

UN PEACE OPERATIONS AND RULE OF LAW ASSISTANCE IN AFRICA 1989–2010

DATA, PATTERNS AND QUESTIONS FOR THE FUTURE

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RESEARCH REPORT

UN PEACE OPERATIONS AND RULE OF LAW ASSISTANCE IN AFRICA 1989–2010:
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Richard Zajac Sannerholm, Frida Möller, Kristina Simion and Hanna Hallonsten

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FOREWORD

THE RULE OF LAW IS AN ESSENTIAL foundation of international conflict and crisis management. Experience gained from past decades demonstrates clearly that establishing the foundations for peace, security and development in the immediate post-conflict period, as well as long-term consolidation, is not possible without a system of rule of law.

OVER THE YEARS THE UN HAS accumulated a wealth of practical experience in supporting law enforcement agencies, strengthening and extending judicial authority and the refurbishing and capacity-building of correctional institutions. This report provides a birds-eye view of this experience in Africa, drawing upon comprehensive empirical and systematic data.

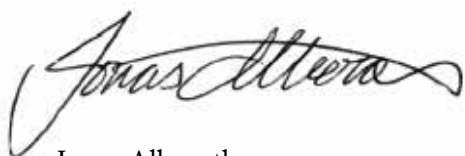
THE REPORT RESPONDS to important questions such as in which ways rule of law assistance has increased since the early 1990s, in what countries and contexts it has been provided, the methods employed for realising the concept, and whether any significant differences are to be found between the approaches to rule of law assistance in peacekeeping and peacebuilding.

THESE AND OTHER TOPICS LEAD TO a number of crucial and forward-looking questions on the UN's rule of law assistance in war-torn societies - for instance, on the capacity of the UN to deal with a large number of rule of law assistance missions simultaneously, the existence of mechanisms and tools for cooperation and joint initiatives between different UN entities, and the quality and coherence of policy and practical guidance on the rule of law. The aim of this study is to prompt and arouse policy discussions and considerations on the UN's commitment to the rule of law in peacekeeping and peacebuilding, and to stimulate the development and refinement of rule of law approaches, instruments and capacities.

THIS REPORT REPRESENTS an example of the Folke Bernadotte Academy's (FBA) work on contributing to improvements in the prevention and management of conflicts in practice, in order to promote lasting peace, security and development.

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Sandö, 1 June, 2012



Jonas Alberoth
*Acting Director General
Folke Bernadotte Academy*

EXECUTIVE SUMMARY

THIS REPORT PROVIDES NEW SYSTEMATIC DATA on two decades of UN rule of law assistance in Africa, covering a total of 36 UN peace operations (peacekeeping, political missions and offices). Seven areas of rule of law assistance are examined, including: (1) judicial reform, (2) constitutional reform, (3) law reform, (4) rule of law in public administration reform, (5) legal awareness and access to justice reform, (6) law enforcement reform, and (7) reforms of detentions, and prisons.

Implementing comprehensive rule of law strategies is challenging for the UN as a whole, not least where peace operations are deployed. Such operations are deployed in situations where the rule of law is severely tested and where in such environments UN staff (UN police, judicial officers, civilian affairs officers etc.) perform a number of critical functions, ranging from developing national rule of law plans and strategies, coordinating national and international stakeholders, advising on justice matters and providing technical expertise on specific topics. For the two leading UN entities in relation to post-conflict societies, the Department of Peacekeeping Operations (DPKO) and the Department of Political Affairs (DPA), the translating of rule of law policy into practical programme activities is a daunting task, specifically in terms of providing assistance that is timely, situational and aligned with the national priorities of the host country.

While there have been many positive developments in the UN's rule of law system over the past decade in terms of policy, practical experience and competencies earned on the ground, observations made on the basis of the comprehensive empirical data in this report raise a number of questions critical to the UN's future commitment to rule of law assistance in peacekeeping and peacebuilding.

INCREASED VOLUME OF UN RULE OF LAW ASSISTANCE

The data shows that the volume of rule of law assistance has increased over past decades. This raises questions of UN preparedness and capacity to deal with volume and to meet specific demands for assistance.

- › *Does the UN possess the institutional capacity, human resources and quality control mechanisms to maintain the high volume of rule of law assistance?*
- › *Does the increase in volume affect the UN's ability to provide comprehensive, timely and context-adjusted rule of law assistance?*
- › *Does the increase in volume affect UN's capacity to take on new responsibilities in rule of law assistance?*

JUSTICE CHAIN INSTITUTIONS AND ACTORS RECEIVE MOST OF THE AVAILABLE ASSISTANCE

The data shows that most rule of law assistance is directed towards the justice chain (judiciary, police and detentions, and prisons). The selective application of the rule of law in peace operations gives rise to questions on the comprehensiveness and

adaptability of UN rule of law assistance and suggests a form of path dependency in the application of the rule of law.

Comprehensive rule of law strategies should include attention to laws and regulations guaranteeing standards of justice, the institutions implementing them, mechanisms for monitoring those institutions, and people's access to laws and legal institutions. Since 2000 it has been possible to observe a broader scope of assistance in the areas of access and legislative reform, though such support seems to be less consistent over the course of time.

- › *Are the structures and mechanisms for joint cooperation between different UN entities put to effective use in order to address broad and cross-cutting rule of law areas in peace operations?*
- › *Is there a need to develop additional or specific guidance (manuals, tools, etc.) on how to work on rule of law areas outside the justice chain?*
- › *Is there a need to develop a standing capacity in the UN on legislative, public administrative and constitutional reform areas similar to that of standing capacities for police, justice and corrections?*

METHODS AND APPROACHES

The data shows that more or less the same methods are used for implementing rule of law assistance in the different rule of law areas. Apart from components such as mentoring, advice and technical assistance (which are integral to all UN operations), rule of law assistance relies chiefly on capacity-building through training and support to infrastructure.

At the same time, recent reviews on civilian capacity in the aftermath of conflict note that while certain core capacities in the sphere of justice (corrections, criminal justice, and judicial and legal reform) have accumulated over the years, they are uneven and confusion exists as to who does what, causing duplication of effort and unfulfilled capacity-gaps in rule of law assistance.

- › *Are practical guidelines and manuals actually used in planning, preparing and implementing rule of law mandates in peacekeeping and peacebuilding?*
- › *Does the existing training of UN staff in preparation for deployment, or following a deployment, ensure quality and coherence of rule of law policy and practical guidance?*
- › *What are the affects and effects on national legal and administrative institutions of capacity-building through training, sensitising and awareness-raising initiatives in peacekeeping and peacebuilding?*

TRANSITIONS AND THE RELATIONSHIP BETWEEN PEACEKEEPING AND PEACEBUILDING

The data reveals that there are more similarities than differences in rule of law assistance between peacekeeping and peacebuilding missions. Policy and strategic guidance together emphasise the need to integrate and deal with peacebuilding tasks early on

in peacekeeping. The data in this report suggests that when peacebuilding follows directly on peacekeeping, the assistance provided is often similar to peacekeeping. This accordingly raises the matter of path dependency between mission types.

- › *Is there sufficient policy guidance, and are there mechanisms and tools for addressing peacebuilding rule of law priorities early on in peacekeeping missions?*
- › *Is there sufficient policy guidance to ensure flexible and context-adjusted rule of law assistance in transitions between peacekeeping and peacebuilding missions?*

This study demonstrates that the UN has long-term experience from support to post-conflict and crisis societies. If properly answered, the critical questions raised in this report can inform and inspire debate and discussion on the UN's commitment to the rule of law, enhance and extend good practices, innovations and accumulated experiences, and bridge critical capacity-gaps in a broader range of rule of law areas.

1 INTRODUCTION

For the UN and the international community at large the rule of law has emerged as a central element in the maintenance of peace and security.¹ Justice and the rule of law are together, with security and democracy, seen to be mutually reinforcing imperatives in fragile post-conflict, peace, and state-building processes. While recent years have witnessed increased concentration by the UN on matters such as the rule of law and justice, the assistance accorded to states emerging from civil war has been fraught with difficulty – specifically on providing a comprehensive and integrated rule of law response, ensuring sustainable progress in rule of law and the linking of rule of law assistance with peacebuilding and development.

This report provides a bird’s-eye view of two decades of UN rule of law assistance in Africa between 1989 and 2010. This account draws on comprehensive empirical data covering a total of 36 UN peace operations (peacekeeping, political missions and offices).² It describes how rule of law assistance has evolved over time, the volume of rule of law assistance, what areas or sectors receive the most assistance, the methods employed for implementation, and differences between peacekeeping and peacebuilding missions.

Between the increased demand for rule of law in UN peace operations, and the attendant demands of putting the concept into practice, there is a scarcity of comprehensive empirical studies. Instead, there is a reliance on project or mission evaluations and lessons learned studies.³ Research on rule of law assistance has a similar focus on either case studies (e.g. UN mission in Liberia) or on thematic studies (e.g. judicial reform in post-conflict environments).⁴ Though case studies are informative and serve to accumulate specific and context-relevant knowledge, they are also limited with regard to the ‘big picture’ and comparison across multiple points of entry.

Considering the efforts, time and resources invested in rule of law assistance, the absence of concerted efforts to describe empirically how the concept is realised is problematic. As Kavanagh and Jones observed ‘given the dearth of knowledge and evidence currently underpinning strategic and operational responses, the international community has perhaps demonstrated a case of “trop de zèle” in terms of rule-of-law expectations in highly complex and volatile settings.’⁵ When comprehensive narratives on rule of law assistance are wanting, there is a risk that assumptions, isolated observations and anecdotal accounts are elevated to the status of facts about what’s being done, or what’s not being done. Without a systematic overview it is difficult to assess properly and appreciate past practices and to identify possible future trends, challenges and demands for rule of law assistance.

This study deals with UN rule of law assistance on the basis of seven broad reform areas: (1) judicial reform, (2) constitutional reform, (3) law reform, (4) rule of law in public administration reform, (5) legal awareness and access to justice reform, (6) law enforcement reform, and (7) reform of detentions, and prisons. These reform areas

are drawn from an analysis of Security Council resolutions, central policy documents and normative frameworks from the Secretary-General and lead entities, as well as practical guidelines, tools and manuals. The seven reform areas describe different aspects of rule of law assistance, but also instances where rule of law form part of parallel initiatives such as security sector reform.

Transitional justice is not included in this report due to the fact that such initiatives – for example, the support to truth commissions and international or hybrid courts are often pursued separately from general rule of law assistance.⁶ Reforms centred on human rights are included where they form part of broader justice reform efforts to realise and internalise international human rights in relation to one of the seven rule of law areas – for instance, through law reform, effective implementation of laws, and training and awareness-raising.⁷ Both transitional justice and human rights promotion tend to fall under different mission components than rule of law, though the practice is not always consistent and in some peace operations there are joint human rights and justice components.⁸

The data collected for the purposes of this report is composed of Secretary-General's reports on UN peace operations. These reports provide regular updates on the situation in a peace operation and on the activities supported or implemented during a specific time period. A rule of law reform area is only included in the dataset when clearly mentioned in a report as an activity that is attributed directly to a specific peace operation (e.g. UNMIL's support to training of magistrates or assistance in drafting a new law on criminal procedure). Work undertaken by other UN agencies – for example, UNDP or UNODC is included if it is undertaken as part of joint programmes and activities within a specific peace operation.

In the compilation of data, each of the seven rule of law areas has been guided by a detailed exemplary and non-exhaustive list of activities. For example, capacity-building, training and mentoring and trial monitoring are some of the activities included in the area of judicial reform. There is no evaluation or comparison between the different reform activities and the data does not provide an exact record of how many times a specific reform area has been implemented, only that the reform area has been supported during a deployment year.

It is important to acknowledge that the work carried out by UN staff in peace operations is multifaceted and ranges from providing advice and legal analysis to acting as facilitators and sharing technical expertise, often through co-location.⁹ These essential but everyday tasks are not easily captured, and it is reasonable to assume that a substantial amount of this type of assistance is under reported or only sporadically documented in the reports of the Secretary-General. Infrequent documentation could also depend on trial and error such as, for example, planned projects and programmes that for various reasons are never implemented.

This report consists of six chapters. **CHAPTER 2** describes UN rule of law policy, frameworks and practical guidelines and manuals and outlines the division of labour in rule of law assistance between peacekeeping and peacebuilding.

CHAPTER 3 deals with the volume of rule of law assistance and the number of

peace operations, noting an intensification and increase since 1989. Such enhancement means that the UN is now more than ever called upon to support war-stricken societies in strengthening the rule of law. This presupposes an increase in capacity to maintain current capacity and quality and to respond to new calls for assistance.

CHAPTER 4 describes the different rule of law reform areas and the methods employed for putting the rule of law into effect. The data shows that most of the UN's rule of law assistance is directed towards the justice chain (judiciary, police and detention and prisons).¹⁰ The central role played by the justice chain in rule of law assistance suggests that the rule of law, in its practical application, attends primarily to security-related matters.

When it comes to implementation, more or less the same methods are used in relation to different rule of law areas. Apart from components such as mentoring, advice and technical assistance (which are integral to all UN operations) rule of law assistance relies chiefly on capacity-building through training and support to infrastructure. The fact that there is a tried and tested methodology suggests an accumulation of experience and practice, at least in some areas.¹¹

CHAPTER 5 examines the differences between peacekeeping and peacebuilding, and the issue of transition between mission types. There are more similarities than differences in terms of rule of law assistance in peacekeeping and peacebuilding. In transitions between peacekeeping and peacebuilding, the justice chain is still the primary focus. This suggests a certain path dependency.

CHAPTER 6 provides concluding reflections and raises a number of questions that serve to inspire debate and policy discussions on future rule of law assistance in peacekeeping and peacebuilding.

