HiiL innovating justice

The World Justice Project

Innovations in Rule of Law: Visions for Policy Makers

Juan Carlos Botero, Ronald Janse, Sam Muller and Christine Pratt

Innovations in Rule of Law

On September 24, 2012, the heads of State and Government will participate in the High-level Meeting of the 67th Session of the UN General Assembly (UNGA) on the Rule of Law at the National and International Levels. Following a series of reports by the Secretary-General and resolutions by the UNGA, the High-level Meeting is set to adopt a new action-plan to promote the (inter)national rule of law in the years to come.

The importance of the (inter)national rule of law for peace, fairness, and economic growth is generally acknowledged inside and outside the United Nations. However, there is mounting skepticism regarding the success of rule of law promotion by the UN and other international organisations and donors at the national and international levels during the past two decades.

While this skepticism is justified in some respects, it risks overlooking areas where innovations have been made, important insights have been gained, and tangible successes, fragile or more robust, have been achieved in the past 5-10 years.

"Innovations in Rule of Law – Visions for Policy Makers" aims to highlight some of these innovations and insights, on the basis of a series of concise essays by key experts and organisations in the area of rule of law.

The full texts are available in the publication *"Innovations in Rule of Law – A Compilation of Concise Essays"*, which interested parties are invited to read in conjunction with this publication. The Compilation was presented at the Innovations in the Rule of Law event held at the International Peace Institute in New York on 26 June 2012, web broadcast available at: www.ustream.tv/recorded/23583527

This publication thereby hopes to contribute to the debate in the UN General Assembly in September 2012 and to subsequent discussion and action by international organisations, governments and civil society.

Visions for Policy Makers

Against the backdrop of their networks of rule of law partners around the world and their own research, The World Justice Project and HiiL are uniquely positioned to offer both a deep understanding of rule of law issues and stories of practical successes in the field that will enrich governments' preparation for the UNGA High-level Meeting on the Rule of Law.

This publication is based on concise essays by leading experts in the field of Rule of Law and features some of the positive developments, innovations and insights that we have distilled from the essays. The innovations and insights presented are grouped in four interrelated themes:

- Measuring the Rule of Law;
- The Nexus Between the National and International Rule of Law;
- Legal Empowerment and other Bottom Up Approaches to Rule of Law Promotion;
- Statebuilding and Rule of Law in Conflict-Affected and Fragile States.

In addition, the present publication highlights a number of policy recommendations that are similarly based on the essays. As these recommendations often relate to more than one of the themes presented above, they have been group differently, under the following headings:

- Make justice more qualifiable and quantifiable;
- Integrate the national and international perspectives;
- More bottom-up justice;
- Statebuilding is political.

The full texts of the essays offer a more detailed account that we have included herein and are freely available at HiiL website and at the WJP's website, see *"Innovation in Rule of Law – A Compilation of Concise Essays".*

Make justice more qualifiable and quantifiable

Policy recommendations

Recent successes show: significant additional justice mileage can be gained by empowering justice actors – judges, legislators but also civil society organisations and business, as well as common citizens – with mechanisms that make justice more qualifiable and quantifiable. They can learn where to focus efforts, measure their own performance, and work on improvement.

Actors across the board should support and enhance a culture of empirical measurements: work in the justice sector should be carried out in light of concrete goals, with constant monitoring of processes, progress and outcomes.

Ministries and members of the judiciary can improve data collection, nationally and locally.

Leaders in government and the judiciaries can work on more incentives to release data to the public and to use data in decision making.

Civil society organisations can also contribute to collecting data, and develop skills to work more evidence based.

Academia can contribute with more research into the development of better measuring tools for changing national contexts, particularly in middle and low-income countries.

Measuring the Rule of Law

A measurement revolution has taken place in the fields of governance, justice, and the rule of law. Not only the quality and amount of available data have exponentially increased in the past two decades, but more importantly, the knowledge about precisely how to effectively use these data to advance reform in the field has greatly improved. Nonetheless, this knowledge remains buried in the hands of a handful of experts scattered around the world; it has not been fully internalised by the rule of law community, and it remains largely ignored by government reformers in all corners of the world today. The four essays in this section offer some insights on the complementarity of the various orders of rule of law data available to reformers in the field, as well as some suggestions on how to integrate these data effectively to advance lasting rule of law reform.

Some key insights of the past decade in the area of rule of law measurement are:
1. *Rule of law progress is often made by impacting the component parts of the system while tracking possible trade-offs among the same components across time; this is an essential predicate of sustained improvement.*
2. *Government agencies collect large amounts of data but they rarely use these data effectively.*
3. *There is a fundamental difference between raw data and an effective system of rule of law indicators. Data may be easily manipulated and misused. An effective indicator system not only provides information on whether and to what extent progress is being made in one particular aspect, but also how progress in achieving one government objective may negatively affect another.* 4. *Different orders of data (official and privately-produced; local and global; quantitative and qualitative), are not incompatible; effective reformers are cognizant of the relative advantages and shortcomings of each of them, and use them all in an integrative manner.* 5. *Local government statistics and independent NGO research provide the raw material to track performance of specific component parts of the system, while cross-country indicators serve to track performance of the system as a whole and to place such performance in relative perspective.*
6. *Strengthening the rule of law through evaluation and performance measurement is not a technical, but a cultural achievement.*
7. *Sustained investments in enhancing local government officer's capacity in data collection and analysis, particularly among low-income countries, is a key component of long-term rule of law advancement*. 8. *There has been major progress within the UN in the use of empirical measurement to inform rule of law programming over the last decade; yet, ongoing challenges facing UN rule of law assessments may limit their effectiveness.*

