

Helpdesk Research Report: Evidence on establishment of the 'rule of law' through deliberate interventions

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Query: To what extent can the 'rule of law' be established through deliberate interventions (domestic or international)? (Please look for evaluations of explicit rule-of-law interventions or significant domestic change processes, and see what evidence there is and how they have been successful).

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1. Overview

There is a lack of systematic evidence on whether and how the 'rule of law'¹ can be established through domestic or international interventions. Sage and Woolcock (2007) note a consensus among experts that rule of law reforms lack a sound theoretical and empirical basis. There is also limited literature on the relationship between domestic change processes and rule of law interventions. On-going initiatives to study the impact of legal empowerment and justice for the poor approaches may start to address this evidence gap.

Some experts consulted referred to the evaluations and assessments of the decades of extensive international experience with rule of law interventions. However there are limitations to this evidence, such as insufficient focus on outcomes rather than outputs.

¹ This research has taken a broad approach to what is considered 'rule of law' reform (as informed by Kleinfeld, 2005, who delineates rule of law as composed of five separate, socially desirable goods or ends: (1) a government bound by law, (2) equality before the law, (3) law and order, (4) predictable and efficient rulings, and (5) human rights.). However it has been beyond the scope of the study to cover in depth related, extensive

This study reviews a selection of the recent (or seminal) evaluations of international interventions, and identifies the following key findings.

- Many evaluations on different types of rule of law reform programmes have found **disappointing, limited or no impact on the establishment of rule of law** by international interventions across donors, countries and sectors. Some evaluations have also found **positive examples of successful interventions**.
- The same issues with the design and implementation of international rule of law interventions are reported across donors, countries and sectors. A common criticism is that rule of law reform does not take into account **the importance of domestic political commitment** to support the reforms.
- **Some innovative interventions and tools are identified as successful** (at least in process and output terms). Examples include the use of paralegals; the lead or contributory role of NGOs, grassroots organisations or other community-based groups; the use of low-tech comic strips and easily available printed material to disseminate legal information; the use of qualified national consultants to develop the advisory work (and not just to gather and process data); and the integration of rule of law and social accountability initiatives.
- A number of evaluations point out that **short-term interventions are unlikely to lead to sustainable establishment of rule of law**.
- Some also point out that **investment in the monitoring and evaluation of results is needed**.

This report is organised in two sections: the first summarises the limitations of the evidence and the second provides examples of evaluations and reviews on interventions to support rule of law. The examples include a) literature reviews; b) evaluations of aid agency interventions; and c) other country/thematic case studies.

2. Limitations of the evidence

Experts agree that **rule of law reforms 'lack a sound theoretical and empirical basis'** (working paper by Sage and Woolcock, 2007) due to a striking lack of coherent and systematic evaluations (literature review by Samuels, 2006). Consequently there is little knowledge about how the rule of law develops in societies and how this can be stimulated beyond 'simplistic efforts to copy institutional forms' (analytical review by Carothers, 2003, 3). There are also knowledge gaps on what the goals of rule of law reform are, what strategies are effective and how to sequence inputs effectively (Samuels, 2006).

There are a number of reasons for this:

- The rule of law is an **area of great complexity**, conceptually and practically (Samuels, 2006). There is no consensus on 1) what constitutes 'rule of law'; 2) how to measure whether rule of law has been established; and particularly on 3) what causal factors are involved and how to study them empirically.
- There is **overlap and sometimes confusion between the field of rule of law and other areas** such as human rights, state-building, democratisation and good governance. Each of these fields also contains definitional complexities and a paucity of empirical research. For example Goldstein (2010) sums up that 'we have (almost) no rigorous evidence of the effects

of governance reform ... we know very little about poverty-governance-justice nexus' (in a presentation at a World Bank training session).

- There are issues with **establishing causality**: Cohen et al. (2011 – an analysis of four recent rule of law projects from Asia, Africa and Latin America) point out that rule of law projects take place alongside a host of simultaneous political and social changes, are time consuming and unpredictable, and have multiple and sometimes conflicting objectives.
- There is **insufficient investment in evaluations**. Carothers (2003) draws attention to the unwillingness of aid organisations to invest sufficient resources in evaluations, and the tendency of both academics and lawyers not to pursue systematic empirical research on rule-of-law aid programmes.

