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SWEDISH AGENCY FOR PEACE, SECURITY AND DEVELOPMENT



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Guidance Note

for Assessing Rule of Law in Public Administration



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The Folke Bernadotte Academy (FBA) is the Swedish government agency for peace, security and development, and has the overall mission to support international peace and crisis management operations. The FBA is part of Sweden's contribution to international peace and security, and its efforts to improve the lives of people living in conditions of poverty and repression.

UNDP partners with people at all levels of society to help build nations that can withstand crisis, and drive and sustain the kind of growth that improves the quality of life for everyone. On the ground in more than 170 countries and territories, we offer global perspective and local insight to help empower lives and build resilient nations.

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Foreword

The rule of law is a fundamental mechanism for regulating the use of public and private power and hence a primary means for ordering state-society relationships and an essential condition for development. There is also no doubt about the importance of efficient and effective public administration as an engine of sustainable human development. Until now, however, both have been addressed and studied in isolation, as separate components in the development agenda.

Inspired by increased attention to the rule of law as an essential driver for development, the Folke Bernadotte Academy (FBA) in Sweden and the United Nations Development Programme (UNDP) have joined forces to develop – through a series of pilots – a tool that will assist governments and development partners in analysing respect for the principles of the rule of law in the workings of public administration. Piloting of the tool was conducted in 2011-2013 in three countries: the Philippines, Sierra Leone and Ukraine; all three facing a different set of development challenges. The first pilot was conducted in Quezon City in Manila and focused on the Urban Poor Affairs Office in the Quezon City Council. The second pilot was conducted in Ukraine focusing on housing cooperatives in the cities of Lviv and Feodosya. The third pilot was undertaken in Sierra Leone and targeted the services provided by the National Registration Secretariat in Freetown, which is responsible for civil registration for the whole country.

As a result of three years of intensive work and close interaction with national actors – governments, civil society,

academia and development actors – UNDP and the FBA finalised the *Users' Guide for Assessing Rule of Law in Public Administration* (hereinafter the Users' Guide). This Guidance Note complements the Users' Guide and provides the reader with a comprehensive overview of how important linking the rule of law and public administration is, highlights the lessons learned from the pilots and proposes a sequencing of actions to be taken when conducting a review/assessment of a specific public administration agency and the role of different actors in that process.

It is our hope that this Guidance Note and the Users' Guide will be important contributions to the evolving debate on the importance of the rule of law as a guiding principle in the workings of public administration and the provision of essential services to people. It is also our hope that these instruments will be used by central and local governments around the world to gain a better understanding of their capacities to deliver services, and to do so with respect for rule of law and human rights principles. While the Users' Guide is primarily intended for national and local governments as well as UNDP country offices and practitioners, it may also serve as a reference document for other UN agencies, multilateral organizations, academic institutions, think tanks and civil society organizations. It also aims to be an important resource for joint programming with other UN agencies. For this purpose, the Users' Guide and Guidance Note will be widely distributed beyond UNDP.

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The development of the Users' Guide and this Guidance Note was based on extensive pilots of the self-assessment methodology in collaboration with UNDP country offices and national counterparts in three countries: the Philippines, Sierra Leone and Ukraine.

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ⁱ Alexander Bartenev was assassinated outside his home in Feodosiya on 27 July 2013.

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Introduction



Children listening to a talk at a mobile health unit in the Philippines © UN Photo by B. Legeller

This Guidance Note aims to provide UNDP practitioners, government counterparts, academics, civil society representatives and other development partners, with a better understanding of the necessary links between the rule of law and public administration. It provides practical guidance for adapting and applying the *Users' Guide for Assessing Rule of Law in Public Administration*. That Users' Guide and this Guidance Note are based on six clearly defined rule of law principles with a specific and direct bearing on public sector service providers: legality, accessibility, accountability, the right to be heard, the right to appeal and transparency. These principles emanate from international law and international human rights law, and serve as indicators for the assessment of qualitative and rights-based issues of 'good administration' and 'good governance'.

This Guidance Note describes UNDP's role in supporting national and sub-national governments in measuring respect for the principles of the rule of law in public administration and public service delivery.

The particular attention paid to the importance of rule of law principles in public service performance is in line with the new approach to governance adopted in UNDP's Strategic Plan, 2014–2017. The new plan has two outcomes on democratic governance: one focused on 'citizen expectations for voice, development, the rule of law and accountability' and one focused on the 'strengthening of institutions to progressively deliver universal access to basic services, including justice and security'. Assessing respect for rule of law principles in public administration links the two outcomes to ensure that people's expectations that the rule of law is respected also resonate in the way in which services are delivered through public administration.

This Guidance Note describes UNDP's role in supporting national and sub-national governments in measuring respect for the principles of the rule of law in public administration and public service delivery. It builds on the results of a pilot project that developed and tested the Users' Guide which seeks to help governments and service providers identify, understand and better address rule of law-related strengths and challenges in public service delivery. The Guidance Note draws on the lessons learned from pilot projects in three countries, and provides future lead agencies with information on the do's and don't's and avoiding potential pitfalls in its application.

The rule of law plays an important part in peacebuilding and development processes, and the concept is intrinsically linked with the successful achievement of poverty reduction strategies, security, and long-term development and stability. The rule of law is an essential component of ensuring justice and fairness in the adjudication of disputes and safeguarding constitutional provisions and democratic entitlements, as well as in establishing realisable and practical links between human rights and their application in practice. The Users' Guide and this Guidance Note subscribe to the United Nations' overarching definition of the rule of law, as used by the United Nations Secretary-General in 2004 and 2012.

Public service providers are the main interface between individuals and the state, and are responsible for a wide range of issues that are fundamental to development and peacebuilding goals, including property rights and land management, civic registration, business licences and regulation, health services, education, social benefits, and basic state regulatory functions.ⁱⁱ

In order to address the disconnect between the rule of law and public administration, and specifically to bridge the knowledge gap on how to situate, understand and act on rule of law challenges in public administration, UNDP in partnership with the FBA launched the initiative to develop evidence-based rule of law tools for public administration.

The Users' Guide was developed jointly by UNDP and the FBA and is inspired by the important role that public service providers play, while noting also the ambiguity of the normative frameworks surrounding these agencies. Public administrative agencies should be seen as rule of law agencies in their own right on an equal footing with the judiciary, prosecutorial services, corrections and prison authorities and law enforcement agencies. Just as rule of law demands are placed on justice and security actors, so too should such demands be placed on agencies

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ii OECD, State Building in Situations of Fragility: Initial Findings, Paris: OECD, 2008.

UNDP and the FBA jointly piloted the Users' Guide in three selected countries: the Philippines, a developing country with strong civil society movements and a dynamic and active local government system; Ukraine, a lower income country that is undergoing a challenging transition from a one-party state to a multiparty democracy; and Sierra Leone, a least developed country (LDC) emerging from a conflict situation.

delivering vital services in the public sector. These public sector bodies are often responsible for enacting regulations and policies, and take decisions which fundamentally affect the rights, liberties and interests of individuals. Since the Users' Guide seeks to assess the quality of service delivery in agencies that have direct contact and communication with the population, the private sector and communities, the ideal entry point for assessing rule of law principles in public administration is at the local government level, where the primary responsibility for delivering basic frontline services to people lies.

UNDP and the FBA jointly piloted the Users' Guide in three selected countries: the Philippines, a developing country with strong civil society movements and a dynamic and active local government system; Ukraine, a lower income country that is

undergoing a challenging transition from a one-party state to a multiparty democracy; and Sierra Leone, a least developed country (LDC) emerging from a conflict situation. The purpose of the pilots was to assess how to apply the methodology in practice, and to gauge whether evidence-based public sector performance assessments could lead to concrete policy recommendations for improving public services.

The adaptability of the Users' Guide was tested by a selection of well-established public agencies.ⁱⁱⁱ Academic institutions, think tanks, civil society organisations and public administration institutes were involved as research facilitators and national experts assisted the selected agencies in conducting the self-assessments. Comparing the Philippines, Ukraine and Sierra Leone enabled methodological learning from different country typologies and to assess the relevance of the Users' Guide to developing, transition and fragile states.

The pilot studies revealed that there is often a knowledge and capacity deficit among a relatively high percentage of staff concerning the practical application of the laws governing their respective agencies and service delivery areas. Evidence from the pilots also showed that staff and users often have contrasting views on the application of certain rule of law principles to the provision of services.

The Guidance Note builds on the application of the Users' Guide.

iii In the Philippines, the pilot was conducted in Quezon City, Manila, in an area of informal urban settlements. In Ukraine, the Users' Guide was implemented in relation to housing and utility services provided by the municipalities of Lviv and Feodosiya. In Sierra Leone, piloting was undertaken with the agency responsible for the civil registry and the issuance of identity cards.



An efficient, accountable, effective and transparent public administration is a key driver of social and economic development and has a key role to play in the implementation of internationally agreed goals.

2.1. Public service capacities and sustainable human development

The link between effective and accountable public administration and development outcomes has long been recognized by development actors, including UNDP, and has played a decisive role in supporting developing countries to improve the capacity of their public services. UNDP's projects in this sector cover various aspects of public sector management, with a total value of USD 384.5 million,^{iv} implemented in LDCs, fragile and conflict-affected countries as well as in middle income countries.