Justice encompasses many dimensions; a comprehensive picture of the interaction among these dimensions is elusive. However, as **Todd Foglesong** and **Christopher Stone** of the Program in Criminal Justice Policy & Management at the Harvard Kennedy School of Government argue, it is within reach of all countries today to develop indicators to effectively track specific component parts of the justice system and to use these indicators to advance reform. In each individual country, province, and city, reformers must strengthen the rule of law one part at a time. If is often hard to harmonise various policy objectives, such as reducing crime rates, limiting use of lethal force by the police, improving treatment of crime victims and suspects, reducing internal corruption, all while improving the full range of basic police services. Data pertaining to all

these objectives is routinely collected in most countries but it is largely ignored or misused. Foglesong and Stone persuasively argue that police and justice officers around the world spend countless hours in largely data-free meetings in offices littered with unread volumes of meaningless numbers and toppling stacks of useless records. They also provide powerful examples of effective use of these data by local government officers to stimulate lasting performance improvements. If we are never to see justice fully realised, the authors posit, at least we should be able to see the police solving more crimes with less intrusion on our liberties. What is essential, Foglesong and Stone argue, is to begin to create a culture of measurement in the service of justice.

The goal is not so much an accumulation of individual measurements as a professional culture that values measurement as an essential part of the preservation and extension of justice. Fundamentally, strengthening the rule of law is not a technical, but a cultural achievement. This is a major rule of law insight of the past decade.

An example of data-driven improvement in a particularly difficult environment is presented in **Innocent Chukwuma** and **Eban Ebai**'s account of the CLEEN Foundation's rule of law promotion through evaluation and performance measures in Nigeria. The authors argue that sub-Saharan Africa appears to have been left behind in the 'measurement revolution' of the past decade, as decisions of government and other policy makers are not based on systematically collected and analysed information. This tends to produce a culture of planning and administration based on anecdotal evidence, experience, tradition, and hunches, leading to ineffectiveness and inefficiency. The authors also provide examples of how data collected by independent NGOs may constitute effective alternative or supplementary sources of information which may be utilised by government officers to aid lasting performance improvements in the police and justice sectors. One of the insights of the past decade is the realisation that sustained investments in enhancing capacity in data collection and analysis among local government officers in the justice and security sectors, particularly among low-income countries, is a key component of long-term rule of law advancement.

"Measuring rule of law is essential and has vastly improved"

As explained by **Juan Botero**, **Joel Martinez**, **Alejandro Ponce**, and **Christine Pratt** of The World Justice Project, while there has been an impressive development of regional and global indicators in the rule of law field during the past ten years, these indicators must be seen only as useful tools to complement the core body of rule of law data, i.e., official statistics. The authors argue that government statistics are essential, but they are not flawless; they often have important technical shortcomings and are vulnerable to political manipulation and corruption. There is a fundamental difference between raw data – which may be easily misused – and an effective system of rule of law indicators. An effective indicator system not only provides reliable and impartial information on whether and to what extent progress is being made in one particular aspect, but also how progress in achieving one government objective may negatively affect another. The authors also argue how different orders of data (official and privately-produced; local and global; quantitative and qualitative), are not incompatible, and provide examples of how effective reformers use various sources of data in an integrative manner. Even countries with highly sophisticated official judicial

statistics, such as the USA and Canada, may benefit from simple, cross-country comparable, privately-developed, independent and impartial, global indicators. Global and regional indicators do not substitute government statistics or local research, but they serve to track performance of the system as a whole and to place such performance in relative perspective. Finally, Botero, Martinez, Ponce, and Pratt highlight some of the most salient improvements of the past decade in cross-country indicators, including the work of the World Bank, Transparency International, Freedom House, CEPEJ, Global Integrity, HiiL, Economist Intelligence Unit, Afro-barometer, World Economic Forum, ABA-ROLI, OECD, IDLO, Vera Institute of Justice, and The World Justice Project.

The final paper of this chapter, by **Jim Parsons** and **Monica Thornton** of the Vera Institute of Justice, discuss the development of rule of law indicators at the UN level. They argue that there has been a marked increase in the demand from donors to demonstrate the impact of United Nations initiatives across all sectors, including rule of law programming, and that the importance of measurement is recognised at the highest levels of the UN.

