

United Nations Rule of Law Reform Support in Post-conflict States (Case of Justice Reform): @PKO Now!

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“Rule of law” is a principle, under which laws and regulations equally apply to all citizens and entities including the government. It seems a common practice in many countries. However, in most post-conflict states, as the rule of law is fragile, public disorder, crimes and impunity prevail, and the possibility of relapse of conflict lingers. To address such volatility, the UN has been supporting post-conflict states in strengthening their rule of law systems. Among various actors in the system, this column sheds light on the justice sector and discusses issues and reasons for reform and outlines how the rule of law has gained recognition within the UN and put into practice.

"Justice Triad"

“Justice Triad” is referred to as the police, justice and penal institutions, all of which constitute the core of a rule of law system and play respective roles in maintaining order and protecting citizens.¹ The police monitor security situations and arrest criminals, the justice sector conducts tribunals, and penal institutions house convicts or detain suspects. Since the three entities are mutually dependent, dysfunction of one would affect activities of the other two, degrading the rule of law system. It is thus crucial that three of them function properly and coordinate well.

Nevertheless, in rule of law reform assistance in post-conflict states, the UN and donors

have put a greater focus on police reform, from which it is relatively easier to gain tangible results, whereas much less support has been offered to justice and penal sectors. This was pointed out in the UN Secretary-General reports in 2004 and 2011.² It would be impossible to achieve peace and stability by merely creating a brand-new capable police without the justice sector that conducts fair trials and penal institutions that safely separate criminals. As discussing in detail all three entities in a short column can be a bit overwhelming, the column focuses on the justice sector.

Common Issues of Justice Sector in Post-conflict States

The first common issue of the justice sector in post-conflict states is the vulnerability of judicial institutions. Many democracies guarantee judicial independence, which prevents political interference into judicial decisions and ensures judges' fair and neutral positions. In contrast, in conflict-affected states, governments often interfere in judicial institutions, and judicial independence is in crisis.³ In Somalia, for instance, while judicial independence is guaranteed by law, politicians interfere in court decisions. Since the politicians are the ones who approve the judiciary budget, judicial institutions ultimately follow their orders.⁴ In Serbia, after the collapse of the former Yugoslavia, President Milošević not only dismissed all the Albanian judges and prosecutors in Kosovo, but also banned Albanians from attending law schools and taking the bar exams to strengthen Serb's dominance in the region.⁵ This is a unique example to countries that experienced conflict among multiple ethnic groups.

The second problem is legal professionals' lack of ethics and competence. Many legal professionals are involved in corruption. For example, the opposing lawyers are pressured to present a substandard defense, the judges are requested to delay a case or influence a final verdict, or administrative staff are intimidated into altering evidence. In return, legal professionals receive bribes.⁶ In addition to the lack of ethics, since most legal professionals have insufficient training due to conflict, their poor judicial decision-making often causes a delay in case processing.⁷

Third, difficulties in accessing formal justice services also undermine the legitimacy of the

justice sector. The poor often end up dropping their lawsuits as a result of unaffordable court fees and related expenses and significant delay in the case processing.⁸ For those who live in rural areas, it is difficult to travel to cities where most formal judicial facilities are located. City dwellers also face challenges accessing the services since many judicial facilities are destroyed during conflicts. Because of such barriers, a number of people rely on the easily accessible and less costly informal justice mechanisms based on customary laws to solve various disputes.⁹

Reasons for Justice Reform and its Directions

Historically, the collapse of the justice systems has often contributed to the eruption of conflict. As citizens do not expect fair judgement from corrupt judicial institutions, they often resort to violence or other extrajudicial measures for recourse.¹⁰ If a justice system that solves disputes fairly and peacefully is established, it can prevent such violent acts, reduce impunity and restore order and public confidence. Additionally, the availability of previously inaccessible services to vulnerable populations would be critical resources to defend their rights, alleviate grievance and prevent the resumption of conflict. Once the society becomes stabilized and the rule of law is restored, it could aim for long-term economic development by attracting foreign investment.¹¹ Justice reform in post-conflict states is thus important from the perspectives of security, human rights and development.