Some experts consulted referred to the evaluations and assessment reports of the decades of international interventions supporting rule of law. Some evaluations conducted by aid agencies (notably AusAID, DFID, EC, Sida, UN, UNDP, USAID, World Bank) are publicly available. These provide some findings and analysis on whether and how international rule of law interventions have been successful. In addition there have been many think tank and policy lessons learnt papers produced from experiences in various regions (Samuels, 2006, 15).

However, there are **limits to this evidence base**:

- There is a lack of rigorous cross-country evaluations and of comprehensive country case studies that cover all the rule of law programmes in a country (most evaluations focus on one institutional actor or programme) (Samuels, 2006).
- There is insufficient focus on outcomes rather than outputs (Samuels, 2006; expert comments).
- The lessons learnt in studies by aid organisations tend to be too general, obvious or both (Carothers, 2003).
- It is possible to observe formal changes in terms of new laws and institutions but not to what extent these changes become internalised or truly 'domestic' (expert comment).

This rapid review did not find much **literature exploring the relationship between domestic change processes and the rule of law**. An expert consulted explained there is more evidence that the rule of law can be established through domestic intervention, but it has not been gathered together and studied, and there is very little academic work on it. In an exploratory academic paper, Quigley (2009) calls for rule of law promoters to draw on the lessons of social science and particularly the study of social movements.

Some **recent approaches may start to address this lack of systematic evidence**. These include case studies of initiatives in legal empowerment (see section 3.3) and the World Bank's evaluation of its Indonesian Justice for the Poor programme (World Bank, 2008).

3. Evidence on rule of law interventions

3.1 Literature reviews

Samuels, K. (2006). Rule of Law Reform in Post-Conflict Countries Operational Initiatives and Lessons Learnt. *Social Development Papers. Conflict Prevention and Reconstruction. Paper No. 37, October 2006* http://siteresources.worldbank.org/INTCPR/Resources/WP37_web.pdf

In this literature review, Samuels reports a story of limited success in the area of rule of law reform in post-conflict or fragile countries, and moderately more success in non-conflict contexts. Difficulties are heightened in the post-conflict context due to a very low institutional starting point and urgent law and order and dispute resolution problems, plus insufficient analysis or understanding to easily adapt positive experiences to the post-conflict context. Samuels provides a synthesis of the common shortcomings of rule of law reforms:

- lack of coherent strategy and expertise
- insufficient knowledge of how to bring about change, leading to no sensible way to prioritise
- focus on institutional objectives and formal legal structures without a nuanced understanding of political and economic incentives (often based on informal mechanisms)
- tangible short-term reforms prioritised over long-term strategies
- wholesale change prioritised over incremental and context-determined change
- lack of identification of local 'agents of change'
- lack of coordination among actors and projects.

Carothers, T. (2003). Promoting the Rule of Law Abroad: The Problem of Knowledge. *Rule of Law Series. Democracy and Rule of Law Project. Number 34. January 2003*
<http://www.carnegieendowment.org/files/wp34.pdf>

In this analytical piece, Carothers charts the development of rule of law promotion from the 'doomed-to-fail' mechanistic approach of the 1980s followed by a focus on: 1) will to reform, involving identifying and working with 'change agents'; and 2) interests and incentives. He notes that this has opened up more questions than answers e.g. how does will to reform develop? Can it be generated and if so how?

3.2 Evaluations of aid agency interventions

Asian Development Bank (ADB)

Asian Development Bank (2009). ADB Technical Assistance for Justice Reform in Developing Member Countries. Special Evaluation Study. August 2009 <http://tinyurl.com/b5rq958>

In the period 1991–2008, the Asian Development Bank (ADB) undertook 44 justice reform technical assistance (TA) programmes. The first special evaluation study by the ADB independent evaluation department of ADB's justice reform TA programmes assesses them as having been successful. Some TAs were innovative and successful in bringing out new ideas for justice reform in DMCs and used pioneering techniques:

- Low-tech comic strips and easily available printed material were used for disseminating critical information on an important law in Cambodia. This proved highly successful and by reaching the public directly, it achieved more than a series of short but expensive training sessions for a small number of lawyers and judges.
- In the Philippines, the use of qualified national consultants to develop the advisory work (and not just to gather and process data) proved to be an efficient use of TA funds, helped to build consensus and brought a balance of views and global perspectives to the work.