This increased focus on measurement and accountability has led to the development of a number of data collection initiatives designed to inform rule of law programming and, in some cases, demonstrate impact. However, as a result of the fragmented governance structure of the organisation, and because a wide range of entities are involved in rule of law programming, measurement initiatives have been developed and implemented within the various UN agencies with limited coordination. As a result, the data collection initiatives that have been developed to date are as diverse as the agencies providing rule of law support, ranging from one-off assessments of local justice programmes in a single jurisdiction to large sector-wide initiatives covering several countries. The authors present compelling examples of progress within the UN in the use of empirical measurement to inform rule of law programming over the last decade, as well as ongoing challenges facing UN rule of law assessments that may limit their effectiveness.

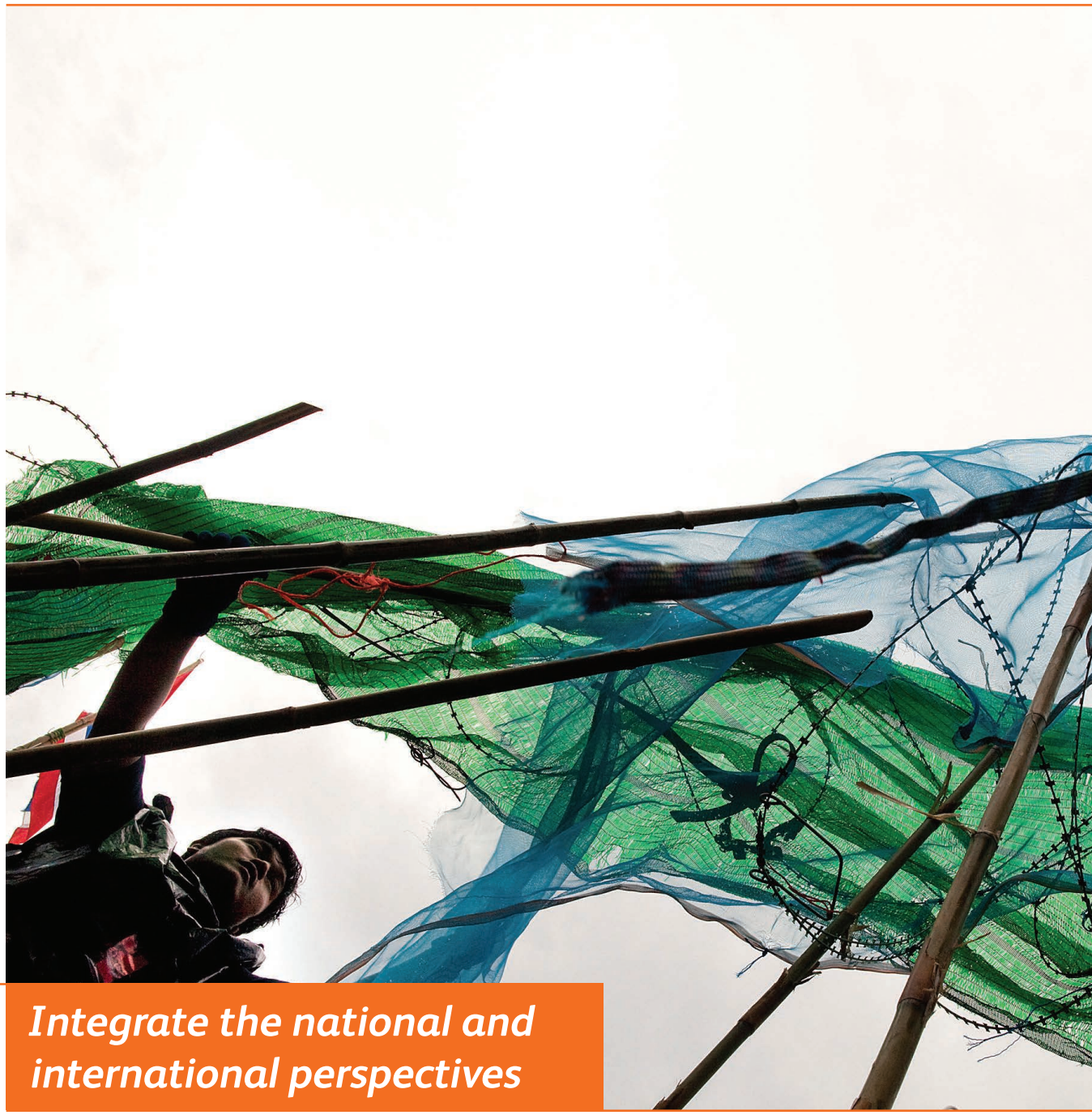
Concise essays:

The Rule of Law Measurement Revolution: Complementarity Between Official Statistics, Qualitative Assessments and Quantitative Indicators of the Rule of Law
Juan Carlos Botero, Joel Martinez, Alejandro Ponce and Christine Pratt
The World Justice Project (WJP)