The need for effective public service as a means to achieve the goals of improving people's lives, fostering democratic governance and advancing human development was highlighted by the UNDP Administrator, Helen Clark, in relation to the ongoing debate on sustainable development and the post-2015 preparations:

The capacity to deliver reliable and quality services where and when they are needed requires a public administration which can collect revenues honestly, allocate and invest public funds wisely, and manage public goods, including land and other natural resources, for the benefit of all. [...] It is also important for women's political participation and representation in public administration to be strengthened so that they can have a strong voice in the setting of development policies and priorities.^v

The role of states in delivering services and promoting inclusive, equitable and sustainable development, as well as their capacity to do so, are among the main topics in the debates on a possible post-2015 agenda. According to the

United Nations Secretary-General: 'The way in which the public administration operates, provides or restricts information, delivers services in an equitable or discriminatory manner and provides or prevents opportunities for people's voice in the policymaking debate has a direct impact on the way citizens perceive the degree of legitimacy of the democratic system.'^{vi} Moreover, 'an efficient, accountable, effective and transparent public administration is a key driver of social and economic development and has a key role to play in the implementation of internationally agreed goals, including those contained in the United Nations Millennium Declaration.'^{vii}

The Report of the United Nations High-Level Panel of Eminent Persons on the Post-2015 Agenda recognizes the need to focus on the quality of public services, as well as on access to their delivery, and stresses the intrinsic value of the rule of law, and non-discriminatory and accountable government and public institutions.

Through the *My World Survey*,^{viii} hundreds of thousands of people expressed their views on the world they want and demanded more justice and accountability. They want their human rights guaranteed and to be recognized in law. They want their voices to be heard and they want institutions that are transparent, responsive, capable and accountable.

iv Total expenditure on Democratic Governance in 2012 was USD 1.02 billion, 38% of all UNDP Democratic Governance Group expenditure on public administration and local governance, not including spending in these areas in Afghanistan which was reported under Crisis Prevention and Recovery.

v Helen Clark, The Importance of Governance for Sustainable Development, Institute of South-East Asian Studies, Singapore Lecture Series, March 2012.

vi UN Secretary-General Ban-Ki Moon in his 2008 Guidance Note on Democracy.

vii Resolution 60/34 of the General Assembly on Public Administration and Development

viii <http://www.myworld2015.org/>

Public administration has an important obligation to steer development; it also acts as a role model for the society it serves, that is, public administration must abide by the international norms and principles that the state is committed to respect, including human rights and gender norms, in both its functioning and its composition. This requires different approaches, including a public service orientation that places women and men at the centre of decision-making and allows for efficient accountability mechanisms, and an institutional system of supervisory agencies that includes courts with judicial review competencies, an ombudsman role and national human rights institutions.

For the purpose of this Guidance Note, *public administration* is understood to mean the agencies and actions of the executive branch of the state at the central, regional and local levels, for example, the tax authorities, civic registry offices and land cadastre agencies. *Administrative processes and services* are understood to refer to the chain of actions and decisions taken by an agency that affect the rights, liberties or interests of private persons, including private sector companies, for example, the issuance of birth certificates, commercial licences and property records, and decisions on the provision of health care, education and social services.

Sufficient attention has not been paid to addressing the fundamental rights of users, women and men, particularly their right to due process when seeking access to public services that fundamentally affect their rights, liberties and interests.

The focus of the Users' Guide and the Guidance Note is on the so-called downstream functions of public administration,^{ix} specifically on the service delivery capacities of administrative authorities and public sector bodies. This Guidance Note recognises, however, that the way in which public administration and service delivery are structured, regulated and supervised differs depending on the political, economic and legal traditions of countries. It is also important to recognize that people have different expectations and face different problems in relation to public administrative agencies, depending on where they live, and their gender, ethnicity, knowledge and experience. UNDP therefore takes a more nuanced approach to the proper relationship between public administration and democratic governance. It sees public administration not only as a means to raise revenue, deliver services, promote social justice

and ensure people's participation, but also essentially as an expression of the developing political settlement, serving as a forum in which questions of access, entitlement and accountability are negotiated.^x

2.2. The rule of law

At its core, and as a key governance principle, the rule of law is a mechanism for regulating the use of public and private power, and thus a means for ordering society, including the state-society relationship or social contract. It refers not only to the systems of rules and regulations, and the institutions that enforce and adjudicate the law – the courts, prosecutors, prisons, police, and so on, but also to the values that infuse them, influenced by international, national and local norms.

According to the United Nations Secretary-General, the rule of law refers to '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'. This definition incorporates two key principles: first, that no person and no institution regardless of position and authority, including the state itself, is above the law. Second, that everyone regardless of ethnicity, religion, gender, sexual orientation or class is equal before the law.

For UNDP, the rule of law is an essential principle of democratic governance and a precondition for development. It determines how decisions are made, rules are adopted and enforced, and grievances and disputes resolved. Such processes are crucial parts of the framework for the equitable delivery of public services and for other aspects of development. A government founded on the rule of law is transparent, accountable and non-discriminatory.^{xi} The rule of law is thus at the heart of the social contract between the state and the individuals under its jurisdiction, as it ensures that justice permeates society at every level. It guarantees protection of the full range of human rights, brings citizens and non-citizens alike legitimate avenues of recourse for abuses of power, and allows for the peaceful

ix See, World Bank, *World Bank Approach to Public Sector Management, 2011–2020: Better Results from Public Sector Institutions*, World Bank: 2011.

x *Lessons Learned Review of UN Support to Core Public Administration Functions in the Immediate Aftermath of Conflict*, Study Commissioned by the UN Working Group on Public Administration at the Request of UN Secretary-General's Policy Committee, 2013.

xi Ibid.

and fair resolution of disputes. Strengthening the rule of law fosters an environment that facilitates sustainable human development, as well as the protection and empowerment of women, children and vulnerable groups, such as internally displaced persons, stateless persons, refugees and migrants.

The rule of law is ensured by national institutions that can generate and implement clear, public, and just laws, and that provide fair, equitable and accountable public services to all people equally. This reflects a growing doctrine that suggests that the rule of law is part of a comprehensive framework of essential and interlinked principles that should be respected whenever individuals and legal persons interact with each other and with the state.

Through various international forums, UN member states have recently renewed their commitment to strengthening the rule of law as a basis for development, most notably in the 2012 UN General Assembly High-level Meeting on the Rule of Law and at the Rio+20 Conference. The value of incorporating the rule of law into the development framework has also emerged from experience with the Millennium Development Goals (MDGs). The Report of the UN High-Level Panel of Eminent Persons on the Post-2015 Agenda also points to Rule of Law as a means to an end and an end in itself.^{xii}

Low levels of respect for the principles of the rule of law in public service delivery can seriously challenge administrative agencies' ability to effectively implement development and poverty reduction strategies and programmes. For example, maladministration in the application of housing, land and property rights perpetuates inequality and discrimination and can prevent generations of poor families from lifting themselves out of poverty.

xii Report of the UN High-Level Panel of Eminent Persons on the Post 2015 Development Agenda, May 2013.

xiii UNPAN, The Legal and Regulatory Framework of Public Administration, ST/SG/AC.6/1995/L.4, 1995, p. 3.

xiv See, UNDP, Public Administration Reform: Practice Note, 2004, pp. 2-3. See also, World Bank, Public Sector Reform: What Works and Why? An IEG Evaluation of World Bank Support, 2008.

2.3 The current disconnect between the Rule of Law and Public Administration

Despite the critical role of public administration and local government in building more legitimate, equitable, inclusive and rights-based societies, there has been a disconnect between rule of law priorities and public administration reform. This was noted early on in a 1995 report by the UN Programme in Public Administration and Finance: 'Writings on public administration usually ignore law, whereas lawyers usually ignore problems faced by public administration.'^{xiii} Most public administration reform projects have focused essentially on capacity development, modernization, efficiency and improving the effectiveness of various aspects of public sector management, and are thus geared essentially to the quantitative side of service delivery.^{xiv}

BOX 1 RULE OF LAW AND PUBLIC ADMINISTRATION IN POST-CONFLICT

In post-conflict peacebuilding processes, respect for the principles of the rule of law by emerging public administration is tenuous at best, but it is critical to strengthen such respect to ensure stability and security. According to the 2010 *World Public Sector Report*:

The success of government in a post-conflict society depends on the performance of the public service in providing critical services to the population and restoring trust and confidence in governance. Public servants are engaged in every facet of government activity – education, health care, public safety, infrastructure, environmental protection, and so on, and most of them work directly with people and communities, to whom they represent the face of government. Therefore, the quality of public servants in terms of knowledge, skills, ethics, attitudes and networks can make or break public trust in a post-conflict government. This makes capacity-development in the public service essential for post-conflict recovery.

A Lessons Learned Review prepared by the UN Working Group on Public Administration stresses that 'while restoring basic functionality remains the key priority in the immediate phase after conflict, the UN also needs to promote respect for rule of law principles in public administration decision-making processes which can contribute to the building or restoring of a culture of integrity'. Paying early attention to questions of accessibility, legality and transparency in administrative processes, and giving people a right to be heard and a right to redress are important means of fostering the accountability of the state and its public administration. Similarly, the 2011 World Development Report, *Conflict, Security and Development*, emphasises the need to support institutional transformation in the public sector, and draws attention specifically to the importance of public bodies to ensuring justice, security and economic development.

At the same time, rule of law promotion has been largely confined to justice reform and implemented through access to justice, security sector reform and legal system reform projects related to the overarching principles and standards of fairness.^{xv} This is further complicated by the fact that despite its clear definition, rule of law assistance continues to be equated by UN agencies and development partners with support for justice and security, and not valued for its intrinsic weight as a core governance principle that underpins all economic, social, political and cultural activities in society.

As a result, despite the importance of the rule of law to service delivery, efforts to improve the functioning of public administration and justice sector reforms have been promoted in separate projects, each underpinned by different paradigms. Because of this disconnect, public administration reform measures have not adequately addressed gaps in the rule of law in administrative procedures and operations, such as holding state agencies accountable or bolstering the potential for service users to legally claim services. Sufficient attention has not been paid to addressing the fundamental rights of users, women and men, particularly their right to due process when seeking access to public services that fundamentally affect their rights, liberties and interests.

