

GUIDANCE NOTE OF THE SECRETARY-GENERAL

UN Approach to Rule of Law Assistance


UNITED NATIONS NATIONS UNIES
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SUMMARY

This note provides the guiding principles and framework for UN rule of law activities at the national level that apply in all circumstances, including in crisis, post-crisis, conflict-prevention, conflict, post-conflict and development contexts. In order to ensure a comprehensive and coherent UN approach, the note is derived from United Nations norms, standards and guidance, and the framework outlines the fundamental constituent elements of rule of law efforts.

For the United Nations system, the **rule of law** is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires as well measures to ensure adherence to the principles of supremacy of 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. **Justice** is an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Its administration involves both formal judicial and informal/customary/traditional mechanisms. Within this paradigm, a range of terms are used to describe various approaches and activities that strengthen the rule of law, such as security sector reform, administration of justice, protection, combating impunity.

A. Guiding Principles

1. Base assistance on international norms and standards
2. Take account of the political context
3. Base assistance on the unique country context
4. Advance human rights and gender justice
5. Ensure national ownership
6. Support national reform constituencies
7. Ensure a coherent and comprehensive strategic approach
8. Engage in effective coordination and partnerships

B. Framework for Strengthening the Rule of Law

1. A constitution or equivalent
2. A legal framework and the implementation thereof
3. An electoral system
4. Institutions of justice, governance, security and human rights
5. Transitional justice processes and mechanisms
6. A public and civil society that contributes to strengthening the rule of law and holds public officials and institutions accountable

INTRODUCTION

As set forth in the Charter of the United Nations, the three pillars of the Organization's mission are to maintain international peace and security; to achieve economic and social progress, and development; and to encourage respect for human rights and fundamental freedoms. The promotion of the rule of law is fundamental to this mission. This note provides the guiding principles and framework for UN rule of law activities at the national level that apply in all circumstances, including in crisis, post-crisis, conflict-prevention, conflict, post-conflict and development contexts.

UN rule of law assistance is based normatively on the Charter, international law, and the host of UN treaties, declarations, guidelines and bodies of principles developed in furtherance of national societies and an international order based on the rule of law. All human rights, the rule of law and democracy are interlinked and mutually reinforcing and they belong to the universal and indivisible core values and principles of the United Nations. Strengthening the rule of law at the international level involves respect for the Charter and international law, including the use of force, respect for the sovereign equality of States, and recognition of the responsibility of States to protect their populations from genocide, crimes against humanity, ethnic cleansing and war crimes. It requires participation in, and effective national implementation of, the main bodies of international law at both the national and international levels.

At the national level, the work of the UN on rule of law is based operationally on technical assistance and capacity-building carried out for the benefit of Member States, at their request and/or as mandated by the Security Council, and in accordance with their national policies, priorities and plans. This enables the UN to respond to the needs of countries in a flexible manner, eschewing one-size-fits-all formulas and the importation of foreign models, and instead, to base our support on national assessments, local needs and aspirations, and broad participation.

A. GUIDING PRINCIPLES

1. Base assistance on international norms and standards

The normative foundation for UN rule of law work is the Charter, together with four of the main pillars of the international legal system: international human rights law, international humanitarian law, international criminal law and international refugee law. The countless UN treaties, declarations, guidelines and bodies of principles represent universally applicable standards. As such, they incorporate a legitimacy that cannot be said to attach to exported national models reflecting the values or experience of donors and assistance providers. These standards form the normative parameters for UN engagement, for example: the UN will neither establish nor directly participate in any tribunal that allows for capital punishment nor endorse peace agreements that allow for amnesties for genocide, war crimes, crimes against humanity or gross violations of human rights. All UN approaches to rule of law issues should take their guidance from, and be developed in conformity with, the applicable international standards.

2. Take account of the political context

The international community has sometimes underestimated the extent of political will necessary to support effective rule of law development and invested inadequately in political dialogue on rule of law promotion. Rule of law activities take place in neither an economic nor a political

void, and require changes in the legal framework and the institutional structures of governance and their functioning. Rule of law development, like all national reforms, generates winners and losers. They are therefore political questions as well as technical ones. Rule of law assistance has often overemphasized technical dimensions and paid less attention to political and strategic considerations. Until national stakeholders see the utility in supporting rule of law development, technical assistance will have little impact. Senior UN representatives in the field need to understand the political nature of strengthening the rule of law, and dedicate attention to supporting both the political and institutional aspects of rule of law development. In cooperation with Headquarters and in partnership with the national political leadership and other stakeholders, UN leadership at the field level is responsible for fostering political space for reform and insulating the rule of law from inappropriate political influence or abuse.