2 ACTORS AND MANDATES

EVOLUTION OF UN RULE OF LAW POLICY

Rule of law has gradually emerged as a key objective in crisis management, and a more defined policy starting to form after 2000, influenced by practices developed and competencies earned in peace operations during the 1990s. Practice from the Security Council illustrates clearly that the rule of law is now an integral part of the UN's approach to peace and security. A number of resolutions address the rule of law in open-ended or thematic ways – for example, referring to the concept as a general constituent end. In other cases, rule of law is made conditional upon the realisations of other political goals. In Security Council resolutions on the Democratic Republic of the Congo (DRC), for instance, elections are presented as the foundation for the rule of law.¹² The rule of law is also frequently linked with security, stability and law and order in several crisis, conflict, and post-conflict societies. The Security Council's usage of the rule of law turns the concept into a political imperative where, depending on the situation, different elements, principles and institutions are emphasised.¹³

Many Security Council resolutions on the rule of law also contain practical guidance or even suggestions on specific institutional design. The main thrust of the institutionalisation of the rule of law in Security Council resolutions emphasises the judiciary. In a set of resolutions on the Côte d'Ivoire, the Security Council decided that the mandate should be that of law and order and assistance in re-establishing both the authority of the judiciary and the rule of law in all parts of that country.¹⁴ In the context of Liberia the Security Council urged the transitional government 'to ensure that the protection of human rights and the establishment of a state based on the rule of law and of an independent judiciary are among its highest priorities'.¹⁵ A number of resolutions also called for a strengthening of institutional capacity within the police and correctional systems, together with the executive and legislative branches of government. Resolutions on Guinea-Bissau,¹⁶ Sierra Leone,¹⁷ and Burundi,¹⁸ all contain references to strengthening the rule of law by supporting the justice sector.

Following the UN's increased responsibility for rule of law assistance in peace operations, and particularly after the experience as an international administrator in Kosovo and East Timor, the need grew for a comprehensive and guiding definition. In 2004 the Secretary-General launched a common rule of law definition for the whole organisation in his report *Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, defining the concept thus: 'a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws'. The definition also lays down that laws should be publicly promulgated, equally enforced and independently adjudicated, and be consistent with international human rights standards.¹⁹

The definition is ends-based and generally in accord with how the rule of law is typically portrayed in legal doctrine and scholarly works.²⁰ The institutional scope of the UN's definition is broad and set out to not only encompass legal and judicial institutions, but also law enforcement, corrections institutions and administrative

agencies. The definition includes both substantive justice (i.e., the aims and outcomes of justice) and procedural justice (i.e., the process by which those aims and outcomes are achieved). In this sense the UN definition is ‘thick’ or ‘material’.²¹ The emphasis is not only on having proper procedural guarantees, but also that the content and meaning of laws and regulations adhere to certain international standards.

The normative foundation on rule of law assistance is also elucidated in the Secretary-General’s 2004 report *Rule of Law and Transitional Justice*. Apart from the UN Charter, the normative foundation is said to consist of international human rights law, international criminal law, international refugee law, and international humanitarian law. While the legal implications are unclear, it is argued in the report that the framework creates certain normative boundaries. The UN cannot, for example, assist in the establishment of a tribunal with the authority to impose the death penalty or to broker a peace agreement that would include amnesties for war crimes and crimes against humanity.²²

The normative framework also includes UN human rights and justice standards developed over the last half-century. These are seen as representing ‘universally applicable standards adopted under the auspices of the United Nations and must therefore serve as the normative basis for all United Nations activities in support of justice and the rule of law’.²³ The standards also function as models in rule of law assistance and, as stated by the Secretary-General: ‘bring a legitimacy that cannot be said to attach to exported national models’.²⁴ Most of these standards relate to substantive areas of concern to the judiciary, law enforcement, detentions and corrections; for example, *UN Basic Principles on the Independence of the Judiciary*, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, and *Guidelines on the Role of Prosecutors*. For public administration there is the *International Code of Conduct for Public Officials*, while the *Standard Draft Principles and Guidelines on Access to Legal Aid in the Criminal Justice* guide and support initiatives focused on access and awareness. There are no standard-setting documents directly applicable to constitutional rule, constitution-making, or legislation and law reform.

The UN’s rule of law policy has continued to develop since the definition launched by the Secretary-General in his 2004 report *Rule of Law and Transitional Justice*, and since 2006 there are annual reports from the Secretary-General on strengthening and coordinating UN rule of law activities. The DPKO and DPA, among other UN entities, have developed a set of general policies and guidelines on rule of law and justice components, as well as practical guidance on specific reform areas.²⁵ The Secretary-General also established the Rule of Law Coordination and Resource Group in 2006 to act as a focal point for coordinating system-wide attention to the rule of law. The Rule of Law Coordination and Resource Group is supported by the Rule of Law Unit, acting as a secretariat, situated in the Executive Office of the Secretary-General.²⁶ In 2008 the Secretary-General published an inventory of UN rule of law activities to serve as a guide to the work of the UN system for rule of law promotion at the national and international levels. The inventory provides general information on mandate, preparation and content as well as an overview of the current capacity of the UN to perform rule of law activities.²⁷

Overall, the UN policy that has evolved – as stated in reports of the Secretary-General, supported by extensive sets of standards, and in the practice of the Security Council – is comprehensive and positions the rule of law as a means for sustainable peace and security, as well as an end in (and of) itself. In this way the UN’s rule of law agenda comprises many different elements, from law and order to economic development and democratic governance. It is worth noting that despite the relatively high profile of the rule of law area, the UN’s human resources capacities are rather modest. As the UN inventory on the capacity in peacebuilding observed there was only a handful of dedicated staff working on rule of law issues in conflict and post-conflict societies.²⁸

FRAMEWORK FOR STRENGTHENING THE RULE OF LAW

Following the formulation of policy, several attempts by the Secretary-General and different UN entities have been made to provide concrete guidance by describing specific justice components, tasks and functions in rule of law assistance.

Operational guidance is provided in the *2008 Guidance Note of the Secretary-General: UN Approach to Rule of Law Assistance* where, for the first time, a framework for strengthening the rule of law is introduced. The Guidance Note is a concretisation of the UN’s comprehensive rule of law policy for activities at national level and places current policy in a more practical context where certain laws, institutions and practices are highlighted. The framework identifies a number of substantive and procedural elements in relation to constitutions, legal frameworks, and the implementation thereof, covering: a) electoral laws and electoral system, b) institutional reform of agencies and bodies responsible for governance, justice, security and human rights, c) supporting transitional justice processes and mechanisms, and d) the capacity-building of public and civil society that can contribute to fortifying the rule of law and holding public officials and institutions accountable.²⁹

Influenced by the 2004 report and subsequent policy guidance from the Secretary-General, the DPKO has elaborated on practical entry-points for justice components in peace operations. In the *2006 Primer for Justice Components in Multidimensional Peace Operations: Strengthening the Rule of Law*, several potential areas of programming in the peacekeeping context are identified. Programmatic areas comprise: a) increasing the immediate effectiveness of the criminal justice system; b) supplementing and reforming the national legal framework; c) providing and reforming legal education and training; d) introducing or strengthening judicial independence; e) promoting judicial and prosecutorial professionalism, accountability and transparency; f) improving court administration and management; g) developing basic judicial infrastructure; h) bolstering the integrity of the legal profession; i) increasing access to justice, developing legal aid and indigent services and civic legal education; j) promoting gender justice and victims’ rights.³⁰ DPKO and DPA have also jointly formulated an operational guidance note on the rule of law and the administration of justice in peace processes and

peace agreements where, for example, the independence and impartiality of the judiciary and the capacity-building of lawyers and judicial personnel are included as important focal areas.³¹

In a 2009 policy document from the DPKO, programme areas were further elaborated into 14 different justice components (Table 1). These components serve to provide a framework and overview for the most common reform areas that UN peace operations are engaged in when providing rule of law assistance.

TABLE 1 *Justice Components in UN Peace Operations*

SUBSTANTIVE AREA	REFORM ACTIVITIES
Immediate effectiveness of criminal justice systems	Establish special chambers to adjudicate serious crimes; deploy emergency mobile courts; train defence counsel and paralegals; standardise key procedures and practices
Basic justice infrastructure	Construction and repair projects; basic equipment and supplies
Legal framework	Advise national stakeholders on international norms and standards; facilitate the creation of law reform or constitutional commission; create library or repository of laws; publish and disseminate laws widely
Law schools	Support the creation and development of law schools
Professional training	Support establishment of magistrates' schools, legal training centres and continuing education for judges, prosecutors and lawyers
Judicial independence	Strengthen constitutional and legislative guarantees of judicial independence; enable constitutional courts and other bodies to resolve separation of powers issues; ensure judicial control over administrative and budgetary matters; improve conditions of service for judicial personnel
Integrity, professionalism, accountability and transparency of justice actors	Support development of legal professional associations, codes of conduct, disciplinary mechanisms and selection and appointment procedures; assist the publication of judicial decisions and adoption of anti-corruption measures
Public administration	Support or facilitate national authorities to design effective organisational structures; allocate sufficient funding and resources for justice systems; develop financial management processes and improve personnel management
Court administration and management	Assist national authorities to process cases more efficiently; develop court policies and procedures; increase use of paralegals; introduce appropriate court technology
Access to justice and victims' rights	Establish public defenders' programme; develop non-governmental organisations; create referral network for victim services; strengthen alternative dispute resolution; establish help desks; implement public information campaigns to educate the public on justice issues
Gender justice	Develop women's professional associations; legislative reform in areas of particular importance to women and girls; establish special judicial capacity to try sexual violence cases; ensure adequate representation of professional women within justice institutions; strengthen gender sensitivity of justice actors
Justice for children	Assist the adoption of laws relating to justice for children; establish alternatives to detention; create juvenile courts or panels; develop child-sensitive procedures and protective measures
Civil (non-criminal) and administrative law matters	Support activities aimed at addressing property and identification; nationality; family; commercial and other matters.
Customary/traditional justice mechanisms	Assist customary/traditional mechanisms in developing policies and practices to enhance compliance with national laws and international human rights standards; assist in resolving jurisdictional conflicts with formal justice institutions.

DPKO, Policy: Justice Components in United Nations Peace Operations (2009) pp. 6-9.

In the concretisation of UN rule of law policy it is possible to observe a pattern of both ‘sectorisation’ and ‘securitisation’. From the comprehensive UN rule of law policy, where the concept is put forward as a ‘principle of governance’, the rule of law gradually assumes a specific institutional orientation and focus as it becomes linked with programmatic entry-points for justice components in peace operations. Overall, less attention is paid to general and cross-cutting rule of law principles such as accountability or participation that can be found in the more comprehensive UN rule of law policy. Instead, practical frameworks attend more to specific institutions, activities or processes.

PRACTICAL GUIDELINES AND MANUALS

At the most practical level, and dealing directly with how to assess, programme, monitor and evaluate rule of law assistance, UN staff have at their disposal a number of guidelines and manuals on different rule of law areas.³² Not all of the guidelines and manuals concern peace operations. Instead, they contain guidance on UN rule of law assistance on a global level, including long-term development.³³

In 2006 the Office of the High Commissioner for Human Rights (OHCHR) established a tool-kit consisting of five sets of instruments: *Truth Commissions; Mapping the Justice Sector; Prosecution Initiatives; Monitoring Legal Systems; and Vetting*. In 2008 the OHCHR floated two more on *Reparations* and *Hybrid Courts*. The different tools are each considered to respond to some of the supreme tests and demands that UN entities typically face in crisis, conflict, and post-conflict societies, and are intended to be employed as practical guidelines in rule of law assistance. The respective devices specify ‘best practices’ regarding monitoring court proceedings, on lessons learned from prosecuting contraventions of international humanitarian law, and how best to conduct overall assessments of the capacity and function of a legal system in a country in transition from war to peace. The DPKO has also developed a set of guidelines and manuals, including *Guidelines on the Methodology for Review of Justice and Corrections Components in United Nations Peace Operations*, *DPKO Best Practice Guidelines: Executive Corrections Management in UN Peacekeeping*, *Policy Directive on Prison Support in UN Peacekeeping Operations* and the *United Nations Police Handbook*.

Legislative reform has seen an increase in practical tools, particularly through the number of model laws developed by the United Nations Office on Drugs and Crime (UNODC) on issues such as money laundering and drug trafficking. The United Nations Children’s Fund (UNICEF) has produced the *Handbook on Legislative Reform: Realising Children’s Rights*. On access and awareness practical guidelines include, for instance, *UNDP’s Rule of Law and Access to Justice: Perspectives from UNDP Experience and UNODC’s Criminal Justice Assessment Toolkit: Legal Defence and Legal Aid*, and the *Handbook on Improving Access to Legal Aid in Africa*.

There is no apparent hierarchy between the different guidelines and manuals, and it is difficult to assess to what extent they are actually used in peace operations.³⁴ The fact that some of the guidelines and manuals are formulated for development cooperation, and others for post-conflict peace operations, might well impede ready

access and use between the two fields. Making the guidelines and manuals part of daily operations requires not only knowledge of their existence, but the training and capacity-building of UN judicial officers, UN police and other staff categories involved in rule of law assistance.

Thematically the guidelines and manuals chiefly cover the justice chain and leave other rule of law areas in want of practical guidance. This is noted by the Executive Committee on Peace and Security (ECPS) *Task Force for Development of Comprehensive Rule of Law Strategies for Peace Operations*. In 2002 the ECPS Task Force identified several gaps in UN guidance on rule of law assistance, specifically in relation to support for dispute resolution outside the judicial system by ombudsperson institutions, on how to analyse penal and criminal laws, civil service laws, parliamentary procedures, property laws, and assistance on how to support the drafting of such legislation.³⁵

Constitutional reform is also an area where there are both limited staff resources and policy guidance. The Secretary-General's *Guidance Note on United Nations Assistance to Constitution-Making Processes* covers the area only superficially while highlighting the pressing need to develop strategic guidance on methods to support national actors.³⁶ As observed in the UN inventory on the organisation's capacity in peacebuilding: 'the UN lacks a dedicated focal point for constitution-making, in-house technical expertise, training and a debriefing/retention of institutional knowledge system, overall policy framework and standards, practical tools/implementation guidelines, and dedicated financial resources'.³⁷ Similarly, public administration is another area where staff shortage and weak policy guidance exist.³⁸

Apart from the tools for specific reform areas, the UN has in recent years made concerted efforts to strengthen its capacity to assess, understand and monitor progress and changes in the rule of law in peace operations and long-term development. The Secretary-General has emphasised the need to develop holistic and strategic approaches that allow for joint and thorough assessments in order to determine rule of law needs and challenges. These assessments should further support the development of a 'comprehensive rule of law strategy' with the 'full and meaningful participation of national stakeholders'.³⁹

The DPKO and OHCHR have developed the *Rule of Law Indicators Instrument* which aims to monitor changes in the performance and fundamental characteristics of criminal justice institutions in conflict, and post-conflict, situations. UNODC has developed the *Criminal Justice Assessment Toolkit*. This is a standardised and cross-referenced set of tools designed to enable UN agencies, government officials engaged in criminal justice reform, as well as other organisations and individuals, to conduct comprehensive assessments of criminal justice systems; to identify areas of technical assistance; to assist agencies in the design of interventions that integrate United Nations standards and norms on crime prevention and criminal justice; and to assist in training on such issues.