2.4 The importance of linking the Rule of Law and Public Administration

The public administration plays a major role as the main interface between the state and the people, and has obligations, as a duty bearer, to uphold the principles and standards of international human rights, and ensure equal access to quality services. Civil registration, for example, is a sine qua non for allowing people to claim their rights and

entitlements. Governments, aid agencies and others concerned with development therefore need to know more about the kind of rule of law challenges and bottlenecks that confront administrators, and their effects. People, in particular those suffering from exclusion and discrimination, need to know what they are entitled to obtain from the public administration. This is particularly the case in fragile, crisis and post-crisis environments where the public administration is often the only authority in place, with a key role as a facilitator in a range of national and international reconciliation initiatives. In many of these crisis situations, the public administration fails to perform this task and often perpetuates discrimination and exclusion. Respect for the rule of law can help a public service agency to improve its performance benchmarks, including for the detection and prevention of corrupt behaviour.

Low levels of respect for the principles of the rule of law in public service delivery can seriously challenge administrative agencies' ability to effectively implement development and poverty reduction strategies and programmes. For example, maladministration in the application of housing, land and property rights perpetuates inequality and discrimination and can prevent generations of poor families from lifting themselves out of poverty. Deficiencies in civil registration, or in the issuance of birth, death, marriage and citizenship certificates, can have a direct impact on people's right to vote, or to other entitlements such as health care and education.^{xvi} Conflicts often erupt because of perceptions of corruption, unfairness and discrimination in the way services and utilities are delivered. Women, youth and members of disadvantaged or vulnerable groups, such as indigenous peoples, minorities and people with disabilities, tend to be particularly affected by lack of respect for rule of law principles in public administration.

xv See the UN-systemic rule of law inventory in the Secretary-General's report, *The rule of law at the national and international levels*, A/63/64, 12 March 2008. See also how rule of law programming in UN peacekeeping and political missions and offices often focus exclusively on criminal law and justice and very little on public administration and service delivery, Richard Zajac Sannerholm et. al., *UN Peace Operations and Rule of Law Assistance in Africa 1989-2010: Data, Patterns and Questions for the Future*, Folke Bernadotte Academy Research Report, 2012.

xvi The 2012 report of the Secretary-General, *Delivering Justice: A Programme of Action to Strengthen the Rule of Law at the National and International levels*, introduced a programme of action for promoting the rule of law that highlights two important areas and their immediate links to respect for rule of law principles in public administration. One is the protection of housing, land and property rights, and the other is the creation and maintenance of civic records. (See Report A/66/749, 16 March 2012, p. 9).

3

Users' Guide for Assessing the Rule of Law in Public Administration



The Users' Guide essentially assesses 'the governance of service delivery'.and complements existing assessment instruments while aiming to foster stronger national and agency ownership of the monitoring process.

The Users' Guide is inspired by high level and strategic documents produced by the United Nations, the World Bank, the Council of Europe and the New Partnership for Africa's Development African Peer Review Mechanism, as well as other international and standard-setting bodies. The Users' Guide is designed to measure the performance and responsiveness of public service providers from a rights-based perspective, as well as the expectations and perceptions of the people using these services. The Users' Guide essentially assesses 'the governance of service delivery'.and complements existing assessment instruments while aiming to foster stronger national and agency ownership of the monitoring process.

Strengthening the rule of law in public administration aims to ensure that public service providers can better identify and adequately act on rule of law challenges, and that citizens' rights and entitlements are respected in their daily interactions with administrative authorities. Strengthening the linkages between the rule of law and the capacities of public services will help to improve the quality of governance, resulting in more positive perceptions, by both women and men, of the responsiveness of public institutions.

3.1. Complementing existing assessment tools with a rights-based approach and a rule of law perspective on public service delivery

Practitioners and researchers have developed various approaches to measuring the rule of law in public administration, albeit from different perspectives. Among the best known are the World Bank's Governance Indicators,^{xvii} the World Justice Project's Rule of Law Index,^{xviii} the Cingranelli-Richards CIRI Human Rights Dataset,^{xix} the Freedom House Freedom in the World Index,^{xx} the World Bank's Doing Business survey,^{xxi} the Judicial Independence Index and the Global Corruption Barometer.^{xxiii}

Country-level diagnostics and assessment tools measure the performance of specific institutions within the justice sector, such as the American Bar Association/Rule Of Law Initiative legal and judicial reform indices, the National Center for State Court's CourTools,^{xxiv} and the National Judicial Institute of Canada's framework for assessing judicial independence,

transparency and accountability.^{xxv} The UN Rule of Law Index^{xxvi} uses 'a basket of indicators and data sources' to measure performance across the criminal justice system.

UNDP, through its Governance Assessment Programme, has made an important contribution to the policy and practice arenas through the development or compilation of specific indicators for measuring governance.^{xxvii} Most of these indicators, however, tend to focus more on institutional performance and less on the outcomes for citizens within a rights-based and rule of law framework.

It is no longer enough for users to receive public services. It is equally if not more important to pay special attention to the quality of services, as well as the quality of communication between agencies and clients. Enhancing the service delivery aspect of public administration from a rule of law perspective accordingly aims to improve levels of accountability and to enhance the credibility of public service providers. The Users' Guide therefore focuses concretely on identifying the gap between the *de jure* offer of services – what people are supposed to be entitled to and under which modalities and conditions – and the *de facto* delivery of services, or what the people receive in reality and how these services are delivered.

The Users' Guide is not intended to be exclusive or applied in isolation. Rather, it may be used to expand or complement comprehensive public administration sector reviews or national strategies with specific rule of law perspectives and dimensions. An important contribution of the Users' Guide to the range of existing assessment instruments is the focus on key qualitative and rights issues for the individual, in a sector that often focuses on the quantity of outputs or the efficient

xvii www.govindicators.org

xviii <http://worldjusticeproject.org/rule-of-law-index>

xix <http://www.humanrightsdata.org/>

xx <http://www.freedomhouse.org/report-types/freedom-world>

xxi <http://www.doingbusiness.org/>

xxii http://www.americanbar.org/advocacy/rule_of_law/publications/assessments/jri.html

xxiii www.transparency.org/research/gcb/overview

xxiv www.courttools.org/

xxv www.nji.ca

xxvi <http://www.un.org/en/ruleoflaw/>

xxvii Governance indicators: A user Guide (2007); User Guide to measuring Local Governance (2009); User Guide to Measuring public administration performance (2009); User Guide to Measuring Corruption (2008); User Guide to Measuring Gender-sensitive basic service delivery (2009); User Guide to Measuring Fragility (2009).

use of government resources. Qualitative and rights-based issues include, for example, whether the administration provides predictable, prompt and transparent decisions and services. Achieving equal access to services for women and ensuring the gender-responsiveness of rule of law assistance initiatives together with ensuring the rights of minority groups in public sector reform are essential ingredients in the design and development of such tools. Another important contribution is the emphasis on the demand-side of public administration, that is, the services that individuals themselves consider essential and the aspects they consider problematic. Furthermore, the assessment effort is nationally and locally owned, and the targeted agencies and their service users lead the process.

3.2. Agency ownership through self-assessment

A central feature of the Users' Guide is the self-assessment methodology. Essentially, participating public service providers and/or government agencies should own and lead the assessment process, with support from external experts where necessary. Undertaking the review as a self-assessment ensures that the participating public service provider has a real stake in the results, can use the findings for advocacy purposes, and act on them to seek out concrete reform interventions in order to address the challenges identified.

In more acute cases, such as fragile states recently emerging from conflict and experiencing significant resource constraints, conducting an assessment may present a number of challenges. Prior to rolling out the Users' Guide, a brief Institutional and Context Analysis (ICA) should ideally be conducted. The ICA helps to diagnose the formal and informal socio-political context in which the agency is operating and how the agency's mandate fits within a political discourse and a set of power relations that can have an impact on how certain population groups are being served. The minimum level of conditions for the ICA methodology to be applied is: (a) a functioning rudimentary legal framework that governs the mandate of the selected agency; (b) an agency that possesses a front office, where the individual client can come to legally claim a service from the state; and (c) the selected agency should already be up and running, and preferably should not be in an early stage of development or have an outdated regulatory framework. Conducting an assessment in the latter case would be premature and would negatively affect the credibility of the results.

Generally, the capacity, time and resources required to undertake the assessment are not always readily available

within administrative agencies, in particular at the sub-national and local levels. The scope of facilitation from external experts will depend on the purpose and the extent of the assessment (of one or several public service providers). External experts can be individual contractors or consultants, but external facilitation can also be in the form of institutional cooperation between the administrative agency and a non-governmental organisation with research and analysis capacity, or with academic bodies or institutes of public administration and governance. Preference should be given to national experts and facilitators over international consultants, considering the emphasis on reinforcing national capacities and ensuring that knowledge management is enhanced among national experts for sustainability purposes.

Undertaking the review as a self-assessment ensures that the participating public service provider has a real stake in the results, can use the findings for advocacy purposes, and act on them to seek out concrete reform interventions in order to address the challenges identified.

An Advisory Committee may usually be set up for the duration of the assessment to ensure the smooth running of the implementation process, by strategically managing partnerships and cooperation between the external facilitator(s)/expert(s) and the relevant agencies, as well as providing substantive advice and support to both in addressing potential obstacles and challenges. This non-decision-making body is essential to participation and accountability, and should ideally be made up of the selected agency, the external expert(s), municipal representatives and relevant NGOs. The Advisory Committee may also include representatives from independent institutions, such as the Ombudsman Office or the Human Rights Commission. Depending on the local context, and after conducting a context analysis, agreement should be reached on the make-up of the Advisory Committee, prior to the start of the assessment activities.

xxviii The pilot project in Quezon City, Manila in the Philippines used the services of an academic institution (the National College of Public Administration and Governance (NCPAG) in the University of the Philippines). The pilot project in the City of Lviv, Ukraine, used the services of a social scientist and in the City of Feodosiya, the project benefited from an expert consultant, who is a former UNDP programme manager. In Freetown, Sierra Leone, the pilot was facilitated by a team of researchers from the Institute of Public Administration and Management (IPAM) at the University of Sierra Leone.