3. Base assistance on the unique country context

Effective and sustainable approaches to strengthening the rule of law must begin with a thorough analysis of national needs and capacities, and the mobilization of national expertise to the greatest extent possible. The UN must consider carefully the particular rule of law and justice needs in the specific context of each country, including the condition and nature of the country's rule of law system (both formal and informal/customary/traditional) and the culture, traditions and institutions that underlie that system, including the role of gender in society, the position of minority groups, and the situation of children. In addition, rule of law assistance must be consistent with the international legal obligations applicable to the country. The UN must assess carefully the many factors giving rise to the need for rule of law assistance, such as the nature and causes of any recent conflict or any history of human rights abuse, and construct its assistance accordingly. The UN needs to promote this approach among all stakeholders in strengthening the rule of law.

4. Advance human rights and gender justice

The UN faces many challenges in developing effective responses to sensitive political, cultural and operational contexts in its support for rule of law development. In providing assistance, the UN must not overlook the entitlements that have been established under international law for women, children, minorities, refugees and displaced persons, and other groups that may be subjected to marginalization and discrimination in the country. Gender-based discrimination permeates all cultures, and dedicated attention to gender equality issues is needed in all dimensions of rule of law work. The UN maintains a responsibility to help establish the rule of law for all on a basis of equality, and with due attention to the rights and specific vulnerabilities of children. Solutions to rule of law challenges that serve to advance the rights of dominant social groups while leaving others behind must be avoided.

5. Ensure national ownership

No rule of law programme can be successful in the long term if imposed from the outside. Process leadership and decision-making must be in the hands of national stakeholders. Rule of law development requires the full and meaningful participation and support of national stakeholders, *inter alia*, government officials, justice and other rule of law officials, national legal professionals, traditional leaders, women, children, minorities, refugees and displaced persons, other marginalized groups and civil society. Experience indicates that the rule of law is strengthened if reform efforts are focused on assisting the State to apply its international legal obligations, and are credible and adhere to the principles of inclusion, participation and

transparency, facilitating increased legitimacy and national ownership. Meaningful ownership requires the legal empowerment of all segments of society.

6. Support national reform constituencies

UN programmes must identify, support and empower national reform constituencies. The UN must facilitate the processes through which various national stakeholders debate and outline the elements of their country's plan to strengthen the rule of law and secure sustainable justice. The aim is to help national stakeholders to develop their own vision, agenda, approaches to reform and programmes. Public consultation and public understanding of and support for reform are essential. The UN must encourage outreach to all groups in society, and support public awareness and education campaigns and public consultation initiatives. Civil society organizations, women's groups, national legal associations, human rights groups and advocates of victims and of prisoners, as well as those who might otherwise be excluded (e.g., non-criminal former regime members and ex-combatants) must all be given a voice in these processes. Children and adolescents must also be enabled to participate and their role as constructive agents of change be acknowledged.

7. Ensure a coherent and comprehensive strategic approach

Rule of law promotion is more than the provision of technical legal expertise. UN rule of law assistance is most effective if it draws on a wide-range of expertise and perspectives, *inter alia*, in the political, legal, human rights, development and social science fields within and outside the UN system. A comprehensive approach that supports all aspects of effective and efficient justice systems, and their management and oversight is likewise necessary. The UN must develop a holistic and strategic approach, within the context of existing planning processes, that involves: **1) conducting joint and thorough assessments with the full and meaningful participation of national stakeholders to determine rule of law needs and challenges; 2) supporting the development of a comprehensive rule of law strategy based on the results of the assessment; 3) developing a joint UN rule of law programme guided by the strategy; and 4) assigning accountabilities and implementation responsibilities.**

8. Engage in effective coordination and partnerships

Strengthening the rule of law encompasses a multitude of activities carried out by many entities across the UN system and the wider international community. Past engagement has sometimes been piece-meal, incongruous and donor-driven, resulting in uneven and contradictory development of rule of law institutions and short-term, superficial gains at the cost of longer-term, sustainable reform. Successful rule of law assistance requires the support and active engagement of all stakeholders working through a comprehensive strategy in a coordinated fashion. All UN entities involved in rule of law assistance must operate according to shared approaches and strategies, including effective coordination, and must recognize that the success of UN engagement is linked to the extent of its partnerships and support for national ownership.

B. FRAMEWORK FOR STRENGTHENING THE RULE OF LAW

1. A Constitution or equivalent, which, as the highest law of the land, *inter alia*:

- Incorporates internationally recognized human rights and fundamental freedoms as set out in international treaties, provides for their applicability in domestic law, and establishes effective and justiciable remedies at law for violations;