The study identifies the following key lessons: (i) strong participation and ownership by governments in TA formulation and implementation contribute to the success of the TA in achieving its objectives; (ii) justice reform TAs when they are linked to country strategy can provide a systematic and long-term engagement in justice reforms; (iii) justice reform is an important subset of law and policy reform

supporting good governance in DMCs, but requires greater attention to play a more important role in inclusive development; (iv) a clearer definition of ADB's justice reform strategy and operational responsibilities would be useful for more efficient justice reform operations; and (v) addressing the low priority for justice reform will need a demonstration of tangible development impacts that can be evaluated.

AusAID

Cox, M., Duituturaga, E. and Scheye, E. (2012). Building on Local Strengths: Evaluation of Australian law and justice assistance. AusAID ODE Evaluations and Reviews. December 2012
www.ode.ausaid.gov.au

Australia's law and justice portfolio includes support for police; courts and corrections systems; government legal offices; specialised law enforcement agencies; national human rights institutions; and civil society organisations. This independent qualitative evaluation (with three detailed case studies of Cambodia, Indonesia and the Solomon Islands), looks at Australia's law and justice assistance over the past decade and finds the following.

- Australia's law and justice assistance objectives are clear and relevant, but results often disappointing.
- Law and justice solutions need to be adapted to each country context.
- Incremental or problem-solving approaches have proved more effective than ambitious programs to reform and build capacity in central justice institutions.
- Whole-of-government delivery of law and justice assistance offers a number of potential advantages including building long-term relationships, but in practice has led to fragmentation, and much stronger coordination by AusAID is needed.
- Australia needs to make much greater investment in results management in the law and justice sector.

The evaluation finds many examples of well-designed activities and effective approaches. For example, in Indonesia, Australia responded to the opportunities emerging from political transition by putting in place a flexible funding instrument, capable of mobilising assistance quickly in response to opportunities to support the reform process. In Cambodia, a series of local pilots on crime prevention and community safety – small-scale, low-cost initiatives – have had immediate results in improving relationships between police and their communities and in encouraging local communities to take action against violence against women

UK Department for International Development (DFID)

Ball N., Biesheuvel, P., Hamilton-Baillie, T. and Olonisa, F. (2007). Security and justice sector reform programming in Africa. Evaluation Working Paper 23. April 2007. DFID London and Glasgow http://www.coffey.com/Uploads/Documents/Security-and-Justice-Sector-Reform-Programming-in-Africa_20120712141959.pdf

This independent qualitative evaluation reviews the UK's security and justice sector reform (SJSR) programming between 2001 and 2005. It involved with field work in the Democratic Republic of the Congo, Nigeria and Sierra Leone. Overall, it finds UK SJSR interventions have been partially effective within different programmes (with the possible exception of Sierra Leone). 'Partial effectiveness' means that programmes generate some useful outcomes but cannot produce a multiplier effect because of political blockages. Sierra Leone stands out as offering the most positive outcomes in

terms of effectiveness. The authors note that the main interventions – Justice Sector Development Programme, Sierra Leone Security Sector Reform Programme and the International Military Advisory and Training Team support – were clearly designed to achieve SJSR outcomes and increasingly connected all strategic-level actors in the delivery of overall SJSR outcomes. The evaluation stresses that this effectiveness was the result of incremental progress and continuous learning of lessons.

European Commission

ADE (2011). Thematic Evaluation of European Commission Support to Justice and Security System Reform. Final Report. Volume I – Main Report. November 2011. Evaluation for the European Commission <http://tinyurl.com/abqrvyh>

This report provides an independent assessment of the Commission's 2001-2009 support to Justice and Security System Reform (JSSR). It draws on country visits to Armenia, Chad, Colombia, Georgia, Guatemala, Indonesia, Rwanda and South Africa. Some of the main conclusions are that:

- The Commission helped in many cases to enhance institutional capacities within state security and justice bodies to deliver public services.
- However, the overall impact on people's security and access to justice has been difficult to measure.
- Impact seems to have been limited by: a lack of a strategic, political approach (due to weaknesses in policy and instruments); inadequate knowledge of local security and justice; and a focus on institutional capacity-building within state bodies rather than on addressing constraints to service delivery from the beneficiaries' perspective).

