



OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR
HUMAN RIGHTS



RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES

Mapping the justice sector



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The Office of the United Nations High Commissioner for Human Rights (OHCHR) has increasingly recognized the need to enhance its assistance in United Nations-wide efforts to work quickly and effectively to re-establish the rule of law and the administration of justice in post-conflict missions. Countries emerging from conflict and crisis are vulnerable to weak or non-existent rule of law, inadequate law enforcement and justice administration capacity, and increased instances of human rights violations. This situation is often exacerbated by a lack of public confidence in State authorities and a shortage of resources.

In 2003, OHCHR, as the United Nations focal point for coordinating system-wide attention for human rights, democracy and the rule of law, began to develop rule-of-law tools so as to ensure sustainable, long-term institutional capacity within United Nations missions and transitional administrations to respond to these demands. These rule-of-law tools will provide practical guidance to field missions and transitional administrations in critical transitional justice and rule of law-related areas. Each tool can stand on its own, but also fits into a coherent operational perspective. The tools are intended to outline the basic principles involved in: *Mapping the Justice Sector*, *Prosecution Initiatives*, *Truth Commissions*, *Vetting* and *Monitoring Legal Systems*.

This publication specifically addresses the issue of mapping the justice sector and some key related institutions and is intended to assist United Nations field staff in understanding how the justice sector actually worked in the State prior to and during the conflict, and how it should function if the rule of law is to take root. It provides an overview of the key institutions, related entities or mechanisms, and identifies priorities such as the linkages between core institutions and the utility of oversight bodies.

The principles used in these tools have been primarily garnered from previous experience and lessons learned in United Nations field presences. Clearly, this document cannot dictate strategic and programmatic decision-making, which needs to be made in the field in the light of the particular circumstances within each post-conflict environment. However, the tools are meant to provide field missions and transitional administrations with the fundamental information required to target interventions with regard to legal reform, in line with international human rights standards and best practices.

The creation of these tools is only the beginning of the substantive engagement of OHCHR in transitional justice policy development. I wish to express my appreciation and gratitude to all those who have contributed to the preparation of this important initiative.



Louise Arbour

United Nations High Commissioner for Human Rights

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INTRODUCTION AND BACKGROUND

Conflicts often arise from the failure of a State's legal system to protect rights and punish perpetrators of human rights violations. Discrimination, corruption and abuse of power by law enforcement officials, and the military in many cases, fuel and exacerbate conflicts and make it even harder to achieve reconciliation after the conflict. Injustice, literally, drives people to take up arms.

Understanding how the justice sector actually worked in the State before and during the conflict, and how it should function if the rule of law is to take root, should be a central feature of any peacekeeping operation. This is extremely complex terrain, so each peacekeeping operation should have experts who can analyse the roles of the various key actors in the justice sector—judges, prosecutors, lawyers, court administrators, the police, prison officials, and ministries like justice, interior and defence. With a great deal of modesty, the international rule-of-law officers can then honestly assess what they can offer their key national counterparts in what must be a nationally led exercise, all the while also honestly assessing the very weaknesses and deficiencies that helped create the injustices and the conflict in the first place. This will enable the peacekeeping operation to monitor the impact of reform efforts while promoting initiatives to strengthen local institutions' capacity to administer justice fairly, protect human rights and establish the rule of law. Most peacekeeping mandates now include these twin purposes of monitoring the rule of law and human rights observance and institution-building. Observing and evaluating the justice system as an entire sector are, therefore, crucial to the success of all peacekeeping operations.

Law is at the core of a peacekeeping operation's mandate and work. International human rights law and the laws of war establish requirements for how a State must treat people within its boundaries both during and after a conflict. Local law and the national legal systems must guarantee and protect international human rights. For most modern peacekeeping operations, monitoring the administration of justice is a priority.

For example, Security Council resolution 1542 (2004) of 30 April 2004 establishing the United Nations Stabilization Mission in Haiti specifies that the Mission will monitor and report on the human rights situation, re-establish the prison system and investigate violations of human rights and humanitarian law, help rebuild, reform and restructure the Haitian National Police, including vetting and certifying that its personnel have not committed grave human rights violations, develop a "strategy for reform and institutional strengthening of the judiciary" and "assist with the restoration and maintenance of the rule of law, public safety and public order."

This mandate captures the main elements of the work on transitional justice and rule-of-law reform in a post-conflict setting: dealing simultaneously with key institutions like the judiciary,

police and prison service, vetting personnel as a way to reform institutions while ensuring that past violators do not continue to wield power and developing broad-based reform strategies for these institutions.

The methodology is also crucial. The Security Council resolution on Haiti incorporates a lesson learned from many post-conflict experiences in the 1990s: there is an intimate connection between monitoring and institution-building/reform. While human rights monitors must investigate and verify whether the police, prisons and courts are operating properly, their primary aim is not to amass evidence against those responsible for any violations. Sound monitoring is necessary to understand the strengths and weaknesses of the justice system so that projects aiming at reform are based on a thorough understanding of actual practice, including ongoing weaknesses and problems. Efforts to reform the justice system are doomed to failure unless the peacekeeping operation knows the strengths and weaknesses of the courts, police, prosecution and prison service, the influence wielded by the minister of justice over the appointment of judges, the root causes of corruption or the simple dysfunction of court administration. This knowledge results from intense, ongoing observation and interaction by civilian peacekeepers whose job is to know and follow the key actors in the justice sector closely.

A group of experts on human rights, institutional reform and peacekeeping concluded that:

Perhaps the most important lesson from the field mission experiences is the essential complementarity between human rights monitoring and institution-building. Monitoring gave missions the ability to identify the sources and scope of human rights problems throughout the country. This information could then be used to design reform measures and training programmes. Finally, field monitoring provided direct feedback on the effectiveness of reform strategies or programmes as they were implemented.¹

Monitoring the administration of justice is also important as a way to test a Government's good faith and intentions. For example, a peacekeeping operation presents the authorities with an analysis of the justice system, highlighting a specific problem: prolonged detention before a suspect is brought before a judge. The peacekeeping operation conducts numerous workshops for judges, prosecutors and the police, hands out copies of the relevant laws (international and national) in local languages, and even offers the use of its vehicles to bring suspects to the courts for hearings in time to meet legally established deadlines. Yet after all these efforts, the Government persists in its practice and even denies there is a problem. The peacekeeping operation can then safely presume that any Government statements extolling a free and fair legal system that respects human rights are empty rhetoric. A Government's true commitment to

¹ Alice Henkin, ed., *Honoring Human Rights: From Peace to Justice* (Washington D.C., Aspen Institute, 1999), Summary Edition, p. 19.

upholding judicial guarantees can best be determined by its willingness or refusal to implement legal reforms when the peacekeeping operation presents it with solid, substantiated information and recommendations, and feasible responses to the problem.

Another important tool for rule-of-law officers is to help national counterparts to consult each other and discuss what their own priorities and strategies should be. This role as facilitator of national consultations, bringing together representatives of many of the institutions identified in this publication, is one of the most useful and appropriate for international actors in the post-conflict justice sector. Helping to identify and encourage local players who support reform is one of the core challenges for international actors. Building and empowering a national constituency for rule-of-law reform must be an early priority for any peacekeeping operation.

As part of this national reform consultation, the international rule-of-law officers should encourage national counterparts to develop their strategy, including the sequencing of priorities. For example, questions relating to when to hold elections, how to implement different elements of a peace agreement, and when to apply transitional justice mechanisms like a truth commission, prosecutions for war crimes and crimes against humanity, or reparations to victims, will all require careful study and discussion. Ideally, the national leaders should set the strategy and priorities, with help, guidance and support from the peacekeeping operation. This will help answer the question of how best to sequence the reforms, always a difficult challenge for which there is no ready formula. One of the great paradoxes of rule-of-law work is that it takes time, yet time can often be the enemy, because ongoing insecurity, lawlessness and corruption undermine all the peacekeeping efforts.

Strategic decisions also determine how money will be spent, so discussions of the budget for the rule-of-law sector will shape policy and can also serve as a coordinating tool. Many have complained of how difficult it is to coordinate all the different donors involved in rule-of-law projects. On average, there are at least half a dozen bilateral donors plus international financial institutions like the World Bank and the United Nations itself. Encouraging the host State to formulate a plan and budget can alleviate some of the strain, waste and duplication. The Government of Rwanda, for example, presented donors with a well-thought-out strategy and asked them to identify the parts they wanted to support. Coordination was not a problem. In Haiti, by contrast, there was no plan and the donors filled the vacuum with their own priorities and interests, making coordination impossible.

Rule-of-law reform requires political support. Ensuring that the general public understands the nature of the reforms reinforces the point that rule-of-law reform has a political dimension. Some people stand to lose if reform occurs. Power relations will change. Those used to controlling the police and using it to enforce their will, control the population or steal property will see reform as a threat. So will those who have used the courts to ensure their economic or political dominance. The Secretary-General's report to the Security Council on the rule of law and tran-

sitional justice in conflict and post-conflict societies represents a significant advance in public, political support for the rule of law; so does the Security Council's enthusiastic welcoming of the report². Before, the Security Council often refrained from addressing rule-of-law issues because it might be seen as interfering in the internal affairs of a Member State. Support from the Special Representative of the Secretary-General and others more involved in purely political matters is also crucial.

Done properly, rule-of-law reform will take years and require significant funding, but much less than military operations. Without rooting respect for human rights and the capacity to prevent violations in local institutions, all the money and effort expended by peacekeeping operations will be wasted. Spreading the rule of law and deepening respect for human rights are now seen not only as the right thing to do, but also as central to durable international peace and security in the post-cold war world.

² S/2004/616.

I. OVERVIEW OF KEY INSTITUTIONS IN THE JUSTICE SECTOR

It has become a truism that each post-conflict setting is unique. It is no less true that certain challenges and problems come up repeatedly in most peacekeeping operations and that by analysing these situations we can draw general principles that, used intelligently and flexibly, can provide some guidance to those charged with the enormous and complex task of supporting the rule of law in societies recently torn apart by intense, brutal conflicts. Often in the mix of challenges are the following:

- The judiciary is dysfunctional, its staff members have either left the country or are completely discredited in the eyes of the public;
- The police have been part of the problem—rather than observing human rights they have been the principal violators; they, too, have either fled or are completely rejected by the population;
- Prisons are overcrowded, unhealthy places where brutality has reigned and people have languished for years without charge or trial;
- Local civil society is in tatters, having borne the brunt of repression for years, it is terrified, lacks resources of all kinds and the most effective leaders have either been killed or forced into exile;
- Corruption is rife, organized crime controls much of what is left of the economy, trafficking in humans, drugs and contraband is rampant; and
- Landmines pose a continuing danger, inhibiting freedom of movement and economic activity, especially in rural areas, where prime farmland is often mined.

Peacekeepers working in the rule-of-law sector should have a solid grounding in the history of the conflict, its root causes and the role different institutions have played. In some cases, the United Nations human rights treaty bodies will have issued reports and findings that might be helpful; similarly, regional organizations like the Council of Europe, the Organization of American States and the African Commission on Human and Peoples' Rights might have valuable information.

In the study for this publication 42 institutions were identified as part of the post-conflict rule-of-law sector. While each peacekeeping operation presents unique challenges, 3 of these 42

institutions will invariably be priorities for any peacekeeping operation: the judiciary, the police and the prison service. Efforts to reform all three must proceed simultaneously, jointly and preferably in tandem without one getting out too far in front of the others.

Different institutions will present varying challenges, depending on the history and practice in the host State or territory: military forces where they have acted as police (Bosnia and Herzegovina, El Salvador, Guatemala, Haiti, Rwanda, the former Yugoslav Republic of Macedonia, Kosovo, Serbia and Montenegro), militias and non-State armies where they are to be integrated into new or reformed law enforcement bodies (Angola, Bosnia and Herzegovina, Cambodia, Democratic Republic of the Congo, El Salvador, Liberia, Sierra Leone, Timor-Leste), national human rights institutions like national commissions and ombudsmen (Afghanistan, Bosnia and Herzegovina, El Salvador, Guatemala, Haiti, Kosovo), the media, parliament and professional organizations (of lawyers, accountants, law professors, police officers, physicians). In many countries traditional or customary laws and procedures may occupy an important place in post-conflict judicial reform (Afghanistan, Burundi, Guatemala, Rwanda, Sierra Leone, Timor-Leste). But in every single case, a peacekeeping operation must dedicate significant time, attention, personnel and resources to the courts, the police and the prison service.

A. The courts

Although the United Nations Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors are essential tools, no universally accepted road map exists for strengthening the independence and effectiveness of the judiciary *in a post-conflict environment*. Peacekeepers working on the rule of law will have to assist the judiciary in a variety of ways, including: improving the management and administration of the courts; assisting in recruiting judges, prosecutors and court personnel; training all judicial personnel; establishing or strengthening independent oversight and disciplinary mechanisms; raising and dispersing additional material resources necessary to run a judicial system; and enhancing the capacity of law faculties at universities to educate future judges and lawyers. Civilian peacekeepers often have to participate in vetting exercises to scrutinize the qualifications and past performance of judicial personnel to ensure they have the requisite qualifications and professional integrity and have not been complicit in past human rights violations or crimes against humanity. Staff must be assigned to monitor the judicial system to identify any problems such as the failure to uphold human rights standards, corruption, political interference or intimidation, absenteeism and lack of resources.

Judges, prosecutors, lawyers, court clerks, notaries, bailiffs, all segments of the personnel of the State's legal system will be crucial interlocutors. Observing trials and monitoring pretrial procedures to ensure adherence to international and national guarantees on limits to pretrial detention, access to counsel and speedy trials, are integral to a mission's work. Seeking such information must be balanced against certain constraints on the justice system's ability to make

details about an investigation public. Creating a solid working relationship with justice officials, from the minister of justice down to the lowest-level trial judge or court clerk, is also important for any work a peacekeeping operation may do in the judicial sector.