- Provides for non-discrimination on the basis of race, color, gender, language, religion, political or other opinion, national or social origin, property, birth or other status, and which protects national minorities;
 - Provides for the equality of men and women;
 - Defines and limits the powers of government and its various branches, vis-à-vis each other, and the people;
 - Limits emergency powers and derogations of human rights and freedoms under states of emergency to those permissible under international standards;
 - Empowers an independent and impartial judiciary.
2. **A legal framework, and the implementation thereof**, consistent with international norms and standards, which protects human rights and provides for effective redress, including:
- Fair immigration, nationality and asylum laws;
 - Penal laws, including for transnational crimes, and criminal procedure laws that ensure the effective and fair administration of justice for perpetrators, including juveniles in conflict with the law as well as victims and witnesses, consistent with, among others, the Basic Principles of Justice for Victims of Crime and Abuse of Power;
 - Prison laws and regulations that are consistent with, among others, the Standard Minimum Rules for the Treatment of Prisoners;
 - Laws for the protection of minorities, children, displaced and returning populations, and other marginalized or vulnerable groups that take into account their special status and international standards for their protection, and that outlaw and address the effects of discrimination;
 - Laws that establish legal protection for the rights of women on an equal basis with men, and that ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
 - Laws protecting free association and assembly, and guarantees that press, libel, broadcasting and other laws respect free expression, opinion and information;
 - Security legislation that protects non-derogable human rights, and ensures civilian control and oversight;
 - Laws on the judiciary, legal practice and prosecution that reflect, among others, the standards embodied in the Basic Principles on the Independence of the Judiciary, Basic Principles on the Role of Lawyers, and Guidelines on the Role of Prosecutors;
 - Laws, guidelines and directives that govern the conduct of police and other security forces consistent with, among others, the Code of Conduct for Law Enforcement Officials and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
 - Fair procedures for the settlement of civil entitlements and disputes under the law and fair administration of laws, regulations, procedures and institutions.
3. **An electoral system**, which, *inter alia*:
- Assures, through periodic and genuine elections, that the will of the people shall be the basis of the authority of government;

- Assures the right of everyone to take part in the government of his or her country, either directly or through freely chosen representatives, including through the application of temporary special measures;
 - Assures equal access to public service, including elective public service;
 - Guarantees universal and equal suffrage, and secrecy of the ballot;
 - Provides for non-discrimination in the area of political rights, and secures an electoral atmosphere that is free of intimidation and respectful of certain prerequisite rights, such as freedom of opinion, expression, information, assembly and association;
 - Provides for objective, unbiased and independent electoral administration, and independent review of alleged irregularities;
 - Provides for the transfer of power to victorious parties and candidates under the law.
- 4. Institutions of justice, governance, security and human rights** that are well-structured and financed, trained and equipped to make, promulgate, enforce and adjudicate the law in a manner that ensures the equal enjoyment of all human rights for all, including:
- A legislative institution or mechanism for the formulation and public promulgation of laws in a procedurally transparent manner;
 - Effective oversight institutions or mechanisms (e.g., anti-corruption bodies, parliamentary committees, national human rights institutions, independent commissions on human rights and ombudsman offices consistent with the Paris Principles);
 - A judiciary, which is independent, impartial and adequately empowered to adjudicate the law with integrity and ensure its equal application to all within its jurisdiction;
 - State institutional capacities to make policy for and manage the effective administration of justice, the provision of security, crime prevention, and to investigate and prosecute violations of the law;
 - Police and other law enforcement agencies that protect individuals and communities, enforce the law without discrimination and take appropriate action against alleged violations of the law, including appropriate oversight mechanisms;
 - Corrections services that provide for a safe, secure and humane prison and rehabilitation system, including alternatives to deprivation of liberty and diversion measures;
 - An accessible capacity to provide legal and paralegal assistance to those unable to afford it, and adequate and effective defense for those alleged to have violated the law;
 - A social service capacity to assist victims and witnesses of crime and abuse of power, including children, to participate effectively in the administration of justice in a manner that ensures redress for harm suffered;
 - A system to effectively adjudicate rights and responsibilities within the family, on the basis of gender equality and in the best interest of the child, which ensures that the protection of children from abuse, exploitation, harm and neglect;
 - A professional training regime for lawyers, judges, prosecutors, law enforcement and prison officials that promotes a culture of service, discipline and ethics;
 - Military and civil defense forces that has allegiance to the Constitution, or equivalent, and other laws of the land, and to the democratic government, and follows international humanitarian law;

- Effective and accessible mechanisms for resolution of entitlements and disputes between and among individuals, State organs, and groups in society, including courts, administrative tribunals, alternative or traditional dispute resolution mechanisms, and commissions or mechanisms for, among others, the fair settlement of property and housing disputes.
- 5. Transitional justice processes and mechanisms** that respond to country contexts while anchored in international norms and standards to address the legacy of large-scale past abuses in order to ensure accountability, serve justice and achieve reconciliation, which may include both judicial and non-judicial mechanisms such as ad hoc criminal tribunals, truth commissions, vetting processes and reparations programmes.
- 6. A public and civil society that contributes to strengthening the rule of law and holds public officials and institutions accountable**, including:
- A system of governance that promotes a culture of legality, legal empowerment and ensures the public is aware of and educated in the full-range of its rights and responsibilities;
 - Communities that have equal access to justice and are empowered to participate in resolving disputes peacefully and responding to community safety needs and concerns;
 - Full access to judicial and other mechanisms for independent oversight of the exercise of executive authority and abuse of power;
 - A strong civil society, including, *inter alia*, adequately trained, equipped, financed and organized non-governmental organizations and professional associations, women's groups, labor unions and community organizations;
 - A free, responsible and flourishing mass media.