Swedish International Development Agency (SIDA)

Dahl-Østergaard, T., Schulz, K and Svedberg, B. (2008). Experiences and Lessons Learnt from Sida's Work with Human Rights and Democratic Governance. Final Report. Sida Evaluation 2008:29 <http://tinyurl.com/a8ncubt>

The authors of this independent qualitative evaluation find cases of well-founded assessment of positive impact, with two of the four rule of law projects graded with a 'high' achievement of results, some with particularly positive effects on women. The summary covers: a review of the Development Cooperation Programme between the South African Police Service and the Swedish National Police Board; an independent evaluation of the impact of Local Court Houses in an access to justice programme in Nicaragua; a review of the effects of Vietnamese-Swedish development cooperation on democracy and human rights in Vietnam; and a Mid-Term Review of the Governance, Justice, Law and Order Sector Reform Programme in Kenya.

United Nations Transitional Administrations

Bull, C. (2008). No Entry without Strategy: Building the Rule of Law under UN Transitional Administration. <http://tinyurl.com/bg9rrej>; Bull, C. (2007). Building the Rule of Law under UN Transitional Administration <http://tinyurl.com/bkpgjbl>

Bull (2008, 8) finds there has been comparatively little detailed academic focus on UN transitional administrations as a specific class of intervention or on the rule of law initiatives undertaken by these missions. She notes that studies examine either state-building under international interventions more

generally, several rule of law issues in a single UN mission, or a single rule of law issue in one or two missions.

Her book examines a broad range of rule of law initiatives pursued by the UN transitional administrations in Cambodia, East Timor and Kosovo. She finds that UN transitional administrations that have sought primarily to establish the rule of law through state-based enforcement mechanisms have enjoyed only limited success in establishing the rule of law. She concludes that building the rule of law should not be equated automatically with establishing state-based coercive mechanisms. This approach may not account adequately for the existence of entrenched informal justice institutions; for the fact that adherence to a rules system may rely less on state sanction than on voluntary consent; or for the influence of indigenous power struggles.

In instances where efforts were made to build confidence in and ownership over rule of law processes, better results were registered. For example, new indigenous police services enjoyed a relatively high level of support, which appeared to stem from their visibility as a symbol of change and close ties with the community. In cases where non-state processes such as alternative dispute resolution, restorative justice and reconciliation mechanisms were harnessed, such as the use of restorative justice processes in Cambodia and East Timor, they appeared to assist in embedding justice processes consistent with the western liberal model. She also notes that: giving real substance to rule of law institutions may depend primarily on internal processes of change; rule of law promotion is a long-term enterprise ill-suited to truncated interventions; front-end planning is critical; and prospects for successful state-building depend on broader UN reform issues.

United Nations Security Council (2011). The rule of law and transitional justice in conflict and post-conflict societies: report of the Secretary-General to the Security Council (S/2011/634), United Nations Rule of Law http://www.unrol.org/files/S_2011_634EN.pdf

This report takes stock of progress made in implementing the recommendations contained in the 2004 report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies. It finds that: 1) increased support for multilateral efforts will bring much needed predictability and accountability to the rule of law field; and 2) enhanced political will, stronger efforts to build national ownership and greater use of objective measures of progress will help ensure the sustainability and impact of national reform initiatives. The report cites some examples of what has worked (although the evidence base for the finding is not explained). For example, the report includes positive examples of:

- rule of law programmes led by and aligned with national development strategies e.g. in Afghanistan, Kenya, Liberia and South Sudan;
- training in evidentiary rules and procedure, together with efforts to harmonise justice sector policies, which have elicited immediate, visible and significant results in such countries as Guinea, Liberia, Sierra Leone and Timor-Leste;
- commissions of inquiry, which are increasingly viewed as effective tools to draw out facts necessary for wider accountability efforts.