Members of a peacekeeping operation should be assigned to monitor the performance of the justice system, note problems, instances of interference or intimidation from outsiders attempting to influence a jurist's behaviour or the outcome of a case. Corruption, bribery and extortion undermine the rule of law, so these cases must be investigated and documented. Any threats, attacks or other violence directed at anyone working in the legal system should be thoroughly investigated and reported. For example, when a prosecutor was beaten up and suspended for failing to follow a local politician's order to arrest people even when there were no grounds to do so, the members of the United Nations human rights mission in Rwanda investigated the case and issued a public statement calling for an official inquiry. The prosecutor was grateful to the mission and felt that his case would have been ignored without its intervention. Similarly, the Organization for Security and Co-operation in Europe (OSCE) in Kosovo has denounced interference in the judiciary based on ethnic hatred and this has led to increased international involvement and in some cases greater protection for judges and prosecutors.

Those assigned to the justice sector may also be requested to advise or assist in establishing mechanisms to address alleged past war crimes, crimes against humanity and serious human rights violations. They may provide information about what other States facing similar challenges have done and suggest possible options like special tribunals, truth and reconciliation commissions, reparations programmes and traditional justice procedures. Together with domestic colleagues, peacekeepers may assist in reviewing and revising domestic criminal and civil laws. Human rights experts in a peacekeeping operation may vet existing or new laws to ensure that they are consistent with obligations set out in major treaties like the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Rights of the Child* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.³ In transitional administration operations with executive authority (Timor-Leste, Kosovo), peacekeepers will be involved in actually running the judiciary, the police and the prisons for a certain period.

Access to justice is often limited to the wealthy, the politically connected and the urban dweller. In many post-conflict settings, the great majority of the population has never had meaningful access to the courts. Instead, the judiciary is seen as a foreign institution, using a language that ordinary people do not understand (French in Haiti, for example, where everyone speaks Cre-

³ If a State has declared that it is derogating from some of its obligations under article 4 of the Covenant on Civil and Political Rights, field officers need to be aware of the exact extent of the derogation. The Human Rights Committee, however, in an important general comment established strict limitations on the use of derogations and field officers may want to confirm whether or not any derogations are valid under the standards and jurisprudence established by the Committee. See the Committee's general comment No. 29 (CCPR/C/21/Rev.1/Add.11).

ole), and lawyers are unavailable or unaffordable. Bringing the courts to the people, especially marginalized groups (based on gender, ethnicity, geography, religion, race, income), so that disputes are resolved quickly, fairly and cheaply, will be a needed and revolutionary change. It will also help ensure that conflict does not reignite.

1. Criminal justice

Most peacekeeping operations will focus overwhelmingly on the criminal justice sector of the judicial system. The reasons are obvious. In most post-conflict situations, basic law and order is absent and there is a compelling need to provide security to traumatized and war-torn populations. Many people are walking around with guns and it is unclear who controls them. Moreover, those responsible for past war crimes, crimes against humanity and other serious human rights violations need to be apprehended, detained and made available for whatever processes designated for such cases. Thus the role and responsibility of the criminal justice system will be central in any post-conflict scenario.

The areas of criminal law most relevant to a peacekeeping operation's mandate will be arrest and detention, treatment of prisoners and detainees, access of lawyers to their clients, access of medical professionals and family members to the detainees, fair trial standards, sentencing practices, rights of victims to participate in the proceedings, reparations programmes and any laws on amnesties or pardons.

Other legal issues that often emerge are laws and practices governing demonstrations, freedom of the press and media laws in general, laws on organizing associations or non-governmental organizations, freedom of movement and the possibility of holding Government officials, including the police and the military, accountable in court for human rights violations.

Several missions, such as in Bosnia and Herzegovina, the Democratic Republic of the Congo and Sierra Leone, have seen an increase in trafficking in women and young girls for sexual exploitation, so knowledge of international and local laws governing this problem is essential. Likewise, United Nations peacekeeping operations must include specialists with expertise on how to interview and counsel victims of trafficking, usually women, and children who have suffered sexual abuse. In a few cases, clumsy and insensitive treatment has resulted in further suffering for these victims of human rights and criminal abuses. Instead of offering compassion and assistance to the trafficked women, some local and international legal officers, including police, treated them like criminals (for example, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia).

The gender dimension of violence is quite pronounced in most modern conflicts, where tragically the rape and abduction of women, including older women and young girls, have become common. Peacekeeping operations must be prepared to help locals investigate and prosecute

such cases and, if necessary, prepare cases for possible international criminal tribunals depending on jurisdictional questions.

Child soldiers have participated in many conflicts, especially in Afghanistan, the Democratic Republic of the Congo, Liberia, Sierra Leone and Sri Lanka. Child psychologists and counsellors, both local and international, should be available to monitor the local judiciary's performance in this area and offer assistance, training and other forms of capacity-building to improve the treatment of children who have endured horrendous experiences and face great difficulties in reintegrating into society. Relevant officers in a peacekeeping operation should be aware of the developing jurisprudence on child soldiers and alternatives to criminal prosecutions and incarceration from the international criminal tribunals, the International Criminal Court and hybrid institutions like the Special Court for Sierra Leone and the new Extraordinary Chambers in Cambodia.

In addition to international laws and norms, those peacekeeping officers working in the justice sector should become familiar with provisions in the national constitution that establish basic rights or prohibit certain acts by the Government or by people acting under its authority. Constitutional provisions guaranteeing free speech, freedoms of assembly or association, prohibiting torture, arrests without a warrant or prolonged pretrial detention, should become part of their daily discourse. The frequent misuse of administrative detention by many Governments should also appear on most peacekeeping operations' checklists.⁴ The scandalous treatment and conditions in which mentally ill persons are kept in many State institutions (Haiti, Rwanda, Kosovo) should be a high priority for most peacekeeping operations.

Engaging local lawyers to advise and even participate in the work on all these criminal justice issues, national and international, helps increase the peacekeeping operation's own knowledge and competence on national matters while simultaneously enhancing local capacity by providing local lawyers with exposure to excellent international legal practice and thinking.

The criminal justice system in a country may be one of several types: Anglo-Saxon or common law, civil law based on the Napoleonic Code, Islamic law or variations of sharia, and traditional

⁴ The Human Rights Committee, in its general comment No. 8 on the right to liberty and security of persons, emphasized that it is not only those in detention for criminal matters that are protected by article 9 of the Covenant on Civil and Political Rights. The Committee noted that "article 9 which deals with the right to liberty and security of persons has often been somewhat narrowly understood in reports by States parties, and they have therefore given incomplete information. The Committee points out that paragraph 1 is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc. It is true that some of the provisions of article 9 (part of para. 2 and the whole of para. 3) are only applicable to persons against whom criminal charges are brought. But the rest, and in particular the important guarantee laid down in paragraph 4, i.e. the right to control by a court of the legality of the detention, applies to all persons deprived of their liberty by arrest or detention. Furthermore, States parties have in accordance with article 2 (3) also to ensure that an effective remedy is provided in other cases in which an individual claims to be deprived of his liberty in violation of the Covenant."

law (frequently found in Africa and Asia but also in Kosovo and the former Yugoslav Republic of Macedonia, where an ancient code still governs many aspects of life for the Albanian community there).

Field officers in the justice sector should have a basic understanding of the national and local court system, particularly its structure and personnel. What kind of cases can a local magistrate hear (i.e. what is the court's "jurisdiction")? Is there an appellate court? How are crimes categorized (e.g. serious, minor)? Where can a party file an appeal against an adverse decision? What kinds of cases does the supreme court hear? How many judges are there in the region/country? Who appoints them? How long do they serve? How can a judge be fired? What role does the prosecutor play in criminal investigations? Are there deadlines for completing investigations and are there penalties for failing to complete investigations or reports on time? Who appoints the prosecutor? Where does the ministry of justice fit into all this? Is there a procedure to file complaints against a judge, lawyer or any court official for misconduct? Is there an oversight body that can discipline judges, prosecutors or court officials for abuse of power, corruption, misconduct or lack of professional behaviour?

Peacekeeping operation officers should establish a network of legal system officials (judges, prosecutors, prison governors) and seek regular meetings with them to raise specific cases, discuss system-wide problems, work on institution-building and human rights education/promotion efforts. A roster of all judges, prosecutors and military and police commanders in the region should be kept up to date. Any transfers should be noted so that information about a specific judge or prosecutor can be shared with colleagues in the region receiving the transferred official. Some key officials in the criminal justice sector and their principal roles in a post-conflict setting are the following:

- **Judges:** in most systems the judges are the guardians of liberty and human rights. Judges will decide on whether there are grounds to arrest and detain a person, ensure that the person has access to counsel, preside over trials and, where there are no juries, decide on innocence or guilt. In Napoleonic civil-law systems, the investigating judge will often play an active role in amassing evidence to prepare the prosecution. Judges' appointment, retention and behaviour should always be in conformity with the *Basic Principles on the Independence of the Judiciary*.
- **Court clerks and administrative personnel:** often overlooked, these officers make the justice system work. They keep track of case files and dockets, schedule hearings and ensure order and safety in the courtroom. In most post-conflict settings, the administration of the courts is in as much disarray as the rest of society; files have been lost or destroyed, basic office equipment is lacking and there often is no electricity. Understanding the importance of these people, who really are the sinews and muscle of the court system, cannot be underestimated. Nothing happens without them. Because of this power and their typical low status and prestige, corruption is frequently rife, and favouritism in treatment and many abuses of power occur at this level.

- **Prosecutor/attorney general:** the lawyer representing the State in a criminal action has obvious importance in post-conflict justice system initiatives. Their discretion to pursue criminal cases gives them great power in the administration of justice, especially in post-conflict situations, where pressure to ignore or forget past crimes might be great. The *Guidelines on the Role of Prosecutors* provide the basic standards applicable to their work and also the protections necessary for them to conduct impartial and fair investigations and trials. Prosecutors are obliged to give “due attention” to crimes committed by public officials, corruption, abuse of power and grave violations of human rights, precisely the mix of cases most likely to confront them and a United Nations peacekeeping operation in a post-conflict setting. Prosecutors must also have the training, resources, equipment and support necessary to prepare and prosecute cases, often of great complexity and sensitivity. Lack of all the above has been a constant problem in many peacekeeping operations (Afghanistan, Burundi, Cambodia, Guatemala, Haiti, Rwanda). Interference, threats and even violent attacks have occurred. Ensuring the competence, independence and integrity of prosecutors must be a high priority.

- **Defence lawyers:** also frequently ignored or forgotten in peacekeeping, defence lawyers are absolutely vital if the justice system is to work. In many States, the existence of a vibrant, independent defence bar will be new. In the Balkans, for example, under the previous socialist system of justice, defence lawyers merely tried to mitigate the sentence, not fight for their clients’ innocence. In Afghanistan, Angola, the Democratic Republic of the Congo, Rwanda and Sierra Leone, there were simply too few lawyers, almost all of them concentrated in the capital, so most criminal defendants went unrepresented.

Training and equipping defence counsel so that there is some semblance of “equality of arms” in a criminal procedure is a keystone to building the rule of law in post-conflict situations. OSCE, as part of the United Nations Mission in Kosovo, established a training and resource centre for defence lawyers and for the first time in Kosovo’s history defendants have lawyers who challenge evidence, assert their clients’ rights and try to keep the system honest. Likewise in Cambodia and Rwanda, international NGOs with assistance from United Nations missions have strengthened the capacity of defence counsel. Defence lawyers do not only improve the administration of justice by fighting abuses of power, arbitrariness and sloppy police work but also enhance access to justice. In most post-conflict States the legal system had been remote and inaccessible, using a strange language and procedures while always seeming to favour those in power and the wealthy. With competent defence counsel, the legal system can be made to work for even the poorest and weakest in society, to protect their rights and to treat everyone equally before the law. This in itself is revolutionary in most post-conflict settings and is an essential ingredient in building a durable peace.

- **Victims’ associations:** depending on the nature of the justice system, victims of crimes or human rights violations may have an active, statutory role in the proceedings. This is especially true in civil-law countries, where the victim often has the right to be represented by counsel,

who participates in the trial, asking questions and presenting evidence. Recognizing the suffering of victims while seeking to establish accountability so that impunity ends is one of the most important features of post-conflict justice sector work. What, after all, is “justice” if not an accounting of what happened and who was responsible, and providing a remedy for those who suffered as a result.

The United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* establishes core principles like access to justice and fair treatment for victims, restitution, compensation and assistance. These can all take many forms and in some cases traditional or customary practices, as we shall see later, may determine their exact content. Peacekeeping operations need to pay more attention to this vital issue. Justice sector officials will need to work with those who assist victims, some deeply traumatized, and link them up with the courts, prosecutors, defence lawyers and medical professionals. Manuals, budgets, counselling, safe houses, the whole panoply of issues related to assisting victims are part of criminal justice reform. This is especially needed when dealing with trafficked women and children, many of whom have suffered sexual and physical abuse that may leave deep psychological wounds. International actors have not addressed the needs of victims adequately and this gap needs filling. One study found that:

“...donors have declined to fund criminal justice projects relating to victims’ rights and other community needs.” “...the positive role of security institutions in protecting personal security—in particular by defending women against rape, supporting victims of violent crime, and buttressing levels of community security—should be strengthened.”⁵

This attitude may change with the advent of the International Criminal Court. Unlike the International Criminal Tribunals for the Former Yugoslavia or Rwanda, the Rome Statute of the International Criminal Court specifically provides for the victims to have formal standing in the proceedings. The Court may also seek testimony from victims and order the convicted person to provide appropriate reparations to the victim.⁶ Importantly, the adoption by the United Nations Commission on Human Rights of the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for the Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* in April 2005 will further cement the centrality of recognizing victims’ roles and claims regarding war crimes, crimes against humanity and similar abuses. This evolving area of the law should be included in the judicial activities of

⁵ International Council on Human Rights Policy, *Local Perspectives: Foreign Aid to the Justice Sector. Main Report* (Geneva, 2000), pp. 65-66.

⁶ See the Rome Statute of the International Criminal Court, art. 75 (2). Article 75 (1) provides: “The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.”

peacekeeping operations, both in any training or capacity-building and in the preparation for prosecutions, either national or international.

The goal of all this knowledge about the core criminal justice actors and the intense interaction with them is to reinforce, not replace, the criminal justice system by helping it to work according to the country's own laws and its obligations under international standards. The mere knowledge that they are being watched and helped has emboldened some officials to follow the law and resist intimidation.