4

Conceptual framework and practical guidance

4.1. Conceptual framework: six core rule of law principles

Assessing respect for the six fundamental rule of law principles presented in this Guidance Note can be undertaken at both the

national and the sub-national levels, involving local governance authorities at the district, municipal or city levels.

FIGURE 1 THE SIX RULE OF LAW PRINCIPLES

Legality	This principle requires that public administrative agencies abide by the law, and that the content of all their decisions have a basis in law. This includes the equal treatment of all citizens. In certain settings, broad a spectrum of laws can exist, and enforcing these laws on a consistent basis can present difficulties.
Accessibility	This principle means that everyone should have access to public administration and places a duty on public authorities to accept and deal with citizens' requests and questions properly. The principle also requires practical access for citizens, such as sufficient opening hours or easy means of communication and easy access for people with disabilities, for example, an agency must use languages that can be understood by the general public and operate in a manner that is culturally sensitive to the needs of specific groups in society.
Right to be heard	The right to be heard means that public authorities must hear an individual before taking a decision affecting his or her rights and interests. It also means that a person should have an opportunity to submit facts, arguments or evidence before a decision is taken. The right to be heard means that public authorities must inform the persons concerned of their decision, and implies a duty to take a decision within a reasonable time.
Transparency	The principle of transparency ensures that the work of public authorities and civil servants is conducted openly. Public authorities have a duty to provide information about their work and to ensure access to laws, acts and administrative documents on request. The right to information should only be restricted by the limitations necessary in a democratic society for the protection of legitimate public interests or privacy.
Right to appeal	The right of appeal allows an individual to seek redress against administrative decisions through internal review processes, judicial review by ordinary courts, or specialist administrative courts. The right to appeal is also dependent on substantive aspects, such as a duty on administrative agencies to communicate their decisions to the persons concerned, and to explain the reasons for a decision and give an indication of where and how to appeal.
Accountability	The principle of accountability ensures that public officials and administrative agencies are held to account for wrongful actions and improving the way an agency conducts its work. The principle further ensures that public officials are held responsible as well as liable for their actions. Mechanisms such as disciplinary procedures, internal reviews, internal audits, ethics boards and external supervision are often needed in order to ensure accountability.

4.2. Integrating rule of law and public administration initiatives at the country level

Many opportunities exist for UNDP country offices to work with national and sub-national governments, academic institutions, think tanks and civil society organisations to accelerate progress on respecting rule of law principles in public service delivery. These opportunities leverage the core competencies of UNDP in the areas of public administration and local governance, human rights and access to justice, building where possible on activities in which country offices are already engaged (see Box 5 for an overview of the pilot assessment in Sierra Leone).

UNDP country offices can assist national counterparts at three stages: the initial stage, the intermediate stage and the impact stage.

a) Initial stage: support the assessment of rule of law principles in service delivery

When negotiating with national counterparts about which sectors to select as priority targets for the measuring exercise, UNDP country offices can take guidance from the areas of intervention included in the United Nations Development Assistance Framework (UNDAF), the Country Programme Document (CPD), or existing programmes and projects. Another possible source of information are the MDG Acceleration Framework (MAF) reports, which identify key MDG sectors in which progress is lagging behind and corrective action is needed. While the process should remain demand driven, other sources of guidance could be national Human Development Reports, opinion polls, surveys and indicators such as the Mo Ibrahim Index or the Transparency International Index. Once potential areas for assessment identified in agreement with national counterparts, UNDP country offices have three options for channelling their support:

1. *Use existing development projects* – in public administration, local governance, access to justice or any other area in which UNDP is engaged, and adding rule of law assessments in order to improve the quality of services in particular areas.
2. *Design specific new initiatives in areas identified by national counterparts.* For example, poverty reduction efforts may be hampered by the lack of legal identity of certain groups in society, which obstructs their access to services and benefits. Also, a Rule of Law and Public Administration

(ROLPA) project could be initiated with a particular focus on civil registry offices, nationwide or in key geographical areas where civil registry capacity is a concern.

3. Include selected ROLPA initiatives in other development interventions such as environmental projects, initiatives on extractive industries, poverty reduction, HIV-AIDS or as part of the MAF rollout at the country level.

Whatever the solution adopted, given the need to ensure that the exercise is nationally owned and driven, the initial

BOX 2 DEFINING RULE OF LAW PRINCIPLES

The six rule of law principles in the Users' Guide and this Guidance Note emanate from international and regional treaty and case law on human rights, for instance, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the European Convention on Human Rights, the African Charter on Human and Peoples' Rights and the Inter-American Convention on Human Rights, while also taking into account common legal principles in the major legal traditions such as common law and civil law.

The Users' Guide and this Guidance Note have taken specific note of the 2004 UN definition of the rule of law, as a principle of governance underpinned by accountability, transparency and openness, and legal certainty. The 2004 definition was reaffirmed in the 2012 Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels. The six rule of law principles are also aligned with global initiatives, such as the New Deal, specifically in relation to the peacebuilding and statebuilding goals on justice, security and revenue raising services.

The Users' Guide and this Guidance Note also take stock of regional commitments and initiatives on the rule of law in public administration. In the 1990 Copenhagen and 1991 Moscow Documents of the Organization for Security and Cooperation in Europe (OSCE) the participating States committed themselves to ensuring the rule of law in public administration, noting specifically accountability and the importance of legal redress against administrative decisions. The Council of Europe has identified a set of rule of law principles – proportionality, reasonable time limits and transparency – as essential principles of good administration. A similar enumeration of principles is found in the European Commission's Code of Good Administrative Behavior and in the Charter of Fundamental Rights of the European Union. The Windhoek Declaration, and accompanying Charter for Public Service in Africa, also details specific requirements such as legality, transparency and accessibility.

The six rule of law principles in the Users' Guide and this Guidance Note also draw on other initiatives in the field of governance, such as the New Partnership for African Development African Peer Review Mechanism, the Mo Ibrahim Index of African Governance, and specific thematic initiatives such as the Pinheiro Principles on housing and property restitution, the European Charter of Local Self-governance, and the UN International Code of Conduct for Public Servants.

stage will involve an important element of training of national counterparts and civil society in the application of the Users' Guide. This initial level of training is at the target agency or sector level, but it could also be at the level of local government, for example, if a municipal government decided to conduct a general assessment of how its agencies at the municipal level respect the principles of the rule of law in public service delivery.

BOX 3 USING THE MDG ACCELERATION FRAMEWORK (MAF) TO PROMOTE IMPLEMENTATION OF THE RULE OF LAW IN PUBLIC ADMINISTRATION

The MDG Acceleration Framework proclaims that inadequacies in service delivery may result from the combined effect of supply-side and demand-side dynamics, i.e. the failure of service-providing institutions to deliver adequate services, combined with the failure of the people entitled to services to act – individually or collectively – to demand their rights.

- **Service delivery (supply):** With respect to the supply side, bottlenecks are likely to occur in areas such as the availability and development of human resources, supplies and logistics, a lack of decentralized capacity, technical and organizational quality, procurement systems, value chain analysis, sector management and institutions, comprehensive monitoring and evaluation systems.
- **Service use (demand):** Bottlenecks in the use of goods and services on the ground from the demand side are likely to occur in: the empowerment of users to use the services when available, the information and education available to explain the service, advocacy, intervention promotion, transportation, the affordability of services, and gender and cultural barriers. Women may face unique difficulties in accessing services. Culture, human rights and gender are critical pillars in addressing demand-side issues.

For example, in **Costa Rica** the MAF aims to improve employability through training services and job placements, as well as increasing the employment and livelihood opportunities available to people with disabilities by providing more inclusive enterprises and improving access to entrepreneurship. The MAF process highlighted various bottlenecks including limited accessibility of training services for people with disabilities, particularly in remote regions, lack of human resources to provide education support services to students with disabilities (from pre-school to higher and technical education) as well as weaknesses in the training of teachers and staff who work in vocational cycles, resulting in limited provision of literacy skills to adults with disabilities and technical and employment training not being adapted to the needs of the local, regional and national labour markets. A Rule of Law assessment could deepen understanding of the problems, leading to better training of staff, availability of redress mechanisms, and improved information and communication to ensure both staff and those directly affected are well informed about the services to be provided.

b) The intermediate stage: dialogue and awareness-raising on the results of the surveys

Once the results of the self-assessment are known, UNDP country offices can assist their national and subnational counterparts in disseminating the findings, facilitating discussion on the way forward within those local government and/or public administration agencies concerned, promoting a dialogue with policymakers at the national and sub-national levels and facilitating further involvement of the clients (the people, the private sector) in suggesting ways forward that can resolve the bottlenecks identified.

c) The impact stage: policy development to address bottlenecks

The purpose of conducting evidence-based research to measure the application of rule of law principles in public administration is to get a better understanding of the governance, institutional and capacity bottlenecks that hamper responsive delivery of a particular public service. These bottlenecks (see box 3) can prevent women and men from gaining access to their rights and benefiting from development, which can lead to decreased levels of confidence and trust among the users of services (which can include the private sector) in the ability or willingness of governments to deliver on their promises.