Practical guidelines and manuals represent further concretisations of UN rule of law policy and frameworks. It is interesting to note that in the practical translation of the comprehensive rule of law policy provided by the Secretary-General, there is selectivity in terms of institutions and justice components. Most of the practical

guidelines and manuals attend to problems and challenges that actors within the justice chain are confronted with, and deal with non-justice sector institutions and problems only superficially. Similarly, the main assessment tools address primarily questions relevant for national actors within the justice chain.

PEACEKEEPING AND PEACEBUILDING

There are two main approaches to conflict management within the UN: peacekeeping and political missions and offices. The DPKO is responsible for peacekeeping operations that are traditionally established at the end of a conflict to ensure peace, security and stability, together with military means where necessary. Peacekeeping today is multidimensional and includes a plurality of long-term objectives such as security sector reform, democracy, good governance and the rule of law.⁴⁰ The DPKO is also responsible for the development of policies, guidelines and best practices on peacekeeping and related activities.

On rule of law specifically, the DPKO has a strategic centre in the Office of Rule of Law and Security Institutions (OROLSI) comprising a Police Division, Criminal Law and Judiciary Advisory Service, Disarmament, Demobilization and Reintegration Section, Security Sector Reform Unit and Mine Action Service.⁴¹ Under the responsibility of the DPKO there has been a Standing Police Capacity since 2007 and in 2010 a Justice and Corrections Standing Capacity was established. Both seek to allow for rapid deployment to start up police, justice and corrections components in peace operations or to temporarily reinforce possible capacity gaps.⁴²

The DPA is the focal point for peacebuilding and is engaged in rule of law assistance through its supervision over political missions and offices, and a number of special projects.⁴³ Political missions and offices are mechanisms employed by the Security Council at different ends of the peace and security continuum and are smaller than peacekeeping operations (e.g. the peacekeeping mission in Côte d'Ivoire has roughly 10,000 uniformed personnel, in addition to 400 civilian personnel, while the Integrated Peacebuilding Office in Guinea Bissau has 57 international staff and 14 police) and generally operates under less forceful mandates.⁴⁴ The mandates of the political missions and offices typically include activities such as support for the strengthening of national justice systems, human rights assistance and monitoring, and other rule of law areas.⁴⁵ The DPA is also often involved in the negotiation of peace agreements which, in most cases, include rule of law matters such as constitutional, judicial and security sector reform.


The rationale behind peacekeeping and peacebuilding is for the UN to have access to flexible ways and means across the continuum of peace and security, and also to allow for sequencing from peacekeeping missions to political missions or offices when the situation in question changes in a host country. However, current budgetary, organisational and logistical structures at the UN are not always conducive to this purpose. Peacekeeping operations receive their funding annually, while political missions and offices obtain funding from the general budget which is set biannually. This means that the possibility of the DPA to respond to new threats and challenges is less flexible compared with that of the DPKO. Political missions and offices lack

a support account to budget headquarters, meaning that they are back-stopped by fewer staff than peacekeeping operations, directly impacting on support and reporting processes.⁴⁶

Other organisational and budgetary differences set political missions and offices at a clear disadvantage in relation to planning and preparation for missions when compared with peacekeeping operations. For example, political missions and offices cannot easily draw on DPKO rule of law experts such as those within OROLSI.⁴⁷ There is also a question of overlapping mandates between peacekeeping and peacebuilding, and though peacekeeping missions are often deployed directly after conflict, it is generally held that peacebuilding issues should be at the forefront of the immediate response.⁴⁸ Limited capacity to address peacebuilding issues early on may affect the transition from peacekeeping missions to political missions or offices. The UN does not seem to have a clear policy for such systematic transitions.⁴⁹

It is important to acknowledge that rule of law assistance in peace operations is not undertaken in isolation from other UN entities, and many reform areas are interdependent, cross-cut and difficult for one entity alone to address.⁵⁰ More than 40 UN entities are engaged in rule of law assistance. Though joint projects and programmes and staff secondments are not uncommon, peace operations and entities working within development cooperation are separated in terms of mandate, function and funding.⁵¹

The Security Council has stressed the importance of clarity of roles and responsibilities between peace operations and UN country teams ‘for the delivery of prioritized support to a country consistent with its specific peacebuilding needs.’⁵² In this regard the Peacebuilding Commission and the Peacebuilding Support Office have important parts to play in order to advise and propose strategies for better integrating peacebuilding tasks in peacekeeping missions, and generally on how peace operations can enhance cooperation with other entities on cross-cutting and interdependent matters such as constitutional reform and public administration.⁵³ Nevertheless, there are tensions between DPKO and ‘development’ entities within the UN system, particularly the UNDP.⁵⁴ As the 2006 report, *United Nations Capacity in Peacebuilding*, revealed there are considerable overlaps in many rule of law reform areas between DPKO, DPA and other UN entities, most notably with regard to law enforcement, judicial and legal reform and corrections.⁵⁵ There also seems to be a deeper conceptual difference between UN entities on peacekeeping and peacebuilding. As the recent DPKO and DFS study notes: ‘peacekeepers approach early peacebuilding tasks as technical responses occurring in long-term, development context, where peace generally prevails’, instead of framing peacebuilding initiatives within peacekeeping operations’ general priorities.⁵⁶ Sometimes Security Council mandates explicitly try to address and ensure that integrated missions and the UN’s ‘Delivering as One’ agenda goes some way towards enhanced cooperation and coherence of field activities. For post-conflict peace operations specifically, planning tools such as the Integrated Mission Planning Process and other similar mechanisms have also been developed to further integration and ‘One UN’ approaches, but their implementation seems to be inconsistent.⁵⁷



In an attempt to introduce clear roles and responsibilities, and in order to enhance coordination of UN rule of law assistance, the Secretary-General established a division of labour and a system of lead entities through the Decision 2006/47.⁵⁸ At country level, lead includes coordinated planning and strategy development as well as coordination of programme implementation with all the relevant partners.

The DPKO is the lead agency in conflict and post-conflict environments with a thematic mandate covering the strengthening of national justice systems and institutions, working with police and law enforcement, prisons, interim law enforcement agencies, and security support to national law enforcement agencies. The UNDP is described as the lead agency on strengthening national justice systems and institutions where DPKO-led missions do not exist, with a thematic focus on court administration, civil and customary law, traditional and community-based justice, training, and land and property rights.⁵⁹ The DPA does not have a designated lead over a particular basket.

The division of labour manifests a close link between rule of law and security. The basket of long-term development is instructed to ‘closely mirror those activities being undertaken in the context of conflict and post-conflict societies’.⁶⁰ Thus, while seeking to maximise UN rule of law assistance by delineating thematic responsibilities and situational responses, the division embeds a securitisation of rule of law reform in peace operations, and for long-term development as well. Peace operations are often the most visible presences on the ground, but are ill-equipped to deal with long-term peacebuilding and development priorities.⁶¹

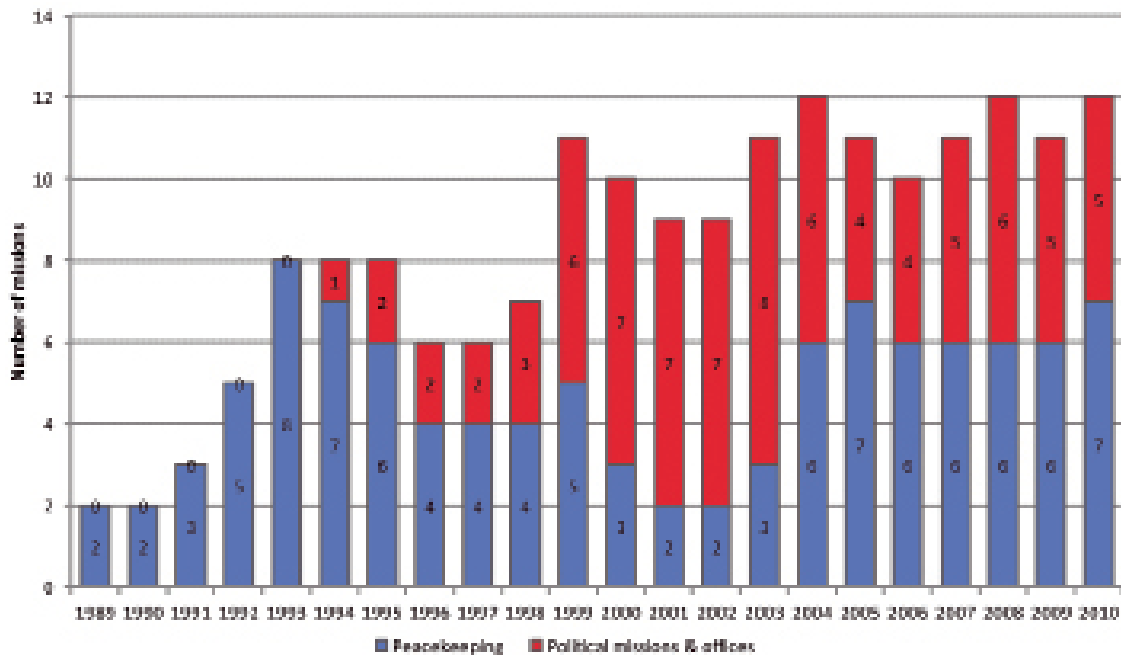
3 VOLUME OF RULE OF LAW ASSISTANCE

NUMBER OF PEACE OPERATIONS

Considering that recent years have seen an increased focus by the UN on matters such as rule of law and justice, and specifically considering the evolution of policy, practical guidelines and manuals, it is interesting to examine if there are correlations to a general increase in rule of law assistance in peace operations.

UN peace operations are divided into two categories: peacekeeping missions, and political missions and offices. The proportion of these two sets of peace operations has varied from 1989 to 2010 (Figure 1). The first political mission, UNOB in Burundi, was deployed in 1994. While political missions were fewer in number than peacekeeping missions during the 1990s, political missions and offices were more common than peacekeeping missions in 1999 and 2003. Around 2004 and onwards, peacekeeping and political missions and offices have been somewhat equal in numbers. The increase in political missions and offices suggests a more frequent use of peacebuilding initiatives in Africa.

FIGURE 1 Number of UN Peacekeeping and Political Missions and Offices, Africa 1989–2010



Peace operations are deployed in response to severe and insecure situations, often in countries with ongoing civil war or where a civil war has recently ended. The data shows that of the 36 peace operations in Africa, a large majority (28) were deployed in a country that had experienced an intense civil war – that is, an armed conflict that caused at least 1,000 battle-related deaths in one calendar year. These 28 peace operations were deployed in 11 different countries with different conflict backgrounds – for example, Angola, Sierra Leone and Sudan. Only eight peace operations were

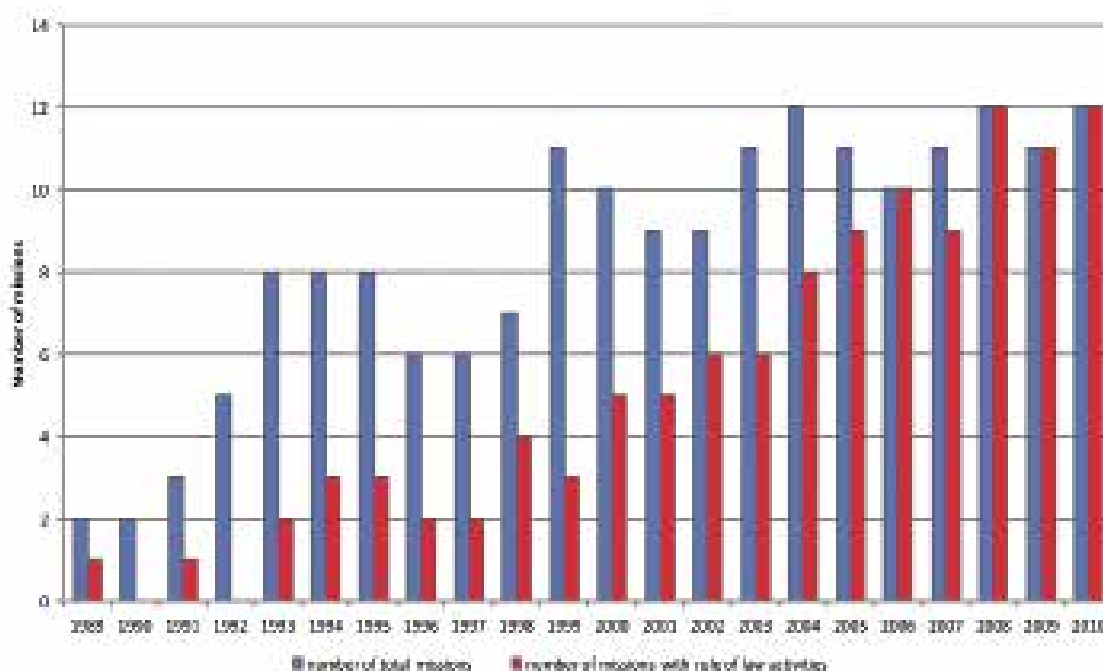
deployed in a country that had undergone civil war of a lower intensity, for instance, the Central African Republic and Guinea Bissau.⁶²

In separating between peacekeeping missions and political missions and offices, it is possible to observe that peacekeeping missions tend to be located in more severe conflict locations than political missions and offices. An overwhelming majority (87%) of all peacekeeping missions were deployed in a country of intense civil war, compared with less than half (46%) of political missions and offices.