2. Civil courts

While criminal justice will receive the bulk of a peacekeeping operation's attention, certain non-criminal matters handled by civil courts or mediation mechanisms, such as alternative dispute resolution, also merit special consideration. The same issues of adequate judicial pay, staffing and resources, proper management including oversight of all court personnel, efficiency, logistics and procurement, will be as important in the civil-law sector as it is in the criminal domain. The population's access to justice, largely determined by costs, availability of lawyers and geographical proximity of courts or mediators will also deserve the attention of peacekeepers. Some important civil justice issues in peacekeeping are:

- **Property (real and personal):** in many post-conflict societies establishing ownership of land, housing, commercial enterprises, livestock and personal effects can become a major issue in reconstruction, reconciliation and establishing a durable peace. Field officers will need to become familiar with or in some cases help create institutions that handle these problems, as has been the case in Bosnia and Herzegovina, Timor-Leste, and Kosovo.
- **Civil registration:** birth, marriage and death certificates are often lacking, record-keeping poor or destroyed in places like Afghanistan, Cambodia, the Democratic Republic of the Congo and Haiti. Much hinges on these records: ability to go to school, health care, especially vaccinations and status of communicable diseases in a district, eligibility to vote, access to social welfare programmes and inheritance.
- **Citizenship:** who is a citizen or resident of a country? Who is a refugee or displaced person? What rights attach depending on this status? Is someone stateless and what are the consequences? This is a life-or-death question in Côte d'Ivoire.
- **Juvenile justice:** conflicts are especially hard on children, disrupting their lives and creating a host of problems that the judicial system must often try to resolve. In addition to the problems related to child soldiers and how to treat them to ease their rehabilitation and re-integration wherever possible, grim challenges arise from the growing trafficking in children for sexual and labour exploitation. The host State rarely has the resources and expertise to

provide the special counselling and medical needs of children affected by conflict. Some peacekeeping operations now include child protection officers, who should establish solid working relationships with local child protection networks. The United Nations Children’s Fund (UNICEF), as the lead United Nations agency on children’s issues, has developed many sound training modules, pocket guides and monitoring tools for juvenile justice challenges in peacekeeping operations.⁷ But all peacekeeping personnel must be alert to identifying children most in distress and work with local leaders and international experts to provide a network of care for children who have often witnessed horrible events. Creative alternatives to incarceration or other custodial measures should be preferred for children in difficulty with the law.

- **Public administration:** early on rule-of-law reform must promote greater transparency and accountability in overall public administration (e.g., vehicle registration, building permits, rubbish removal, public health inspection, banking regulations, tax collection), since even more people have contact with these agencies (and their history of discriminatory practices and corruption) than they do with the formal judiciary. Any continuing bad practices by Government agencies can quickly deepen lawlessness and reinforce the reality/perception that the situation is out of control or has not changed. In Kosovo, for example, the failure of the United Nations and the International Security Force (KFOR) to enforce traffic laws and building regulations created a widespread fear that the criminal gangs had more power than either the State or the international community, which was in fact true in some places.

3. Customary law and traditional justice

In addition to their formal justice sector, many States will have procedures and actors based on customary laws and traditions. These have the typical benefit of being “close” to the people, affordable and quick while enjoying great legitimacy.

Yet some of these traditional justice models may have serious defects concerning gender equality, children’s rights and forms of punishment that are prohibited under international law. So field officers cannot blindly endorse the use of customary law in all cases. For example, in some areas of Afghanistan, Pashtun custom dictates that the family of a murderer must give a young girl in marriage to the family of the victim. Clearly, this is unacceptable under international law applicable in Afghanistan and also under Afghan law; even the conservative Chief Justice of the Supreme Court admits that the practice must be stopped.

⁷ See the final report of the Task Force for Development of Comprehensive Rule of Law Strategies for Peace Operations to the Executive Committee on Peace and Security (August 2002), in particular Annex B.

United Nations peacekeepers can assist reformers by pointing out which elements should be supported and which present problems.⁸ They can raise awareness of human rights deficiencies in traditional justice mechanisms among practitioners and seek to resolve the problem while still using the local traditional justice mechanism or mediation model. At the same time they can advise on how best to support informal methods of dispute resolution without undermining other programmes promoting women's rights or abolishing harmful practices. This can be a delicate undertaking with varying degrees of risk. Peacekeepers need to have extensive contacts with key local NGOs, religious leaders and heads of local associations. Rwanda offers a hopeful model; United Nations human rights officers helped adapt the traditional *gacaca* process of village justice to lesser crimes associated with the 1994 genocide. This alleviated severe overcrowding in Rwandan prisons, which was itself a grave human rights violation, while fostering accountability, justice and reconciliation at the village level.

B. The police and other law enforcement bodies (customs, border guards, constabulary bodies)

Police reform is one of the most important and complex challenges in any environment. It is particularly challenging, however, in post-conflict situations, where the police have often perpetrated serious human rights violations. Largely cut off from the populations they are theoretically meant to serve and protect, and operating more like military contingents than public security officers, such police forces have proved difficult to transform into rights-respecting organizations that simultaneously provide protection and fight crime. The implications for the justice sector and for protecting human rights are enormous.

Police reform, like judicial reform or any effort to change an institution, is intensely political. Power distribution and relationships will change, and resistance is only natural and to be expected. Many in the old order will see reform as a direct threat, a zero-sum game, where they stand to lose and others will gain. Reform also implies that what exists or existed is flawed. People invested in the old structure will not be happy with this conclusion and can be expected to resist change. There is a built-in tension between the judgement of the United Nations that it is important to “build on what exists locally and take local ownership seriously” and the reality that the very need for reform means that what exists locally is inadequate and requires fundamental change.⁹

⁸ Xanana Gusmao, President of Timor-Leste, summarized the complex nature of traditional justice mechanisms in a speech: “If we know how to take advantage of the positive aspects of traditional justice and to identify its weaknesses as a mechanism and in its values, traditional justice (in other words, ‘Community-applied Justice’) will play an important role in preventing minor problems from dragging on and becoming major conflicts, inducing families or even entire hamlets against each other.” 27 June 2003, available at www.asiafoundation.org.

⁹ Charles Call, *Challenges in Police Reform: Promoting Effectiveness and Accountability* (International Peace Academy, 2003), p. 4.

The United Nations and others embarking on police reform must understand from the outset that the exercise involves much more than a mere “technical fix” or tinkering purely with the operational side of a police force. The local population will interpret every project, every training or public awareness campaign as a political initiative and will do a political calculus of what it stands to gain or lose from the effort. Police reform will inevitably transform a society; it is a major exercise in State-building requiring the population to have confidence in the police and the police to serve the public regardless of political agendas and despite their recent experience. Such a dynamic represents a pivotal change in how society is governed in most post-conflict and crisis States. “Policymakers and critics have to recognize that civilian police missions are an integral part of a vast and ambitious project of conflict management and political and socio-economic development.”¹⁰ And they must also recognize, and budget for, a long-term commitment since this will take years, not months.

United Nations peacekeepers must know the local traditions, practices and conditions regarding policing and security. A deep understanding of how the police had been structured and organized is essential. United Nations officials must also understand past criminal patterns, the networks and criminal gangs, inside or outside the old police, and how they operated. Moreover, in most post-conflict countries, the police were often part of the problem. In places like Bosnia and Herzegovina, Cambodia, Rwanda and Sierra Leone, the police usually acted like occupiers, squelching any perceived criticism of the authorities and not hesitating to use violence to maintain control. Most people’s interactions with the police have been negative: extortion, threats, beatings, rape, disappearances and murder have been all too common.

In many places, the population has had no experience with a police force that provides services and protection and observes human rights, so the United Nations must be ready to help citizens formulate demands for respectful, responsive policing.¹¹ Although it is difficult to overcome this background, “there is a suppressed demand for responsive, sympathetic policing.”¹² Despite understandable scepticism bred from decades of abusive police behaviour, most people want to have a good relationship with the police; they want to rely on the police for protection and the prevention of crime. This is especially so for people who have survived modern conflicts where so many of the victims have been civilians. They, more than anyone, appreciate the need for a rights-respecting police force that will protect them instead of preying on them.

Police reformers must know this history, even things like the colour of the old police uniforms and the names of notorious police units. The public may see certain police stations as torture

¹⁰ Annika S. Hansen, *From Congo to Kosovo: Civilian Police in Peace Operations* (The International Institute for Strategic Studies, 2002), Adelphi Paper No. 343, pp. 13-14.

¹¹ Call, op. cit., p. 5.

¹² David Bayley, *Democratizing The Police Abroad: What To Do and How To Do It* (National Institute of Justice, 2001), p. 25.

houses and not want to go near them. Reform efforts must not in any way even hint that discredited and abusive symbols, units or tactics will continue.

This type of understanding requires broad-based expertise. Put simply, improving human rights performance in the police is too important and complex to be left to human rights or police experts alone. Those steeped in management, personnel, logistics, procurement, communications, data analysis, institutional reform, psychology, sociology, criminology, public information campaigns, anthropology and community relations must participate for these efforts to succeed. It is not enough merely to bring in a human rights expert to lecture on international human rights standards to a group of cadets in a police academy, or for a police expert to discuss how to conduct a “stop and frisk.”

Many police forces in post-conflict societies had few women in their ranks. The gender aspect of police reform has become a top priority. In Kosovo, for example, the new police force has approximately 18 per cent women, revolutionary for the Balkans. In other missions, concerted recruiting efforts have yielded increased numbers of women officers. Domestic violence, long overlooked or dismissed as a private matter, has taken on an entirely new perspective with the increase in women police officers. The United Nations Civilian Police (CIVPOL) themselves would do well to emulate efforts to achieve greater gender balance; most United Nations police sent to peacekeeping operations are male.

Police reform is a multifaceted, multidisciplinary effort that takes careful coordination among many actors and will require many years and much money. Ensuring sustainable funding from within the State and not dependent on foreign largesse is a major challenge. Yet the central role and responsibilities of the police to guarantee law and order and respect for human rights mean that United Nations peacekeeping operations must focus immediately on police reform. United Nations experts in several sectors—human rights, policing and organizational development—must collaborate with local officials to design a policing strategy and secure sustainable funding from local resources.¹³

1. The military

Peacekeeping operations must often consider the role of the military when designing justice sector reforms. In States emerging from conflict, the armed forces have played a role, usually a negative one, in the administration of justice. Either through intimidation of judges and prosecutors, or usurpation of the police function, they have frequently interfered in court cases or have arrested and detained civilians. This must not recur, so peacekeepers need to establish

¹³ The overemphasis on monitoring and training in United Nations police reform has hurt the effort to build strong, efficient and rights-respecting police services in post-conflict settings. See William G. O’Neill, “Human rights and police reform”, Study for UNDP/OHCHR Human Rights Strengthening Programme (July 2004).

good working relations with the military to ensure it understands its new role in a rights-respecting emerging democracy. Programmes that will ease this transition, usually the classic “DDR” of demobilization, disarmament and reintegration, need to have adequate resources to enable a transition from conflict to enduring peace. Afghanistan, Liberia and Sierra Leone currently demonstrate the links between successful DDR and justice sector reform. Getting it wrong has deeply destabilizing impacts on peace and security, as was demonstrated in Liberia in March 2004, when a hasty and ill-prepared DDR programme led to riots and the threat of renewed fighting. Haiti’s failed DDR in 1994-95 came back to haunt the country nine years later, when former soldiers violently overthrew a democratically elected president.

Vetting soldiers to determine their eligibility to serve in either the reformed military or police has emerged as a vital justice sector issue. Clear, transparent and impartial reviews of the records of serving military personnel will simultaneously help reform the institution while sending a signal that impunity for past behaviour will not be tolerated. Keeping out “bad guys” from the new army and police increases the chances of successful justice sector reform. It is interesting to note that the Security Council resolution on Haiti of 30 April 2004 explicitly calls on the United Nations to assist in vetting the Haitian National Police. Vetting exercises are also under way in the Democratic Republic of the Congo and Liberia.

2. Non-State actors—militias and insurgent groups

Successful rule-of-law reform in Afghanistan will largely depend on the smooth demobilization of the various militias run by warlords. A similar challenge exists in Burundi, Côte d’Ivoire, the Democratic Republic of the Congo, Liberia and Sierra Leone, where several rebel armies will have some of their members incorporated into new armies. Some non-State militias, like their formal Government counterparts, often interfered in justice and police matters in the territory they controlled during the conflict. The Kosovo Liberation Army (KLA) is a good example; it acted as the police and arrested, detained and even “tried” alleged “collaborators” with the Serb regime. Ensuring that these non-State actors give up their arms and find other employment is crucial in post-conflict situations. Their successful reintegration into society, including possible posts in the new police (some KLA members after vetting became members of the new Kosovo Police Service) or the military (former militia members are being trained to become officers in the new Afghan army), must be part of an overall justice sector strategy.

C. Prison administration

The prison service is a key link in the criminal justice chain that includes the police, prosecutors and defence lawyers, and the judiciary. Yet it is often ignored or, if recognized, underfunded. For example, in Afghanistan, the international community designated Italy as the lead country on reforming the judiciary, while Germany took the lead role in police reform. No lead country

was identified for the prison service. Yet the prison situation in Afghanistan was a real emergency, with hundreds of prisoners at immediate risk of dying due to overcrowding, lack of food or mistreatment.

This is not unusual in post-conflict settings, where prisons and detention centres often pose particular challenges. Detainees are often at great risk in prison, cut off from family, lawyers and doctors in many cases, with the risk of torture and mistreatment constantly present. Conditions in prisons are often inhumane, with overcrowding, poor or little food, dirty water and disease the main dangers to prisoners' health. Even greater dangers exist in secret or unofficial detention centres where detainees are held incommunicado. The risk of torture or mistreatment is very high where the outside world has no knowledge of or access to the detainee. If and when they are detained, those on the "losing" side of a conflict are vulnerable to retribution and victors' justice, which is often of the summary kind. A prominent study of prisons in peacekeeping operations noted:

"Ultimately, the legitimacy of any peace operation depends on its ability to create positive change in the lives of persons affected by violent conflict. Foremost in importance is the establishment of basic guarantees for human security... Corrections is that component of the criminal justice system which has the greatest impact on the freedoms, liberties and rights of individuals... [It] can play an essential role in re-establishing the basic conditions for human security as part of an overall rule-of-law strategy by:

- providing qualified personnel to manage and maintain prisons on an interim basis;
- providing technical assistance in support of prison reform efforts;
- supporting initiatives that establish or reform the legal and policy infrastructure of the overall criminal justice system; and
- training local prison staff."¹⁴

In a peacekeeping operation, establishing clear and accepted connections and boundaries with the other parts of the criminal justice chain is a first-order challenge and is vital to rebuilding legitimate structures of State authority. Yet work on the prison system is often complicated by the earlier arrival of other elements of the peacekeeping operation that have already begun work in the field, however reluctantly, as in Kosovo. Thus early and intense collaboration and communication between prison specialists in a peacekeeping operation and their military counterparts is essential.