What should be done then to address the above-mentioned issues? First, to improve overall delivery of justice institutions, the oversight mechanisms must be strengthened. Parliament should be in a position to monitor and prevent political interference into the judiciary by enacting new laws or establishing committees to ensure judicial independence.¹² Also, an internal oversight body that investigates corrupt practices by legal professionals is needed to maintain discipline and improve transparency.¹³ For civil society organizations which monitor government violation of citizens' rights or the rule of law principles, support to capacity building in information sharing and advocacy could be impactful.¹⁴

Second, capacity building projects should contain more pragmatic elements, such as on-the-job trainings.¹⁵ Although the UN has put enormous efforts on capacity building of legal

professionals, such projects have often focused on lectures on general legal knowledge or international human rights laws delivered by foreign legal professionals, which did not effectively develop capacity of local legal professionals. Also, from the perspectives of sustainability, such capacity building projects should eventually be fully locally-led and locally-owned, in which training is planned and organized by all locals with much less third party support.¹⁶

To improve access to formal justice services, legal aid might be a temporary option for the poor as the government, NGOs or donors cover court fees.¹⁷ For those who live in rural areas, mobile courts through which legal professionals periodically visit remote areas to provide the services, would be helpful. Its effectiveness has already been recognized in many post-conflict states.¹⁸ Also, reconstruction of judicial facilities destroyed during conflict is a pressing issue, and such facilities should be installed in rural areas as well to alleviate regional disparities in accessibility. Nonetheless, considering that many people still rely on informal justice mechanisms, governments should cooperate with them to explore how best to address citizens' justice needs in a fair and timely manner.

Recognition of Rule of Law Concept within the UN and Practices

It was the end of the Cold War when the importance of rule of law started to gain recognition in the UN.¹⁹ In 1992, "An Agenda for Peace" presented by Boutros Boutros-Ghali, UN Secretary-General at that time, stressed that "there is an obvious connection between democratic practices such as the rule of law...and the achievement of true peace and security..."²⁰ In 1993, the UN General Assembly adopted the resolution that supported strengthening of the rule of law system as an essential element of protection of human rights.²¹ In 1995, "Supplement to an Agenda for Peace" argued that restoration of the justice system is crucial for conflict prevention and reconstruction.²²

In 2004, a Secretary-General report defined the rule of law for the first time.²³ In 2007, the Rule of Law Coordination and Resource Group (RoLCRG) chaired by the Deputy Secretary-General was established to ensure overall coordination of UN rule of law activities and maintain coherence in UN's assistance to member states.²⁴ RoLCRG, consisting of 20

entities including relevant offices of UN secretariat and UN agencies, formulates assistance guidelines, priority areas, action plans, among others. In the same year, the Office of Rule of Law and Security Institutions (OROLSI) was created in the Department of Peace Operations to provide UN peace operations and member states with technical advice to strengthen the justice systems. The establishment of the Justice and Corrections Standby Capacity with experienced legal professionals is also noteworthy as it supports a mission's start up and transition, thereby bolstering readiness.²⁵ In 2012, the Secretary-General himself expressed the strong determination to work with UN senior management in the field "to make the rule of law a priority in high-level dialogue with national authorities."²⁶ Thus, as the importance of rule of law has increasingly been recognized in headquarters, the support system to the field has also expanded.

In the field, several UN peacekeeping operations in the early 1990s were mandated to monitor and report on the human rights situations.²⁷ However, it turned out that merely monitoring and reporting acts of human rights violations failed to address the root causes of issues and to prevent the recurrence of violations. Based on the reflections, the UN decided to embark on institutional reform of the justice sector which is the foundation for the protection of human rights. As a pioneer, in 1999, a Judicial Affairs Office set up within the UN Interim Administration Mission in Kosovo (UNMIK) undertook a large-scale judicial institutional reform.²⁸ Since then, a number of UN peace operations have been given rule of law reform mandates. As of today, MINUSCA (Central African Republic), MINUSMA (Mali), MONUSCO (Democratic Republic of the Congo) and UNMISS (South Sudan) have been working on justice reforms aiming to strengthen the rule of law system of the states.²⁹