4.3. Support for scaling up of the initiative at national and regional levels

Support at the country office level can start at an individual agency or within a specific sector. After the initial pilot phase, however, the ambition is to ensure that national efforts are part of a process to ensure broader coverage, multiplier effects on development, policy impact and the sustainability of the initiative. This process not only involves the expansion of initial assessments on a larger scale – at the sectoral level, at the sub-regional level (local government) and the national level – but also the strengthening of national capacities. It is important to adopt a vision for scaling-up from the outset, as this will ensure the sustainability and adaptability of results. This could entail:

- Institutional and contextual analysis to consider, at the project design stage, possible opportunities and strategies for up-scaling, including training on the human rights-based approach and analysis of the rule of law principles.
- Systematic application of the ROLPA tools and methodologies in other sectors or local authorities so that

these become institutionalised and are used to enhance development impact.

- Strengthening joint support for the ROLPA initiative from different stakeholders – the Local Government Associations, the ministry in charge of the modernisation, improvement or reform of public administration, national and sub-national training institutions, and think tanks and academic institutions working in the areas of public administration, the rule of law and human rights.
- Ensuring that sufficient funding sources are available from the start. This is not always feasible, and in many cases UNDP country offices and national counterparts will have to be flexible in their resource mobilisation strategy, and seize the momentum to generate additional funding from national or local budgets, development partners and possibly the private sector, which has everything to gain from better administration.

It is important to adopt a vision for scaling-up from the outset, as this will ensure the sustainability and adaptability of results.

- Addressing the capacity/knowledge gaps in a specific national or sub-national context to move beyond the pilot phase. This could include specific training programmes for local government officials or public administrators, possibly through the national and sub-national training institutions and universities.
- Supporting advocacy at both the national and the sub-national levels, using various networks and fora including electronic networks and annual forums of the Associations of Local Government, and regular events at Schools of Public Administration.

5

Lessons learned from piloting the Users' Guide



Long distances to public services is a major challenge throughout Sierra Leone © UN Photo by Eric Kanalstein

The process of piloting the Users' Guide in four cities in three countries generated a series of lessons, some specific to their context (e.g. the role of civil society organisations in countries in transition from a one-party state to a multi-party democracy) and others of a more general nature. This section captures those lessons which are common to the different pilots and can provide useful guidance when assessing rule of law principles in public administration.

5.1. Lessons learned on the implementation of the Users' Guide

A self-assessment needs to be seen as both a learning exercise and an instrument for accountability, but not as an evaluation.

Staff, management and users of the public service agency should perceive the assessment process as a learning exercise that leads to improved services, not as an exercise that detects wrongdoers or 'guilty' managers or staff. In order to achieve the best use of the data and results, it is essential that the purpose of the self-assessment is clearly communicated and well understood by all the actors, in particular staff participating in the process. Public servants face numerous challenges in their everyday work, and the self-assessment is intended to enhance their professional environment and competencies.

A good understanding is needed of the institutional and political context. The self-assessment process has to be clearly situated within ongoing political processes, demand and expectations at the local, regional and national governance levels. This may have implications for how to organise and engage with different actors in the exercise. For example, the Users' Guide suggests the inclusion of non-governmental organizations in the assessment exercise, possibly as members of the advisory board, to ensure public monitoring of the implementation of the recommendations developed on the basis of the research results. Obviously, much depends on the capacity of local NGOs. For example, in Ukraine, civil society is still weak and many NGOs do not yet have sufficient experience and skills to advocate for respect for rule of law in the work of public authorities. Yet the fact of being associated with a ROLPA self-assessment exercise in itself can be a good learning exercise for NGOs in a still emerging civil society sector. Application of UNDP's Institutional and Context Analysis (ICA) – or at least its first two steps – is a good way to get a better understanding of the political economy of the sector under review, as part of the inception phase.

Selection of the external expert(s) is an important factor in the success of the project. Although the principle is that

the self-assessment is undertaken by the service delivery entity, most such entities would seek support from external consultants in order to undertake the exercise. Time constraints or capacity constraints may be a factor, or it may simply be a management decision that external involvement would provide a more objective and thus legitimate outcome. There are various possibilities: an agency could recruit an independent consultant (as occurred in Feodosiya, Crimea), an academic institution (the National College of Public Administration and Governance, University of the Philippines or the Institute for Public Administration and Management, University of Sierra Leone) or a team of young graduate researchers (as occurred in Lviv, Western Ukraine). It is important that those selected to conduct the research have a professional understanding of the strategic goals and the substance of the state administration system, as well as its legal environment and developmental issues. It is important, however, that the agency under study does not have direct administrative or other relations with the selected researchers.

The Users' Guide must be adapted to the local language and culture. The Users' Guide contains a series of sample questionnaires that need to be translated into the local language, or sometimes into different local languages, in order to reach indigenous groups. Semantic adaptation of the tool may also be needed. A common understanding of the key concepts and terminology – starting by what is understood by the rule of law – is needed by all the parties involved in the project, including the external experts, researchers, interviewers and interviewees. For example, in Ukraine, the rule of law was translated in some expert circles – particularly from the legal sector – as 'strict adherence to the law'. Semantic or grammatical adaptation should therefore aim for proper translation without distorting the concepts.

The sample questionnaires in the Users' Guide must be adjusted to the purpose and scope of the self-assessment.

Such adaptation can be achieved through *profile adaptation*, which is the harmonisation of the questionnaires and their different elements with the specifics of the activities of the institution being assessed. Profile adaptation can also involve adding to, or reducing the number of questions in the questionnaires for the formal mapping, agency staff survey and user survey. The profile adaptation can be carried out by means of expert analysis of the questionnaires and could also utilise focus group discussions and piloting of the adapted questionnaires with potential respondents, both staff and users, ensuring equal representation of women and men.

Ensure from the start that there will be a follow-up process of the results of the assessment. To avoid waning attention upon completion of the self-assessment, it is necessary to plan for the possibility of institutionalising the assessment methodology in existing performance monitoring and evaluation systems for public administration at the national and sub-national levels. As a quality assurance mechanism, national authorities could even envisage institutionalising management responses to self-assessments conducted by local authorities and identifying an action plan with concrete measures to address the bottlenecks identified through the self-assessment exercise.

BOX 4 MEASURING THE RULE OF LAW IN PUBLIC ADMINISTRATION IN QUEZON CITY

The rule of law in the Philippines is not just defined by the presence (or absence) of laws, but also by the extent to which these laws are prepared or designed for operationalisation. Numerous laws and rules may define the conduct of public administration, but the sheer volume of law does not necessarily translate into effective public administration. On the contrary, some laws pose difficulties in providing stability or continuity in the interpretation of the law because there is a low level of consistency between related or similar laws.

Quezon City faces a number of challenges when it comes to informal settlements, as approximately 41 per cent of its population are urban poor. Until recently, there had been indications of double or multiple claimants of the same property, which has led to conflict and problems with land and property claims. In addition, government properties in the city serve as a convenient space for homeless people and communities to construct shanties and informal dwellings. Privately owned properties that lie idle, as well as substantial tracts of publicly owned land are occupied by urban poor and informal settlers.

Despite the broad mandate of the Urban Poor Affairs Office (UPAO) to address these developments, it is constrained by the overlapping laws and codes at the national, city council and district levels as well as the inadequate knowledge of its staff on how to interpret the specific legislation. In the case of Quezon City, UPAO – despite having a small legal support service and personnel with relatively high levels of knowledge of the relevant laws – experienced difficulties not only in interpreting the laws in complex contexts, but also in applying them in practice. The results of this first pilot highlighted the need for clear and categorical guidelines and procedures to guide agency personnel in the execution of policies and laws. These procedures and guidelines would enable the UPAO legal support service to more effectively carry out its functions and allow frontline staff to benefit from targeted capacity building measures in relation to understanding and interpreting the laws and rules, regardless of whether they are permanent or temporary employees.

5.2. Lessons learned on the findings and results of the Users' Guide

The self-assessment provides an information map of the legal and institutional environment in which the agency operates.

Agency managers and staff often think they have a good understanding of the laws and regulations that apply to their area of work, and of the related functions of their ministries or agencies. The self-assessment tool provides clarity to staff and management on the institutional and legislative environment in which the agency operates. For example, in Sierra Leone, as in other countries, there is a multitude of players in the field of civil registration,^{xxix} almost all of which are state-run public institutions, often operating with limited coordination between each one. Each of these state-controlled agencies operates with a large degree of autonomy and has its own legislation, independent of the other agencies. Problems of coordination also arise from the fact that the responsible officials at the national level may be located in several ministries, and there is therefore often little or no information sharing.

Differences between the perceptions of agency staff and what is perceived by the users can highlight important bottlenecks to governance improvements. Substantive deviations between what staff think and what users perceive can point to a variety of underlying governance and institutional bottlenecks. For example, in Sierra Leone, 88.3 per cent of the employees of the National Registration Service who were interviewed indicated that they had instructions on how to advise a person who wants to appeal a decision of the Agency. Only 47 per cent of the service users, however, believed that the NRS provided effective advice on how to appeal. The National Registration Act is silent on this issue. A decision by the NRS can be challenged through the Office of the Ombudsman, the Human Rights Commission or the High Court of Sierra Leone, but most ordinary people are not aware of these processes and thus feel powerless if their rights have been ignored or violated.

Even if only applied to a few offices within a local government sector, the ROLPA self-assessment tool can identify wider systemic problems that apply to other agencies or municipalities. Even though some surveys only take place in a limited number of offices or agencies, problems identified in the implementation of the principles of the rule of law in

xxix The Births and Deaths Department, the Administrator and Registrar-General's Department, the National Registration Secretariat, the Immigration Department, the National Social Security and Insurance Trust, the National Revenue Authority, Statistics Sierra Leone and the National Electoral Commission

one department or agency might also be occurring in other departments. For example, a problem in the implementation of the 'right to be heard' or a right to appeal revealed through a self-assessment in one department may identify a weakness in the municipal department responsible for handling communications with people in the entire municipality. It is therefore important when presenting the findings of any assessment to pay attention to cross-cutting problems that are or may be of a more systemic nature.

