity and neglect of the lower levels of society. I feel that there should have been a concerted campaign to take the rule of law to the people's level and to the level of the claimant of rights, so that the rights-holder could enjoy substantive equality in terms of access to resources and opportunities. Therefore, the failure of the rule of law is to my mind both the cause and result of the conflict. As I see it, the rule of law is not just about the law and the court, but also the quality of the governance system that calls all the state organs of the state, the executive, the legislature and the judiciary to respect the supremacy of law. The failure of any of them to discharge their formal responsibilities can impinge on the people's rights and result in a systematic failure. Hence, rectifying these weaknesses is always a rule of law concern.
Positive and negative trends in reform

Today when I look at the rule of law situation in Nepal, I find both positive and negative trends prevailing. On the positive side, Nepal has ratified many key international human rights instruments. She has also created a bold framework of rights at the domestic level. Many economic, social, and cultural rights, such as the right to education, health, food, housing and employment in their different manifestations are enumerated as enforceable rights. The court has also declared, by using the power vested by the Constitution, many discriminatory provisions ultra vires, and issued orders and guidelines pending legislation for facilitating the enjoyment of rights. However, on the negative side, the enforcement of the international norms at the domestic level is crippled due to the absence of necessary infrastructure, strategic tools and operational rules, as well as the lack of a law abiding culture. The inability of state institutions to address impunity has created a situation where law breakers are considered as heroes, and those who abide by the law remain helpless. Unless this scenario is reversed, the faith in the rule of law will not be revived. Therefore, there is a need to take the normative standards of the rule of law to the people’s level, deal with impunity more seriously and create a culture of compliance so that the rule of law situation improves desirably.

At present, the capacity and willingness of the state institutions to respect and abide by the rule of law is questionable. This is due to their inability to deal with law violators especially in the rural areas where organized non-state actors have their presence. In many instances, even the decisions by formal institutions such as the court are not implemented. The political parties, for their own short-term interest, do not seem very supportive of stamping out violence.

Since the end of the conflict, the demand side of the rights has grown tremendously. This is partly because of civil society movement and the supportive role of international agencies. However, there is yet to be commensurate enhancement of the capacity of the state institutions to cater to these demands as donor assistance is conspicuously absent in the capacity building of these agencies. The legal sector is one of the least prioritized areas in terms of external assistance. Only a handful of our development partners, such as the United Nations Development Programme (UNDP), the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the United Nations Children’s Fund (UNICEF), the
United States Agency for International Development (USAID), the Danish International Development Agency (DANIDA) and the Japan International Cooperation Agency (JICA) are engaged in providing some support to the justice sector, which frankly is not sufficient. Due to the impeded capacity of the justice sector institutions, the benefit of the constitutional protection of rights has not reached the people. Therefore, if this mismatch between the demand and supply side is not adjusted, people will have a very low respect to the rule of law, and the country may even relapse into conflict.

Now coming to the rule of law assistance by development partners both at the bilateral and multilateral levels, it appears to me that the programs so far have remained rather sporadic and run on an ad-hoc basis, mainly guided by what the international community or their experts viewed as a problem. The assistance programs suffer from the donor domination syndrome. As is the usual practice, prior to undertaking the project the donors neither undertake a needs assessment nor hold adequate prior consultation during the design or ensure effective participation during the implementation phase. Unnecessary reliance on expatriate consultants and excessive expenditure on the management of the projects results in less expenditure on the actual project activities.

No communication between the implementing agency and the recipient stakeholders during the evaluation and reporting phase and follow up are other problems associated with donor assisted projects. It often seems that donors select single or an inadequate number of activities just to show their presence without having any measurable outcome in mind or requisite flexibility to make the activity successful. This has happened partly because of the lack of any rule of law road map being in place and the donors’ casual approach. Due to this, the rule of law assistance is yet to take concrete direction. Even though the delivery of justice is a continuous activity demanding long-term and continuous interventions, the assistance programs as of now have been short and guided more by the competence or convenience of the donors than the real need of the national stakeholders. The larger national community within the justice sector remains virtually uninformed about the objective and activities of the projects. Many people on the recipient side do not even comprehend why certain issues were prioritized and why projects were later discontinued.