NUMBER OF PEACE OPERATIONS PROVIDING RULE OF LAW ASSISTANCE

Since 1989 there has been a general increase in UN peace operations. Parallel with this growth has been the corresponding and significant expansion of rule of law assistance (Figure 2). During the first ten years covered in this study, more than half (12 out of 21) of the peace operations concerned were involved to a varying degree in rule of law assistance. From 2000 and onwards, the proportion of peace operations providing rule of law assistance increased to a large majority (19 of 24). It is also possible to observe considerable peaks in rule of law assistance, and it is notable that in 2006, and 2008–2010, all peace operations in Africa were involved in one or several of the seven rule of law areas.

FIGURE 2 *Number of total UN Peace Operations and Number of Missions Providing Rule of Law Assistance, Africa 1989–2010*



The high number of peace operations engaged in rule of law assistance demonstrates a comprehensive commitment on behalf of the UN, and the prominent part that the rule of law has come to assume in conflict management. That the Security Council now almost routinely includes the rule of law concept as part of the mandate in peace

operations implies that it is viewed as both a means and an end in relation to many different challenges in crisis, conflict, and post-conflict societies.

The UN's commitment to rule of law assistance in Africa can also be examined in terms of the accumulated deployment of UN peace operations (e.g. combining all missions and their respective terms of deployment) and how much of the total deployment that has been committed to rule of law assistance between 1989 and 2010. Of the accumulated deployment years of all peace operations in Africa, a majority (57%) have engaged in rule of law assistance in one or several rule of law areas.

The relatively large increase in volume over the past decade (illustrated in Figure 2) corresponds with organisational changes within the UN; for example, the establishment of OROLSI, the Rule of Law Coordination and Resource Group and the Standing Police Capacity and the Justice and Corrections Standing Capacity. The intensification of rule of law assistance also coincides with the evolution of policy at the UN Secretariat, in addition to the development of practical guidelines and manuals on rule of law assistance. A survey of the evolution of UN rule of law assistance suggests that this practice has informed policy, or at the very least necessitated the development of definitions, frameworks and guidelines as the responsibility to manage rule of law assistance has grown.

The steady and significant increase in volume after 2000 raises several questions for future rule of law assistance. If the past five years offer any projection for the future, there are no indications that calls for rule of law assistance will decrease. This raises fundamental questions for the UN – for example, is there sufficient capacity to handle simultaneously the high volume of rule of law assistance in many different conflict and post-conflict environments? More specifically: what is the capacity of the DPKO and DPA to provide rule of law assistance that is comprehensive, timely and adjusted to country specifics? As the inventory on UN capacity in peacebuilding observed in 2006, there is generally limited capacity with regard to human resources with rule of law expertise within the UN and that in some areas, such as constitutional reform, the scarcity of capacity is striking.⁶³ According to the report on UN civilian capacity in the aftermath of conflict, this situation in many ways appears to prevail today.⁶⁴

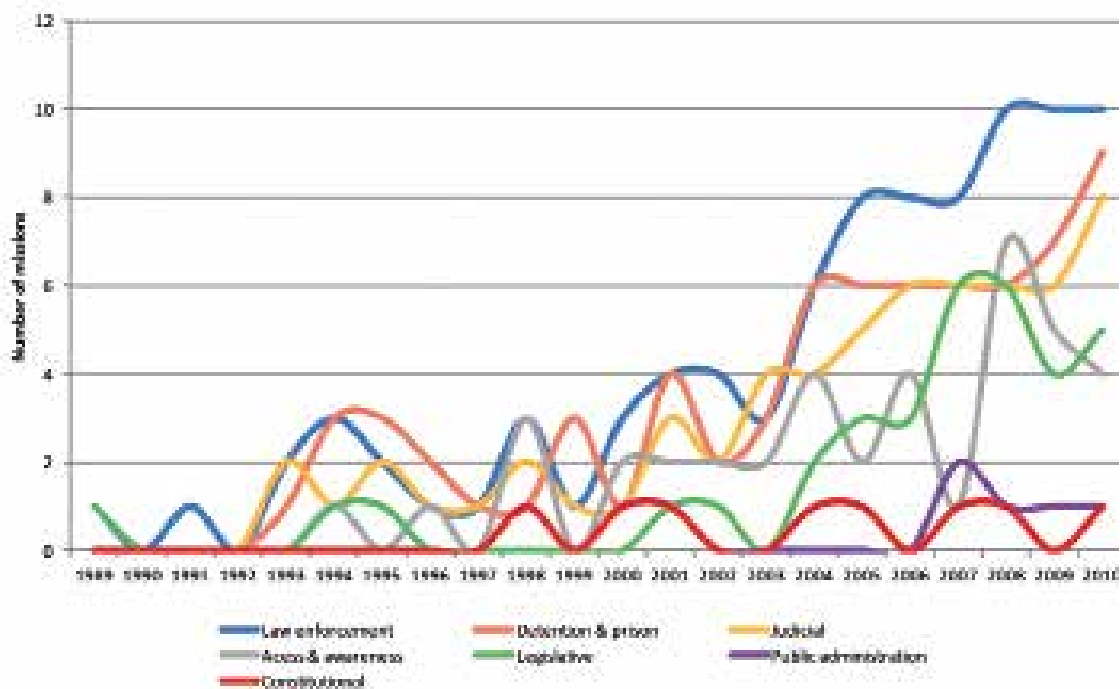
4 RULE OF LAW AREAS AND METHODS

Considering the general increase of the rule of law in peace operations it is important to identify those areas where assistance is provided and the methods employed in implementing it. The data shows that while the type of rule of law assistance has varied over time, the overall trend is one where justice chain institutions (e.g. judiciary, law enforcement and detentions and corrections) stand for a significant portion of rule of law assistance in peacekeeping and peacebuilding (Figure 3).

The justice chain pattern is possible to identify over time and between different missions, starting with the early peace operations in Namibia, Angola and Mozambique and reinforced by more recent peace operations in countries such as Liberia, Sierra Leone and Sudan. A focus on reform outside the justice chain, in fields such as legislative, constitutional or access and awareness, was infrequent and less prevalent during the 1990s.

From the mid-2000s, rule of law assistance increased dramatically in terms of the number of peace operations with reported rule of law assistance. This also coincides with an expansion of rule of law areas, thus increasing the prevalence primarily of access and awareness and legislative reforms.

FIGURE 3 UN Peace Operations Involved in Rule of Law Reform Areas, Africa 1989–2010



A general pattern that emerges on examining the different reform areas over time is that the rule of law in relation to public administration is only reported in isolated instances, thus lacking in levels of consistency, detail and prevalence compared with

rule of law assistance found in other areas. In Sudan, for instance, UNMIS supported training initiatives organised by the Ombudsman office and provided logistical support to harmonise administrative divisions, while the UN in Sierra Leone assisted the Anti-Corruption Commission. Besides these, and a few other reported instances, reform of public administration receives limited attention in UN rule of law assistance.

Overall, and among all peace operations taking part in rule of law assistance, there are notable differences in terms of the scope of involvement. At one end of the spectrum operations such as BONUCA in the Central African Republic, and UNIOSIL in Sierra Leone, engaged in all seven of the rule of law areas during one deployment year. At the other end, operations such as UNOMIL in Liberia embarked on only one reform area (detentions and prisons) during a single deployment year.

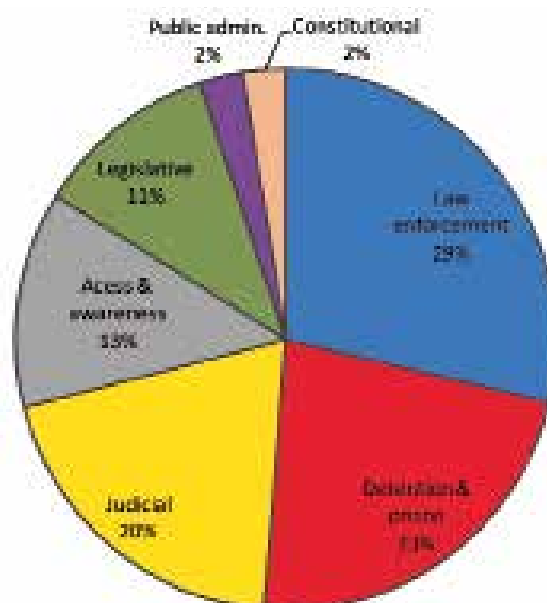
The scope of rule of law assistance can be viewed in different ways. One of them is to count the number of missions that have been engaged in a specific activity. This demonstrates that law enforcement is the single reform area that most peace operations have supported (Table 2). Viewing all UN operations, 28 out of 36 (78%) were at some point during their deployment engaged in law enforcement reform. If the data is disaggregated further, variations between peacekeeping and peacebuilding emerge. For example, a number of political missions or offices have engaged in constitutional reform and public administration, while only one out of 22 peacekeeping missions focused on constitutional reform (MONUC in the Democratic Republic of Congo) and one on public administration (UNMIS in Sudan).

TABLE 2 Number and Percentage of Peace Operations in Relation to Rule of Law Reform Areas

RULE OF LAW REFORM AREA	ALL UN OPERATIONS (36 MISSIONS)	PKO OPERATIONS (22 MISSIONS)	POLITICAL MISSIONS & OFFICES (14 MISSIONS)
Police & law enforcement	28 (78%)	17 (77%)	11 (79%)
Prison & detention	22 (61%)	14 (64%)	8 (57%)
Legal access & awareness	21 (58%)	11 (48%)	10 (77%)
Judicial	20 (56%)	12 (55%)	8 (57%)
Legislative	15 (42%)	7 (30%)	8 (62%)
Constitutional	7 (19%)	1 (4%)	6 (46%)
Public administration	5 (14%)	1 (4%)	4 (31%)

Another way of observing the scope of rule of law assistance is to examine how much of UN rule of law assistance in peace operations has been committed over time to the respective reform areas (Figure 4).

FIGURE 4 *Scope of Commitment to Rule of Law Assistance in UN Peace Operations in Africa 1989-2010*



Looking at rule of law assistance over time, 72% of UN rule of law assistance has been committed to the justice chain institutions. One observation is that reforms in the justice chain tend to be sustained over long periods. At the same time, the fact that most deployments are committed to justice chain reform can also indicate that this is a particularly difficult reform area, attended by numerous challenges.

Legislative reform and access and awareness display a similar amount of commitment over time, though far less common than the three justice chain reform areas. In contrast, and at the farther end of the scale, constitutional and public administration reforms are only marginally represented. A study of rule of law assistance in terms of commitment in deployment over the course of two decades indicates that the rule of law agenda is mainly confined to a particular sector.

A comparison of UN rule of law policy with where rule of law assistance typically ends up illustrates a significant difference in focus, and it is not clear what the implications of the discrepancy between policy and practice are. Moreover, most practical guidelines and manuals centre on a particular set of institutions in the justice chain, whereas rule of law areas outside the justice chain are less supported by standards and tools. This raises the question of whether there is a need to review the guidelines and manuals in order to facilitate work in respect of areas such as legislative support, constitutional reform, access and awareness and public administration.

METHODS FOR IMPLEMENTATION

Apart from discovering where rule of law assistance typically ends up it is also important to examine the methods employed in peacekeeping and peacebuilding. Comparing methods employed in the different rule of law areas allows for the observation of differences, commonalities and potential synergies.

Justice Chain: Judicial, Law Enforcement and Prison Reform

The justice chain includes rule of law actors such as judges, prosecutors, defence lawyers, law clerks, court bailiffs, police and law enforcement personnel, together with detention and correction personnel.⁶⁵ In this study, law enforcement reforms are found in 78% of missions, prison and detention in 58%, and judicial reform in 56% of them (Table 2).

Much of the support to the justice chain takes the form of mentoring, monitoring, and advice – sometimes through co-location programmes. Common activities also include technical assistance for the development of national justice plans and strategies and conducting assessments of justice chain actors and institutions. It is reasonable to assume that a substantial part of this type of assistance is not regularly documented in the reports of the Secretary-General, but form part of the everyday work of judicial officers, police advisers and other civilian staff.

Support to infrastructure and the provision of basic equipment also accounts for a large part of justice chain assistance and is typically initiated at the beginning of a peace operation and sustained throughout the life of the mission. The extent and scope of UN assistance to infrastructure and basic equipment varies and ranges from constructing and renovating new court houses to supplying office equipment. For example, in Guinea Bissau the UN provided ‘computer systems to enhance the functional capacity of the judiciary’.⁶⁶ For the judiciary, a number of activities include setting up legal documentation centres, case tracking systems and national databases to enable the coherent and systematic administration of justice. For corrections and prisons the lack of adequate infrastructure is particularly problematic and often a grave humanitarian concern. Some missions and offices have supported the development of prison farm projects, the creation of prison gardens and other self-sufficiency programmes where prisons have lacked the necessary provisions.

Another frequently reported activity in relation to the justice chain is capacity-building and professionalisation through training. The data shows that law enforcement personnel are the recipients of most training initiatives, followed by judicial personnel and prison and corrections officers.

Two patterns of how training is undertaken are noteworthy. First, training is typically focused on specific topics responding to challenges and problems confronting justice chain personnel, with the intention of enhancing capacity, awareness and skills. For instance, several training initiatives for law enforcement include subject matters on specific skill-sets such as fingerprint techniques, hard copy file management, vehicle maintenance, information technology and communication, intelligence gathering, urban law enforcement, special weapons and tactics, forensics and crime scene investigation, community policing and public order management. Training also includes more general updating, information and awareness-raising on subject matters directly related to the duties and functions of police, judges and other court staff, as well as prison and corrections officers. Training topics include, for example, customary law, enforcement of economic and financial rules and regulations, criminal law, court procedures and the role and responsibility of the prosecutor.