ROLPA surveys can identify policy decisions needed to delegate authority or further decentralise services. For example, in Freetown, where the National Registration Secretariat (NRS) is currently based, a high proportion of both employees and users are satisfied with the services provided by the NRS in terms of accessibility. With no district offices or vehicles to undertake mobile registration, however, there is no guarantee of universal access to the service. Users therefore identified an urgent need to decentralise the activities of the NRS to the entire country, as distance to the point of service delivery – especially for people living in remote border areas – creates an additional cost of obtaining an identity card. At the time of the finalization of the pilot project, the services of the NRS were not among the functions devolved to local councils. A problem of accessibility may thus find its solution in an adjustment of the decentralisation policy and the mandate of local councils.

Laws alone are not sufficient: both guidance on how to implement them and advocacy are needed. In all the pilots, there appeared to be a significant gap between policymakers and the agency staff who enforce agencies' mandates on the understanding of the laws and how they are applied in practice. Most employees understand and have access to the general laws and regulations, but many are of the opinion that the rules do not provide sufficient guidance on the different situations they may face; they must therefore rely on internal or administrative rules which do not have the force of law to fill in the gaps. For example, in Quezon City, Urban Poor Affairs

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BOX 5 ASSESSING RESPECT FOR THE RULE OF LAW IN THE NATIONAL REGISTRATION SECRETARIAT, SIERRA LEONE

In the case of Sierra Leone, the pilot study involved assessing rule of law principles in the work of the National Registration Secretariat (NRS), a civil registry supervised by the Ministry of Internal Affairs. The NRS is responsible for developing a national identity register in Sierra Leone and issuing national identity cards to all registered persons. It operates under the legal framework of the National Registration Act, 2008, which is rudimentary in its scope. The civil registration landscape in Sierra Leone is complex and uncoordinated, as a number of civil registration functions are discharged by multiple institutions each with its own legislation independent of the other and supervised by different ministries. These institutions tend to be weak, under-resourced and highly centralised. In addition, the laws on civil registration in Sierra Leone are predominantly national laws. Efforts to establish regulatory mechanisms at the local level have been hampered by an uncertain process of decentralisation. The 2008 Act provides for the Minister to make regulations for the proper implementation of the register, but the NRS relies on internal administrative rules that do not have the force of law and which service users are often unaware of.

The main findings identified a number of rule of law-related gaps in the work of the NRS. Although the principle of accountability is regulated by law, its application is questionable and problematic as NRS employees are perceived to be unwilling to give out information that they believe has the potential to damage the reputation of the institution. Consequently, a substantial proportion of users do not think that the principle of accountability is applied in practice by the NRS. Updates for staff on new laws that directly or indirectly affect their work are carried out on an ad-hoc basis by the staff themselves, but only if they are so inclined. Because NRS staff does not receive training on new legislation, their performance remains poor. Unsurprisingly, a recommendation of the assessment was that the NRS must prioritise continuing professional development among its personnel if it is to achieve a high standard of performance and competence, as well as the confidence of service users.

The perception of corruption within the NRS is illustrative of the widespread incidence of corrupt practices in the public service in Sierra Leone. While there are a number of systemic problems that could create opportunities for public servants to be corrupt, many analysts see the poor pay and conditions of public service as a major determining factor.

The principle of accessibility was heavily criticised in the assessment, but the NRS is currently powerless to make any improvements in this area. A Freedom of Information bill was put before parliament in 2010 but was only passed into law in late 2013. The role of CSOs was paramount in continuing to bring pressure to bear on the parliament (elected November 2012) to address this deficit. Lastly, there was an emphasis on minimizing the fragmentation and poor coordination in the sector through new legislation to establish an autonomous Civil Registration Authority that would merge the functions of the NRS and related civil registration agencies. In September 2012, a separate UNDP Scoping Mission recommended a harmonized or integrated approach to civil registration in Sierra Leone. Although this is awaiting implementation, a road map has been identified.

BOX 6 MEASURING THE RULE OF LAW IN THE HOUSING AND COMMUNITY AFFAIRS OFFICE OF FEODOSIYA MUNICIPALITY IN CRIMEA

The Housing and Utilities Department of Feodosiya municipal executive committee provides citizens with services through five public utilities companies. In the face of serious depreciation of key infrastructural assets, the city authorities continually seek to maintain an adequate level of service provision commensurate with existing standards. Nonetheless, regular technological failures and increasing rents and prices cause public frustration. This is to some extent symptomatic of the ingrained corruption in public institutions, and their resulting inability to react adequately and effectively to political, economic and social challenges. This credibility gap between the community and the state as service provider is encapsulated in the inadequate legal regulation of public administration, a low level of property rights protection and a transparency deficit on the part of the state authorities.

The pilot assessment in Feodosiya revealed a number of challenges in the implementation of certain rule of law principles. Although there are provisions made in national law, there is a lack of regulations at the municipal level on how the national legislation applies to the delivery of public services. In essence, there is no incentive for local authorities to transpose national laws into regulatory mechanisms at the local level in the interests of their citizens.

One recommendation arising from the assessment is to develop a course to be delivered by a training centre under the Crimean Ministry of Regional Development, Housing and Communal Services to improve understanding of the rule of law in service delivery by representatives of the communities and among departmental employees. The need for capacity building is also relevant in addressing challenges at the micro level in the department, where evidence from the pilot assessment showed a profound lack of knowledge among frontline staff of the application of the principles of the rule of law to their area of work. Reviewing the structure and approach of the department would also help resolve the problem of staff having insufficient time and resources to deal with citizens' appeals and claims.

For citizens, greater transparency and access to information through the publication of a series of articles on the content of reforms would help address the low level of awareness among citizens of the structure of the department, the responsibilities of its officials, its procedures and the standards that apply to its work. Setting up a legal support group within the Department to develop a local legislative base and train the employees in the laws governing the housing sector, would allow for a quicker and more effective service to citizens and also act as a consultative resource for the Department's employees. Yet, few of these recommendations can be put into practice without first establishing better levels of collaboration between the municipalities and the Ministry of Regional Development and Housing and Communal Services of Crimea. The results of the UNDP/FBA supported assessment are a first step towards achieving that, bolstered by a plan for increased information sharing on lessons learned from the pilot assessment and how to integrate rule of law principles into basic service delivery in the housing and utilities sector in Crimea.

Office personnel and service users recognised that the laws include the principles of *legality* and *accessibility*. However, staff expressed discomfort about the lack or inadequacy of clear guidelines and procedures to help them implement the law effectively. It is therefore important to address the need for clear guidelines and procedures that can guide agency personnel in the execution of the relevant policies and laws. An essential component from the users' perspective is the need to be better informed about the substance of the laws and rules. For example, in Sierra Leone, on the question of which agency is responsible for issuing identity cards, only 56% of the service users knew it was the NRS. This highlights the need for more awareness-raising among the population.

Analysis of the accessibility principle can provide useful information on the need for awareness-raising and the kind of communication people prefer.

In Quezon City, users found adequate levels of accessibility, especially when dealing with the agency personnel. The service users are free to communicate with the agency by various means, but the preferred route is through interpersonal communication in the language most convenient to the clients. Part of accessibility has to do with the ability of agencies to communicate with service users. In several cases, clients tended to prefer personal contact rather than telephone or other technology-based communications. The preference for face-to-face communications could be cultural, but it can also highlight deeper problems with today's overemphasis on electronic communication, and the related problems of dealing with a faceless administration. Conversely, in Lviv, the use of the media to convey information to citizens was a preferred option of the city council, particularly with regard to the start and end of the assessment process and the proposed approach to implementing the final policy recommendations. This effectively reinforced the concepts of openness and transparency, and contributed to greater levels of citizen participation in bringing about meaningful change in the agency's work.

Legality includes consistency in law and the enforceability of the law.

The principle of legality includes two related issues: consistency and *enforceability*. Consistency concerns coherence between different but related laws, and in the implementation of laws and rules. *Enforceability* refers to the articulation of laws, allowing practitioners and actors to put the law into effect. This includes the substance of the law, which enables it to be fully obligatory and compulsory. In practice, greater consistency and enforceability ensures a more effective and results-oriented environment for the specific agency and its

staff, in the knowledge that cases will not get clogged up or fall by the wayside in the administrative process.

The gaps between *de jure* and *de facto* application of the law tend to be more pronounced when it comes to problems of contestation and the right to appeal. The principle of the right to be heard is a critical ingredient in ensuring that the services offered to the public are not just within the law but delivered in the most efficient and non-discriminatory manner. In Sierra Leone the majority of employees and service users indicated that the right to be heard is fairly represented in the laws and normative rules that regulate the day to day operations of the NRS. The right to appeal, however, is often more problematic as there are no proper channels for complaints by the users of the services provided by the NRS. The legal mapping in Sierra Leone revealed that no legislation stipulates the procedure for appealing against a decision of the NRS. Users can appeal through the courts, but this rarely happens – probably due to the costs and delays inherent in the justice system in Sierra Leone. The Human Rights Commission and the Office of the Ombudsman also provide avenues for dissatisfied or aggrieved applicants, but their decisions are often not respected or even largely ignored, and many people are not aware of this option. Cases of bribery or other forms of corruption fall under the Anti-corruption Act, about which people feel more intimidated. Similar results were obtained in Quezon City, where staff from the Urban Poor Affairs Office saw adherence to the principles of the right to be heard and the right to appeal but service users observed that although the law affirms the principle of the right to be heard, the right to appeal is only exercised to a limited extent and existing laws are unclear about the appeal procedure.