Presently, the attention of the donors and international development partners of Nepal is drawn to the success of political dialogue among the various parties to the conflict. Almost all
the donors are engaged in peacebuilding and conflict transformation. While one can understand the importance of this kind of focus of international community in Nepal, my only submission is that overemphasis of one area pushes other equally deserving areas to the back burner.

**Planning for coherent reform**

If securing justice to the people is one major consideration in the peace process it is essential for all stakeholders to take note that the absence of sufficient laws and necessary physical and well trained human resources are visible obstacles witnessed at the moment. Mainly due to this, the Nepali judiciary is finding it difficult to meet the expectation of the people, successfully handle the impact created by conflict and entrench rule of law. Quick revamping of the legal system has become all the more necessary in view of the emerging norms in the drafting of the Constitution. Owing to the possibility of the new Constitution impacting the legal system enormously it is incumbent upon us to quickly adapt the legal system to contemporary values and reflect the aspiration of the people in the Constitution.

Today, the justice sector works under a very narrow legal framework. A legislative void is palpable in many areas. Even where laws exist, they are old and hence possess insignificant contemporary value. In many instances such laws are used as a tool to perpetuate discrimination and exploitation of the people. In view of this, the current engagement of the UNDP and JICA in the preparation of comprehensive Civil Code and Penal Code is certainly laudable. However, there is a Herculean task ahead of us demanding initiatives such as dissemination of the codes to the stakeholders, further elaboration of the principles to make them operational, capacity enhancement of the human resources, creation of facilities and institutions, continuous nurturing and monitoring of the implementation of the laws. Given that there is a need to draft several supplementary laws, review other laws in view of the emergent constitutional norms and international norms internalized by Nepal, the assistance should be continued for many more years to come. This aspect of current UN engagement, if taken to its logical end, will make significant positive contribution for the entrenchment of rule of law in Nepal.

Another aspect of the rule of law assistance is the capacity enhancement of the civil society organizations working to promote access to justice of the underprivileged community. However, this assistance, to a large extent, has remained peripheral so far. It is more focused
on advocacy than tangible assistance to the needy. A lot of money might have been spent in this area but commensurate benefit to the target community seems absent. In the absence of a coordinated effort of all the stakeholders in capacity building of civil society with firm linkages to the work of the judiciary given the latter’s central role, these programmes are unlikely to produce tangible results.

One focus area in the present situation is UN assistance to transitional justice. Here also the approach seems to be guided by a superficial understanding of peace, justice and reconciliation. Insufficient attention is given to rectify the impact created by conflict in the justice sector. It is common knowledge that the judiciary was also affected by the conflict. For instance, in many districts court buildings were destroyed and normal judicial process was obstructed by compelling the parties to withdraw the cases by threatening them or their witnesses. The movement of the court staff was seriously curtailed due to fear instilled and intimidation by the insurgents. This resulted in low filing, pending arrears, and impeded execution of the verdicts. A myriad of other distortions occurred in the justice process during the conflict as parallel courts were created by the insurgents. Therefore it is desirable that impact of the conflict to the judicial process is accounted for in transitional justice and/or rule of law assistance programs. Such a program should focus on mainstreaming pending and derailed cases, supporting victims through a compensatory mechanism or reopening trials, and broadening the legal protection of rights by creating a comprehensive legal framework. Thus, linking the judiciary to the transitional justice mechanisms and strengthening of the judicial process is crucial for reviving the faith and confidence of the people in the rule of law. However, so far none of the donors including the UN agencies have come forward to assist the judiciary to revamp its capacity to manage transitional justice issues.