Training aimed at enhancing skills and professionalism seems to be situational and in the Democratic Republic of Congo, for example, MONUC provided basic training for all personnel in the justice chain during the first years of the missions, but also specific and targeted training in preparation for the elections in 2006 where police were trained in crowd control and electoral security, and magistrates in resolving electoral disputes. Later, and as MONUC identified an increase in trafficking in women and young girls for sexual exploitation, knowledge of international and local laws governing the problem became the focus of capacity-building.⁶⁷

The second pattern of capacity-building of justice chain personnel is training aimed at sensitising and building integrity. For example, several training initiatives include topics such as gender, human rights, or juvenile justice. One illustration is Burundi where BINUB provided ‘awareness training in gender-based violence to specialized police units’,⁶⁸ another is Guinea Bissau where the UN organised seminars for police officers to ‘increase awareness of the need to respect human rights and the role of the police in defending the welfare of citizens’.⁶⁹

Another strand of sensitisation and integrity efforts within the justice chain is the development of mechanisms, institutions and processes for the vetting and quality assurance of legal professionals and law enforcement personnel. For the judiciary, activities include the development of ways for selecting judges and magistrates, conducting recruitment and the auditing of magistrates and other judicial personnel, creating a national database on magistrates and preparing a guidance bench book for them. In some cases, sensitisation and integrity efforts focus on specific issues such as the capacity of local judiciaries to deal with cases of death in custody, torture, ill-treatment and the arbitrary killing of detainees.

For law enforcement personnel, activities include efforts to professionalise the police force by strengthening procedures relating to sexual harassment, discrimination and abuse in the work place, confidence-building activities, drafting codes of conduct, supporting the recruitment of female officers and developing internal control and accountability mechanisms such as databases for recording and tracking cases of police misconduct. For detentions and corrections, activities cover visits to prisons, documentation of ill-treatments and torture, and support in drafting codes of conduct for prisons and corrections officers.

There are only a few reported instances recorded where rule of law assistance to the justice chain involve the creation or establishment of new institutions. Peace operations have supported the establishment of public defenders’ offices and prosecution support cells to reinforce the capacity of military prosecutors or the establishment of special units on diamonds crime intelligence and investigation, transnational organised crime, and sexual and gender-based violence.

Legislative and Constitutional Reform

Law reform is undertaken in 15 out of 36 peace operations. While only seven out of 23 (30%) peacekeeping missions have engaged in law reform, eight out of 13 (62%) political missions and offices have reported activities in this reform area (Table 2).

The data shows a similar pattern for constitutional reform and while it only stands for a small part of UN rule of law assistance in Africa as a whole, it is a more frequent reform area in political missions and offices. For both legislative and constitutional reform there might well be a large number of unreported activities compared with other reform areas of rule of law assistance. The issue of constitutional reform, for example, tends to be particularly sensitive, and national stakeholders might not wish to explicitly acknowledge outside support.

Constitutional reform also seems to be supported on a smaller scale than other reform areas, focusing on providing targeted technical expertise and supporting political dialogue. For assistance in constitutional reform specifically, UN missions and offices in, for example, Somalia, Guinea Bissau and the Democratic Republic of the Congo have supported harmonisation of constitutional provisions with international norms, harmonisation efforts between national laws and the constitution and capacity-building of bodies and actors vested with the responsibility for drafting new constitutions.

Typical activities undertaken in the area of legislative reform encompass technical assistance and advice on legislative topics, analysis of specific areas of law, or advice on the process of law-making. Thematically, legislative reform supported by peace operations is primarily focused on criminal justice, including criminal law and criminal procedure law and specific initiatives such as human trafficking and narcotics. Other subject-matter areas related to the justice chain cover counter terrorism, national intelligence and security, and laws on juries, bail, legal aid, prisons and law enforcement agencies. Often, legislative reform is undertaken as part of broader strategies of rule of law assistance. In the Democratic Republic of Congo, for example, the UN 'provided technical assistance to the ministerial committee on reform of the penitentiary system with a view to the finalisation of the reform package, including necessary draft legislation'.⁷⁰ Outside matters directly related to the justice chain, legislative reform comprises support to drafting laws on children's rights, land regulation, gender, media and broadcasting services, financial accountability, electoral laws, labour codes, and customary law.

National stakeholders and actors in legislative and constitutional reform are first and foremost parliaments and national assemblies and ministries of justice, but also political parties and specific agencies having concern for particular legislative proposals. In some peace operations, support is provided for establishing or strengthening law reform commissions and other such bodies to coordinate and ensure a coherent and inclusive law-making process. In a few instances, rule of law assistance is reported to have directly contributed to the actual drafting of laws and regulations. In Chad, the UN is reported to have 'assisted in drafting of a comprehensive set of laws, policies and procedures to assist the government of Chad in the establishment of a professional prison system'⁷¹ while in Liberia the UN pursued legislative reform initiatives on rape, media law, human trafficking, bail, juries, narcotics and security agencies.⁷²

Similar to the methods used in relation to justice chain institutions, legislative and constitutional reform focuses on mentoring, advice and capacity-building. UN

peace operations support political parties on specific issues of legislative reform and hold workshops and seminars with national legislators and other relevant actors. Part of legislative and constitutional assistance is also the hosting of public education seminars, mass media and training sessions to sensitise the public to new legislative initiatives.


Though a substantial part of reported assistance to legislative reform concerns the drafting of new laws and regulations, another frequent approach is the reviewing and vetting of national law in light of international human rights. In Namibia, for example, 51 laws were repealed or substantially amended in order to overcome ‘major obstacles against holding of free and fair elections’.⁷³ Where compliance is lacking, peace operations have supported harmonisation efforts or supported ratification of international instruments. Legislative reform also includes more tangible and direct assistance in the form of revision codification and translation of laws, or the development of commentaries and legal reference texts.

Access and Awareness

Initiatives centring on strengthening access to justice and people’s awareness of rights and the duties and functions of legal and administrative institutions have increased over the past decade. Of 36 missions, 21 have at one time or another engaged in supporting access to justice and legal awareness. However, similar to legislative and constitutional reform, this is an area where political missions and offices carry out proportionately the main bulk – that is, 11 out of 23 peacekeeping missions reported working on access and awareness while 10 out of 13 political missions and offices did the same.

Access and awareness is different from other reform areas in the sense that there is more cooperation with non-governmental organisations and other non-state actors, and many activities are described in terms of community empowerment and participation. Public events, seminars and workshops with non-governmental organisations, community leaders, religious and traditional leaders, civil society groups and citizens constitute a large part of reported activities in the field of access and awareness. Public events, workshops and seminars either seek to inform the broader public on proposed or recent changes in the legal and administrative framework, build trust and confidence, or explain and facilitate discussions on the role of certain actors in the justice sector. In Liberia the UN organised workshops to ‘help sensitise the public on the new and enhanced role of the judiciary in nation-building and on the importance of the rule of law’⁷⁴ while in Angola sensitisation programmes were initiated on existing legal and administrative mechanisms.⁷⁵

Access and awareness activities frequently use a variety of media outlets and communications channels. For example, the United Nations Integrated Peacebuilding Office in Guinea Bissau broadcasted radio programmes on issues relating to justice and security. Part of the outreach and public information initiatives of access and awareness is also to make available legal reference texts, information on the rights of the accused, the role, function and duties of the courts, or ‘Bill of Rights’ from constitutional texts.



A limited number of structural and institutional activities are also reported in relation to access and awareness. These include, for instance, support to national human rights institutions, establishment of mobile courts, legal aid clinics and paralegal mechanisms to address access on structurally related issues.

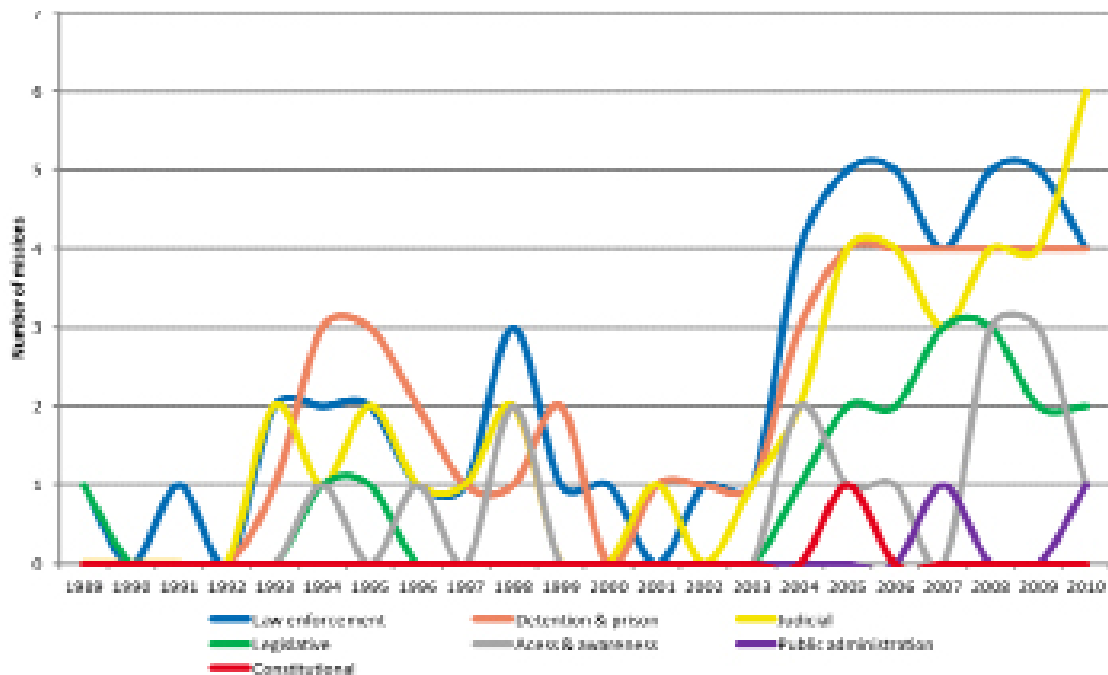
Overall, there are many similarities in the methods employed in the different rule of law areas. In relation to law enforcement, corrections, judicial reform and legislative support a reliance on capacity-building through training is evident, specifically in the enhancement of skill-sets and technical competence. Another dimension is the use of training to sensitise legal professionals, to build integrity and increase awareness on particular topics such as juvenile justice, discrimination and gender. The area of access and awareness shares much of the same methodology, but seeking to build confidence, knowledge and capacity among communities and vulnerable groups rather than among public officials. Another common methodology is the support to infrastructure and technical equipment – for example, modernising court case management systems, supporting legal aid clinics or disseminating central laws and regulations. The shared aspects in methodology correspond to the topical orientation of practical guidelines and manuals at the disposal of UN staff. The practical guidelines and manuals deal for the most part with matters such as building confidence, integrity and capacity among rule of law actors – though it is unclear how and to what extent they are actually used in the field.

5 PEACEKEEPING, PEACEBUILDING AND TRANSITIONS

Successful interventions depend on the flexibility of adjusting the response to evolving post-conflict challenges. Another conditional factor is the ability to address long-term issues early on and to lay the foundations for peace, security and development in the immediate period of post-conflict reconstruction. It is therefore interesting to examine the ways in which the type of rule of law assistance provided in peacekeeping and differ, and what happens when there is a transition from a peacekeeping to a political mission and office.

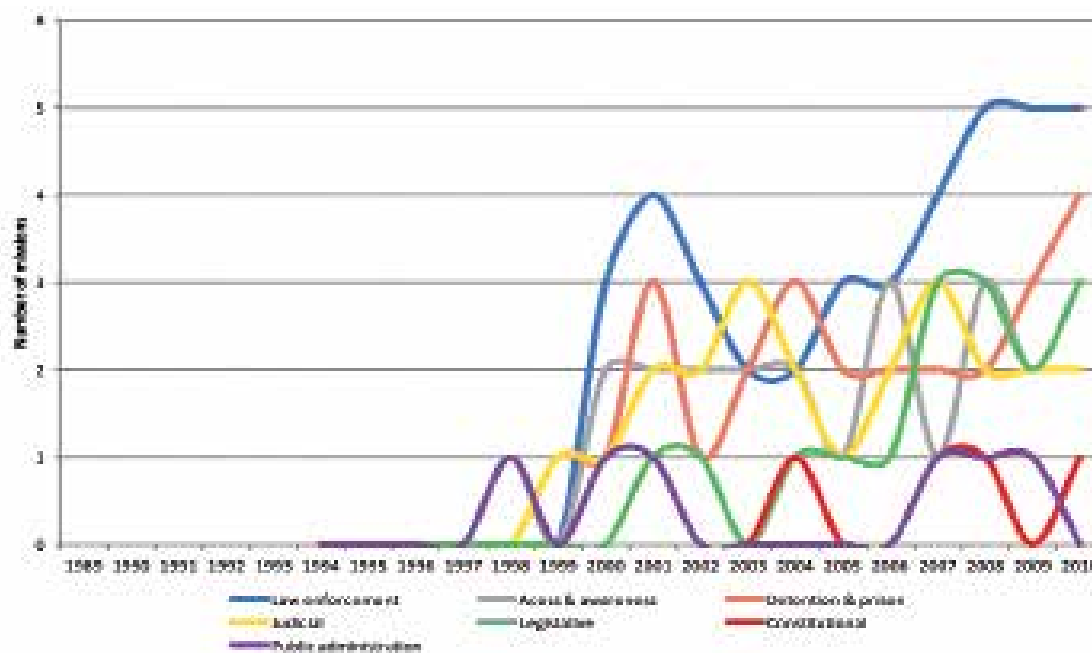
In the early 2000s there was a noticeable increase in the number of peacekeeping missions providing rule of law assistance. Generally, for peacekeeping missions a clear pattern over time is the focus on law enforcement, the judiciary and detentions and prisons (illustrated in Figure 5). It is worthy of attention that judicial reform, legislative reform and access and awareness all increased around 2003. This expansion corresponds with the Security Council's more frequent use of rule of law mandates, and coincides with the growth in policy and guidelines on rule of law assistance.

FIGURE 5 *Number of UN Peacekeeping Missions Involved in Rule of Law Reform Activities, Africa 1989–2010*



The first political mission was deployed in 1994 and the first reported rule of law assistance in peacebuilding occurred in 1998 and involved constitutional reform, access and awareness and law enforcement reform. For political missions and offices (Figure 6) the extent of rule of law assistance increased sharply in the early 2000s and increased again in the late 2000s.