The International Committee of the Red Cross (ICRC) has a mandate to work in prisons and will often be a key partner in prison reform. In Haiti and Rwanda, United Nations human rights

¹⁴ International Corrections and Prisons Association, *Practical Guidelines for the Establishment of Correctional Services within United Nations Peace Operations*, pp. 16, 23-24.

missions had a formal agreement with ICRC specifying which days each would visit the prisons so that they did not get in each other's way and which issues each would make its priorities (ICRC to focus on conditions and treatment in detention, United Nations human rights officers to focus on the judicial status of the detainee/prisoner).

Local authorities in most post-conflict settings will continue to be responsible for prison administration, and international experts will monitor, mentor, advise and train. In some peacekeeping operations, such as Timor-Leste and Kosovo, there will be a period of shared jurisdiction as the transition is managed. Ideally, this should be short, but in reality that is not likely. It may take months if not years. One major challenge is coordinating efforts so that all components of the peacekeeping operation and the local partners cooperate and communicate on key issues such as who is being held, for what reason, what detention policies and practices are in place, what equipment and support can be shared, what mutual support can be offered and what jurisdictional boundaries cannot be breached. Conflicting professional, national or ideological objectives may hinder the effort and dramatically increase stress and frustration. This has been the case in most peacekeeping operations and is one of those realities that must be faced, managed and mitigated, but will probably never disappear.

Prison administrators should be on the ground as soon as possible, whether as advisers or administrators, to ensure that the needs of a prison service are understood and accounted for. If this is not done early, decisions that are difficult to reverse may have been taken and available resources divided among existing groups with the result that prison experts, when they do arrive, are forced to explain the need to make changes to people who already have other priorities and to beg and borrow resources from those who had committed them elsewhere. The repercussions can be long-term, as senior managers can spend much of their time in succeeding years trying to find aid and funding sources, when their main task should be advising those running the prison system or running it themselves in transitional administration operations.

The physical infrastructure of prisons (for instance, in Afghanistan, Cambodia, Guatemala, Liberia and Sierra Leone) is usually woefully inadequate, to the point where physical health and even survival are at risk. The economy of the country is usually in tatters, making the operation of prison facilities highly dependent on outside aid, severely hampering early reform. Assessing facilities, identifying pressing needs and securing adequate resources will distract officers from the business of advising or running a prison system properly. Senior staff often spend more time searching and even pleading for funds for construction, equipment and training, from an array of countries and agencies, than they do planning, training, advising or managing the operation of the system.

The social context cannot be ignored either. Prisons may have become symbols of oppression, corruption or places of torture and punishment for the civilian population or some segments of it. Building a sense of legitimacy and social justice for the prison system is a huge challenge in

places like the Democratic Republic of the Congo, Guatemala, Liberia, Timor-Leste and Kosovo. Accepted social values in the host countries must also be considered. Notions of crime, punishment and the nature and role of the State's power to sanction vary widely. Externally imposed value systems and attendant sanctions are not likely to enjoy immediate legitimacy, yet international standards on human rights and detention such as those found in the *Standard Minimum Rules for the Treatment of Prisoners* or the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* must be respected, regardless of cultural norms. Whether acting as adviser or administrator, whether rebuilding or reforming a prison system, or starting one from scratch, peacekeepers will have to balance these sometimes competing interests.

National staff, if there are any remaining after the conflict, may not possess the right skills and may not have credibility with citizens or inmates. If prisons were places of abuse and oppression, the population will have little trust in the people working there. In many cases (Bosnia and Herzegovina, Guatemala, Rwanda, Kosovo) there will be one dominant linguistic, religious or ethnic group. Notions of gender equality will almost certainly be minimal. Incarcerating juveniles may be the norm, often in violation of the *Convention on the Rights of the Child* and the *Standard Minimum Rules for the Treatment of Prisoners*. For example, a frequent problem encountered in many peacekeeping operations is the mingling of juveniles with adult prisoners, and the failure to separate women and men.

United Nations peacekeepers working on the prison system must immediately assess the skills, experience, values and performance of the local staff. Depending on the outcome, some may have to be replaced or even referred to the police and judiciary for prosecution, while retraining programmes should be initiated for the rest.

Peacekeepers, whether monitoring/advising the national prison authorities or running the prisons directly, should always adhere to the following principles:

- Incarceration is the punishment; it is not for punishment to be meted out by angry, vindictive or judgemental prison staff.
- Offenders retain all rights and privileges of a member of society except those that are necessarily removed or restricted by their incarceration.
- No punishment other than incarceration shall be imposed by prison authorities with regard to an individual's crime.
- In administering the sentence the least restrictive measures should be used in dealing with the offender, consistent with the risk he or she poses.
- Any punishment that results from a violation of institutional rules must be imposed openly and in accordance with the law and attendant rights.
- All offenders should have access to fair grievance and redress systems.
- Prison staff powers and their purpose should be granted by law and clearly defined.
- Controls on prison staff power should be established.

- Force must be used only when there is an immediate threat to personal safety or the safety of the institution or the community. Only the minimum force necessary to control the threat should be used. The United Nations has clear policies governing the use of force and firearms by law enforcement officials, equally binding on local law enforcement and internationals (CIVPOL and United Nations prison officers). Prison professionals should use the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the *Basic Principles on the Use of Force and Firearms* and the *Code of Conduct for Law Enforcement Officials* to set policy and guidelines in a prison setting.

Whether United Nations staff are advisers or administrators, whether they are creating or rebuilding a prison system, they will have to understand the local penal system and determine how best to inculcate the values of a modern, humane system. This is a critical step, affecting every aspect of the prison service: size, operations, budget and staffing. United Nations prison professionals should understand that their behaviour, advice and policies influence the nature of the prison service for the future. It is a particularly difficult challenge in a typical mission setting, where the priority will be on finding the basics—money, equipment, staff, food, clean water, medical care—and creating safe facilities, redress systems and some kind of external inspection or oversight mechanism. Even as United Nations peacekeepers struggle to manage these tasks, the way they work sends a powerful message about universal norms, values and principles.

II. RELATED ENTITIES OR MECHANISMS

The courts, police, armed forces and prison service occupy the central place in the justice sector map. Familiarity and intense interaction with these bodies are the hallmark of rule-of-law and transitional justice work in post-conflict settings. Other entities may also be important to the peacekeeper working on justice sector reform. The following is a non-exhaustive list, with priority roles and responsibilities as they relate to the administration of justice:

- **Ministries of justice, human rights, interior, defence and finance:** depending on the country, these ministries will control the administration of the courts, police, prison service and armed forces. If there is a ministry of human rights, then it is important to ensure that it has independence of action and proper resources. One danger is that this ministry can serve as a shield to deflect criticism. All these ministries must promote and support reforms, but their willingness to do so may be in question since the executive branch may not want to give up control. The finance ministry controls the budget and, as we have seen, scarce resources can doom justice sector reform. The problem is that most see both the control and budget issues as zero-sum games.

- **National legislatures:** often overlooked and weakened by executive or military dominance, the parliament can and should play an important part in judicial reform. From generating new laws on criminal procedure or penal administration to creating specialized committees to exert oversight over the executive (parliamentary committees on human rights, juvenile justice, women's rights, law enforcement, criminal justice, etc.), the legislature should be an active and vocal partner in justice sector reform. Unfortunately, most post-conflict countries have had little experience in such legislative assertion of authority so this will take much time, energy and resources to build. This is even truer for more local, decentralized legislatures like regional or town bodies.

Moreover, many legislatures are overwhelmingly male, constituting "old boys' clubs" unwilling to question let alone rock the established order. Rwanda has set an interesting precedent by providing in its Constitution that 30 per cent of the seats in the parliament are reserved for women. Women constitute 48 per cent of the current legislature, the highest percentage in

the world. Such affirmative action or “positive discrimination” could serve as a model for other post-conflict States where laws and practices have excluded women from governance.

- **National human rights institutions:** this is a growing area, especially in Europe, where human rights ombudsmen and national human rights commissions have developed extensive experience and sound practice. These can come in many varieties, but usually they are non-judicial, in that they can receive complaints from citizens about alleged official misconduct, have some investigative authority (including the power to compel authorities to turn over documents and people to testify), but they do not determine innocence or guilt, nor can they enforce their findings. These national human rights bodies have become very important in the effort to make people more aware of their rights. The United Nations in its Paris Principles¹⁵ has established certain criteria to ensure the independence and impartiality of national human rights institutions regardless of their exact form or source of funding.

National human rights institutions can enhance the rule of law by focusing attention on an often overlooked area that is vital to justice: behaviour by Government officials that may not rise to the level of a crime but infringes on human rights nevertheless. For example, favouritism or discrimination by officials in granting building permits or food vending licences or officials looking the other way when doing inspections for safety, health or other regulations, affects many people’s lives and well-being. Rooting out such behaviour not only protects people and their rights but also promotes good governance and public confidence in their institutions. This aspect of justice sector reform merits much greater attention from those planning and implementing peacekeeping operations.

Administrative misconduct can also have devastating consequences: buildings collapse; unsafe food is sold in markets; expired medicine fails to cure while enabling disease to spread; unsafe vehicles ply the roads and kill and maim.

National human rights institutions can also address an overlooked segment of rights: economic, social and cultural. The rights to food, shelter, education, health care and social welfare will often be desperately needed in post-conflict settings. Yet realizing these rights through court cases can often be difficult, lengthy and expensive. Raising these issues through the national human rights commission or ombudsman may yield quicker results.

- **Bar associations:** lawyers’ associations, if they exist, can assist in transforming the legal system. Unfortunately, in cases like Rwanda and Kosovo, lawyers were part of the oppressive system that helped cause the conflict and rights violations. In these two situations most lawyers fled the country. Peacekeeping operations should help re-establish functioning bar associations

¹⁵ General Assembly resolution 48/134 of 20 December 1993.

quickly. Lawyers' groups often have disciplinary mechanisms to uphold professional behaviour and punish misconduct. They also often establish legal aid systems so that the poor have counsel in at least serious criminal cases. For example, the bar association in Haiti has a rotating list of lawyers who are on call to provide free representation to indigent clients.

Bar associations also serve as induction centres for new lawyers. Some countries require law graduates to serve as apprentices or articulated trainees for a specific period. This is an important rite of passage by which new lawyers can be exposed to good practices and ethical behaviour at the start of their careers. Associations of women lawyers have also emerged in many countries, shining a welcome light on grave problems for women associated with domestic violence, access to credit, inheritance and landownership. These women lawyers also serve as positive role models for the next generation of rule-of-law and human rights advocates.

The *Basic Principles on the Role of Lawyers* establish universal standards of conduct and are a good place to start when working with national lawyers' organizations. They include the provision that "all persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings."

- **Law reform commissions:** often criminal laws, laws on property, inheritance, juvenile justice and commercial codes (including bankruptcy, foreign investment and banking) need comprehensive revision and updating. Some may directly contradict the international treaty obligations of the host State, especially regarding human rights. Several States have established law reform commissions (Bosnia and Herzegovina, Haiti, Rwanda, and Sierra Leone) to do this work. Some are the result of an act of parliament, some are largely comprised of members of the bar, others are a hybrid of parliamentary commission and independent body. Whatever their exact form, judicial advisers from United Nations peacekeeping operations should be aware of these commissions' work and offer expertise and assistance. One area where international assistance has proved especially useful is in helping States that have ratified the Rome Statute of the International Criminal Court to draft enabling or "executing" legislation so that the treaty obligations can be fully activated.

- **Law faculties:** an obvious but often forgotten ally in justice sector reform. Since law faculties or law schools produce a country's future legal practitioners there is no better place to seek to shape the competence, professional ethics and sense of responsibility to serve. Fortunately, recent peacekeeping operations have dedicated staff to forging strong links with law schools early on.

In Kosovo, OSCE assigned several members of its rule-of-law team to work with the Pristina University Law Faculty to modernize its curriculum and teaching methods. The OSCE officers even taught several classes, including one on international human rights and humanitarian law. Clinical law studies were introduced for the first time into a system that had previously

rewarded rote memorization. Practical skills and applying legal principles were emphasized. In Rwanda, United Nations human rights officers pitched in at the Law Faculty in Butare, creating new courses and teaching several themselves. Working with law school teachers was also important to ensure the sustainability of the effort. Similar efforts have occurred in Sierra Leone, where staff from the United Nations Mission helped rejuvenate the once-revered Law Faculty at Fourah Bay College.

- **Judicial training centres:** a shocking percentage of judges in post-conflict countries have had little previous professional training. A judge's academy never existed in Haiti or Rwanda, for example, before the mid-1990s. In other countries, especially in the Balkans, judges were well trained, but their expertise was geared to a system that was antithetical to respecting human rights. Creating or reforming centres to train the judges and also the court clerks (*greffiers* in the Napoleonic civil-law system) should be a high priority in any peacekeeping operation. Ensuring that practical skills dominate over theoretical or overly academic approaches is crucial. Learning how to run a courtroom, move cases along, keep track of files, write opinions and manage heavy caseloads efficiently is more important than yet another course on abstruse legal issues. One should also never underestimate the importance of exposing the judges to international human rights law applicable in their country and its application in domestic cases. For example, most judges in post-conflict States had no idea that the *Convention against Torture* bars them from allowing into evidence any statement made as a result of torture (art. 15) or that the *International Covenant on Civil and Political Rights* prohibits imprisonment for civil debt (art. 11).