For a long time the judiciary was considered an unproductive sector both by local government as well as the international donors. For instance, the development of the judicial sector was not included in successive national development plans. The judiciary was neither the priority of the executive or the legislature. The judiciary quickly realized that unless it explained the challenges facing it and set out its reform goals and priorities, assistance would not be forthcoming. Therefore, with a view to propel institutional reforms the Supreme Court of Nepal in 2004 launched a Strategic Plan for judicial reform. The Plan set out the establishment of an independent, competent, inexpensive, speedy, accessible system of justice in Nepal which is worthy of public trust as the vision of the judiciary. Transforming the concept of rule
of law and human rights into a living reality and thus ensuring justice to all were also included in the vision. After executing the first Plan the judiciary unveiled the Second Five Year Strategic Plan in 2009 and is currently engaged in undertaking reform measures based on this Plan.

In view of this therefore, rather than imposing their own agenda it is desirable that the UN and all other development partners assist the judiciary to implement the Strategic Plan. Any international assistance, if linked to the Strategic Plan of the Judiciary, will provide a proper direction to judicial reform. Support to the Plan will be understood as the recognition of the international community to the domestically outlined reform agenda, and thereby add recognition and respect to both the donors and the recipient.

Ironically, the judiciary today experiences a very skeptical response from donors to the implementation of the Strategic Plan of the Judiciary. As the coordinator of the Implementation Committee, and also as the coordinator of the Donors' Coordination Committee, I have yet to meet any donor willing to take up any of the 12 reform interventions identified in the Second Strategic Plan.

As a general rule so far, the donor assisted projects span only for a limited period, one, two or at the most three years. The financial resources are often too little to achieve any tangible results. I do not have the cumulative figure of the budget for donor assisted projects in Nepal. However, I am informed that the tentative budget of the UNDP assistance over the last ten years is around 5 million dollars. Given the multitude of conflict-related challenges that my country is facing, I wonder why the UN system or other donors are not willing to put sufficient emphasis on the rule of law assistance for a country like Nepal.

Finally, there are different UN offices working in Nepal in different legal sectors. But their activities do not seem to be properly coordinated. In view of this, there should be better coordination among them.

**Conclusion**

In my opinion, in order to have more enduring results, first and foremost a Rule of Law Plan should be put in place by the various government institutions involved, including the judiciary, the donors, the United Nations and the civil society. The Plan should take note of the prevailing situation in the country, such as the prevalence of low intensity conflict,
attendant impunity and absence of transitional justice, impediment in the access to justice, frail institutional capacity, and the lack of sufficient law or the prevalence of unjust laws. The Plan should be prepared after holding consultation with broad spectrum of the stakeholders. The Rule of Law Plan thus prepared should be fed into the National Development Plan and the Strategic Plan of the Judiciary. The linkage between the three plan documents will not only provide direction to the rule of law assistance but also create the necessary local ownership down the line in terms of planning, design and implementation of the rule of law programme at the national and local levels using available domestic resources. It is desirable that donors create a common basket of resources linked to the Plan and take up assistance programmes in which they have expertise.

As a start, a joint steering committee of the donors and the recipients should be formed at the good offices of the United Nations. The Committee should create the formation of a working team to draft the Rule of Law Plan, and also the Strategic Plans for different justice sector actors, such as the police, government attorneys, and prison. The development of the projects with the stakeholders in the justice sector, their implementation, monitoring, evaluation and complaint handling should be on the oversight of the steering committee. Given that Nepal is a conflict affected country, there should be a special international rule of law assistance program for Nepal. On behalf of the Nepali judiciary I assure full cooperation in making the rule of law assistance program in Nepal a success.
In this article, the Minister of Justice examines the essential role that strengthening the rule of law in Liberia has in maintaining peace and security in the country after a long and protracted civil war. The article focuses on the four priority areas of assistance efforts to date: access to justice, pre-trial detention, capacity building and public education. It also examines the key shortcomings of reform efforts that need to be addressed for external rule of law assistance to be more effective.

Introduction

In 2003, Liberia emerged from an agonizing fourteen-year civil conflict under the governance of an interim body that was in place until 2005. In January 2006, the mantle of constitutional authority to lead Liberia back into the realm of the rule of law was passed on to a new democratic leadership. Madam Johnson-Sirleaf has the formidable task of leading Liberia after winning the presidential elections in November 2005 to become the first elected female leader on the continent of Africa. Her efforts are supported by international assistance under the aegis of the United Nations Mission in Liberia (UNMIL).