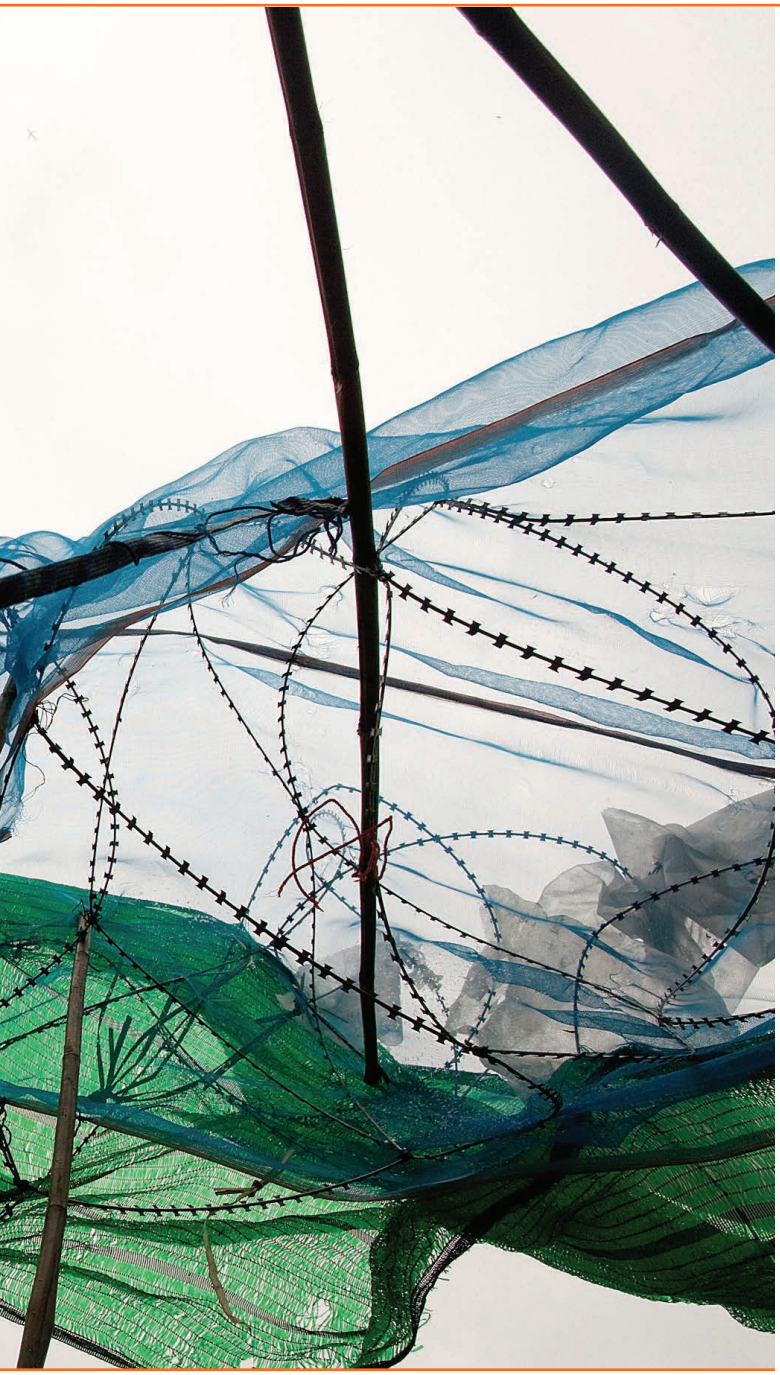
Strengthening the Rule of Law by Measuring Local Practice, One Rule at a Time
Todd Foglesong and Christopher Stone
Program in Criminal Justice Policy & Management, Harvard Kennedy School of Government

Promoting the Rule of Law through Evaluation and Performance Measurement in Nigeria: Challenges and Prospects
Innocent Chukwuma and Eban Ebai
CLEEN Foundation

Data as a United Nations Rule of Law Programming Tool: Progress and Ongoing Challenges
Jim Parsons and Monica Thornton
International Program, Vera Institute of Justice



Integrate the national and international perspectives



Policy recommendations

Rule of law strategising should integrate the national and international perspectives from the start. If this is done well, there are better results.

International organisations must also subject themselves more fully to rule of law standards.

International organisations can use International law more as a tool to strengthen rule of law at the national level.

Legislators must do more to strengthen reception of international law, for example through prosecutions under the ICC system.

National prosecution services can benefit greatly from the innovative ICC Legal Tools and Case Matrix Network, which helps integrate international rules in domestic systems. It serves as an example that could be rolled out into other areas as well.

International actors should engage with local actors to support and facilitate the provision of justice even in times of conflict.

The Nexus Between the National and International Rule of Law

So far, the UN has tended to view the strengthening of the national and international rule of law as separate projects. This is justified to some extent. But, as **André Nollkaemper** from the Amsterdam Center for International Law (ACIL), University of Amsterdam points out, a key insight of recent years is that rule of law at the national and international levels are to a large degree inextricably linked. National rule of law depends on the international rule of law and vice versa. The UN has failed to appreciate and take seriously this connection and should to a much greater extent aim its policies at the nexus between the two levels.