- **Research organizations, academic centres and think tanks:** United Nations peacekeeping operations should include relevant academic experts from the national intelligentsia in their justice sector reform efforts. For example, in Guatemala academic experts in criminology, anthropology and related disciplines participated in both designing and delivering police training. Yet often the United Nations overlooks local academic research and expertise, which could enrich all aspects of its rule-of-law work. More collaboration between academics, universities, research centres and think tanks and United Nations reform efforts should occur. In fact, it should be routine for the United Nations to canvass the local academic experts and seek information, insights and participation. This would also reinforce one of the previous dicta: it is essential to have a profound understanding of local factors and the context and history of crime, violence, discrimination, favouritism, repression and abuse before embarking on any rule-of-law initiative. And who is better placed to provide such information and analyses than the local academic and research community? By working with these local academics and researchers, the United Nations also helps to build their capacity to conduct research, gather, analyse and assess data and serve as constructive watchdogs on performance long after the last CIVPOL, judicial monitor, prison inspector or human rights officer has left the country.

- **Police academies:** as with judges, it was not unusual for police to have little formal training for their work in countries like the Democratic Republic of the Congo, El Salvador and Sierra

Leone. Many came from a military background, completely unsuited for dealing with the public and for applying mediation techniques or minimal force. As a result, several peacekeeping operations have led efforts to create professional police schools where all police officers must undergo induction training. Experts on policing and human rights have helped create the curriculum and deliver the courses.

In Afghanistan, Bosnia and Herzegovina, Georgia, the former Yugoslav Republic of Macedonia, and Kosovo, police had been trained in the previous communist/socialist system; but this type of policing denigrated human rights and completely ignored modern approaches inherent in democratic or community policing. In some ways these situations were more complex because police officers must unlearn previous practices hostile to human rights or the rule of law.

- **Forensic science and medical institutions:** rare is the post-conflict society that has a functioning professional forensic lab for criminal investigations or trained staff able to conduct such investigations. Reality dictates that international resources and expertise will predominate at the outset in this crucial area. Fortunately, much expertise and relevant experience now exists based on complex investigations of genocide and crimes against humanity in Guatemala, Rwanda, the Balkans and elsewhere. Groups like Physicians for Human Rights can establish operations relatively fast and inexpensively. They emphasize training locals so that these efforts and expertise do not vanish when they leave.

Sometimes a mission will incorporate such expertise into its own staff for specific tasks and periods. The joint United Nations/Organization of American States (OAS) International Civilian Mission in Haiti (MICIVIH) asked several forensic experts from an Argentine forensics team to work with it as it in turn assisted the Government of Haiti to prepare a prosecution of those charged with a massacre in Gonaives in 1994. For the first time in Haitian history forensic evidence was used in a court and helped convict the perpetrators. Relying more on forensic and other scientific evidence will help lessen reliance on confessions or other forms of evidence that is more readily manipulated or even created by abusive police practices or corruption. Thus developing forensic capacity reinforces the drive to professionalize law enforcement and improve respect for human rights. Simultaneously, defence counsel must also have access to forensic evidence that may exculpate his/her client; again, the principle of “equality of arms” must obtain whenever technological advances appear in the criminal justice system.

- **Media organizations:** a free, independent and responsible press is a vital ally in justice sector reform. Informing the public about the Government’s behaviour, revealing basic information like Government budgets and contracts, uncovering corruption and misconduct are as necessary as training judges and police in post-conflict settings. Professional journalists should also have codes of conduct because with their rights and privileges comes a heavy responsibility to be fair and accurate. Rumour mongering or reporting without checking the facts first can lead to more violence and reverse hard-fought gains in justice sector reform.

A clear, recent example comes from Kosovo, where journalists in all the media—press, radio and television—repeated an unfounded story that a Serb had unleashed his attack dog on three Albanian youths, who drowned in a nearby river after fleeing. These media reports helped unleash a wave of violence in March 2004 resulting in at least 19 deaths, hundreds of Serb homes and dozens of Orthodox churches burned and destroyed, and any semblance of a working peace between the two ethnic groups in tatters. Four years of work and millions of dollars spent on inter-ethnic tolerance virtually evaporated overnight.

Several peacekeeping operations have provided specialized training for journalists on how to do investigative reporting on crimes, human rights abuses, financial fraud, organized crime, smuggling and covering trials. These have included sessions on the freedom of expression but also the limits on this right and the duty of journalists to the public. Peacekeeping operations must continue to address media issues on several fronts, including working with journalists in direct campaigns to raise public awareness of human rights and the rule of law while assisting in their professional development.

• **Non-governmental organizations:** no single group of entities has a more vital role in the justice sector than NGOs. No reform—justice, police, prison service, military, administrative—will take root and lead to real change without the support and understanding of civil society. As stated earlier, one of the biggest mistakes made by peacekeeping operations in the justice sector has been to regard reform only or primarily as a technical matter, involving tinkering with some selected statutes and providing some training and “goodies” to key players in the core institutions. The population that these institutions are supposed to serve must be consulted early and often. And the consultations must not be mere window dressing but meaningful opportunities for those concerned with justice and human rights to have their say. It is not enough to invite NGOs to sit in a meeting and then say they participated. Rather, citizens working on human rights, justice, women’s rights, children’s issues, the rights of the mentally ill, the disabled and others must be involved in planning, research, developing strategy, budgets and accountability and evaluation mechanisms of justice reform initiatives.

In Sierra Leone, for example, the Special Court (a hybrid international-national court created by an agreement between the Government of Sierra Leone and the United Nations to try those “most responsible” for war crimes and crimes against humanity) has an extensive public outreach programme. A coalition of local NGOs working on human rights regularly meets with court officials to discuss specific cases and legal reform efforts. The public’s role in providing evidence, appearing as witnesses and helping investigators is discussed and the NGOs in turn disseminate this information to their members and the population at large. In a country where the courts and law enforcement have historically repressed the population and helped perpetrate human rights violations, the people understandably have little faith, incentive or experience in cooperating with these institutions. To reverse this dynamic, the reformers must make a concerted effort to reach out to the general public and solicit their advice and involvement. This holds true not only for the courts but also for the police, prison service and most Government institutions.

Peacekeepers have learned that they must network with local NGOs. Strengthening their capacities to monitor, report and advocate is as important to successful justice sector reform as are efforts to build the capacities of the courts, lawyers, police and prison administration. The next section will discuss priorities in reinforcing governmental institutions central to the justice sector, but proven methods of capacity-building among NGOs must not be overlooked.

Human rights officers and legal affairs specialists in a peacekeeping operation typically spend much time training local human rights advocates. Workshops on basic human rights laws, international and national, techniques of monitoring—including how to interview and write reports, negotiation, mediation, conflict resolution, how to visit a prison and lobby your cause with local officials—usually occupy the core of training. “Training trainers” so that local partners can deliver as much of the training as soon as possible should always be a priority. Peacekeeping operations in Bosnia and Herzegovina, Guatemala, Haiti, Rwanda, Timor-Leste, and Kosovo have included specialized training sessions for local community leaders, journalists, teachers, farmers, women, children and health-care professionals.

Assistance must adapt to the needs of the host society. In Rwanda, most people are illiterate and do not understand French. Seminars, workshops and distributing copies of important texts like the Constitution, the *Universal Declaration of Human Rights* and the *Convention on the Rights of the Child* will have little impact on spreading knowledge of and respect for human rights. The United Nations decided the best way to reach its clients was to enlist the assistance of a local theatre group. Working directly with the actors, the human rights officers created short skits that would illustrate a human rights problem. The actors then performed the plays in villages and towns in Kinyarwanda, the language everyone in the country understands. Afterwards, the actors led discussions with the audience on what the play had tried to convey and what human rights lessons they had drawn from the piece. This approach has also been used in other countries with high rates of illiteracy like Angola, Burundi and Haiti, and is very successful.

Radio is also a crucial way of connecting with civil society in places where both communications and transport are difficult. Call-in shows, round-table debates on human rights, the judiciary and the police and radio plays have reached large audiences. Most importantly, these initiatives draw on local talent and are relatively cheap, thus increasing the likelihood that they can be sustained once international assistance declines, as it inevitably does.

Focusing on youth groups and school-age children inculcates human rights values in the future leaders and parents of the country. In Kosovo, the United Nations human rights officers learned quickly that the children were often much more tolerant than their parents and felt they had more in common with youth their own age, regardless of ethnic differences, than they had with older people of their own ethnicity. Building on this sentiment, the United Nations Interim Administration Mission in Kosovo (UNMIK) sponsored a variety of youth activities focusing on sports, music, computers, English language lessons and entertainment. They found that the kids

all listened to the same kind of music and followed the same football teams and they all wanted to learn English and how to use the Internet. Soon, it was not unusual to find Albanian, Serbian, Turkish, Roma and Slavic Muslim kids in youth centres engaged in a variety of activities.

In many post-conflict situations discrimination against women will be rampant, often “justified” or at least explained away on grounds of cultural practices or immutable tradition. The Human Rights Committee has issued quite a hard-line general comment on this matter, noting that:

“Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes. The subordinate role of women in some countries is illustrated by the high incidence of prenatal sex selection and abortion of female foetuses. States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all Covenant rights.”¹⁶

In reality, it is not that easy. Local NGOs, especially those focusing on women’s issues, and other figures, notably those respected in the local society, will have to lead the charge for change in this and related areas. And it might take time. But this does not mean the peacekeeping operations should avoid issues of discrimination of whatever type or whatever the source. Rather, it is a question of choosing the right mix of tactics that will yield real results and improvements for those suffering from unequal treatment.¹⁷ Experience has shown that strengthening the capacity of women’s organizations has a huge multiplier effect in securing improved observance of human rights and the rule of law.

The NGO sector should participate in the strategizing process; public information campaigns explaining the importance of the population’s participation in judicial, police and prison reform are vital. This will also help manage expectations since judicial reform is a long-term and often slow process.

International assistance will last only for a limited time. Leaving behind strong, vibrant and effective NGOs and other types of civil society groups should, therefore, be a priority. A key question to assess whether a peacekeeping operation’s human rights programme has succeeded is: are both the governmental and the non-governmental institutions charged with protecting human rights stronger now than when the peacekeeping operation began?

¹⁶ Human Rights Committee, general comment No. 28 (CCPR/C/21/Rev.1/Add.10, para. 5).

¹⁷ A good example is from Sierra Leone, where after many efforts to stem the practice of female genital mutilation, the United Nations enlisted the support of a local Islamic cleric or mullah. He noted that the Koran does not sanction this practice and that it is actually un-Islamic and should be stopped. His word carried much more weight than the protestations from the international community. A similar approach was used in Afghanistan, where mullahs have denounced domestic violence in Friday sermons.

III. SOME KEY AND PRIORITY ISSUES FOR THE CRIMINAL JUSTICE SECTOR AND RELATED INSTITUTIONS

A. Linkages between core institutions

In many conflict States core criminal justice institutions like the judiciary, police and prison service all too often operated as separate, even quarrelling fiefdoms. Little cooperation existed and they often fought over who would control lucrative sources of profit such as selling jobs, imposing “taxes” for services and various criminal racketeering enterprises involving smuggling, trafficking in women and children, narcotics, diamonds, coltan (in the Democratic Republic of the Congo, a valuable component in cellular phones) and similar resources. These institutions rarely fulfilled their duties as defined by law, which was one of the proximate causes of the conflict.

So a major challenge for peacekeepers will be to help professionalize each of these institutions while simultaneously building bridges between and among them where limited previous exchanges existed. Overcoming turf consciousness and insular instincts is difficult, especially where power is seen as a finite element and one group’s gain is automatically another’s loss.

The police, prosecutors and the courts will have to develop smooth communications and working relationships. Who investigates, who detains suspects, who shares information and when? Doctrine and training must provide clear answers. The military especially will have to learn to accept a much-diminished role in law enforcement and focus on the core tasks of national defence and emergency relief. In some countries like Afghanistan, El Salvador and Guatemala the military frequently interfered in domestic matters, often with devastating consequences for the rule of law and respect for human rights. Peacekeepers must constantly stress the proper demarcation between police and military matters. Nothing will undermine reform efforts faster than if the population sees that old patterns and practices persist.

B. Strengthening institutions

Peacekeeping operations need to pay greater attention to strengthening the capacity of rule-of-law institutions to operate openly and impartially while maintaining proper oversight of their

hiring, promotion and firing of personnel, budgets, procurement programmes and oversight mechanisms. Strengthening these sinews of good internal governance in the justice sector requires specific attention, expertise and ongoing attention from peacekeepers.

1. Oversight bodies

Accountability mechanisms, internal and/or external, are vital to any rule-of-law effort. For the courts, judicial inspection units or internal disciplinary bodies must have adequate resources and total independence; judicial misbehaviour must be punished quickly and fairly, otherwise everyone will lose faith in the enterprise, concluding quite reasonably that nothing has really changed. Judges, prosecutors and lawyers in general must be held to the highest standards of professional conduct and integrity. Afghanistan provides a negative example on this score. Its Supreme Court's internal disciplinary mechanism is weak and ineffective; corruption and misconduct are common, undermining the people's belief that the situation will improve, and judges will continue to be unaccountable for their behaviour.

Establishing effective, internal and external, police accountability mechanisms are a first-order priority in peacekeeping operations. Transparent and fair accountability mechanisms will help ensure police discipline and secure public trust. This is one of the most important aspects of improving police respect for human rights. A major problem in many countries has been police impunity. The police got away with murder, torture, rape and extortion. Any misbehaviour by the new police will have a devastating impact on reform. The population will see that the new police are just like the old, not worthy of its trust or support, and a dangerous dynamic will develop quickly. This was the case in El Salvador in the early days of the United Nations mission there, while the opposite occurred in Haiti, where an energetic Inspector General of the new Haitian National Police in 1994-95 disciplined, suspended and even turned over for prosecution misbehaving and abusive police officers. This was revolutionary in Haiti and sent a clear signal to both the police and the population: impunity is over; you can lose your job and even go to jail if you violate the law or police code of ethics.