Regular training of all staff is important, including front-line staff and contractual staff. In Quezon City, the permanent staff of the agency tend to have a fair or even good understanding of the laws and procedures, including the right to appeal. Fixed term employees or temporary staff appeared not to have an equal understanding of the regulations. Hence, this points to insufficient capacity building and training on the rules and procedures among contract employees. The resources and budgets for capacity building are allocated only for permanent staff, which explains why contract employees face capacity challenges. Like Sierra Leone, a post-conflict country, there is no lack of legislation, but what is evidently lacking is the proper and effective implementation of these laws. This highlights two bottlenecks: the lack of detailed regulations to implement the laws and the inadequate training of staff.

In practice, greater consistency and enforceability ensures a more effective and results-oriented environment for the specific agency and its staff, in the knowledge that cases will not get clogged up or fall by the wayside in the administrative process.

Access to information can be challenging, in particular where there is not yet a right to information law.

The transparency principle requires that those who seek information from government agencies must be given access to such information, as long as the information is not statutorily classified. There are circumstances in which information and participation can be denied under the law, but in general agencies are required to seek an appropriate balance between citizens' interests and an agency's need for secrecy. In countries in transition such as Sierra Leone, where the legal framework is still under construction, there is no freedom of information law, even though transparency is now generally accepted as a basic element of good governance. In the absence of a law on access to information, public agencies apply a wide degree of discretion over when and how to disclose information to the public.

6

Summary of actions and time frame for self-assessment

Table 1 provides an overview of the different steps to be taken in undertaking a self-assessment of the level of respect for the rule of law in public administration, as well as an indicative

time frame. The assessment is cost-efficient. The main costs are for the external expert team conducting the surveys and collating the data for the presentation of the final results.

TABLE 1 SELF-ASSESSMENT TIMEFRAME AND ACTIONS

Step	Objective	Action	Time
Inception Institutional and Context Analysis (ICA) ^{xxx} and Risk Assessment ^{xxxii}	Identify participating agencies, get an understanding of the political economy of the sector by means of an ICA exercise, establish ownership and lead processes and agree on scope and objectives of the assessment.	Prepare practical and logistical arrangements (procurement if necessary). Establish an Advisory Committee and identify an external expert.	2-3 weeks
Formal mapping	Understand the legal and institutional framework applicable to the participating agency.	Conduct the formal mapping in close cooperation with external expert and legal experts at the participating agency.	2-4 weeks
Agency staff survey	Map perceptions of civil servants at the participating agency on rule of law strengths and challenges ^{xxxii}	Administer the <i>agency survey</i> including a pre-test survey with adapted questions to suit the context (if necessary).	2-3 weeks
User survey	Map perceptions of users of the participating agency. ^{xxxiii}	Administer the <i>user survey</i> including a pre-test survey with adapted questions to suit the context (if necessary). Employ profiling for selection to ensure the survey targets actual users of the agency's service.	4-6 weeks
Data analysis, triangulation and report writing	Identify and categorise main findings	Prepare <i>preliminary</i> report and hold a stakeholder seminar.	4-6 weeks
Presentation and dissemination of results	Disseminate the findings to target groups and broad audience, including national/local authorities, NGOs, international organisations etc. Prior to this activity, ensure that a validation process takes place with assessment stakeholders to guarantee credibility of results	Publish and disseminate <i>final report</i> and organise follow-up events with key stakeholders	2 weeks
Follow up actions (training, policy and administrative reforms, etc.)	Address the capacity gaps and institutional bottlenecks that have been identified in the self-assessment process	Political and administrative action at the municipal level, lobbying and advocacy at higher levels for reforms that improve the mandate and or competency level of local government.	

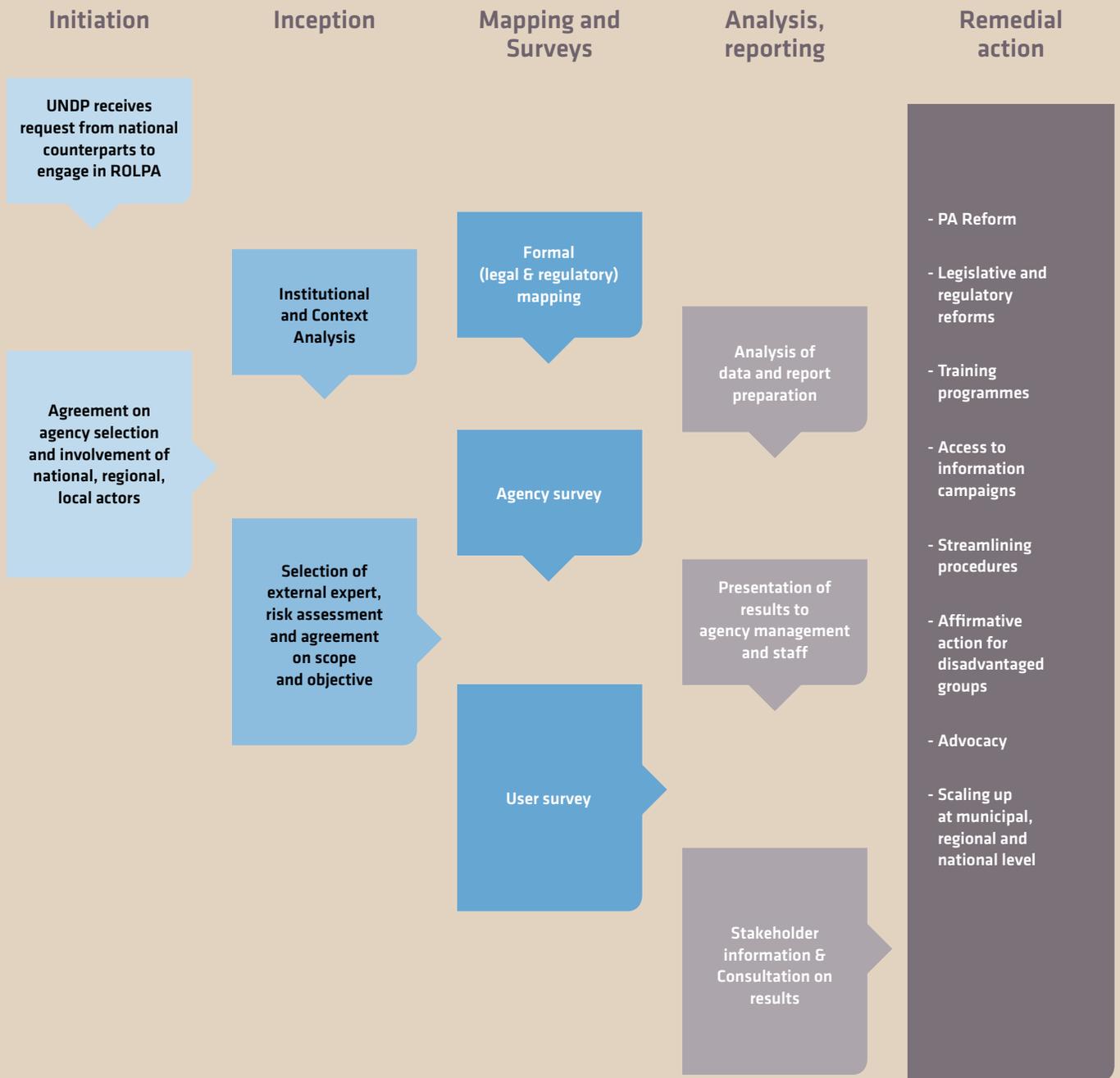
xxx Use should be made of UNDP's Institutional and Context Analysis, see Guidance Note on Institutional and Context Analysis.

xxxi Several tools are available: UNOPS Strategic Risk Management Planning Framework (2010), AusAid Risk Management Framework and Policy (2012) as well as the OECD/INCAF report, Managing Risks in Fragile and Transitional Contexts (2011)

xxxii For example, in Sierra Leone, 77 staff members of the National Registration Service were surveyed and the interviews took 45-60 minutes each. Some organisations will interview only a sample of the employees while others will try to engage all employees of the agency. In Lviv the total number of respondents in the housing and utilities department was 27; 73 people were interviewed in Feodosiya.

xxxiii In Sierra Leone, 985 interviews were conducted involving a diverse range of users who had completed the process of applying for a civil registration identity card. In Lviv, 400 active interlocutors of the Housing and Utilities department were interviewed.

FIGURE 2 SELF-ASSESSMENT OF RULE OF LAW IN PUBLIC ADMINISTRATION – FLOWCHART



7

Follow up and next steps



Improving access to ID cards is crucial to enhancing voter registration in Sierra Leone © UN Photo, UNIPSIL

Assessing the quality of public administration by measuring its respect for the principles of the rule of law is not a standalone exercise. The end result cannot be a report on how civil servants and service users perceive the performance of the office. The ultimate aim of the self-assessment is to ensure that action is initiated at the appropriate level to address the weaknesses detected and to improve the performance of the public sector. The self-assessment exercise is also to be seen as a means to assess the 'readiness for change' of both the office and the users.

For example, the self-assessment can reveal whether civil servants are sufficiently aware of the legislation and regulatory procedures they need to apply. It may reveal that they are insufficiently trained in human rights-based approaches, which could explain any complaints lodged of perceived discrimination against members of certain user groups. The assessment may also reveal that people are not sufficiently informed about the mandate of the office, or of their rights and entitlements. If there is no freedom of information act, follow up action could involve lobbying for such legislation in the national assembly. Where such legislation exists, the outcome of the self-assessment might indicate the need to ensure that it is enforced or properly implemented.

