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Thematic Issue 2 - Promoting the Rule of Law

Developing a United Nations system-wide approach on rule of law mainstreaming

Note by the United Nations

I - Background

1. At its retreat session in October 2012, HLCP identified as a priority for its work programme the issue of “promoting the rule of law as the foundation for peace and security, development and the realization of human rights, and for all state and global action.” Subsequently, following a briefing by Mr. Jan Eliasson, Deputy Secretary-General to CEB at its second regular session of 2012 on “the rule of law at the national and international levels”, the Board welcomed an initiative to enhance coherence and coordination among UN system organizations on the rule of law and supported the integration of the rule of law in the post-2015 development agenda. It requested HLCP to take up this issue at its 25th session.

II - Historical Context

2. “There will be no development without security and no security without development. And both development and security also depend on respect for human rights and the rule of law.”¹
3. The General Assembly first considered the rule of law at the World Conference on Human Rights in Vienna in 1993, when a programme of action was adopted calling on the United Nations to establish a comprehensive programme to strengthen national structures that have a direct impact on the observance of human rights and the maintenance of the rule of law. Following the Vienna World Conference, the third committee of the General Assembly, dedicated to human rights, adopted yearly resolutions on the rule of law until 2002.

¹ Report of the Secretary-General A/59/2005: In larger freedom: towards development, security and human rights for all, Annex, paragraph 2.

4. At the United Nations World Summit in September 2005, Member States unanimously recognized the need for “universal adherence to and implementation of the rule of law at both the national and international levels” and reaffirmed their commitment to “an international order based on the rule of law and international law”. The rule of law was acknowledged as an essential component of development, as well as peace and security, human rights, democracy and good governance. Member States recognised that the rule of law belongs to the universal and indivisible core values and principles of the United Nations. Since 2005, the 6th Committee of the General Assembly dealing with legal affairs has discussed and adopted an annual resolution on the rule of law.
5. Aside from a preambular reference to the deterioration of law and order in the Congo in 1961, the Security Council first used the words “rule of law” in 1996 in Resolution 1040 where it expressed its support for the Secretary-General’s efforts to promote “national reconciliation, democracy, security and the rule of law” in Burundi. Since that time, the rule of law has become a standard tool in the Security Council’s peacebuilding toolbox and numerous peace operations have had important rule of law components; currently, 18 of 23 Security Council mission mandates include strengthening the rule of law. In two situations, Kosovo and Timor Leste (1999-2002), the United Nations has had direct responsibility for the administration of justice, including control of police and prison services.²
6. The Security Council has also worked to strengthen the rule of law by promoting accountability for the most serious international crimes. It created international criminal tribunals to complement domestic processes, for example for the former Yugoslavia and Rwanda, finding that accountability was essential for the maintenance of international peace and security.³

III - The High-level Meeting on the rule of law

7. On 24 September 2012, the General Assembly held a High-level Meeting on the rule of law, adopting the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels.
8. The Declaration reaffirms Member States’ commitment to the rule of law and its fundamental importance for political dialogue and cooperation among all States, and for the further development of the three main pillars upon which the United Nations is built: international peace and security, human rights and development.
9. Member States agreed that the rule of law applies to all States equally, and to international organizations, including the United Nations and its principal organs, and that respect for and promotion of the rule of law and justice should guide all of their activities and accord predictability and legitimacy to their actions. The Declaration also recognized the work being undertaken by organizations of the United Nations system,

² Similar powers were exercised in Bosnia and Herzegovina through the Office of the High Representative from 1996.

³ Note also United Nations supported hybrid tribunals such as the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, and the Special Tribunal for Lebanon.

called for greater coordination and coherence in these efforts, and for integration of the rule of law in the post-2015 development agenda.

IV - What is the rule of law

10. In the High-level Declaration, all 193 Member States affirmed for the first time that “all persons, institutions and entities, public and private, including the State itself, are accountable to just, fair and equitable laws and are entitled without any discrimination to equal protection of the law.” This reflects the Secretary-General’s 2004 working definition of the rule of law as a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.⁴
11. In addition, and as recognised by all Member States in the General Assembly, the rule of law applies at the international level, giving predictability to international relations, protecting the sovereign equality of all states and providing for the peaceful settlement of international disputes.
12. Consequently, the rule of law represents a robust framework both at the state and inter-state levels, normatively based on the Charter and international law.