Whatever the institution—police, courts, prison service, military, intelligence services, customs, border patrol, building inspectors, tax collectors or health inspectors—the most important element of success is creating and maintaining a dynamic relationship between the rule-of-law institution and its relevant oversight body. In addition, Security Council resolutions or the peacekeeping operation's terms of reference should include a monitoring mechanism so that the United Nations can track any progress in the administration of justice, law enforcement and related rule-of-law activities. Measures or benchmarks for the judiciary and police, for example, should include ethnic, racial and gender diversity of key staff, financial resources (percentage of the national budget dedicated to the courts), objective appointment and promotion criteria, transparency in decision-making, accountability and applicability of professional codes of ethics and protections from external interference.

The public needs to know and have confidence in any complaint procedure established to uncover professional misconduct or criminal activity by Government officials. If a police officer or an officer of the court did something wrong, can a citizen file a complaint and be sure that it will be acted on and not dumped in a drawer never to be seen again? The police, courts, prison service and other Government agencies should conduct a public information campaign to explain to citizens how they can file a complaint for misconduct. The relevant inspector general, ombudsman, citizens' or internal review board or national human rights commission should issue public reports, give press briefings and issue press releases describing the allegations, the nature of the alleged misconduct and the names, titles or ranks of the people involved. For a while in the mid-1990s, the Inspector General's Office of the new Haitian National Police gave a weekly press conference, announcing the number of complaints made against the police, action taken—including the referral of serious cases for criminal prosecution—and an update on the status of earlier cases. The police also provided information on crime rates, locations of particularly high criminality and statistics on the types of crimes committed. This openness encouraged the population to work with the police, to provide information, tips, identify suspects and prevent crime.

Oversight bodies also serve important purposes in addition to assessing behaviour and punishing misconduct. The internal affairs unit or inspector general's office should also support "analysing and changing the regulatory and management systems and practices of the police [or other justice sector bodies] to refine their capabilities and improve their performance, both in their effectiveness and ethics."¹⁸ Internal disciplinary mechanisms, if fair and objective, encourage good behaviour since they directly influence an officer's career. Performance assessments go into personnel files, which then affect promotions, transfers, raises, assignments, opportunities for further training and skills enhancement.

While some Government officials resist oversight, especially from external bodies, as a hindrance to effective crime-fighting or administration of justice, an expert on police reform, David Bayley, suggests that, rather than framing the issue as a trade-off between oversight and effectiveness, accountability and respect for human rights can be seen as management and performance issues.

*"I believe, then, that the kind of clever tactic with the police is not to beat them over the head with respect to external methods of accountability, much as I approve of many of them, but to work with them and get them on our side in changing their management mentality."*¹⁹

¹⁸ Rachel Neild, *Themes and Debates in Public Security Sector Reform: A Manual for Civil Society: Internal Controls and Disciplinary Units* (Washington, D.C., Washington Office on Latin America, 1998), pp. 1–2.

¹⁹ Melissa Ziegler and Rachel Neild, *From Peace to Governance: Police Reform and the International Community* (Washington, D.C., Washington Office on Latin America, 2002), p. 10.

This holds true regardless of the institution: police, courts, prison service or public servants in general.

Overall analyses by both internal oversight bodies and external civilian review boards reveal patterns, trends and problems, based on the cases/complaints filed with each body. Such information generates policy changes and recommendations, adaptations in training and in the incentive structure. The police, prosecutors, judges and others involved in law enforcement want to know which tactics or practices generate civilian complaints. Analysing patterns of abuse, hot spots or tactics that lead to abuse is essential for corrective action and reform.

*2. Vetting and performance evaluations*²⁰

Vetting currently serving officials to determine their suitability for continuing in office is perhaps the most natural bridge issue between transitional justice and institutional reform. Removing people who should not be in the police, the military, the prison service or the judiciary because of their past behaviour not only addresses their accountability for past behaviour but also ensures that they will not engage in misconduct again. Their removal simultaneously reforms the institution in which they serve. For example, the process of assessing judges' qualifications in Bosnia and Herzegovina while conducting a comprehensive reappointment process was an effective way to help reform the country's judiciary.

Meanwhile, vetting raises many other fundamental institutional reform issues: more equitable recruiting, improved training, affirmative action or "positive discrimination" measures, sounder financial bases to discourage corruption, civil complaint procedures, oversight bodies, codes of conduct, whistle-blower statutes, improved management, personnel policies and administration.

Furthermore, the appointment process, salaries and tenure of judicial personnel must be structured to enhance their ability to make decisions free from political influence, financial pressure and other outside interference. Mechanisms like a supreme judicial council or an ombudsman should be established to receive complaints from citizens against a judge, prosecutor or any other judicial employee for acts committed in his or her professional capacity. Judicial personnel should be subject to discipline, suspension and/or removal only for reasons of incapacity or misconduct rendering them unfit to discharge their duties according to established standards of judicial conduct. Judicial affairs officers in various United Nations peacekeeping operations have helped to write codes of conduct for judges and prosecutors, drawing on existing standards outlined in the *Basic Principles on the Independence of the Judiciary* and the *Guidelines on the Role of Prosecutors*.

²⁰ For a comprehensive approach to vetting, see the OHCHR rule-of-law tool for post-conflict States on vetting.

3. Training programmes

United Nations peacekeeping operations' rule-of-law work usually emphasizes training. They dedicate large amounts of resources and time to training for police, judges, court clerks, defence lawyers, prison officers, legislators, journalists, court administrators, border guards and customs officials. Certain lessons on what makes effective training have emerged from all this experience.

- All training for the judiciary, police, NGOs, legislators, etc. should be extremely practical and use pedagogical tools that involve active learning, participation, role playing, problem solving, case studies, strategizing and small-group exercises. These exercises should be based on real problems in the country, and not imported unthinkingly from “one-size-fits-all” manuals. For example, one case study in Haiti involved a woman being robbed at her car in the far reaches of a shopping centre car park; another involved tapping a private home phone. Large shopping centre car parks, private cars and home phones are not common in Haiti, and the training materials had to be revised after some embarrassing classroom sessions.
- Adults learn best when they are actively involved; passive listening and long lectures, especially those that are theoretical or academic, should be limited.
- Whenever possible, classroom or academy training should be followed by active mentoring in the field. On-the-job training both reinforces what was learned and allows feedback from the field to the training centres on what needs reinforcement or if new issues have emerged. This holds true across the rule-of-law spectrum (police, prison service, judiciary, public servants).
- Joint training among the judiciary, penal administration, the police and human rights specialists should be encouraged so that each sees more clearly the various roles all have to play and a sense of teamwork may develop. The rule of law depends on all of these sectors. This is a practical way to reinforce the need for collaboration, communication and coordination described above.
- All training assistance should ask whether it will achieve the following goal: to impart skills, knowledge and tools so that local institutions responsible for the rule of law are stronger than before. Can local NGOs, national human rights commissions, police civilian review boards and ombudsmen report, monitor and continue capacity-building without the further help of international experts?

The United Nations peacekeeping operation in Timor-Leste identified several additional key elements for successful training:

- Get the right trainers, people not only with technical expertise but also with practical experience and the ability to engage the participants actively, promote analysis and problem solving and not merely recitation and memorization.
- Relevant rule-of-law expertise, whether in human rights, the judiciary, policing, prison service or related areas, should be presented jointly and the focus should be on the real world—operational and relevant—not academic, theoretical or abstract. At the same time, trainers cannot just tell stories or relate anecdotes—the examples, while real, must serve a purpose to reinforce or illuminate an important lesson or skill. Rigour and relevance are the watchwords.
- Human rights, whatever the rule-of-law domain, should not be an add-on subject or relegated to a ghetto but rather should be incorporated, referred to and part of every subject covered in any training and in mentoring.
- Many people in the various rule-of-law disciplines are used to an education system that rewards rote memorization and actually discourages analysis, critical thinking and independent judgements, so the trainers should be aware of just how disconcerting the active-learning, probing, case-study participatory approach will be, at least at the start. Participants must understand that their active participation will be crucial to the success of the training.
- In places like Timor-Leste, where no one has experienced democratic, rights-respecting policing or an independent, free and fair judiciary, it is important to spend some time on basic Government structures, the role of the police, courts, parliament, etc. in a democratic State, emphasizing the idea that the people have built this “home”—their constitution—and human rights and the rule of law are the foundation. This approach has worked very well with the Timorese police trainees.
- Using the police, judges, prosecutors and other Government officials in training programmes with NGOs and civil society raises their profile, deepens their knowledge of human rights, the rule of law and good governance while strengthening ties and trust with the communities served. The United Nations has sponsored several training sessions where the Timor-Leste Police Service, for example, have gone to schools and women’s organizations to talk about human rights. Both the police and the community have emerged with a deeper knowledge of human rights, and the community’s perception of the police has also improved. In addition to formal training, the United Nations has sponsored lunches hosted by the Timor-Leste Police Service where community leaders attend to discuss concerns and problems. These meetings allow the police to hear what is worrying the community they are supposed to serve and protect, clear up any confusion the community may have about the role of the police and allows both

to strategize about the future: set priorities, follow-up activities and joint police-community projects.

- Nationals should implement projects themselves wherever possible and training trainers should be automatic; always “reinforce, not replace” local institutions or talent.

4. Sustained assistance to the justice sector

United Nations human rights missions in Cambodia and Guatemala have established units specifically to work with the local judiciary. The United Nations Transitional Authority in Cambodia (UNTAC) set up training programmes for public defenders, prosecutors and judges. This programme continues today under the direction of an international NGO with assistance from the Office of the United Nations High Commissioner for Human Rights, several years after UNTAC ended. However, the international community failed to provide the necessary funds to conduct a broad effort to help rebuild the Cambodian judiciary.

Adequate funds have been available in Guatemala, where human rights observers have provided critiques of the justice system. With funding from the United Nations Development Programme (UNDP), the human rights officer has established courses and ongoing training for Guatemalan jurists and human rights monitors on legal issues. Early on, the United Nations Verification Mission in Guatemala assigned staff to work in the Attorney General’s Office and help plan investigations and prosecutions. Regular meetings are held with UNDP and bilateral donors to avoid waste and duplication of efforts.

5. The need for substantial and comprehensive institutional capacity-building

While effective oversight, careful recruitment, vetting of serving officials and pragmatic training are necessary for the entire rule-of-law and transitional justice sector, they are not sufficient to effect lasting change and build strong, self-sustaining and trustworthy institutions. If anything, the United Nations has focused too much on training, which yields impressive but often misleading measures. “We trained 3,000 police in seven months” sounds good, but if those police are not managed properly, if their career paths depend on nepotism and not merit, or if they are paid little and months late and do not have vehicles or communication radios or even a change of uniform, then the training, vetting and oversight bodies will do little to enhance the rule of law or respect for human rights.

Successful rule-of-law reform hinges on institutional development of what have previously been dysfunctional, corrupt, bloated and distinctly user-unfriendly institutions riven by outside interference, favouritism and a complete lack of accountability and transparency. United Nations peacekeepers must devote much more attention and resources to issues like career development, transparency in administration, budgeting, fiscal oversight, planning, logistics and procurement—institutional capacity-building in general.

Successful police or judicial reform is every bit as much about personnel management, established career paths and transparent disciplinary procedures as it is about human rights training and awareness campaigns or about improved crime-fighting equipment or computerized case management systems. Yet the former have often been overlooked in favour of the latter. For example, despite solid efforts to reform the police in the former Yugoslav Republic of Macedonia and much training on human rights, ethnically weighted and politically partisan decision-making pervades all aspects of the police force. The United Nations especially must recognize the broader governance challenges when it comes to police reform in particular and rule-of-law reform in general. These institutions do not operate in a vacuum, and it is often the national political ethos and system of incentives and punishments that need reforming.

Tools developed for other areas of governance—diagnostic assessments of institutional strengths, sound data gathering and analysis, merit-based performance evaluations, measures to assess impact of programmes, leadership development, modern management practices and budgetary oversight are as important to justice sector reform as are initiatives to improve customs regulations, tax collection or other public services that the United Nations, the World Bank, the International Monetary Fund or bilateral donors like the United States Agency for International Development, the United Kingdom's Department for International Development, the Canadian International Development Agency or the Swedish Agency for International Development Cooperation typically support in their various good governance projects. Reform initiatives in the justice sector deserve no less rigour or strict accountability for producing measurable improvement.

Any reformed judiciary or police force will need help in strategic planning—how to budget, allocate resources, anticipate training and deployment needs, identify specialized needs (forensics, crime lab, domestic violence intervention and counselling, tackling organized crime, trafficking in humans, drugs, etc.). United Nations peacekeeping operations should ensure that their rule-of-law teams include planning specialists and experts in administration and management, including personnel and finance. These areas, along with logistics and infrastructure, are often overlooked yet are pivotal to success.

Judicial independence also requires that the judicial system has the resources and tools necessary to function effectively. When peacekeepers are asked to assist in reforming judicial institutions, they must first help their local colleagues assess what resources exist and then determine those that may be required to bolster the operations of the judicial system. Because the issue of capacity is fundamental to efforts to transform a legal system, it is best to conduct an extensive assessment during the initial phase of a peacekeeping operation and develop, along with the host State, a strategic plan for reform. The United Nations, however, must work with local officials so that the strategic plan takes into account the Government's capacity to finance its judicial system over the medium and long term. The plan should also spell out its reconstruction and reform priorities to maximize harmonization with comparable efforts in law enforcement,

the prison service and public administration to ensure that the plan reflects broader political, cultural, religious and other priorities for the host country.

Once reform projects are under way, peacekeeping officers are best placed to assess the impact of the assistance, communicate their findings to the authorities and suggest modifications to the programmes. For example, in Rwanda judicial affairs officers prepared a comprehensive study of the Rwandan justice system and evaluated the impact of assistance projects for a round-table meeting of donors in Geneva in June 1996. The donors and the Government used this study to plan future projects. In Haiti, MICIVIH observers noted that even after receiving training at the National Judges School, many judges continued to charge the public for issuing warrants or judgements. Because MICIVIH documented these cases, training in this area was reinforced and the Government realized it needed to make sure that basic supplies were regularly delivered to the courts—which was really a logistics and management problem and not one of corruption.