This means that, in supporting rule of law reform at the national level, the UN should give more attention to approaches that open or expand the application of international law in national legal orders. In this way, both the international and national rule of law are strengthened. The regimes of the European Convention on Human Rights and the American Convention on Human Rights are good examples. The UN should also support strengthening and expanding internal checks and balances and controls over international organisations, because a weak rule of law in international organisations undermines the rule of law at the national level. A clear example is the UN Security Council Sanctions dispute. The recently established Ombudsperson for the Sanctions Committee is a step in the right direction, but still far removed from the due process standards that are common in domestic legal systems. The Security Council as actor at the international level must be more cognizant of international law. Double justice standards at the international level will have consequences at the national rule of law level.

The interconnectedness of the international and national rule of law is perhaps nowhere more clear than in the functioning of the International Criminal Court (ICC). It is neither possible nor desirable that all cases of genocide, war crimes, and crimes against humanity are prosecuted and adjudicated by the ICC. The Statute of Rome and the project of international criminal justice will only succeed if national justice institutions have the capacity and will to prosecute and adjudicate core crimes. However, building and strengthening this capacity is a major challenge. Positive complementarity is the most important conceptual mechanism to address this. A broad initiative has been taken by states, international organisations and NGOs to contribute to a national development framework.

Among the most innovative and successful are the Legal Tools Database (LTD) and the Case Matrix Network (CMN). The LTD is the largest online library of documents relevant to the practice of international criminal law. The CMN provides users with technology aided services to assist in the investigation, prosecution and adjudication of core international crimes. Both tackle the most prohibitive aspects of core international criminal adjudication: complexity (they help organise evidence and material), quantity (they assist in prioritising and selecting cases) and cost (they can be used free of charge). The use of technology-aided tools and the information provided therein can thus help overcome the complexity of core international crimes cases by providing knowledge directly to national practitioners within their work environment and on a permanent basis, as **Emilie Hunter** from the Case Matrix Network argues. The UN should mainstream accountability measures for core international crimes into its technical legal assistance and capacity developing programmes in areas such as human rights, legislative reform, women and humanitarian issues. The LTD and CMN are of great value for this. Moreover,

"The national and international rule of law are not separate projects, but they depend on each other"

LTD and CMN are important innovations which have potential beyond international criminal law. Another successful initiative is the mobile court initiative in the Democratic Republic of Congo (DRC). Between 2008-2012, the American Bar Association Rule of Law Initiative (ABA ROLI) has helped its Congolese partners conduct 900 military and civilian rape trials in remote areas of South Kivu, North Kivu and Maniema provinces in eastern DRC. Although costly by Congolese standards, the costs of prosecuting a case in mobile courts are comparatively low by international standards (roughly $3,000). Further, mobile courts represent the only practical means by which rape survivors and other victims can obtain justice in DRC's remote areas, including for crimes against humanity under international law. Notably, the mobile courts satisfy international standards for fair trials and have a conviction rate of 60%. As ABA ROLI's **Michael Maya** argues, the mobile court initiative demonstrates that justice – even in cases that might otherwise be heard by the ICC – can be delivered with relatively modest assistance in less developed countries. The UN should explore whether this initiative can be replicated in other conflict-affected countries; if successful, it could help combat impunity in the short term and build the capacity of the justice sector in the long term, just as it is currently doing in DRC.

Concise essays:

The Nexus Between the National and the International Rule of Law
André Nollkaemper
Amsterdam Center for International Law, University of Amsterdam

Mobile Courts in the Democratic Republic of Congo: Complementarity in Action?
Michael Maya
American Bar Association Rule of Law Initiative

Strengthening National Capacity to Prosecute Genocide, Crimes Against Humanity and War Crimes within the International Criminal Court System
Emilie Hunter
Case Matrix Network

More bottom-up justice

Policy recommendations

Research and evaluations over the last few years clearly show that building top-down institutions is not everything; the bottom-up perspective is also critical for the rule of law. There have been a lot of concrete successes in this field, which we should build on. These have focused on building justice around problems, and have not focused entirely on state-based law but have also involved informal justice mechanisms.

Donors: invest more in bottom-up processes and continue to do so, including investment in the legal empowerment of the poor.

Donors, governments and legal aid organisations should consider a more extensive use of paralegal, as an affordable way to narrow the access to justice gap. Donors and governments, when attempting to reform customary justice systems, should do so by understanding the context of their operation and by closely engaging with the communities most affected.

Leaders in government and policy makers: build bottom-up justice strategies around local problems, like health, gender, and land-distribution.

Create a variety of solutions to enable greater choice.

Promote the understanding of access to justice as access to fair solutions to concrete problems.

National justice leaders from government and civil society: five concrete strategies for Basic Justice Care, based on extensive research, have been developed and can be implemented.

Academia: more multi-disciplinary research on evaluation and impact, process, and service delivery is needed.

International organisations: help reinforce the underlying vision for bottom-up justice.

Informal justice must be recognised and engaged within rule of law promotion.

The technology, IT and social media revolution of the last decade has created room for new and more effective tools to deliver legal information to people. There are some very innovative examples, like the Legal Tools Database and Case Matrix Network, and mobile courts. More investment in this field can achieve sizeable results.

Donors: open up to the idea that investing in justice could be investing in technology.