V - Mainstreaming the Rule of law

13. As acknowledged in the Declaration, the rule of law applies to all States and international organizations equally, including the United Nations, and “respect for and promotion of the rule of law and justice should guide all of their activities and accord predictability and legitimacy to their actions”. In furtherance of the Declaration, and in recognition of the fundamental importance of the rule of law to the three pillars upon which the United Nations is built, the Secretary-General has decided to **mainstream the rule of law** in the work of the United Nations. The CEB welcomed this initiative at its second regular session of 2012, and also supported the integration of the rule of law in the post-2015 development agenda.
14. The rule of law is a cross-cutting thematic area offering a holistic approach to further our work in development, human rights, and peace and security.

Rule of law in international peace and security

15. The United Nations, under its Charter, is mandated to maintain international peace and security and to “bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.”
16. Indeed, the Charter provides the normative basis for friendly relations between states based on an international rule of law. International relations based on the rule of law

⁴ The Secretary-General had further specified that the rule of law requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.

create reciprocity between states as sovereign equals, and accords predictability and legitimacy to their actions within an agreed multilateral framework, and provides a means to peacefully resolve any disputes arising. In the Millennium Declaration, Member States therefore resolved to strengthen the International Court of Justice “in order to ensure justice and the rule of law in international relations.”

17. It is increasingly recognized that States marked by ineffective governance, repressive policies, poverty, high rates of violent crime and impunity pose significant threats to international peace and security. Deep capacity deficits in state justice and security institutions, exacerbated by widespread corruption and political interference, lead to diminishing levels of citizen security and economic opportunity. Resentment, distrust or outright hostility towards the Government grows. Radicalized movements often stand ready to harness these sentiments, inciting marginalized groups, unemployed youth and criminal elements to challenge the established order through violent means. Transnational organized crime emerges in parallel with increasing instability, stoking new forms of violence, while further undermining the legitimacy and competence of State institutions.
18. Empirical evidence of this is found in the World Bank *World Development Report 2011*. Strengthening legitimate institutions and governance to provide citizen security, justice, and jobs is crucial to breaking cycles of violence within States. Cycles of insecurity in States undermine development, and impact regional and international peace and security. The establishment and maintenance of the rule of law within states is therefore fundamental to conflict prevention, and to post-conflict peacebuilding.

Rule of law in human rights

19. The Universal Declaration of Human Rights links human rights to the rule of law, and both in turn to peace and security. It states that it is essential, “if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”
20. Indeed, rights are empty words in the absence of a legal and political order in which they can be realized. The rule of law provides a framework in which the arbitrary exercise of power is subjected to agreed rules, guaranteeing protection of both collective and individual civil, political, cultural, social and economic rights. The rule of law is the vehicle for the promotion and protection of all human rights. The Secretary-General’s concept of the rule of law is also deeply linked to the principle of justice, involving an ideal of accountability and fairness in the protection and vindication of rights within a system, and the prevention and punishment of wrongs.

Rule of law in development

21. The rule of law and development are strongly interrelated and mutually reinforcing. Any progress in the rule of law furthers development, which in turn strengthens the rule of law. The rule of law is essential for sustained and inclusive economic growth, sustainable development, and the eradication of poverty and hunger.
22. The rule of law is a framework for development outcomes. It supports economic growth, and reduction in inequalities. It provides legal frameworks that increase contractual security, lower levels of corruption, allow for the timely, transparent and predictable

resolution of commercial disputes, which in turn affect the economic climate for businesses, and interest in investment, particularly at the level of small and medium-sized enterprises more susceptible to local conditions. The rule of law enhances personal security and good governance; widens access to public services; and improves sustainable environment and natural resource management. As a cross-cutting thematic, the rule of law should be mainstreamed to tackle a range of development challenges.

23. The rule of law, as a foundation of just and fair societies, can also be seen as a development outcome in itself.
24. *Post-2015 development agenda*: Given the growing international consensus that the rule of law is key to sustainable development, it is important that the rule of law also be considered as part of the post-2015 development agenda. Indeed, this was specifically agreed by Member States in the High-level Declaration on the Rule of Law in paragraph 7.
25. The annexed draft briefing paper, for the HLCP's consideration and input, explores the linkages between the rule of law and development. Such a briefing paper could be a useful tool for the High-level Panel of Eminent Persons on the Post-2015 Development Agenda, as well as to Member States, in their consideration of the interrelationship between the rule of law and development in the post-2015 international development agenda.