6. Need for sound and reliable data

Record-keeping must be meticulous to thwart efforts to cover up the incidence of police abuse or judicial misconduct or non-productivity. Establishing baseline information for statistical analyses of crime, the disposition of court cases and the number of people in prison facilities (awaiting trial or sentenced) makes it possible to assess the impact of reform efforts. United Nations rule-of-law initiatives should include experts in data management and statistics. These are keystones to sustainable institutional reform. Lack of solid data has prevented even mature police forces or court administrators in developed countries from fully understanding the extent and nature of police abuse, tardy resolution of cases and prison overcrowding and, as importantly, from designing remedies and assessing the impact of reforms. The better and more comprehensive the information, the more nuanced, sophisticated and effective the United Nations analyses of rule-of-law performance can be. Good data should yield good policy and practice, which in turn yield better respect for the rule of law.

7. Donor coordination

Sometimes experts are seconded to work in the justice ministry, the police, the prison service and prosecutor's office and offer their expertise on a daily basis in a work setting, a type of on-the-job training. France sent two officials from its Ministry of Justice to work in the Haitian Ministry to provide expertise in case management, administration and personnel management. The Governments of Belgium, Canada, Germany and the Netherlands have sent officials to work in the Rwandan Justice Ministry on a wide range of issues, including general management, administration, drafting legislation and managing modern information systems.

Donors must, however, send a consistent message and establish coherent assistance programmes. All too often donors try to export their own system and sometimes engage in

unseemly and counterproductive disputes. In other cases, donors do not consult each other adequately so waste, duplication or gaps in coverage inevitably result. The United Nations can play an important role in facilitating donor communication with other donors and with the authorities.

United Nations agencies also need to increase their participation in strengthening of both governmental and non-governmental institutions in the justice sector. This is inherently development work; peacekeeping operations are often present for a limited time. UNDP and UNICEF, for example, have often worked in countries for many years before and during the conflict. They have large offices, mostly staffed with nationals, and thus have a unique capacity themselves to help the long-term development of the core justice sector institutions. They also have the expertise in areas like project development, assessments and data management. Specialized agencies of the United Nations need to participate earlier and more robustly in the justice sector and offer their experience and resources to the effort. And peacekeepers should forge better working relations with these agencies and regional bodies (OAS, European Union, OSCE, Council of Europe, African Union) that will be in the post-conflict countries long after the last peacekeeper has left.

IV. PEACEKEEPERS' CONDUCT

Reports of grave misconduct by United Nations peacekeepers—military, police and civilians—undermine efforts to build the rule of law. How can the United Nations preach to others about the necessity of following rules, addressing impunity, applying the same standards to all without discrimination and upholding the principle that no one is above the law, when some of its own peacekeepers violate these principles. Numerous recent, well-documented reports from Bosnia and Herzegovina, the Democratic Republic of the Congo, West Africa, and Kosovo illustrate the pervasiveness of the problem. Some peacekeepers in these countries have been implicated in trafficking in women and children, drug smuggling, patronizing prostitutes, including children, and other criminal activity. In many cases, the alleged offender merely gets shipped home, where punishment is either uncertain or non-existent.

This sends a terrible message to the host country and makes an already difficult job immeasurably harder. United Nations peacekeeping operations should intensify briefings, training and oversight of their own personnel and not hesitate to punish wrongdoers and penalize the sending States if they refuse to sanction wrongdoers. International employees of peacekeeping operations, civilian and military, must be held to the highest levels of accountability and transparency.

Conclusion

Justice sector reform is central to international peace and security and thus to development. Failure in this area can lead to renewed fighting. The following good practices, distilled from the previous analysis of justice sector reforms, need to be applied in peacekeeping, with requisite modifications for local particularities.

- The rule of law must be seen as a flexible concept. It is more than just reforming courts, criminal justice systems or penal law. In many countries, property disputes, birth registrations, juvenile justice, citizenship/statelessness, corruption, public administration/civil service reform, and demobilization and disarmament of combatants will be a priority.
- Justice sector reform should receive immediate attention and large resources from the very start of a peacekeeping operation. Waiting too long or allowing “spoilers” to get established can make the job much harder, and it is almost impossible to make up for the time and momentum lost. The looting and lawlessness in Iraq following the downfall of Saddam Hussein’s regime, and extensive violence in Kosovo right after the end of the North Atlantic Treaty Organisation’s bombing campaign provide compelling proof of this lesson.
- The United Nations, donors and the host Government must agree on an overall rule-of-law strategy, specifying priorities, sequencing, benchmarks, indicators, evaluation mechanisms, responsibilities and deadlines. Follow-up is as essential as planning and coordination. The principal donors must budget for the material needs of a functioning judiciary, police and prison system; yet they must appreciate the long-term ability of the country to fund these core institutions from taxes and other revenues. It is expensive to run an efficient and honest judiciary and to equip, train and pay competent and honest police and prison professionals.
- Too often, there has been a lack of coordination within the United Nations and between the United Nations and major bilateral actors.
- The intense, early and meaningful involvement of local experts, both inside and outside Government, is essential to success.
- The United Nations should never adopt a one-size-fits-all approach to rule-of-law issues. While some principles are universal and many approaches have been proved effective in a variety of settings, the exact recipe for strengthening or reforming the rule of law originates from an informed analysis of local conditions.
- Non-governmental organizations and civil society in general should participate in strategizing. International assistance should from the outset forge strong working relations

with local NGOs. Information, where security allows, should be shared; planning and implementation should involve local NGOs early and in a meaningful way and not just as window dressing.

- Public information campaigns explaining the importance of the population's participation in justice reform are vital. This will also help manage expectations since this is a long-term and often slow process.
- Access-to-justice projects are important; the lower courts should not be overlooked in favour of the higher-profile cases and tribunals. Most people's contacts with the judiciary are at the lowest-level courts and it is here that they must see that changes are occurring, and quickly.
- Honest and transparent public administration (vehicle registration, building permits, rubbish removal, public health inspectors) is central to the rule of law, but often overlooked. More people have contact with public agencies than with the courts and these agencies' failure to perform, combined with bribery and corruption, can quickly deepen lawlessness and the reality/perception that nothing has changed. The United Nations should see programmes addressing corruption and good governance as directly related to rule-of-law efforts.
- Judicial inspection units or internal disciplinary bodies must have adequate resources and total independence. Judicial misbehaviour must be punished quickly and fairly, otherwise everyone will lose faith in the enterprise.
- No State or Government is monolithic; it is worth trying to identify allies who will support human rights and the rule of law within official structures and support them.
- Judicial, police and prison reforms must go together, they are all part of a seamless whole and are mutually reinforcing.
- Police reform projects should emphasize police-community relations, community policing, human rights, mediation and conflict resolution skills and criminal investigations techniques that respect human rights but are also effective in solving crimes. Rising crime rates in post-conflict settings are common and undermine not only security but also the possibility of enhancing the rule of law. Effective, rights-respecting crime fighting is a high priority.
- Broad, national public information campaigns should explain the role of the new or reformed police and courts in a democracy. Regular meetings should be held between the police and community organizations and between judges, prosecutors and court personnel and the community they serve.

- International assistance should pay particular attention to helping police develop and apply internal codes of conduct and disciplinary procedures, and helping inspector generals' offices to investigate and punish police misconduct or involvement in corruption or criminal activities. Police misconduct must be punished fairly and swiftly or else the new police will look a lot like the old police, undermining any chance for reform.
- All training, for the judiciary, police, NGOs, legislators, etc. should be practical and use pedagogical tools that involve active learning, participation, role playing, problem solving and small-group exercises.
- Whenever possible, classroom or academy training should be followed by active mentoring in the field. On-the-job training both reinforces what was learned and allows feedback from the field to the training centres on what needs reinforcement or if new issues have emerged. This holds true across the rule-of-law spectrum (police, prison, judiciary, public servants).
- Joint training among the judiciary, penal administration, the police and human rights specialists should be encouraged so that each sees more clearly the various roles all have to play and a sense of teamwork may develop. The rule of law depends on all of these sectors.
- All assistance should ask whether it will achieve the following goal: to impart skills, knowledge and tools so that local institutions responsible are stronger than before. Can local NGOs, national human rights commissions and ombudsmen report, monitor and continue capacity-building without the further help of international experts?
- The operating principle for all justice sector reform should be to reinforce, not replace local institutions and actors whenever possible.
- Peacekeeping operations must be innovative in reaching the local public, taking advantage of local cultural practices and popular entertainment such as local theatre troupes and radio to spread the message and encourage discussion about the importance of rule of law.
- The host society should identify the best approach to addressing past crimes and violations of domestic or international law. International experts can offer assistance by outlining options, and providing information about what other countries in similar circumstances have done regarding prosecutions, truth-seeking endeavours, reparations and apologies. Yet some form of justice is a prerequisite to any meaningful reconciliation. It is never an "either/or" proposition.

ANNEX I

SUGGESTED GUIDELINES FOR WORKING WITH LAW ENFORCEMENT OFFICIALS/POLICE OFFICERS

Police officers or any law enforcement official with the power and authority to arrest and detain play a central role in the administration of justice. Peacekeepers must develop a professional working relationship that allows them to monitor the performance of law enforcement officials, raise issues of concern with Government officials and report on any problems to their mission headquarters.

Most human rights officers' and peacekeeping mandates include the obligation to monitor the rights to physical integrity and liberty (freedom from torture or cruel, inhuman and degrading treatment or punishment, freedom from arbitrary arrest and detention, and, most crucial of all, the right to life). These rights are found in the major international human rights treaties (*International Covenant on Civil and Political Rights*, *Convention against Torture*) and in domestic law.

Peacekeeping officers should become knowledgeable about the international standards governing police practice concerning arrest and detention. These issues should be covered in pre-deployment training and every peacekeeping operation should have a complete set of the major human rights treaties and instruments. The *Code of Conduct for Law Enforcement Officials*, *the Basic Principles on the Use of Force and Firearms*, and the *Standard Minimum Rules for the Treatment of Prisoners* should be covered in all pre-deployment and induction training.

Observers should also become familiar with the provisions in domestic law governing police practice. For example, who has the power to arrest? Are written arrest warrants necessary in all cases or are there exceptions? When are searches legal? In Haiti, arrests and searches cannot be made between 6 p.m. and 6 a.m., unless the police witness a crime being committed. MICIVIH observers, because they knew of this provision, were able to point out to the police that certain arrests were illegal and obtained the release of the persons.

The law on pretrial detention should also be familiar to observers. Most domestic legal codes specify strict limits on the time a person can remain in pretrial detention. If the person ar-

rested is not brought before a judge for charge or trial within this specified period, the person should usually be released or a judge must rule that an extended detention is legal. In Haiti, the detainee must be brought before a judge within 48 hours of arrest to determine the legality of the arrest and detention. Rwandan law also imposes strict limits for the police investigators to submit a report and the judge must then rule on whether to keep the person in prison. The detainee's lawyer and family should have regular access and if the detainee needs medical care, then adequate provisions to deliver such care should be made.

The approach to monitoring the police or law enforcement officials should emphasize the systematic evaluation of the police as an institution: the effectiveness of its command structure, its ability to conduct internal investigations, relations with judicial authorities and relations with the population it is supposed to protect. This type of approach allows a mission to understand the functioning of the police and enhances its capacity to identify problems and propose solutions so that the police respect human rights. If the mission has a CIVPOL component, as in Bosnia and Herzegovina, Cambodia, Haiti, Liberia, Sierra Leone, Timor-Leste, and Kosovo, then judicial affairs officers and CIVPOL need to work closely together and exploit the comparative knowledge and expertise that each side brings.

A checklist or set of guidelines for assessing the work of the local or national police should include the following:

1. Know the names of all police commanding officers in your region. Keep an accurate and up-to-date list of all police and law enforcement officers and also keep available a list of addresses and phone numbers of all police stations in the region.
2. Request a meeting with the local police commander as soon as possible. Clearly describe the peacekeeping operation's mandate and give the police commissioner a copy. Explain what your office will be doing and seek to establish a regular time and place for meetings with the commander or his/her deputy.
3. Visit police stations regularly. Try to get to know the police officers in your district. But never become too friendly; rather, establish a cordial yet professional dialogue. Remember, if you are seen to be too close to the police this may undermine the mission's credibility with the local population.
4. If possible, offer to give training sessions to the police on international standards governing arrest, detention, use of force and firearms, and treatment of detainees. The human rights missions in Guatemala, Haiti and Rwanda have done so, using the international instruments and case studies drawn from actual events. The senior adviser on human rights in UNMIK gave similar courses at the Kosovo Police School.

5. Assess the impact of police training: has the performance of the police improved? Are any problems persisting which indicate a need for further training? In Haiti, the new Haitian National Police resorted much too quickly to their firearms, had great difficulty in crowd control and wrecked the brand new vehicles provided by international donors. MICIVIH observers submitted detailed reports on these failings and the Police Academy adjusted its training curriculum to allow more time for driver training, crowd control and when the use of force is appropriate. In Kosovo, workshops on domestic violence were included in the curriculum when this issue emerged as a major problem. Courses on organized crime and trafficking in women are now a permanent part of the police training in Bosnia and Herzegovina.

6. When meeting with local human rights organizations or other community groups, always ask them how they view the police, what problems they see and seek concrete examples from them. If they agree, these cases can be used in later discussions (omitting names and other information that might identify your source) with the police commanding officers to show that problems exist and that corrective action should be taken. These incidents can also be used as case studies in future training of local police, CIVPOL and human rights field officers.

7. Before meeting with the police to discuss current problems, make sure that the cases you intend to raise have been checked for accuracy and that the sources/witnesses/victims do not object to having their cases presented to the police. If in doubt, do not raise the cases and wait for further clarification.

8. If the police commander is uncooperative or threatening (denies any wrongdoing by his/her officers, accuses the victim or promises action that is never taken) then communicate this information with suggested recommendations to mission headquarters.

9. Officers should find out whether the internal police investigation unit, usually an inspector general's office, has been informed of any incident of police misconduct and, if so, whether any investigation or disciplinary action (including suspension, confiscation of weapons or transfer pending the completion of an investigation) has been taken. Has the police investigation included conducting an exhumation, autopsy, ballistics tests, forensic investigations, collecting DNA specimens, gathering testimony from witnesses, etc.?

10. Indicate the outcome of any official investigations into police misconduct and the outcome of such investigations, note any sanctions imposed (expulsion from the force, suspension, transfer, demotion, docked pay) and the date such sanctions take effect. Also note whether the case is referred to the justice system for possible prosecution and the results of any action taken by the judiciary. If no action is taken, try to find out why, especially if there is evidence of interference or lack of political will to discipline or prosecute police for misconduct or human rights abuses.