FIGURE 6 Number of UN Political Missions and Offices Involved with Rule of Law Reform Activities, Africa 1989–2010

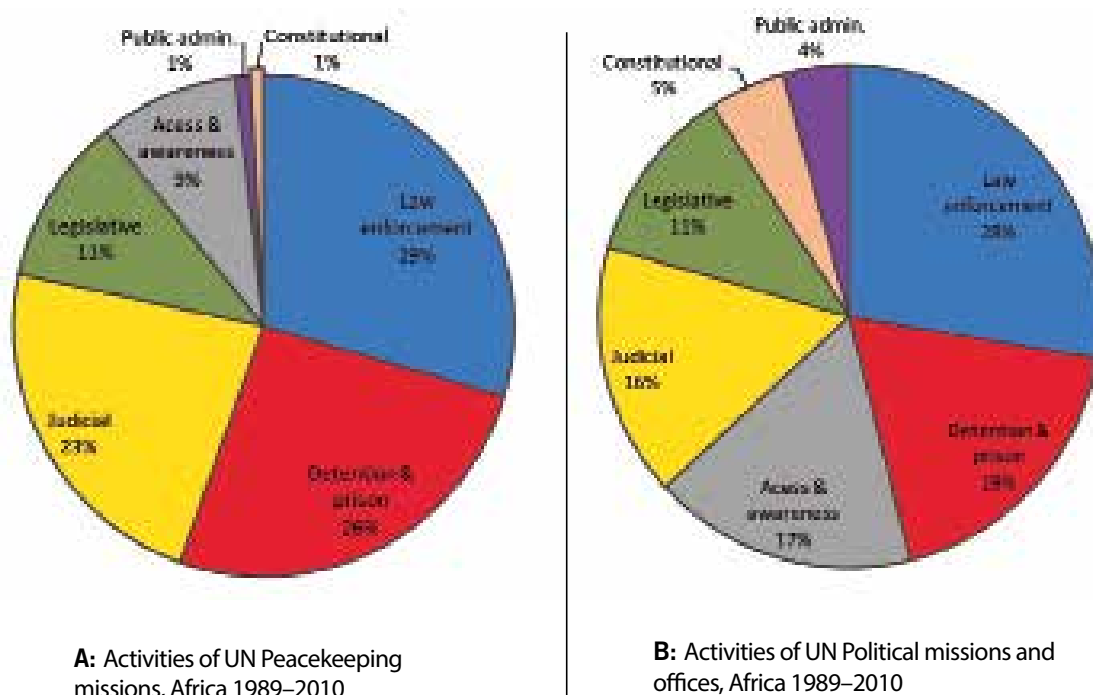


Although operating under a different mandate, political missions and offices maintain much of the same institutional focus as peacekeeping. At the same time, an interesting pattern in peacebuilding over the course of time is that rule of law assistance is broader in scope, including more reform areas than in peacekeeping. This seems to be a consistent pattern over time. This means that while the justice chain still accounts for a dominant part, it is primarily in peacebuilding where issues such as constitutional reform, public administration and legislative support are more frequently addressed. This suggests that at least in terms of the reforms pursued, political missions and offices provide rule of law assistance more in accord with the UN’s rule of law policy and strategic guidance calling for comprehensive approaches.

SCOPE OF RULE OF LAW ASSISTANCE IN PEACEKEEPING AND PEACEBUILDING

When comparing the scope of rule of law assistance in peacekeeping and political missions and offices (Figure 7) with regard to deployment years, it is clear that law enforcement is the single most common reform area. It is also possible to observe that legislative reform and reform of detentions and prisons are also pursued to an equal degree in both peacekeeping and peacebuilding.

FIGURE 7 *Scope of Engagement of UN Peace Operations. Peacekeeping and Political Missions and Offices Separately*



Reforms on access and awareness are more widely supported in political missions and offices than peacekeeping missions. Constitutional reforms are also more common in political missions and offices. Only one peacekeeping mission, MONUC in Democratic Republic of Congo, has a reported reform on constitutional reform.

At the same time, reform areas outside the justice chain are less frequent. This may signify a weaker commitment to non-justice chain areas or indicate that the implementation of projects and programmes in these areas is more focused on quick impact and single events rather than on more long-term processes. This inconsistency, however, means that there are fewer chances of building extensive accumulated practices and the learning of lessons, or to motivate and influence the development of policy, standard-setting documents, practical guidelines and manuals.

The difference between peacekeeping and peacebuilding can perhaps be explained by the fact that peacekeeping missions are deployed in more challenging environments and high-intensity conflicts. In these environments the security and justice institutions take precedence over other reform areas. The data reveals that peace operations deployed during intense civil war (i.e. more than 1,000 battle deaths in a calendar year) engage less in rule of law assistance than peace operations deployed during lower intensity conflicts, and that the focus of rule of law assistance tends to prioritise security and justice institutions. Fifteen missions operated during intense civil war and only six provided rule of law assistance.⁷⁶ Rule of law assistance increases significantly during ‘peace’. Efforts directed at law enforcement are still the most common during peace, but assistance is more widespread in terms of scope of activity.

TRANSITIONS BETWEEN MISSIONS

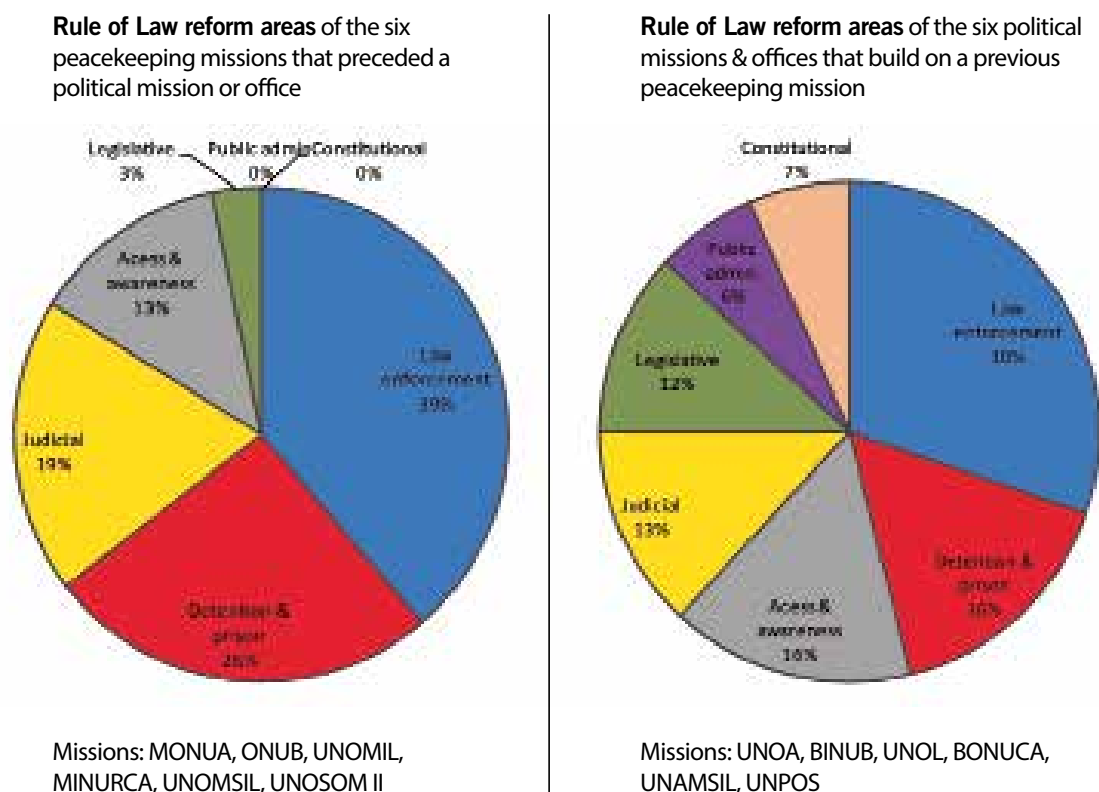
About half of all peace operations (peacekeeping, political missions and offices) follow on a previous operation. Ten out of 22 peacekeeping missions and 11 out of 14 political missions and offices were built on previous ones or were deployed during an existing mission. Of specific interest is the question of whether there has been progression in rule of law assistance with regard to scope – that is, do the activities of missions that are first on the ground differ from subsequent missions? One assumption is that there would be a complementary relationship between peace operations building on one another – for example, that the same type of activities are carried out in order to continue and complete previous initiatives. But it is also reasonable to assume that as the situation changes in the host country concerned, the type of rule of law assistance would also change from a more narrow and initial justice and security sector focus to include aspects of legislative and constitutional reform, access and awareness, and public administration.

The data shows that of the 15 peace operations that were the first to be deployed in a country, 12 were peacekeeping missions and only three were political missions or offices. During their deployment, first-time peace operations concentrated primarily on rule of law assistance to the justice chain. More modest assistance was directed towards legislative reform and enhancing legal access and awareness. Very little or no attention was accorded to constitutional reform or public administration. When comparing this assistance to later peace operations the emerging pattern is one of peace operations building on previous ones, and by and large continuing the work of their predecessors with a focus on the justice chain. This suggests that there is generally little expansion, and that the inclusion of non-justice chain areas represent only a small portion of the available assistance.

The transition from peacekeeping to peacebuilding is also of particular interest. Political missions and offices are rarely deployed as the first peace operations on the ground but follow on a peacekeeping mission in several cases. The transition from peacekeeping to peacebuilding is problematic for practical and financial reasons. As noted in the Secretary-General's 2011 report on funding for political missions, there is currently an inability to scale up back-stopping capacity for peacekeeping missions transitions to a political missions.⁷⁷ This means that peacebuilding often lacks access to funds, staff and expertise in the area of rule of law, and cannot easily draw on the resources of the DPKO.

In 1989-2010 six political missions and offices were deployed in Africa, building on previous peacekeeping operations.⁷⁸ Of interest here is whether the DPA-led operations provide a different type of rule of law assistance from those of the peacekeeping missions that they replaced. Figure 8 illustrates the division of activities in these missions.

FIGURE 8 *Sequencing of Rule of Law Reform Areas in Africa 1989–2010*



There are interesting differences in the sequencing from peacekeeping to peacebuilding. Reform areas on access and awareness, and law enforcement, detention and prison, and the judicial sector are pursued in both, with some variations. A major difference, however, is that peacekeeping operations provide very little or no attention to constitutional, legislative, or public administration reforms compared with political missions and offices. This indicates that political missions and offices continue in large part the rule of law assistance of peacekeeping missions, but also that there exists a broader scope of assistance in terms of the number of reform areas included.

The differences between peacekeeping and peacebuilding might imply a conscious sequencing strategy. Moreover, the DPKO does not have an explicit mandate to work on constitutional reform, whereas this reform area is typically seen to fall within the responsibilities of the DPA. The difference in sequencing, however, might also be a reflection of peace operation realities. Political missions and offices lack the financial strength, the capacity to deploy personnel rapidly, and the logistics of peacekeeping missions. In consequence, political missions and offices are more dependent on support from UN Country Teams and other UN entities present in the host country, which might explain the broader scope of rule of law assistance.

6 CONCLUDING REFLECTIONS AND QUESTIONS

This work provides a descriptive account of UN rule of law assistance in Africa between 1989 and 2010. It draws upon a comprehensive, empirical and systematic review of reports from the Secretary-General on UN peace operations and an inventory of UN policy and standard-setting documents, frameworks, practical guidelines and manuals on rule of law assistance.

In the past ten years covered by this report several changes have occurred within the UN rule of law system – for example, the establishment of a Rule of Law and Resource Coordination Group, supported by a Rule of Law Unit in the Executive Office of the Secretary-General, and the Office of Rule of Law and Security Institutions at DPKO. Moreover, a Police Standing Capacity and a Justice and Corrections Standing Capacity have been set up. There is also a continuing debate on capacity, roles and responsibilities in rule of law assistance. Several recent strategic reviews, for instance, the *Senior Advisory Group's report on Civilian Capacity in the Aftermath of Conflict* and DPKO's and DFS's *Peace: Keep it. Build it*, confirm the importance of rule of law in peacekeeping and peacebuilding while highlighting the attendant difficulties of conducting successful programmes and reforms.

Though considerable effort has been made and progress achieved with regard to policy formulation, organisational restructuring and the development of tools, manuals and frameworks, observations based upon the comprehensive data raises several questions for future UN rule of law assistance. If properly considered, these questions can inform and stimulate debate and discussion on the UN's commitment to the rule of law, enhance and extend good practices, innovations and accumulated experience to bridge critical capacity-gaps to encompass a broader range of rule of law areas.

INCREASE IN VOLUME OF RULE OF LAW ASSISTANCE

The UN is now, more than ever, called upon to provide rule of law assistance to countries emerging from crisis and conflict. This confirms that the rule of law is today firmly established both as a means and an end in the UN's maintenance of international peace and security. At the same time, the fact that more peace operations are engaged in rule of law assistance than ever before in Africa engenders several questions on what the intensification of rule of law assistance means for the organisation and its responsibilities in peace operations. For example:

- › *Does the UN possess the institutional capacity, human resources and quality control mechanisms to maintain the high volume of rule of law assistance?*
- › *Does the increase in volume affect the UN's ability to provide comprehensive, timely and context-adjusted rule of law assistance?*
- › *Does the increase in volume affect the UN's capacity to take on new responsibilities in rule of law assistance?*

SECTORISED AND SECURITISED RULE OF LAW ASSISTANCE

When examining UN rule of law assistance in Africa over time, what emerges is an orientation of a sectorised and securitised rule of law with specific ‘core’ rule of law areas – law enforcement, judiciary and prisons. Here, the UN seems to have accumulated a considerable amount of practice and policy, and also to have made substantial commitments in terms of overall deployment. For instance, the Standing Police Capacity and the Justice and Corrections Standing Capacity testify to an increased preparedness in relation to these fields. The three major reform areas in the justice chain also correspond to the burgeoning set of UN standards and practical guidelines and manuals now available for rule of law reformers. The fact that the justice chain was at the centre of the early peace operations in the 1990s, and has been so ever since, implies a form of path dependency. This path is reinforced by the practice of the Security Council when resolutions highlight or specifically identify institutions in the justice chain as priorities for rule of law assistance.