Cross-cutting dimensions

26. As shown above, the rule of law is a fundamental and cross-cutting thematic, offering a holistic approach to integrating the three pillars of the United Nations. In order to mainstream the rule of law throughout our work, it is necessary to bring out the cross-cutting dimensions of the rule of law. These could be considered as follows:

1. What are the applicable rules?

All areas of the United Nations' work have underlying laws, rules, regulations or customs. As such, we must identify and be aware of what these are. We must also be aware of the quality of the rules, their accessibility and application. The following are relevant questions:

- What are the laws or customs governing the subject area?
- Are rights protected under the system?
- Are the laws or customs in accordance with international norms and standards?
- Is legislation publicly available or the customs widely understood?
- Are the rules generally applied to and adhered to by all?
- Could the legal or customary framework be further strengthened?
- Are the applicable rules accessible to all?
- Do the rules apply to all on an equitable, non-discriminatory basis?
- Is the State also held accountable under the system?

Example

The UN system is looking to strengthen the government's provision of mental health services in Country X, with a goal of ensuring the availability of both essential medicines, and trained health workers in communities around the country.

An analysis of the legislative and regulatory framework with regard to mental health services is an important step. Based on this analysis, the UN system should consider working with the Government to strengthen legislation on mental health services, in order to guarantee agreed service provision and standards. An appropriate legal framework will enhance sustainability of the UN's intervention, encourage institutionalization of best practice and accountability of responsible actors, assist in the Government's ability to procure national budgetary allotment and donor support, and strengthen local ownership.

2. How are disputes resolved?

Dispute resolution services must be timely, accessible, and responsive. We must always be aware not only of what the rules are, but also of where and how any disputes are resolved. The following are relevant questions:

- Is there a dispute resolution mechanism in place?
- Is the mechanism accessible; legally, physically and geographically, financially, and culturally?
- Are disputes resolved and decisions enforced in accordance with the law?
- Are disputes resolved and decisions enforced in a timely manner?
- Are disputes resolved independently, equitably and without discrimination?
- Are the arbiters of the system accountable under the law?
- Is there a means of appealing a decision under the mechanism?

Example

Women in a rural community in Country Y have been assisted by a gender and economic empowerment programme to set up a local women's association in order to collectively sell the rice they are farming. The programme can be further strengthened by assisting the women in the establishment of a transparent and accessible dispute resolution mechanism to resolve disagreements between members over issues such as contributions or profits. Without such a mechanism, disputes risk undermining the work of the collective and affecting the women's livelihood. This in turn affects the long term sustainability and resilience of the programme. Specifically the UN system can assist by providing information on best practices in dispute resolution within collective associations, ensuring adherence to local laws and customs, as well as international norms and standards.

3. Do people know?

It is important that rights and rules are understood by those they govern and protect, as well as by any assistance provider. There must be awareness in order for rules to be respected and rights fully enjoyed. Institutions function well when an empowered citizenry holds them to account. All United Nations work should consider the importance

of communities and individuals being informed about applicable rules and rights. The following are relevant questions:

- Is information on the applicable rules and means of resolving disputes accessible to all?
- Is information available in a culturally accessible, understandable and non-discriminatory format?
- Is there opportunity for meaningful discussion and understanding of processes?
- Is there a means of raising concerns and seeking information in the system?

Example

Natural resource extraction in Country Z can support development in local communities, and is a lucrative business for private companies. Disputes concerning the redistribution of rights and resources can, however, undermine development gains by causing conflict. Ensuring that local communities are appropriately consulted throughout the extraction licensing process and fully informed as to the applicable laws and dispute resolution mechanisms in place is therefore key. For example, a lack of information regarding extraction rights of a company under an agreement, and the corresponding rights of the community, may cause community tensions. Awareness and understanding supports adherence to rules and the enjoyment of rights. Both state institutions and the private sector are incentivised to function well when an informed citizenry holds them to account. Understanding of established processes and dispute resolution mechanisms reduces the potential for violent conflict.

VI - Way forward

1. Agreement to mainstream the rule of law throughout the United Nations system on the basis of principles as proposed in this paper, and elaborated by the HLCP.
2. Development of a system-wide plan to implement agreed principles of rule of law mainstreaming.
3. Incorporate in the briefing paper on the rule of law and development, contributions from all CEB entities to fully reflect the scope of their work in this area, for submission to the High-level Panel of Eminent Persons on the Post-2015 Development Agenda.