11. Periodic reports on police practices (including analysis of whether limits on the length of pre-charge or pretrial detention are being observed and allegations of the unlawful use of force) should be sent to the operation's headquarters.

ANNEX II

SUGGESTED GUIDELINES ON WORK RELATING TO PRISONS AND DETENTION CENTRES

Prison visits and inspection

Prisons and detention centres pose particular challenges to peacekeepers. Detainees are often at great risk in prison, cut off from family, lawyers and doctors in many cases, with the risk of torture and mistreatment constantly present. Conditions in detention centres are often inhumane, with overcrowding, poor or little food, dirty water and disease the main dangers to prisoners' health. Even greater dangers exist in secret or unofficial detention centres where detainees are held incommunicado; the risk of torture or mistreatment is very high if the outside world has no knowledge of or access to the detainee.

Officers must monitor the treatment of prisoners and prison conditions without endangering the lives of prisoners or making their conditions or treatment even worse than it may already be. There are certain techniques and guidelines that have been tested over the years and have been shown to be effective ways to monitor prisons.

Mandate

A peacekeeping mission's mandate should include broad and clear authorization to visit all prisons and centres of detention. The key elements are the right to visit every place, official or unofficial, where anyone is being detained and the right to make these visits without prior approval from the Government or prior notice from the peacekeeping operation. Once in the prison, the observers must have the right to visit every part of the prison; no corner, cell or area may be declared off-limits. And the observers must be able to speak with any prisoner that they wish in conditions that ensure that prison officials cannot hear what is being said in the interview; the confidentiality of such interviews must be guaranteed. The prison authorities must also guarantee that there will be no reprisals against any prisoner interviewed by the peacekeeping officers or against any prison guard or officer who agrees to provide information to the officers of the peacekeeping operation.

Inhumane prison conditions in themselves can constitute cruel treatment in violation of international law. For example, in Rwanda, the United Nations human rights officers insisted that the Government take steps to alleviate the horrendous overcrowding in prisons and police lock-ups, which had led to deaths and the rapid spread of infectious diseases. The worst excesses of overcrowding were somewhat alleviated due in some part to regular visits and reporting on prison

conditions by these officers, who worked closely with ICRC, which is the pre-eminent agency in this type of field work.

Primary objectives

Based on the peacekeeping mandate, some primary objectives for prison monitoring emerge. They include:

1. Put an end to torture, cruel, inhuman or degrading treatment or punishment, beatings, psychological pressures (threats, intimidation) or any form of mistreatment, physical or mental.
2. Secure the release of arbitrarily or illegally detained persons.
3. Obtain access to the justice system for detainees in accordance with procedures and time limits provided for by law.
4. Ensure that the victims of human rights violations, especially victims of beatings, ill-treatment or torture, receive medical treatment immediately.
5. Inform the appropriate Government officials of any documented cases of torture or mistreatment and insist that the Government investigate and punish those responsible for such grave human rights violations.
6. Ensure that the prison authorities establish and maintain an accurate register of detainees, with the name of every detainee, the date of arrival at the place of detention, the legal status of the detainee and the date of the next court appearance.
7. Promote, with the competent authorities and specialized organizations (ICRC, Doctors of the World, World Food Programme), the improvement of the material, physical and psychological condition of the detainees.
8. Train, if appropriate, prison guards and administrators in international human rights law and standards governing the treatment of prisoners, with particular emphasis on the *Convention against Torture*, the *Standard Minimum Rules for the Treatment of Prisoners* and the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*. Constantly assess the impact such training has on the actual performance of prison officials and recommend modifications in prison training to address any persistent problems. If the problem is not lack of knowledge, then senior officers in the mission should be informed so that they can take up the issue at the highest level with State officials.

Guidelines for prison visits

Prison visits are crucial to the work of a peacekeeping operation and are also very complex, difficult and potentially shocking to the human rights observer. It is not unusual for the observer to be deeply affected by the visit, seeing human beings incarcerated in abominable conditions with clear signs of torture and mistreatment. Observers should carefully prepare for every visit and should be fully briefed on what to expect from members of the team who have already visited the site. In many States, ICRC will also have a prison-monitoring mandate. ICRC has vast experience in visiting prisons and in some cases it will and should take the lead role. In other situations, ICRC and a peacekeeping mission can share the work. For example, in Haiti and Rwanda, ICRC and the human rights missions agreed to visit prisons on fixed days to avoid congestion and confusion. They also agreed to split priority issues, with ICRC focusing on prison conditions and the human rights mission focusing on the judicial status of the prisoners.

The following is a compilation of guidelines that have proved successful in several peacekeeping operations.

General guidelines

1. A team specializing in prison visits (“the prison unit”) should be formed with peacekeepers that have relevant professional experience. Each visit should be carefully planned and each person’s role clearly defined. The team should have a thorough knowledge of the *Standard Minimum Rules for the Treatment of Prisoners* and the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*. There should be at least two observers for every prison visit. One person should take note of the name of the officer in charge and check the register, the map and the condition of cells, while the other can conduct interviews out of the hearing of prison officials and other prisoners. Observers should never be left alone with detainees or warders.
2. If possible, visits should take place without prior notice to the prison. If this is not possible, either because the mandate does not permit it or because the authorities refuse to cooperate, then minimal notice should be provided. However, never turn down the chance to visit as long as the conditions for a proper visit described above are present. Even if the prison administrators have “cleaned up everything” knowing you are coming, this at least benefits the prisoners albeit only for a short time.
3. Once at the prison, the prison unit’s leader should present him/herself to the guard and ask to see the commanding officer or the official responsible for the prison. Note the name, rank and function of the person in charge.

4. Remind the person in charge of the peacekeeping operation's terms of reference and request politely that he or she cooperate with the visit. In case of refusal or non-cooperation, if you judge that further insistence will not be productive, leave and report the incident immediately to headquarters, where your superiors can take the matter up with senior Government officials.

5. Ask the officer in charge to produce the prison register. If such a document does not exist, remind the officer that it is required under international standards (and possibly national law, as in Haiti). Examine the register and calculate how many prisoners are in the prison. Over the course of several visits, observers, or the prison unit, should prepare a census of all prisoners to verify whether the official register is accurate.

6. Use a previously prepared prison map to ensure that all sections of the prison are visited.

7. Individual interviews (up to half an hour each) should be conducted with any detainee who appears to have suffered a violation of the right to physical integrity or security of the person. If, in carrying out an investigation of a specific victim, the observers learn of other similar violations, they should investigate these additional cases immediately if possible.

8. Do not take any photographs or use a video camera. If possible, do not allow yourself or your colleagues to be photographed or have video of the visit taken.

Key issues to note/investigate

In addition to the general guidelines, observers visiting a prison or detention centre should pay close attention to certain key indicators that must be included in any eventual report on the prison situation. All reports should include the following information:

1. An updated list of prisoners with their full names, age, civil status, occupation, address, legal situation, date of imprisonment, circumstances of their arrest, name and function of the person who made the arrest, the duration of pretrial detention, court appearances to date and any future dates for court hearing.

2. Prison personnel: how many were on duty, their attitude (professional, hostile, indifferent).

3. Conditions in the prison: number of detainees per cell, bedding, windows, light, ventilation, temperature in the cells, sanitary facilities, access to water, food, presence of insects or vermin.

4. Segregation of prisoners: men, women, minors (this is required under current international standards), pretrial detainees and condemned prisoners, military and civilian, the mentally ill.

5. Ability to exercise: walk outside of cells, in open air, participate in sports.
6. Evidence of any cruel, inhuman or degrading treatment when arrested or while in prison. What types of evidence, how many prisoners so treated and any information on who is responsible. (These questions must be handled with the utmost caution and in the strictest confidence. In Rwanda, an observer left a questionnaire for prisoners to fill in asking them if they had been mistreated; some prisoners responded “yes” when completing the questionnaire and were later beaten by the prison warders when they collected the forms from the prisoners. This type of inquiry should be avoided at all costs.)
7. Punishments imposed by warders: type, circumstances, intensity, frequency and consequences.
8. Health conditions of detainees: illness related to unhealthy conditions in the prison, lack of hygiene, presence of communicable diseases (tuberculosis, HIV/AIDS), nutritional deficiencies (in Haiti an outbreak of beriberi, caused by vitamin deficiency, was spotted by human rights observers and changes were made to the prison diet), regularity of doctors’ visits, availability of medicine.
9. Extortion or bribes demanded by the prison authorities from prisoners or their families in exchange for basic services or what is required anyway; intimidation by other prisoners.
10. Access of lawyers and family to the detainee: are visits regular and private?

The prison visit report

Upon returning to the office after a visit, the prison unit should go over all the information gathered, compare notes and observations, and immediately begin to write a report of the visit. The report should include all the information related to the issues discussed in the previous section. Special attention should be given to individuals who have been tortured or mistreated and whose physical condition is serious; prolonged pretrial detention should also be highlighted.

Once completed, the report should be sent to the headquarters; once headquarters has received reports from all the regional offices, those responsible for prisons should analyse the reports and determine whether there are any widespread and persistent problems that should be raised with senior Government officials. In Rwanda, for example, reports of serious overcrowding and the presence of infectious diseases were brought up with the Ministers of the Interior, Defence and Justice, and some action was taken to relieve overcrowding and remove people with infectious diseases and the elderly. In Haiti, the peacekeeping officers presented the military with detailed evidence of systematic beating of detainees by army officers; for a short period the peacekeepers documented a decrease in beatings after this intervention.

As part of the follow-up work to visiting and writing reports, meetings should be sought with the authorities. Once the mission's findings have been communicated, the authorities should be given a reasonable time to respond or take corrective measures. Further visits should focus on whether the mission's recommendations have been followed. If there are improvements, the observers should try to discover the reason: change of prison director or prison personnel, punishing warders for ill-treatment of prisoners, shortening the time of pretrial detention, are all possible reasons for improvements. The mission should publicly note any positive changes.

The prison unit should verify that no detainee interviewed was subsequently punished, mistreated or questioned by any Government official about their statements to the mission. If any detainee were so treated, the mission should protest most vigorously and the State must take steps to prevent any recurrence and to punish those responsible.

ANNEX III

SPECIFIC GUIDELINES FOR INVESTIGATING ALLEGATIONS OF CRUEL, INHUMAN OR DEGRADING TREATMENT INFLICTED BY POLICE OR WHILE IN DETENTION

In many peacekeeping operations, the issue of mistreatment at the hands of Government officials is one of the most common and serious human rights violations and a threat to the rule of law. Beatings, torture and other forms of mistreatment can occur in a variety of settings, from demonstrations to meetings, during arrest or while the person is at the police station being questioned. Ill-treatment often occurs in prisons and detention centres.

Here are some guidelines for peacekeepers who are investigating allegations of cruel, inhuman or degrading treatment. While it may be difficult to carry out detailed and extensive interviews in the field, especially in prisons, as many of the areas highlighted below as possible should be covered. Some of the questions may seem unrealistic, particularly given the probable hostile reaction of the authorities, but even asking the question notifies the Government that its actions are being monitored and will not go unnoticed, that it has obligations and should take steps to prevent or punish those responsible for mistreatment.

1. Interview the victim:
 - take detailed information of arrest, detention and ill-treatment (names, dates, places);
 - note any marks, injuries, symptoms related to ill-treatment; obtain consent from the victim to raise the case with the Government, if appropriate; obtain consent from the victim to seek appropriate medical treatment.
2. Interview the witnesses:
 - corroborate the victim's account; if there are inconsistencies, note them.
3. Interview medical personnel who have treated the victim:
 - obtain medical corroboration of the evidence of mistreatment.
4. Interview prison authorities if the victim is still detained:
 - obtain information about the victim's medical condition when transferred from police custody to the prison;
 - if the detainee had been mistreated before arriving at the prison, note any steps the prison officials took to seek medical care or inform judicial authorities about the apparent mistreatment;

- in cases where the prison guards are responsible for the cruel, inhuman or degrading treatment, obtain the account of the prison authorities and find out what steps, if any, have been taken to investigate or punish those responsible.
5. Interview the local police authorities directly responsible for the alleged ill-treatment:
 - obtain the “official” version of events;
 - find out what steps have been taken to investigate the allegations;
 - if there are reasonable grounds to suspect that a specific police officer is responsible, ask whether the officer has been suspended until the investigation is completed.
 6. Interview judicial officials who may have seen the detainee or who have jurisdiction over the case:
 - determine whether the judge or prosecutor is aware of the ill-treatment;
 - did the judge issue a finding on the condition of the detainee;
 - did the judge or prosecutor investigate any allegations of mistreatment (take statements from the victim/ authorities/ witnesses);
 - find out whether the judge or prosecutor intends to prosecute those responsible.

General points regarding instances of violations of the right to security and physical integrity of the person

1. Since cruel, inhuman or degrading treatment is a human rights violation central to most current peacekeeping mandates (see Côte d’Ivoire, Democratic Republic of the Congo, Haiti) and directly involves the administration of justice and its representatives (police, security forces, judges, prosecutors and prison officials), all cases should be reported to headquarters, even if the investigation has not been completed. These are always high-priority cases.
2. If during a visit to a prison or a police station, you learn of a case of mistreatment, you should stop whatever you are doing and take a detailed testimony; this case becomes a priority.
3. You should ask the person making the allegation for permission to raise the case with the authorities. You should be aware that, if the person is still in the custody of the person alleged to be responsible for ill-treatment, there is a risk of reprisal against the victim. This risk is serious and should be explained to the victim. The victim’s informed choice should always be respected in this matter.
4. Bar exceptional circumstances, do not raise cases with the authorities until you have confirmed the basic information about when/where/what happened and who was allegedly responsible.

5. Do not be accusatory when you meet the authorities. Be firm, courteous and professional. The aim of your initial meeting is to get information and obtain their account of what happened. You should explain that you are investigating allegations of ill-treatment and that you would like to hear their version of what happened. You are also putting them on notice that you are aware there is a problem—this could lead to corrective action being taken immediately.

6. You may need to conduct several visits to the authorities to find out whether investigations have started and what progress has been made, if any.