Follow up action is important and its feasibility should be assessed at the outset of the exercise. A self-assessment should not be undertaken if there is no political commitment to take the necessary action to remedy the gaps and weaknesses that the self-assessment identifies. This action could include:

- ⇒ Developing an action plan to address the different issues revealed by the self-assessment exercise, with a clear indication of responsibilities and timelines. Such a plan could be part of the workplan of the service or office under review – or it could become part of the political programme of the local government in power, or a combination of both. It could also lead to an action plan developed by the Association of Local Government, leading to a further upscaling of the results of the self-assessment at the regional or national level, or to the consolidation of the methodology as a complement to existing evaluation / assessment approaches within the service or office under review
- ⇒ Monitoring trends and further developments to ensure that the results of the assessment lead to improvements.

- ⇒ Affirmative action to overcome possible past discrimination against certain groups.

- ⇒ Training programmes delivered by the Institute of Public Administration or the Association of Local Government to familiarise civil servants with the Users' Guide and a human rights-based approach to service delivery, and to enhance their understanding of the laws and regulations they are to implement.

- ⇒ Lobbying the government and lawmakers at the national, regional and local levels for policy reform and related legislation to address the gaps revealed by the assessment, such as further decentralisation or delegation of mandates to local government to bring service delivery closer to the population. This could also entail supporting local government associations to develop their advocacy strategies for lobbying central government for change, as was the case, for example, with the Association of Cities in Ukraine.

- ⇒ Initiating subordinate regulations at the level of the local council to fill possible gaps caused by a lack of the regulations or procedures required to implement national laws at the local level. For example, where there is a freedom of information act there may be a need to issue additional municipal directives to ensure that people know how to benefit from its provisions.

- ⇒ Initiating training on ethics for local officers where the assessment reveals concerns over integrity.

- ⇒ Reviewing the budget and developing a procurement plan to modernise the service in cases where the gaps identified in the self-assessment require the purchase of new equipment or technology. Designing larger projects by drawing on the self-assessment methodology to focus on developing specific outcomes for the local government/municipality/ ministry/regional or provincial government, such as: (a) enhancing knowledge and expertise on the rights of service users in collaborating authorities; (b) increasing understanding among service users about how to exercise their rights when legally claiming services; and (c) assisting civil society to hold public institutions accountable.

8

Role of different actors in supporting the self-assessment

8.1. Role of UNDP Country Offices

Implementing the Users' Guide and methodology at the country level will only be possible if there is strong buy-in from national/local stakeholders and strong support from country offices to improve public administrative performance through rule of law assessments of public services, in particular in cities, municipalities and local governments.^{xxxiv}

Country offices can facilitate the implementation of the Users' Guide through the following actions:

- Build up political will at the national and sub-national levels through advocacy measures and the sharing of information.
- Design specific projects on the rule of law in public administration, or include support to self-assessments in existing projects.
- Coordinate the implementation of ROLPA projects at the national level.
- Provide technical backstopping and support.
- Assist in the recruitment of facilitators and experts (research institutions, academics, consultants) for the assessment.
- Support logistics management during the assessment period.
- Liaise with national and local partners on the progress of the assessment.
- Support training programmes linked to up-scaling the initiative.

- Support policy action to respond to the findings of the ROLPA survey and advocate with other UN agencies active in the sector to lend their support.
- Ensure coordination with related actions or projects undertaken by other development partners.
- Assist with resource mobilisation at the national level to ensure upscaling of the initiative and related policy developments.

8.2. Role of UNDP Regional Service Centres

Regional Service Centres have a role to play in supporting country offices and promoting the sharing of experience between countries within the region and between regions. Regional Service Centres can support the ROLPA initiative by:

- Responding to country demands for technical assistance and liaising with UNDP HQ on timely support
- Organising regional fora (e.g. community of practice/ development solutions team meetings) to share experiences
- Promoting integration or linking the initiative with other initiatives undertaken by the regional centre, such as the roll out of the MDG Acceleration Framework (MAF).
- Ensuring dissemination of lessons learned at the regional and cross-regional levels, to both public administration practitioners and justice and human rights practitioners.

8.3. Role of UNDP Headquarters

From Headquarters, UNDP will provide the following support:

- Interaction with regional bureaux, regional centres and country offices to ensure optimal planning of support to ongoing and new initiatives and the collection and codification of knowledge obtained at field level.

^{xxxiv} The Users' Guide will be translated into French and Spanish and other languages as needed, as linguistic and cultural differences have an impact on how respondents understand and answer the survey questions.

- Strategic planning of field visits and advocacy initiatives.
- Knowledge management support and knowledge dissemination.
- Roster management.
- Implementation oversight.
- Liaison with other UNDP initiatives, in particular the MAF and post-2015 initiatives.
- Development and monitoring of the implementation of results-based indicators and impact criteria.
- Partnership development at the global level and global resource mobilisation.
- Global updates on implementation of the ROLPA initiative.

8.4 Technical Helpdesk

If justified by the volume of requests for ROLPA interventions, UNDP will explore the possibility of setting up a Technical Helpdesk. The role of this helpdesk would be to support country offices in developing the capacity of public servants and civil society to use the Users' Guide. The helpdesk could provide training on and methodological support with implementing the Users' Guide. The tasks of the helpdesk could be outsourced to an academic institution.

The helpdesk would provide coaching, mentoring and technical assistance to country level projects, as well as training and quality control in the implementation of the Users' Guide by national counterparts. The helpdesk would also codify the knowledge gained by the national facilitators who work on the country level initiatives and the lessons learned in engaging with national stakeholders in order to constantly improve the content and the active employment of the Users' Guide. These national facilitators will in turn become consultants on the global initiative, and could be used, through the helpdesk, as resources for South-South cooperation and assistance within the framework of the global initiative. The project thus aims to build over time a network of rule of law in public administration resource people who can support each other in the implementation of national initiatives.

BOX 7 MAIN FUNCTIONS OF THE UNDP TECHNICAL HELPDESK

- Provide support and expert advice to national partners on adjusting the methodology to reflect context-specific challenges, preparation prior to conducting surveys as well as preparatory courses on the application of the principles of the rule of law to public administration.
- Facilitation of workshops and/or seminars on Users' Guide methodology with local/national research partners, and cities and municipalities.
- Analysis of research data from legal mapping and surveys for use in policy recommendations and assistance with report writing.
- Development of a network of experts to support ROLPA implementation in collaboration with UNDP HQ
- Communication / web platform for information and advocacy linked to the UNDP website
- Document and codify the knowledge gained from the various projects on the rule of law in public administration and local governance.

9

Conclusions



Reducing discrimination and improving accessibility is a core aspect of respecting the rule of law in public administration © UN Photo, Sierra Leone by Eskinder Debebe

In many countries, questions around citizens' satisfaction with the actions of the authorities in terms of the legality of decisions, the right to be heard or the right to appeal are still not being widely addressed, possibly because these issues have not been measured as part of a process of gauging the quality of service delivery. The focus has been mainly on physical accessibility, affordability in terms of cost, transparency in terms of information on available services, and satisfaction with the quality and timeliness of the services provided. A focus on the principles of the rule of law in service delivery complements these measurements, and helps to shift the focus of a government's performance assessment from quantitative indices to a qualitative measurement of the administrative services provided by the government and the implementation of the rights of citizens.

While ROLPA self-assessment studies may be limited in scope, in terms of the number of participating agencies, they nonetheless provide a powerful snapshot of the degree to which there is compliance with the rule of law in public administration in a given local government, region or even nation. Even though many countries, whether they are middle income, fragile, or in transition, may have made great progress on the path to strengthening democratic institutions, assessments of how they comply with rule of law principles in service delivery reveal the many challenges these institutions are still facing. The ROLPA assessment tool and analysis therefore provides a relatively easy way to detect and decide on what needs to be done to improve access, accountability and transparency. Citizens for their part, as rights-holders, also need to know what they can legitimately expect of the state and its administrative machinery.

Similarly, the survey at the agency level reveals how civil servants and employees in the bureaucracy perceive their own understanding, knowledge and practice of the rule of law. Through the survey, agency civil servants realise that they do not merely carry out or comply with routine roles and procedures within the bureaucracy, and that there are principles of the rule of law which, when upheld and operationalised, mean better and more effective governance that can make a tremendous difference to the people they serve.

The introduction of methods to assess how public administration adheres to constitutionally declared democratic principles is therefore an important element of reforming the system of state administration as a whole. At the local level in particular, such assessments can nurture a new type of relation

The ROLPA assessment tool and analysis therefore provides a relatively easy way to detect and decide on what needs to be done to improve access, accountability and transparency.

or social contract between the authorities and the people, and solidify the democratic platform in a more horizontal way – towards the people rather than upwards to the government and the people's representatives at the national level.

In countries that are emerging from authoritarian rule, or where the political settlement is still maturing, government institutions continue to apply methods which are oriented more towards satisfaction of the requirements of bureaucratic institutions, and not to accountability to the people or transparency. An assessment of rule of law principles in public service delivery can give both staff and service users a better understanding of what the concept of democratic governance means, and how it can be strengthened by attention to the principles of the rule of law in the system of public administration.

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Acronyms and Abbreviations

- ACD** Assistant Country Director
- BPPS** UNDP Bureau for Policy and Programme Support
- CD** Country Director
- DCD** Deputy Country Director
- FBA** Folke Bernadotte Academy
- ICA** Institutional and Context Analysis
- LDC** Least Developed Country
- MAF** MDG Acceleration Framework
- MDG** Millennium Development Goals
- NRS** National Registration Service
- RC** Resident Coordinator
- ROLPA** Rule of Law and Public Administration
- UNDP** United Nations Development Programme
- UPAO** Urban Poor Affairs Office

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