In 2008, the Government of Liberia launched a three-year National Poverty Reduction Strategy, which consists of four pillars: Infrastructural Development, Governance and Rule of Law, Peace and Security, and Economic Development. It is noteworthy that two of the four pillars specifically focus on justice and security institutions because the Government of Liberia has realized that historical weaknesses in these key sectors underlie the instability in Liberia over the past decades.

Together, Government agencies and international partners – most notably the United Nations - have developed strategic plans for each justice and security sector agency which are in line with the Government’s national Poverty Reduction Strategy, and have established linkages with donor agencies to ensure that our goals and objectives are consistent and on target. Strengthening the rule of law has thus become an important objective in the United Nations Development Assistance Framework (UNDAF) for Liberia.
In a post-conflict environment, “rule of law” has a broad meaning. Indeed, it means virtually rebuilding a collapsed legal system and re-introducing core values in all of our basic social institutions. For instance, during the civil war most of our people turned to the customary or informal justice system for redress to grievances, since the formal system either did not operate consistently or was simply inaccessible. Therefore, despite the fact that our task encompasses a wide range of issues and challenges, we have commenced the rebuilding process by focusing on certain areas that we have determined are the priorities to set the foundation for longer-term reform. These priorities are access to justice, pre-trial detention, capacity building, and public education.

**Priorities for rule of law assistance**

**Access to Justice**

During the past few months several consultative meetings were held in many parts of the country among a cross-section of the population to get the public’s perspectives of the legal system in preparation for a national conference on “Enhancing Access to Justice”, which was convened in April 2010. It was revealed that a large number of the population – regardless of their education level – hold a great deal of confidence in the informal or customary justice because, according to them, it is inexpensive and expeditious in disposing of cases or reaching a resolution. At the moment, we have set up a working committee to review the findings detailed in the Conference report and to review our existing laws, to determine how best we can harmonize the formal and informal systems, and provide greater access to justice for all our citizens.

One of the most common crimes in Liberia, during and after the conflict, has been gender and sexual-based violence. Access to justice for victims is essential to addressing this pervasive form of violence in our society. With assistance from our partners, we therefore established a specialized prosecution unit for Sexual and Gender Based Violence, as well as a specialized court to try such cases. A Public Defender Program was introduced in 2009 under the judiciary for the first time to provide legal representation for the indigent; the reform process also consisted of the construction of many new police stations, prisons and court houses, made possible with assistance from the UN quick impact projects, the UN Peacebuilding Fund, and other international partners.
Pre-trial detention

When our current administration assumed power, we discovered that more than 60 percent (60%) of the detainees in the country had not had a court hearing to date. Most of them had been detained for as long as 18 months on minor charges such as petty theft. In early 2009, the Government and its international partners responded to the prison backlog with the implementation of the Magistrate Sitting Program. Under this initiative, six Magisterial Courts operate within the prison compound and address cases on a fast-track basis, thereby reducing prison overcrowding. Additionally, the Ministry of Justice in October 2009 set up a Pre-trial Detention Task Force to determine how best to release prisoners from prolonged detention without jeopardizing the safety of the larger community. The Task Force, which includes local and international non-governmental organizations, is still carrying out this mandate.

Capacity-building

Many training programs have been conducted over the last five years in the judiciary and the Ministry of Justice involving judges, magistrates, court clerks, prosecutors, public defenders, police officers, immigration officers, corrections officers, etc. Most of these training sessions are on-going. We have especially encouraged the recruitment of women for training in the justice and security sectors, so as to improve the gender balance and increase the participation of women in the maintenance of peace and security in the country.

Public Education and Awareness

In a post-conflict society when citizens are not provided with accurate information, they will make up their own information by way of rumor, which is undoubtedly one of the most destructive forces in a fragile society. Therefore, public education on basic concepts of justice and the process by which matters are investigated and adjudicated is crucial to promoting peace and stability. In addition to public education programmes implemented by partners, the Ministry of Justice has launched two radio programs per week on a wide range of topics from the role of the police to access to bail. One of the programs has a call-in component, so as to promote and foster dialogue between the public and those who run the criminal justice system.
Short-comings in achieving reform objectives

Most of the rule of law assistance received by Liberia, as in other host countries, is in the form of training opportunities. Unfortunately, insufficient attention to coordination means that the training programs provided are often duplicative, either because the segment is repeated by the same agency or it is duplicated by other donor agencies. There is a need for greater attention to planning for training, and to coordinating training initiatives among the international and national communities.