UN peace operations are involved in strengthening national judicial institutions, assisting national consultations on justice reform, developing capacity of legal professionals, facilitating donors' support, among others.³⁰ Through Quick Impact Project (QIP), the UN also supports construction and rehabilitation of judicial facilities.³¹ Utilizing their expertise, other UN agencies such as the UN Development Programme (UNDP), UN Office on Drugs and Crime (UNODC) and UN Children's Fund (UNICEF) have also made significant contributions in justice reform.³²

Since the UN started participating in justice reform, significant resource has been allocated to the criminal justice affairs,³³ yet the sources of conflict can also be found in civil justice affairs. Housing, land and property (HLP) is an example. It is not uncommon that the HLP rights which were stripped as a result of evacuation caused by conflict were not reinstated upon post-conflict repatriation. Such issues jeopardize reconciliation and can be a source of more conflict.³⁴ To address HLP disputes, capacity development of the courts to handle HLP matters, creation of the special courts and the use of local conflict resolution mechanisms have been considered.³⁵ While a few UN agencies have been tackling HLP issues, the issues are not yet sufficiently addressed on the ground.³⁶

Conclusion

Supporting rule of law reform, especially justice reform, is important for the reconstruction of post-conflict states from multiple perspectives. From the security perspective, by strengthening judicial institutions, justice reform aims to prevent crime, eliminate impunity and restore order. From the human rights perspective, improving access to justice services will help with the defense of the rights of vulnerable populations. Without social stability based on the rule of law, sustainable development would be a mere dream. Strengthening the rule of law is also key to achieve Goal 16 of the Sustainable Development Goals (SDGs): Peace, Justice and Strong Institutions, as it plays a crucial role in conflict prevention.³⁷ In order for the rule of law system to function as an effective mechanism to promote security, human rights and development, alongside justice reform, reform of the police and penal institutions should be carried out with the same level of commitment.

End Notes

- ¹ Futori, Kiyonobu. 2012. "Column 8: Justice Reform and SSR." In *Security Sector Reform in Peacebuilding*, ed. Yuji Uesugi, Hiromi Fujishige, and Tomonori Yoshizaki.. Kokusai Shoin.
- ² United Nations. 2004. "Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies" (S/2004/616). New York: UN Security Council, 9; United Nations. 2011. "Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies" (S/2011/634). New York: UN Security Council, 10.
- ³ Vapnek, Jessica, Boaz, Peter, and Turku, Helga. 2016. "Improving Access to Justice in Developing and Post-Conflict Countries: Practical Examples from the Field." *Duke Forum for Law & Social Change* 8(27): 27-44, 37.
- ⁴ Sage, Andre Le. 2005. "Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives." Geneva: Centre for Humanitarian Dialogue, 31.
- ⁵ Rose, Ackerman, Susan. 2008. "Corruption and Post-Conflict Peacebuilding." *Ohio Northern University Law Review* 34: 405-443, 435.
- ⁶ Mann, Catherine. 2011. "U4 Expert Answer: Corruption in justice and security." U4 Anti-Corruption Resource Centre, 3.
- ⁷ United Nations. 2011, 10.
- ⁸ Vapnek., et al. "Improving Access to Justice in Developing and Post-Conflict Countries: Practical Examples from the Field," 41.
- ⁹ UN Office on Drugs and Crime. 2011. "Criminal justice reform in post-conflict States: A guide for practitioners." Vienna: UNODC, 103. Informal justice mechanisms, based on local traditions and cultures, are used by community members to resolve any type of dispute. Yet, following weaknesses are pointed out: some mechanisms do not comply with national laws or international human rights laws, the ways problems are solved constitute human rights violations, and even the systems and modalities are arbitrarily changed by local warlords.
- ¹⁰ O'Neill William G. 2008. "UN Peacekeeping Operations and Rule of Law Programs." In *Civil War and the Rule of Law: Security, Development, Human Rights*, ed. Agnes Hurwitz and Reyko Huang, 91. Colorado: International Peace Academy.
- ¹¹ *Ibid*, 98.
- ¹² UNODC, 23.
- ¹³ O'Neill, "UN Peacekeeping Operations and Rule of Law Programs," 106.
- ¹⁴ *Ibid*, 103.