Justice leaders from governments, judiciaries, and civil society in transition states: technology presents a unique opportunity to get more justice to more people; work together to develop this area.

Legal Empowerment and other Bottom Up Approaches to Rule of Law Promotion

One of the most powerful insights of the past decade is legal empowerment. As **Stephen Golub**, who has been credited with coining the term and is among its best-known advocates, writes, this approach is about using law and rights to help increase disadvantaged populations' control over their lives.
The reason why this approach has gained so much traction among practitioners and parts of the international community – the UNDP (in particular the high profile Commission on Legal Empowerment of the Poor), FAO, the International Development Law Organization, the Open Society Foundations and many other international organisations, NGOs and bilateral donors – is that it directly helps the poor and disadvantaged and focuseson the legal rights and needs most relevant to their lives.
In contrast, most traditional rule of law programmes mainly aims for benefits only indirectly, through law reform, court reform and other institution-building exercises.
Many advocates of legal empowerment believe that these traditional reforms have been largely ineffective and have done little to advance the interests of the poor and disadvantaged.
Legal empowerment, which is an umbrella for a wide variety of programmes in such areas as land rights, labour and employment, environmental protection, and addressing governmental power abuse, seems to be much more successful in making a difference. However, as Golub points out, more rigorous research and evidence of impact is needed. Also, the bureaucratic and political forces that drive the international donor community can still largely impede investments in legal empowerment.

Nevertheless, current and potential evidence of legal empowerment impact may produce greater international support for this emerging field. The UN, which has been active in legal empowerment through its agencies such as the UNDP and FAO, should step up their in promoting evidence-based legal empowerment initiatives.

A success story on legal empowerment is exemplified by Landesa's partnership with governments to create laws, policies, and programmes that provide secure land rights for the poorest. As **Roy Prosterman**, Landesa's Founder, explains, we've learned that when land rights are secure, the cycle of poverty may be broken. Broadly distributed land rights provide structural change that is enduring and multi-generational, which leads to long-term systemic change, not short-term relief. Secure land rights foster the tangible benefits of ownership that are necessary for sustainable poverty alleviation. This shift is already happening on a grand scale and could be leveraged by greater UN engagement.

The FAO is another organisation which has been active in legal empowerment in its work in land tenure, forestry and fisheries management in countries such as Mozambique and Kenya.
As **Dubravka Bojic**, **Christopher Tanner**, and **Margret Vidar** write, these programmes have improved the protection of people's land and other resources as well as gender equality in agriculture and children's rights. Impact is best, however, if the bottom-up approach of legal empowerment is combined with legal and institutional reforms. Paralegals are the bridge between the legal system and the communities by raising awareness and providing advice and support.

No organisation has done more to put paralegals on the radar of the international community than Timap for Justice from Sierra Leone. Established in 2003, Timap has developed a creative, flexible model to advance justice, one that combines education, mediation,

organisation and advocacy to respond to the development and governance challenges in Sierra Leone. Timap, which has 19 offices across the country and gives people in remote areas access to justice, assists citizens in addressing a wide range of justice problems, including intra-community breaches of rights (a father refuses to pay maintenance or a widow is wrongfully denied inheritance) as well as justice issues between people and their authorities (corruption, abuse of power, failures in service delivery). Moreover, Timap's paralegals straddle the dualist legal system, engaging both customary and formal institutions. Timap has developed standardised training and codes of conduct for paralegals as well as methods of oversight and evaluation. As **Simeon Koroma**, one of the founders of Timap writes, this effective, efficient and affordable method of assisting people with problems of injustice has great potential in many developing countries. This conclusion that facilitators and paralegals are a promising strategy to deliver justice is supported by HiiL's *2012 Trend Report Towards Basic Justice Care for Everyone*. In this report, based on a voluminous body of multi-disciplinary research as well as input from experts from all over the world, **Maurits Barendrecht** identifies five key strategies to give people access to justice: ensure legal information so that people can learn about concrete solutions that worked for others; share practices and develop evidence based protocols; encourage competition and specialization of third party adjudicators; support IT platforms for negotiation and litigation. The UN can make a difference by supporting these strategies and thereby bring basic justice care within everybody's reach.

"Legal empowerment to complement pure institution building contributes to improving the quality of life of the poor and disadvantaged and builds stakeholdership in rule of law"

Informal justice

Interest in informal justice systems – which include indigenous, customary and religious legal orders and can often be hard to disentangle from the formal legal system – has grown tremendously in recent years. In many developing countries the vast majority of citizens rely on informal justice systems to address most of their problems. The advantages of informal justice systems are many: they are operated by trusted people in the language everybody speaks, relatively cheap, in the vicinity, and decisions are made according to rules of the community. Against this background, it does not make much sense to focus exclusively on building and strengthening the formal legal system, which has limited impact on the lives of most people. Informal justice must be recognised and engaged with in rule of law promotion. Yet informal justice systems are not unproblematic.