While the justice chain accounted for the majority of rule of law assistance initiatives during the first decade of peace operations included in this study (1989–2000), it is possible to identify a pattern of broader rule of law assistance from 2000 onwards. Around that time there was an increase in peace operations working on access and awareness and legislative reforms. During that time a majority of constitutional reforms were also supported, and all public administration reforms implemented. The predominant focus on the justice chain until 2000 might be explained by the fact that political missions and offices were not carried into effect until the late 1990s and that a more comprehensive policy on rule of law was in the making (e.g. the 2004 UN rule of law definition), as well as organisational changes such as the Peacebuilding Commission.

When it comes to the scope of UN rule of law assistance – that is, how common the respective reform areas are – the justice chain institutions in general, and law enforcement in particular, are the sectors and reform areas most commonly supported (in terms of years of deployment where there are reported activities). The key focus on the justice chain leads to a situation of discrepancy between UN rule of law policy (rule of law as a principle of governance) and UN rule of law in practice. While such accumulated practice indicates a positive resource mobilisation and growing knowledge repository, the justice chain focus reflects only one part of the UN’s rule of law policy. Looking at where most UN assistance ends up prompts a number of questions on its flexibility and ability both to adapt and to context-adjust rule of law assistance. For example:

- › *Are the structures and mechanisms for joint cooperation between different UN entities put to effective use in order to address broad and cross-cutting rule of law areas in peace operations?*
- › *Is there a need to develop additional or specific guidance (manuals, tools etc) on how to work on rule of law areas outside the justice chain?*

- › *Is there a need to develop a standing capacity in the UN on legislative, public administrative and constitutional reform areas similar to that of standing capacities for police, justice and corrections?*

RELIANCE ON CAPACITY-BUILDING THROUGH TRAINING

Viewing the methods of implementation in the different rule of law areas, one sees an emerging pattern of reliance on capacity-building through training. This is either skills-based or continuing legal education or training aimed at sensitising legal professionals on specific topics. Much training concentrates on linking situational challenges (e.g. preparing for elections or addressing a rise in sexual and gender-based violence) with international law and standard-setting in human rights. This is in accord with recommendations from the Secretary-General and others that rule of law assistance should be ‘tailor-made’ to each host country’s specific and evolving demands.

In most cases UN rule of law assistance supports capacity-building existing institutions and invests only marginally in legislative reform. This raises the matter of how newly-trained or ‘sensitised’ judges, correctional officers or community police officers, are influenced by continuing to work under a dysfunctional organisation and within weak and inconsistent legal frameworks. A growing set of practical guidelines and manuals now deal with capacity-building, chiefly in relation to the justice chain. But they are also developed by many different entities, and in relation to different contexts and challenges. There does not appear to be a decisive hierarchy or follow-up mechanisms on how, or to what extent, they are actually used in the field.

Another frequent activity is the supporting of infrastructure and basic equipment. Many such activities are technical, quick-impact or in response to immediate challenges after conflict, such as constructing police stations or the rebuilding of court houses or prisons. Less frequently reported are activities treating rule of law from a more political and long-term perspective, such as building trust and confidence, supporting local constituencies or assisting national institutions in providing legal education.

That there are many similarities in the methods employed in peacekeeping and peacebuilding offer the potential for synergies, and for facilitating the expansion of other rule of law areas previously in want of attention. But the apparent lack of a system-wide review gives rise to the following questions:

- › *Are practical guidelines and manuals actually used in planning, preparing and implementing rule of law mandates in peacekeeping and peacebuilding?*
- › *Does existing training of UN staff in preparation for deployment, or following a deployment, ensure quality and coherence of rule of law policy and practical guidance?*
- › *What are the affects and effects on national legal and administrative institutions of capacity-building through training, sensitising and awareness-raising initiatives in peacekeeping and peacebuilding?*

PATH DEPENDENCY BETWEEN PEACEKEEPING AND PEACEBUILDING

Between peacekeeping and political missions and offices, this study identifies a general pattern of coherence, but also significant differences in the type of rule of law assistance provided. Political missions and offices tend to undertake similar types of activity to those of peacekeeping missions. At the same time, it is in political missions and offices, primarily, where legislative reform, access and awareness and constitutional reforms are found, and where more elements of a comprehensive rule of law agenda are catered for. This might suggest a division of labour by default between different mission types, where long-term, structural and political activities are more feasible in less unstable environments. Generally, political missions and offices are employed in countries with a lower conflict intensity compared with peacekeeping.


The practice of transferring responsibility for non-justice chain areas to peacebuilding means that many rule of law areas are not addressed immediately after a conflict settlement has been brokered and an international force is deployed, but rather depend upon a would-be future transition to a political mission or that structures and mechanisms to ensure support from the UN Country Team are in place while the peacekeeping mission attends to justice chain demands. The differences in logistical, financial and human resource capacity between DPA and DPKO missions should also be acknowledged when discussing responsibilities for different fields in the rule of law.

If the division of labour between the responsibilities for different rule of law areas is motivated by ideas that transitions from peacekeeping to peacebuilding will be progressive and adjusted to new context realities, then past practices provide limited guidance. The data suggests that peacebuilding following directly on peacekeeping provides more or less the same type of assistance. Six political missions have been deployed directly after a peacekeeping mission. Of these six, Liberia and Burundi started as peacebuilding, later replaced by peacekeeping as the situation deteriorated before political missions were once again established. Another instance, Côte d'Ivoire, started as a political mission but is now a peacekeeping mission.

On examining the relationship between peacekeeping and peacebuilding, and transitions between different missions, two questions of importance arise:

- › *Is there sufficient policy guidance, and are there mechanisms and tools for addressing peacebuilding rule of law priorities early on in peacekeeping missions?*
- › *Is there sufficient policy guidance to ensure flexible and context-adjusted rule of law assistance in transitions between peacekeeping and peacebuilding missions?*

There have been many positive developments in the UN's rule of law system over the past decade both in terms of policy and learning and adjusting to practical experience and competencies gained on the ground. Despite these encouraging changes, when the UN's rule of law assistance in Africa is examined as a whole certain questions arise on the organisation's flexibility with regard to post-conflict reality, the ability to provide a context-adjusted response, and the coherence and use of policy and practical guidance.



The data in this report demonstrates that public administration, legislative reform, constitutional reform, and access and awareness play small parts in UN rule of law assistance in peace operations. When these areas actually form a part of rule of law assistance they are addressed only to a relatively low extent in peacekeeping and peacebuilding.

The UN's extensive and long-term support to post-conflict and crisis societies has established certain core capacities that should be reinforced, and this experience could be used to expand rule of law assistance to better reflect the organisation's commitment to the rule of law commitment as a principle of governance.

ANNEX A.

UN PEACE OPERATIONS IN AFRICA 1989–2010

COUNTRY	MISSION NAME	TYPE OF OPERATION	PERIOD	RULE OF LAW ASSISTANCE
Angola	UNAVEM I	Peacekeeping	1989-1991	-
Angola	UNAVEM II	Peacekeeping	1991-1995	X
Angola	UNAVEM III	Peacekeeping	1995-1997	X
Angola	MONUA	Peacekeeping	1997-1999	X
Angola	UNOA	Political mission & office	1999-2001	X
Angola	UNMA	Political mission & office	2002-2003	X
Burundi	UNOB	Political mission & office	1994-2004	-
Burundi	ONUB	Peacekeeping	2004-2006	X
Burundi	BINUB	Political mission & office	2007-	X
Central African Republic	MINURCA	Peacekeeping	1998-1999	X
Central African Republic	BONUCA	Political mission & office	2000-2009	X
Central African Republic	BINUCA	Political mission & office	2010-	X
Côte d'Ivoire	MINUCI	Political mission & office	2003-2004	-
Côte d'Ivoire	UNOCI	Peacekeeping	2004-	X
Democratic Republic of Congo	MONUC	Peacekeeping	1999-2009	X
Democratic Republic of Congo	MONUSCO	Peacekeeping	2010-	X
Guinea Bissau	UNOGBIS	Political mission & office	1999-2009	X
Guinea Bissau	UNIOGBIS	Political mission & office	2010-	X
Liberia	UNOMIL	Peacekeeping	1993-1997	X
Liberia	UNOL	Political mission & office	1998-2003	X
Liberia	UNMIL	Peacekeeping	2003-	X
Morocco	MINURSO	Peacekeeping	1991-	-
Mozambique	ONUMOZ	Peacekeeping	1992-1994	X
Namibia	UNTAG	Peacekeeping	1989-1990	X

COUNTRY	MISSION NAME	TYPE OF OPERATION	PERIOD	RULE OF LAW ASSISTANCE
Rwanda	UNAMIR	Peacekeeping	1993-1996	X
Sierra Leone	UNOMSIL	Peacekeeping	1998-1999	X
Sierra Leone	UNAMSIL	Political mission & office	1999-2005	X
Sierra Leone	UNIOSIL	Political mission & office	2006-2008	X
Sierra Leone	UNIPSIL	Political mission & office	2008-	X
Somalia	UNSOM I	Peacekeeping	1992-1993	X
Somalia	UNSOM II	Peacekeeping	1993-1995	X
Somalia	UNPOS	Political mission & office	1995-	X
South Africa	UNOMSA	Peacekeeping	1992-1994	-
Sudan	UNAMIS	Peacekeeping	2004-2005	-
Sudan	UNMIS	Peacekeeping	2005-	X
Sudan	UNAMID	Peacekeeping	2007-	X

ANNEX B.

COMPILATION OF PRACTICAL GUIDELINES

REFORM AREA	PROGRAMMATIC AID AND TOOLS
Judiciary and criminal justice procedure	Manual on Human Rights for Judges, Prosecutors and Lawyers, OHCHR, 2003
	Criminal Justice Assessment Toolkit: The Independence, Impartiality and Integrity of the Judiciary, UNODC, 2006
	Criminal Justice Assessment Toolkit, UNODC, 2006
	Legal and Judicial Rule of Law Work in Multidimensional Peacekeeping Operations: Lessons Learned Study, DPKO, 2006
	Criminal Justice Assessment Toolkit: The Prosecution Service, UNODC, 2006
	Training Manual for Prosecutors on Confronting Human Trafficking, UNODC 2008
	Guidelines on the Methodology for Review of Justice and Corrections Components in United Nations Peace Operations, DPKO, 2009
	UNODC Guide for Practitioners: Criminal Justice Reform in Post-conflict States, UNODC, 2011
Constitutions	Guidance Note of the Secretary-General: United Nations Assistance to Constitution-Making Processes, Secretary-General, 2009
Law-making	Model Drug Abuse Bill, UNODC, 2000
	Model Money Laundering and Proceeds of Crime Bill, UNODC, 2000
	Model Witness Protection Bill, UNODC, 2000
	Model Law on Drug Trafficking and Related Offences, UNODC, 2003
	Human Rights: Handbook for Parliamentarians, OHCHR, 2005
	Strengthening the Role of Parliaments in Crisis Prevention and Recovery, UNDP, 2005
	Legislative Guide for the Implementation of the United Nations Convention Against Corruption, UNODC, 2006
	Legislative Reform on Domestic Child Labour, UNICEF, 2007
	Handbook on Legislative Reform: Realising Children's Rights, UNICEF, 2008
	Nationality and Statelessness: A Handbook for Parliamentarians, UNHCR, 2008
Public administration	Partially covered in law-making, e.g. in relation to legislative guidance for the implementation of UN Convention Against Corruption
Legal awareness and access to justice	Investigating the Links Between Access to Justice and Governance Factors: An Objective Indicator's Approach, UNODC, 2001
	Rule of Law and Access to Justice: Perspectives from UNDP Experience, UNDP, 2003
	Access to Justice: Practice Note, UNDP, 2004
	Criminal Justice Assessment Toolkit: Legal Defence and Legal Aid, UNODC, 2006
	Handbook on Improving Access to Legal Aid in Africa, UNODC, 2011

REFORM AREA	PROGRAMMATIC AID AND TOOLS
Police and law enforcement	United Nations Civilian Police Principles and Guidelines, DPKO, 2000
	United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, DPA, 2000
	Urban Safety and Good Governance: The Role of the Police, UN HABITAT, 2001
	United Nations Police Handbook, DPKO, 2005
	Criminal Justice Assessment Toolkit: Crime Investigations, UNODC, 2006
	Criminal Justice Assessment Toolkit: Public Safety and Police Service Delivery, UNODC, 2006
	Criminal Justice Assessment Toolkit: The Integrity and Accountability of Police, UNODC, 2006
	DPKO Policy Census and Identification of Law Enforcement Officials, DPKO 2006
	Standard Operating Procedures on Investigating Crimes of Trafficking for Commercial Sexual Exploitation, UNODC, 2006
	Handbook on Police Accountability, Oversight and Integrity, UNODC, 2011
Prisons and Corrections	DPKO Best Practice Guidelines: Executive Corrections Management in UN Peacekeeping, DPKO, 2003
	DPKO Policy Directive on Prison Support in UN Peacekeeping Operations, DPKO, 2005
	Supporting National Prisons Systems: Lessons Learned and Best Practices for Peacekeeping Operations, DPKO, 2005
	Criminal Justice Assessment Toolkit: Alternatives to Incarceration, UNODC, 2006
	Criminal Justice Assessment Toolkit: Detention Prior to Adjudication, UNODC, 2006
	Prison Support Guidance Manual, DPKO, 2007
	Handbook for Prison Managers and Policymakers on Women and Imprisonment, UNODC, 2008
	Management Development Course: Management of Prison Support Programmes in Peace Support Operations, DPKO, 2008
	Guidelines on the Methodology for Review of Justice and Corrections Components in United Nations Peace Operations DPKO, 2009

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ENDNOTES

1 The Security Council has included rule of law components in almost all thematic and country-specific resolutions since 2003. See, Security Council Report, 'Cross-Cutting Report on the Rule of Law', No. 3 2011, p. 15.