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- ¹⁵ Office of the UN High Commissioner for Human Rights (OHCHR). 2006. "Rule of Law Tools for Post-Conflict States: Mapping the justice sector." New York and Geneva: United Nations, 35.
- ¹⁶ UNODC, 38.
- ¹⁷ Ibid, 10.
- ¹⁸ Ibid, 85.
- ¹⁹ Hurwitz, 4.
- ²⁰ United Nations. 1992. "Report of the Secretary-General: An Agenda for Peace Preventive diplomacy, peacemaking and peace-keeping" (A/47/277-S/24111). New York: UN, 16.
- ²¹ United Nations. 1993. "Resolution Adopted by the General Assembly: Strengthening of the rule of law" (A/RES/48/132.) New York: UN General Assembly, 1.
- ²² United Nations. 1995. "Report of the Secretary-General: Supplement to An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations" (A/50/60-S/1995/1). New York: UN, 12.
- ²³ United Nations. 2004, 4. The rule of law is defined as "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.
- ²⁴ United Nations. 2020. UN Coordination of Rule of Law Activities (<https://www.un.org/ruleoflaw/what-is-the-rule-of-law-archived/coordination-of-rule-of-law-activities/>). Accessed 6 Aug 2020.
- ²⁵ United Nations. 2020. Office of Rule of Law and Security Institutions (<https://peacekeeping.un.org/en/office-of-rule-of-law-and-security-institutions>). Accessed 6 Aug 2020.
- ²⁶ United Nations. 2012. "Report of the Secretary-General: Delivering justice: programme of action to strengthen the rule of law at the national and international levels" (A/66/749). New York: UN General Assembly, 16.
- ²⁷ O'Neill, 94.
- ²⁸ United Nations. 1999. "Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo" (S/1999/779). New York: UN Security Council, 15. UNMIK was charged with, but not limited to, support to reconstruction of judicial facilities, establishment of strong legal associations such as a bar association, improvement of access to justice services, amendment of existing laws, establishment of the special courts for housing, land and property (HLP) related disputes.

²⁹ United Nations. 2020. Where we operate (<https://peacekeeping.un.org/en/where-we-operate>). Accessed 11 Aug 2020.

³⁰ United Nations. 2004, 5.

³¹ For instance, the UN Mission in Liberia (UNMIL) undertook QIPs on construction of prisons and courts, provision of equipment, and capacity development of legal professions. For more information, please refer to The Quick Impact Project (UNMIL) (<https://unmil.unmissions.org/quick-impact-projects-qip>).

³² For instance, UNDP has carried out mobile courts projects to support access to justice in rural and remote areas. UNODC has focused its activities on criminal justice reform and victims support. UNICEF has provided technical advice in reviewing and amending existing laws in a way to promote children's rights and protect them from violence, abuse and exploitation.

³³ OHCHR, 8.

³⁴ Hurwitz, Agnes. 2008. "Beyond Restitution: Housing, Land, Property, and the Rule of Law." In *Civil War and the Rule of Law: Security, Development, Human Rights*, ed. Agnes Hurwitz and Reyko Huang, 195. Colorado: International Peace Academy.

³⁵ *Ibid*, 201.

³⁶ Food and Agriculture Organization (FAO) has supported land reform and improving access to arable land for rural farmers. UN-Habitat has offered legal and technical advice in the rights of residence and land and house lease rights. UNHCR has addressed the issues related to HLP in the framework of resettlement assistance for refugees (*Ibid*, 204-205).

³⁷ UN Development Programme (UNDP). 2020. Sustainable Development Goals: Goal 16: Peace, Justice and Strong Institutions (<https://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-16-peace-justice-and-strong-institutions.html>). Accessed 11 Aug 2020.