The tension between cultural relativism and universal standards is particularly strong in the field of informal justice systems. They function well within homogeneous communities, but less well in heterogeneous communities. They are often male dominated and decisions often gender-biased or may discriminate against disadvantages groups. They often raise human rights concerns, and sometimes very serious ones. Informal justice, too, can be corrupt and nepotistic and violate due process standards. The UN and other IOs have recognised the importance of strengthening rule of law through informal justice systems, and there is a growing body of evidence which provides guidance on how to do. **The International Development Law Organization** (IDLO) paper argues that attempts to improve procedural and substantive aspects of customary laws, or to modify the state-informal law interface to better harmonise the two frameworks, have not achieved much. Legal empowerment approaches and legal awareness programmes have a better prospect to strengthen rule of law in informal justice systems. Reviewing recent trends in South Sudan, Pakistan, Bolivia and other Latin-American countries, **Tilmann Röder** from the Max Planck Institute for Comparative Public Law and International Law is cautiously optimistic about efforts to change the relation between the formal and informal legal system and bring the latter more in conformity with essential human rights standards. He also stresses the importance of a well-functioning formal justice system which is able to address serious issues for women, children and other vulnerable groups. Both IDLO and Röder emphasise that patience is essential, concessions inevitable and careful analysis of social and political context is imperative for successful reforms.

Legal information

Many countries in the Arab world are in the process of fundamental rule of law reform. **Joyce Hakmeh** from the Arab Center for Development of the Rule of Law and Integrity argues that legal information building and sharing is vital in this process. This is not easy, because of significant levels of illiteracy, a limited digital infrastructure and a lagging IT sector in the region. However, a series of programmes where NGOs, governments and international donors cooperate have been successful in creating greater access to legal information in Syria, Iraq, Morocco, UAE, and Kuwait. The UN and the international community can build on these programmes by providing technological and financial aid to nations that show initiative and commitment to give citizens, business and professionals access to legal information.

Concise essays:

The Past, Present and Possible Future of Legal Empowerment: One Practitioner's Perspective
Stephen Golub

Land Rights and the Rule of Law
Roy L. Prosterman
Landesa

Legal Empowerment of Rural Poor: A Pathway Out Of Poverty
Dubravka Bojic, Christopher Tanner, and Margret Vidar
Food and Agriculture Organization of the United Nations (FAO)

Timap for Justice and the Promise of Paralegal Initiatives
Simeon Koroma
Timap for Justice

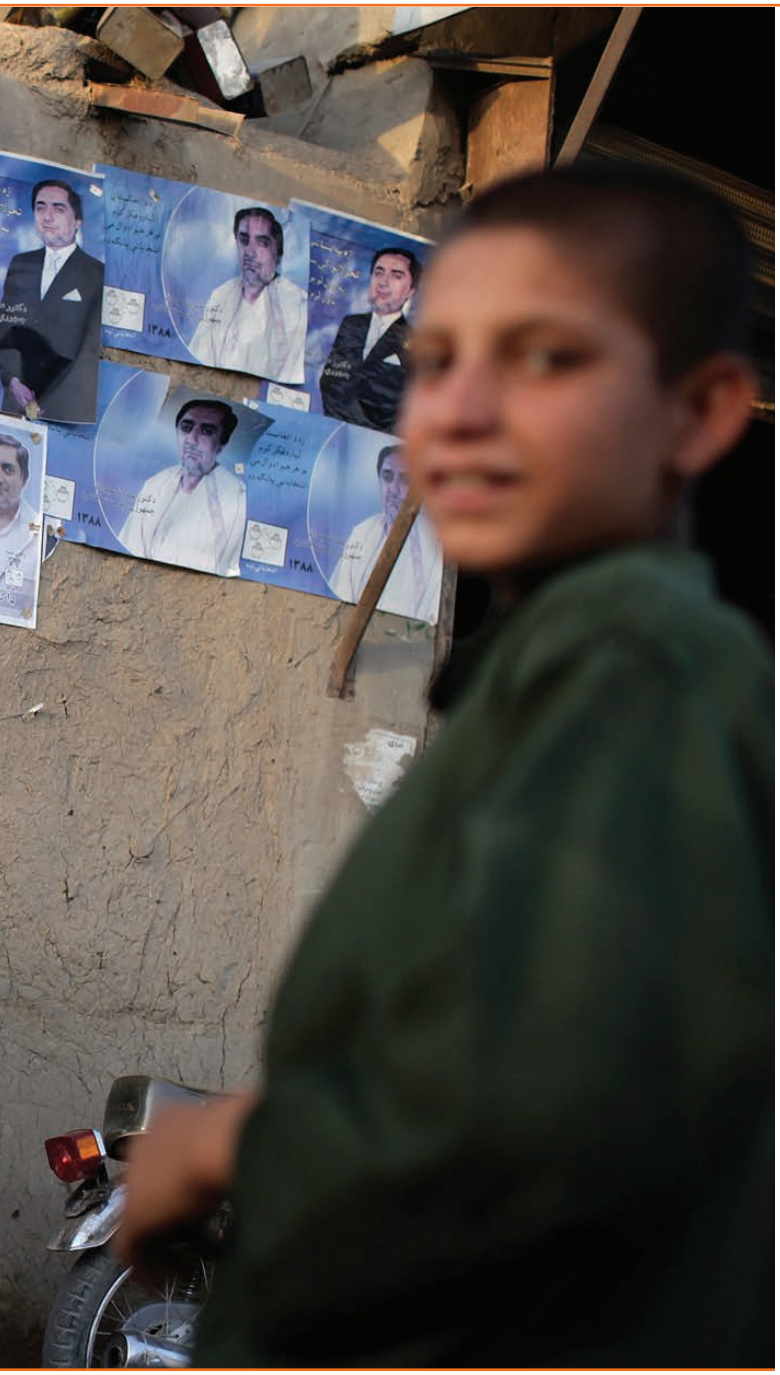
Five Strategies Towards Basic Justice Care for Everyone
Maurits Barendrecht
HiiL