2 The list of peacekeeping, political missions and offices is based on the UN repertoire. http://www.un.org/en/sc/repertoire/subsidiary_organ/peacekeeping_missions.shtml (on peacekeeping missions) http://www.un.org/en/sc/repertoire/subsidiary_organ/special_political.shtml (on political missions and offices); and http://www.un.org/en/sc/repertoire/subsidiary_organ/peace_offices.shtml (on peacebuilding offices). Please see Annex A for a complete list of cases. Of the 36 peace operations, 30 have engaged in one or several rule of law reform areas – for example, UNAVEM I in Angola (1989-1991) and MINURSO in Western Sahara (1991-). Peace operations deployed to interstate conflicts and regional missions are not included in this study.

3 See, for example, resources at the webpage of the UN Policy, Evaluation and Training Division: www.peacekeepingbestpractices.unlb.org/PBPS/Pages/Public/Home.aspx.

4 There exist only a few empirical studies on rule of law in peace operations allowing for comparative analysis across countries and over time. Two recent publications are notable: Security Council Report, 'Cross-Cutting Report on the Rule of Law', and Camino Kavanagh and Bruce Jones, 'Shaky Foundations: An Assessment of the UN's Rule of Law Support Agenda', Center on International Cooperation, 2011.

5 Kavanagh and Jones, 2011, p. 26.

6 See, Cherif Bassiouni, 'Introduction' in *Post-conflict Justice*, Bassiouni (ed.) Transnational Publishers: New York (2002), p. xv.

7 Typically, the Office of the High Commissioner for Human Rights has a global lead on both transitional justice and human rights promotion in post-conflict and development contexts. This means that experts, funding and activities are in many ways distinct and separate from rule of law assistance in peace operations.

8 UN Department of Peacekeeping Operations, 'Primer for Justice Components in Multidimensional Peace Operations', p. 11.

9 *Ibid.*, p. 8.

10 The justice chain is often presented as representing the 'core' of rule of law. See, Jane Stromseth, David Wippman and Rosa Brooks, *Can Might Make Rights? Building the Rule of Law After Military Interventions*, Cambridge: Cambridge University Press, 2006, pp. 184f.

11 UN, *Civilian Capacity in the Aftermath of Conflict: Independent Report of the Senior Advisory Group*, A/65/747/S2011/185, 22 February 2011, p. 7.

12 UN Security Council Resolution 1621, 'The Situation Concerning the Democratic Republic of the Congo', 6 September 2005, preamble; Resolution 1635 'The Situation Concerning the Democratic Republic of the Congo', 28 October 2005 preamble.

- 13 See, generally, Security Council Report, pp. 15–17.
- 14 UN Security Council, Resolution 1528, ‘The Situation in Côte d’Ivoire’ 27 February 2004) para. 6 (q); Resolution 1609, ‘The Situation in Côte d’Ivoire’ 24 June 2005.
- 15 UN Security Council, Resolution 1509, ‘The Situation in Liberia’ 19 September 2003, preamble.
- 16 UN Security Council, Resolution 1580, ‘The Situation in Guinea Bissau’, 22 December 2004, para. 2 (h).
- 17 UN Security Council, Resolution 1620, ‘The Situation in Sierra Leone’, 31 August 2005, para I (v).
- 18 UN Security Council, Resolution 1719, ‘The Situation in Burundi’, 25 October 2006, para. 2 (d).
- 19 UN Secretary-General, ‘Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies’, p. 4.
- 20 See, generally, the contributions in Gianluigi Palombella and Neil Walker (eds.) *Relocating the Rule of Law*, Oxford: Hart Publishing, 2009.
- 21 For a discussion on thin or thick interpretations of the rule of law, see, Brian Tamanaha, *On the Rule of law: History, Politics, Theory*, Cambridge: Cambridge University Press, 2004 pp. 91f.
- 22 UN Secretary-General, ‘Rule of Law and Transitional Justice in Conflict and Post-conflict Societies’, p. 5.
- 23 *Ibid.*, p. 5.
- 24 *Ibid.*, p. 5.
- 25 UN Secretary-General, ‘Uniting our Strengths: Enhancing United Nations Support for the Rule of Law’, A/61/636-S/2006/980, 14 December 2006; ‘Strengthening and Coordinating United Nations Rule of Law Activities’, A/63/226, 6 August 2006; ‘Annual Report on Strengthening and Coordinating United Nations Rule of Law Activities’, A/64/298, 17 August 2009; and ‘Strengthening and Coordinating United Nations Rule of Law Activities’, A/66/133 8 August 2011.
- 26 Report of the Secretary-General, ‘Uniting Our Strengths: Enhancing United Nations Support for the Rule of Law’, S/2006/980 14 December 2006, p. 15. See, also, Rule of Law Coordination and Resource Group, ‘Joint Strategic Plan 2009–2011’, February 2009.
- 27 UN General Assembly, ‘The rule of law at the national and international levels: report of the Secretary-General’, A/63/64, 12 March 2008.
- 28 UN Executive Office of the Secretary-General, ‘Inventory: United Nations Capacity in Peacebuilding’, September 2006, p. 46.
- 29 UN Secretary-General, ‘Guidance Note of the Secretary-General: UN Approach to Rule of Law Assistance’ pp. 4–7.

30 UN Department of Peacekeeping Operations, 'Primer for Justice Components in Multidimensional Peace Operations', p. 25ff.

31 Department of Peacekeeping Operations and Department of Political Affairs, 'Operational Guidance Note: Rule of Law and the Administration of Justice in Peace Processes and Agreements', 2009.

32 See Annex B for a selection of guidelines and manuals.

33 Most are developed by a specific entity or at the level of the Secretariat. Some, however, are developed by specific peace operations. See, for example, United Nations Verification Mission in Guatemala, 'Manual for Public Prosecutors', October 1996.

34 Kavanagh and Jones, p. 61.

35 ECPS Task Force for Development of Comprehensive Rule of Law Strategies for Peace Operations: 'Final Report', Annex E, 15 August 2001.

36 Guidance Note of the Secretary-General, 'United Nations Assistance to Constitution-making Processes', April 2009, p. 3.

37 UN Executive Office of the Secretary-General, 'Inventory', p. 76.

38 See, Per Bergling, Lars Bejstam, Jenny Ederlöv, Erik Wennerström, and Richard Zajac Sannerholm, 'Rule of Law in Public Administration: Problems and Ways Ahead in Peace- Building and Development' Folke Bernadotte Academy, 2008.

39 UN Secretary-General, Guidance Note of the Secretary-General: UN Approach to Rule of Law Assistance' April 2008, p. 4.

40 UN Department of Peacekeeping Operations, 'Primer for Justice Components in Multidimensional Peace Operations: Strengthening the Rule of Law', p. 1. See, also, Bruce Jones, Richard Gowan, Jake Sherman, et al. 'Building on Brahimi: Peacekeeping in an Era of Strategic Uncertainty', Center on International Cooperation, 2009.

41 UN Secretary-General, 'Secretary-General's bulletin: Organization of the Department of Peacekeeping Operations', ST/SGB/2010/1.

42 UN Secretary-General, Implementation of the Recommendations of the Special Committee on Peacekeeping Operations', A/64/573, 22 December 2009, pp. 8-9.

43 See, UN Secretary-General 'Secretary-General's s bulletin: Organization of the Department of Political Affairs', ST/SGB/2000/10.

44 The employment of political missions and offices began in 1993 with UNOB. UN Secretary-General, 'Review of Arrangements for Funding and Backstopping Special Political Missions', A/66/340, 12 October 2011, p. 6. The Department of Political Affairs describes its missions and offices as cost-effective alternatives for managing conflicts and before it spreads. UN Department of Political Affairs, 'Appeal 2010', 2011, p. 2.

45 UN Secretary-General, 'Review of Arrangements for Funding and Back-stopping Special Political Missions', p. 6

46 Charles T. Call, 'Political Missions and Departures from Constitutional Order' in *Review of Political Missions*, Center on International Cooperation, 2011, p 10.

47 Call, p. 10-11. In the report of the Secretary-General, 'Strengthening and Coordinating United Nations Rule of Law Activities' A/63/226, 6 August 2008, p. 10, DPA's limited access to a rapidly deployable capacity in relation to broader rule of law areas is described.

48 UN Secretary-General, 'Peacebuilding in the Immediate Aftermath of Conflict', S/2009/304, 11 June 2009 p. 24.

49 UN Executive Office of the Secretary-General, 'Inventory', p. 73.

50 One example is constitutional reform which requires the support and competencies from many entities in the UN system. See, Guidance Note of the Secretary-General, 'United Nations Assistance to Constitution-Making Processes' April 2009.

51 Michèle Griffin, 'The Helmet and the Hoe: Linkages Between United Nations Development Assistance and Conflict Management', *Global Governance* 9, 2003, p. 208.

52 UN Security Council, 'Statement by the President of the Security Council', S/PRST/2011/4, 11 February 2011.

53 Peacebuilding Commission was established by the Security Council resolution, S/RES/1645, 20 December 2005.

54 Kavanagh and Jones, p. 61, though over the years the DPKO and UNDP have attempted to enhance their joint programming, see, UN Secretary-General, 'Strengthening and Coordinating United Nations Rule of Law Activities' A/66/133, 8 August 2011 p. 17.

55 UN Executive Office of the Secretary-General, 'Inventory', pp. 9f.

56 DPKO & DFS, 'Peace. Keep It. Build It.' November 2011, p. 15.

57 Kavanagh and Jones, pp. 63-64. See, also, UN, 'United Nations Integrated Mission Planning Process (IMPP)' Guidelines Endorsed by the Secretary-General, 13 June 2006.

58 UN Secretary-General, 'Uniting Our Strengths: Enhancing United Nations Support for the Rule of Law', S/2006/980 14 December 2006, pp. 13-16. The decision is controversial and has been rather problematic to put into effect.

59 UN Secretary-General, 'Uniting Our Strengths: Enhancing United Nations Support for the Rule of Law', S/2006/980 14 December 2006, p. 13.

60 *Ibid.*, p. 13.

61 UN Department of Peacekeeping Operations, 'A New Partnership Agenda: Charting a New Horizon for UN Peacekeeping', 2004, pp. 22-23.

62 Information on conflict intensity is taken from Uppsala Conflict Data Program (date of retrieval: 2011/09/30). UCDP Conflict Encyclopaedia: www.ucdp.uu.se/database.

63 UN Executive Office of the Secretary-General, 'Inventory', p. 46.

64 'Civilian Capacity in the Aftermath of Conflict: Independent Report of the Senior Advisory Group', A/65/747-S/2011/85 22 February 2011, p. 7.

65 UN Department of Peacekeeping Operations, 'Handbook on United Nations Multidimensional Peacekeeping Operations', 2003 p. 83.

66 UN Secretary-General, 'Report of the Secretary-General on the Developments in Guinea Bissau and the Activities of the United Nations Peacebuilding Support Office in that Country' S/2001/237, 16 March 2001.

67 UN Secretary-General, 'Thirtieth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo' S/2009/623, 4 December 2001.

68 UN Secretary-General, 'Fifth Report of the Secretary-General on the United Nations Integrated Office in Burundi', S/2009/270, 22 March 2009.

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70 UN Secretary-General, 'Twenty-fifth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo', S/2008/218, 2 April 2008.

71 UN Secretary-General, 'Report of the Secretary-General on the United Nations Mission in the Central African Republic and Chad', S/2009/199, 14 April 2009.

72 UN Secretary-General, 'Sixth Progress Report of the Secretary-General on the United Nations Mission in Liberia', S/2005/177, 17 March 2005.

73 UN Secretary-General, 'Report of the Secretary-General on the Implementation of Security Council Resolution 640 (1989) Concerning the Question of Namibia', S/120083, 6 October 1989.

74 UN Secretary-General, 'Fourth Progress Report of the Secretary-General to the Security Council on the United Nations Mission in Liberia', S/2004/725, 10 September 2004.

75 UN Secretary-General, 'Interim Report of the Secretary-General on the United Nations Mission in Angola', UNMA S/2002/1353, 12 December 2002.

76 Armed conflicts do not necessarily start with intense civil war and then de-escalate. Conflict intensity can and does fluctuate and move between peace and different intensity levels.

77 Report of the Secretary-General, 'Review of Arrangements for Funding and Backstopping Special Political Missions' 12 October 2011, p. 10.

78 UNOA after MONUA (Angola), BINUB after ONUB (Burundi), UNOL after UNOMIL (Liberia), BONUCA after MINURCA (Central African Republic), UNAMSIL after UNOMSIL (Sierra Leone), UNPOS after UNSOM II (Somalia).

THIS REPORT PROVIDES NEW SYSTEMATIC data on two decades of UN rule of law assistance in Africa, covering a total of 36 UN peace operations (peacekeeping, political missions and offices). Seven areas of rule of law assistance are examined, including: (1) judicial reform, (2) constitutional reform, (3) law reform, (4) rule of law in public administration reform, (5) legal awareness and access to justice reform, (6) law enforcement reform, and (7) reforms of detentions, and prisons.

THE REPORT PROVIDES A BIRDS-EYE VIEW on how rule of law assistance has evolved over time, the volume of rule of law assistance, what areas or sectors receive the most assistance, the methods employed for implementation, and differences between peacekeeping and peacebuilding missions.

THE REPORT DEMONSTRATES that rule of law assistance has increased dramatically since the early 1990s. The data also shows that the most common reform areas are found in the 'justice chain' – that is, law enforcement, judiciary, and prisons. The centrality of the justice chain in UN rule of law assistance is observed in both peacekeeping and peacebuilding initiatives. The intensification of rule of law assistance, and the concentration on a select group of reform areas, raises the issue of the UN's capacity and ability to meet demand. Between peacekeeping and political missions and offices, this study identifies a general pattern of coherence, but also significant differences in the type of rule of law assistance provided.

THERE HAVE BEEN MANY positive developments in the UN's rule of law system over the past decade both in terms of policy and learning from, and adjusting to, practical experience and competencies gained on the ground. Despite these encouraging changes, when the UN's rule of law assistance in Africa is examined as a whole certain questions arise on the organisation's flexibility with regard to post-conflict reality, the ability to provide a context-adjusted response, and the coherence and use of policy and practical guidance. If these questions are carefully and properly considered, they can inform and inspire debate and discussion on the UN's commitment to the rule of law, enhance and extend good practices, innovations and accumulated experience in order to bridge critical capacity-gaps and encompass a broader range of rule of law areas.

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