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The rule of law and development – issues for the post-2015 agenda

Growing consensus

- There is a growing international consensus that the rule of law is key to sustainable development. Whilst the Millennium Declaration has multiple references to the importance of strengthening the rule of law, the 2005 World Summit outcome document more specifically states that the rule of law is essential for sustained economic growth, sustainable development and the eradication of poverty and hunger.
- This is repeated in the 2010 MDG outcome document as well as in the Rio+20 outcome document. Finally, in the Declaration adopted at the High-level Meeting on the Rule of Law in September 2012, Member States unanimously agreed that the rule of law should be considered in the post-2015 development agenda.

The rule of law as justice

- The rule of law is a principle of governance and as such, should be seen broadly, as a means of organizing societies in a way that maximises political, social and economic justice.
- The rule of law delivers justice through a range of institutions and processes that ensure the promulgation and application of fair, just and equitable laws binding on all, including the State itself; and through the transparent, predictable and fair enforcement and adjudication of these laws through a means accessible to the whole population.

The rule of law as a development outcome

- As Member States acknowledged in the “Declaration on the rule of law at the national and international levels” the rule of law, as a foundation to just and fair societies, should be seen as a worthy outcome of development (i.e. a development goal).

The rule of law as a development process

- It can also be seen as a necessary process for development (i.e. as a means of achieving other development goals). For instance:

Economic growth is clearly a development goal, and the rule of law is critical for achieving this. It provides for the protection of property rights, enforcement of contracts, regulation of labour, fostering an investment climate, protection of small and medium sized enterprises, fair trade rules and equal access to markets.

Reducing inequalities has been identified as an important aim for the post-2015 development framework: the MDGs often bypassed or even excluded the poorest and most excluded populations that should benefit most from development. The rule of law is a key tool to address inequalities. Constitutional guarantees of non-discrimination and the ability to enforce equal rights and access for women and minorities bring equality to the political, social and economic sphere. For instance, the rule of law provides for the right to own and inherit property, the right of representation and access to the necessary institutions. It also works to regulate and bring legitimacy to levelling up measures.

Personal security was identified as a basic value and aim for development in a number of global surveys, such as the World Bank's project "Voices of the Poor". Indeed, fear of violence and physical insecurity has a direct bearing on the well being and productive capacity of society, and on the possibility that economic growth and investment take root. The rule of law is a central element of any strategy to address violence and personal security by working directly through functioning police, justice and correction institutions.

Avoiding conflict and fragility: violent conflict can be seen as an obstacle to the MDGs and peace is an important condition for progress towards the MDGs. The gap in MDG performance between conflict-affected countries and other developing countries is large and increasing. No low-income fragile or conflict-affected country has achieved a single MDG as of 2011. By 2025, 82% of the world's poor are projected to live in fragile states. As was highlighted in the World Bank's 2011 World Development Report, strengthening the rule of law will deliver justice and security, two key elements to avoiding cycles of fragility.

Good governance: like the rule of law, good governance is both a development goal per se, since it can be seen to increase the well being of individuals and societies, and an enabler of other development goals. Governing through the rule of law is a central plank of good governance as it regulates the exercise of public power through transparent rule-based processes, making public officials accountable in the implementation of their functions to their population through tribunals, courts and other adjudicative mechanisms.

Widening access to public services: Equal access to public services should be a central component of any development strategy. Allocating key public services such as *health, education, clean water*, to the entire population can be enhanced by providing opportunities to challenge the failure of local authorities to provide such goods through judicial and administrative reviews should form part of any development strategy.

Sustainable environment and natural resource management have also been identified as key components of a post-2015 development framework, which the rule of law can advance through the enforcement of regulatory frameworks. Further, people can be empowered by ensuring opportunities to equitably resolve grievances and claims when governments and businesses impact the environment.

Mainstreaming the rule of law

- In the "Declaration on the rule of law at the national and international levels", Member States have agreed that the rule of law is a cross-cutting thematic, which should be mainstreamed to tackle a range of development challenges.

Prioritizing the rule of law

- Despite its impact on development, and increasing evidence that a weak rule of law has affected countries' ability to meet the MDGs, the rule of law has not received the degree of priority it deserves in the development community.

Measuring the rule of law

- Measuring the rule of law has also made progress in recent years. A series of measurement tools have been developed that reflect the broad reach of the rule of law through indices that aggregate multiple measures, or baskets of indicators that capture the multi-dimensional and local aspects of the rule of law (World Bank, World Justice Project, Mo Ibrahim indexes).
- Further, measuring specific outcomes related to the rule of law can be done through single indicators, such as using violent crime to measure personal security. Multifaceted proxies can also be used, for instance birth registration is a measure of legal personality needed to access other development outcomes. Such proxies can be streamlined across goals, or placed in a basket for measuring rule of law as a whole.