Customary Justice: Challenges, Innovations and the Role of the UN
International Development Law Organization (IDLO)

Informal Justice Systems: Challenges and Perspectives
Tilmann J. Röder
Max Planck Institute for Comparative Public Law and International Law

An Overview on Legal Information Building and Sharing in the Arab World
Joyce Hakmeh
Arab Center for the of the Rule of Law and Integrity (ACRLI)

Statebuilding is political



Policy recommendations

Rule of law in conflict-affected and fragile states remains very difficult. Quick results are not realistic, long term horizons essential, and things are often more political than technical. Evolutionary approaches work. So does linking rule of law and public administration.

Statebuilding and Rule of Law in Conflict-Affected and Fragile States

Many rule of law engagements in situations of fragility and conflict have focused on lawmaking and strengthening central legal and security institutions. The results have not been stellar. **Luc van de Goor** and **Erwin van Veen** argue that sound analysis has shown that more effective international support for rule of law development in fragile settings is possible if three broad changes are made. The first of these game changers is: don't deny politics, treat justice and security interventions as political interventions with a technical component rather than apolitical technical interventions. If interventions do not take into account that change produces winners and losers, support and resistance, they will fail. The second game changer is to build justice and security programmes in a more evolutionary manner. Programme cycles must be allowed to take longer than 3-4 years, to establish results progressively, to work iteratively at every stage of the project cycle, and be monitored with the aim of adjusting and learning rather than of showing results. Evolutionary approaches work. The third game changer is to engage more and better with local/non-state justice and security providers. The UN has the needs and the means to make these changes – can it also marshal the required leadership? Van Veen and Van de Goor suggest both immediate and long-term actions for the UN.

Since the publication of the 2004 Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, the field of transitional justice has continued to make progress in promoting rule of law in countries that have experienced serious human rights violations. At the same time, the field continues to face new challenges, one of the broadest but most important of which is the need to adapt measures initially designed to confront abuses in post-authoritarian contexts to postconflict and fragile state settings.

The **International Center for Transitional Justice** (ICTJ) paper focuses on three areas in which, since 2004, progress can be seen but challenges – particularly related to post-conflict and fragile settings – must be faced: reparations, truth-telling and children. In all these cases the UN and its agencies as well as other IOs, states and NGOs have been immensely important in advancing the field of transitional justice. But much remains to be done, for instance the development of common standards for including children in transitional justice, supporting instruments of truth-seeking other than truth commissions, such as searching for the missing and disappeared and the preservation and use of archives, and examining the relevance of the right to reparations for health, education, displacement and indigenous communities.

> *"Rule of law reform in fragile and conflict-affected states"*

Another important field in post-conflict and fragile states is building and strengthening an accountable and transparent public administration. For instance, the issuance of birth, death, marriage and citizen certificates gives access to health services, education,

loan, electoral registration. Moreover, public administration is necessary for implementing programmes on economic reform and development. Public administration, however, should not merely be efficient, but also satisfy the standard of the rule of law. If corrupt and an instrument of arbitrary power, people will suffer rather than benefit from public administration. Despite growing recognition of the importance of rule of law in public administration, reform usually focuses on efficiency and effectiveness. The explanation is a lack of yardsticks, manuals and other guidance tools. As **Richard Zajac-Sannerholm** explains, the Folke Bernadotte Academy and others have recently developed such manuals and guidance tools. The UN should endorse this emerging standard-setting and codify it in a specific UN instrument, for example a GA resolution or supplementary human rights document. Such a normative document, which would for example include the right to a fair hearing before a decision is taken and the right to participate in an administrative procedure on the basis of widely defined locus standi, could guide UN rule of law promotion efforts as well as those by other donors.

Concise essays:

The Heart of Developmental Change: Rule of Law Engagements in Situations of Fragility
Luc van de Goor and Erwin van Veen
The Netherlands Institute of International Relations (Clingendael) and OECD's International Network on Conflict and Fragility (INCAF)

Transitional Justice in Post-conflict and Fragile Settings: Progress and Challenges for Reparations, Truth-Telling, and Children
International Center for Transitional Justice (ICTJ)

Extending Rule of Law Promotion beyond Criminal Justice: Rule of Law and Public Administration in Conflict, Post-conflict and Fragile States
Richard Zajac-Sannerholm
Folke Bernadotte Academy

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