Additionally, the training is often planned and conducted in isolation of post training logistical support for implementation. For instance, when twenty (20) criminal investigators are trained without any concrete plans for how they would be absorbed by the Government payroll or whether they have a crime lab to carry out a proper and thorough investigation; it renders the entire training program an exercise in futility. Therefore, it is crucial that partners and host Governments coordinate their efforts and develop a holistic capacity-building program to ensure that the results from training are tangible, realistic and achievable.

While we value the broad perspectives introduced in our training programs, trainees are often confused by the diverse messages received, including on their professional roles and responsibilities. Trainers representing various donors often bring ethnocentrism in the values passed on to the trainees and, at times, views that conflict with Liberian local norms and culture. In addition, most donors tend to invest money in programs that comport with their interest and values, which may not necessarily be an area of greatest need for the host government. This type of preferential selection of projects by donors is likely to leave adverse effects such that the criminal justice system is unevenly developed and the entire system remains weak and compromised. Therefore it is crucial that host governments be more involved, not just in planning programs, but also in the management of donor assistance. In this way, the emphasis placed on national ownership principles by host Governments and partners would be truly reflected in our actions.

In terms of the entire justice chain, it is important to understand that where one part of the system is weak, the entire system remains fragile. It is thus crucial for government to strike a balance to ensure that the needs of each sector are taken into account. In Liberia, we have struggled to get a holistic, sector-wide approach from donors that would ensure that sufficient resources are provided to all parts of the justice chain. Our experience continues to
be that support for corrections remains particularly weak, while that for prosecution and criminal justice efforts is close to adequate, and support for police is still over-emphasized by donors.

We have also faced the situation where international support has been limited, reduced or withdrawn without consultation with the host government in the spirit of partnership. This practice undermines the efforts of all stakeholders involved and does not promote reform. It can damage relationships of trust and collaboration. Any decision to limit, reduce or withdraw support should be clearly explained and done in collaboration with the host government as a partner.

Another challenge in terms of national ownership is that we still need to build national unity around a reform agenda. There remains the need to recognize and understand the strong cultural beliefs which shape the legal system. Before the war, the formal and the informal justice systems coexisted. A shift to using more informal and harsher modes of justice took place during the civil war. The behavior that emerged during this time, including widespread theft, was informed by the need to survive. That is no longer acceptable if the society is going to progress.

This is sometimes hard to understand for those of us who have been trained in the formal system of law and understand its value. Many of the informal processes currently being undertaken in Liberia deny the various rights, such as the right to jury, to counsel, right to appeal, right to due process. I am a firm believer that in Liberia strengthening the formal justice system to provide access to justice to the people will ultimately help to ensure that our society does not return to violence and conflict. However, the reality of the population’s relationship with informal justice is one that we live with on a daily basis and must be recognized. The challenge in rule of law is not to marginalize the informal system, but rather to re-evaluate the values of the population in the country in order to build a strong judicial and legal infrastructure that can address the needs and service the people. In this, we must reestablish and earn the trust of the people in the rule of law and the institutions of justice.

**Conclusion**

To conclude, I wish to state how honored I am for having had this privileged opportunity to convey the extent of the significance of our global partnership in the orchestration of the
preeminence of the rule of law in our respective countries; in particular, my country. Much has been achieved, and we are pleased by the on-going progress in Liberia, to state that the outcome of our combined efforts, especially that which emanates from our partnership with the United Nations, will in the last analysis, bring acclaim to the dreams we all share in making the rule of law the cornerstone of peace and stability in our global village. In this regard, I must assure you that Liberia will rise again to uphold its enduring commitment to the rule of law, and when that occurs, the credit will be a monument to our respective undertakings.