United Nations Development Programme (UNDP)

Luchsinger, G. (2010). Access To Justice In Asia And The Pacific. A DGTTF Comparative Experience Note. Covering Projects in Cambodia, India, Indonesia and Sri Lanka. The DGTTF Lessons Learned Series <http://tinyurl.com/b8lt6b5>

This desk-based review brings together key findings and lessons learnt from assessments of five Democratic Governance Thematic Trust Fund (DGTTF) projects on access to justice and human rights in Cambodia, India, Indonesia and Sri Lanka. The key lessons and recommendations are summarised below.

- A human rights perspective can improve the identification of problems, target groups and the most effective entry points for access to justice programming.
- UNDP should deepen its context and situation analyses to include aspects of political economy related to access to justice.
- Close attention should be paid to ensuring sustainability of results, e.g. through client surveys.
- DGTTF projects are by nature innovative, which implies a higher degree of difficulty in implementation, and perseverance is extremely important for initial investments to pay off.
- Success depends on choosing credible partners and managing expectations.
- It is important to empower rights holders, but also ensure duty bearers are equipped to uphold their rights.
- While the protection of individual rights is integral to access to justice, greater emphasis could be placed on group rights and strategies to uphold those, such as public interest litigation that produces legal precedents and policy changes.
- More could be done to foster engagement between formal and informal justice mechanisms.
- Future projects would benefit from additional research to anticipate and adjust to potential risks and benefits for target groups.

UNDP (2010). Global Programme On Strengthening The Rule Of Law In Conflict And Post-Conflict Situations. Building Peace Through Justice And Security. Annual Report 2010
<http://tinyurl.com/a4583bz>

An external mid-term review of the UNDP's Global Programme on Strengthening the Rule of Law in Conflict and Post-Conflict Situations, conducted in 2010, provides reflections on the implementation to date. The review is available on request, but it is also summarised in this 2010 Annual Report. A number of process achievements are identified. The Global Programme is said to: 1) use a proactive, rapid-response, results oriented approach with a focus on country office support; 2) have been consistently delivered in a way that focuses on national ownership, is based on sound analytical work, adapted to country context, conflict-sensitive and supportive of innovation; 3) have promoted a timely and good quality approach to building partnerships in the field. Recommendations include: 1) examine projects where there are serious doubts over the financial and political sustainability at country level; 2) ensure systematic collection of baseline data and production of results-oriented reporting; 3) strengthen its capacities, including those for strategic reflection and internal planning; 4) clarify its engagement on policing and security sector reform/ development within the UN system.

United States

Samuels, K. (2006). Rule of Law Reform in Post-Conflict Countries Operational Initiatives and Lessons Learnt. *Social Development Papers. Conflict Prevention and Reconstruction. Paper No. 37, October 2006* http://siteresources.worldbank.org/INTCPR/Resources/WP37_web.pdf

Summary of evaluations of US rule of law assistance by Samuels (2006, 14):

- 'The Congress report on rule of law assistance in the Former Soviet Union focuses on the broader impact of the programs and sustainability of changes achieved (e.g. has the new curriculum course been adopted by other law schools, has the legislation been passed and

implemented), and concluded that the US rule of law assistance efforts in the Former Soviet Union had had limited impact thus far, and results may not be sustainable in many cases.²

- In contrast, the review of the USAID funded activities of the American Bar Association in 22 countries in Eastern Europe (CEELI) was largely positive when evaluating the impact and outcome, perhaps overly positive given the contrast with the Congress report.³
- Another largely positive evaluation of the impact of rule of law reform was undertaken by Management Systems International (MSI) on behalf of USAID and provides a very broad overview of rule of law reform in countries on all continents. The report suggests that there have been significant positive changes in many of the countries where such programs have been undertaken, particularly in the non-post conflict countries in Latin America. However, this report only provides a starting point for concrete policy development, as the description of the programs is not very detailed, and the results cited tend to be based on general perceptions.⁴
- In addition, the review of similar cases by Alvarez, undertaken a few years earlier, seems to take different views of some of the claimed successes.⁵

Henderson, K., Jakosa, C. and Gibson, C. (2009). Evaluation of Rule of Law Programs In Liberia. April 2009. The QED Group, LLC for USAID <http://tinyurl.com/bb73dkq>

Henderson et al (2009) undertake a qualitative evaluation of three years of rule of law programming in Liberia by the United States and other donors, and find limited impact on citizens' access to fair, effective and efficient justice. They conclude (ibid, 2) this was caused by multiple factors, including:

- lack of political will for reform by high-level government officials;
- legal gaps and deficiencies in the law; lack of administrative, management and enforcement capacity of key justice institutions to implement legal reforms;
- inability of justice sector officials and the public to access the law (due to language barriers);
- lack of legal rights awareness and societal consensus on reform priorities and issues;
- limited access to transparent, fair and efficient justice in either the capital or rural;
- the high cost of accessing the justice system for most impoverished Liberians;
- lack of a focused rule of law strategy within post-conflict Liberian context;
- lack of donor coordination and collaboration;
- lack of data related to rule of law; and,
- unchecked endemic corruption throughout the justice sector and lack of accountability within the justice sector.

World Bank

World Bank (2012). The World Bank: New Directions in Justice Reform. A Companion Piece to the Updated Strategy and Implementation Plan on Strengthening Governance, Tackling Corruption <http://tinyurl.com/acv8c8a>

² Ford, Jess T. 2001. *Former Soviet Union: U.S. Rule of Law Assistance has had Limited Impact*. U.S. General Accounting Office (DEC) <http://www.gao.gov/assets/240/231403.pdf>.

³ Blue, Richard N., and Silvy Chernev. 1999. *Evaluation of the Rule of Law Program in Central and Eastern Europe and the New Independent States: The American Bar Association/Central and Eastern Europe Law Initiative (ABA/CEELL)*. Management Systems International, Inc., USAID. Bureau for Europe and the New Independent States. Office of Democracy, Governance and Social Reform.

⁴ MSI. 2002. 'Achievements in Building and Maintaining the Rule of Law: MSI's Studies in LAC, E&E, AFR and ANE', *USAID Occasional Paper Series*. USAID.

⁵ Alvarez, Jose. 1991. 'Promoting the 'Rule of Law' in Latin America: Problems and Prospects', *George Washington Journal of International Law & Economics*, 25(2) 281.

This report highlights that the World Bank has not to date conducted a systematic evaluation of its work on justice reform (World Bank 2012, 5). Nevertheless, it states that a range of Bank-funded initiatives have been reviewed and shown to have supported the advancement of justice from a user perspective. However, despite these successes, the report finds that the overall outcomes of the Bank's justice reform efforts have been uneven. Findings include the following (ibid, 6-8).

- Some interventions have produced demonstrably positive results for users.
- Achievements are often reported in terms of outputs, such as the passage of new legislation, training of judges, construction of court infrastructure and improvements in systems for case handling.
- Where outcomes are measured, there has been criticism for focusing on efficiency issues (such as reducing case backlogs) in circumstances where these concerns may not have the highest priority.
- Moreover, while project designs may cite higher-level goals, the chain of causation between these goals and the proposed activities are arguably often weak, which in turn makes outcome-level evaluation difficult.
- Although some projects are based on a solid assessment of the political economy, others gloss over problems related to governance and power and blame poor judicial performance on technical issues, such as funding, the state of the regulatory framework, a lack of equipment, or the absence of training.
- Other challenges for these projects include: unrealistic reform agendas given the local political economy, project designs that are insufficiently focused on the needs of end users, overly short time horizons, inadequate implementation capacity and a near absence of rigorous, systematic evaluation.

Sage, C. and Woolcock, M. (2007). Breaking Legal Inequality Traps: New Approaches to Building Justice Systems for the Poor in Developing Countries. December 2007. BWPI Working Paper 17 <http://tinyurl.com/ayhcbdr>

This paper promotes the (World Bank supported) Justice for the Poor programmes in Cambodia and Indonesia as an alternative model for studying informal dispute resolution at the community level, as well as a fruitful strategy for assessing interactions between customary and state legal systems. Using mixed quantitative and qualitative methods, the research attempts to discern information on, and perceptions of, conflict at multiple units of analysis. Sage and Woolcock highlight the possibility of replication. They say the study sets the empirical groundwork for future complementary research that can guide legal reform efforts on the basis of context-specific knowledge. One consequence of this research has been the design of a new project, Support to Poor and Disadvantaged Areas (SPADA), for regions experiencing conflict. In SPADA+, judicial reform does not import institutions from outside. It uses trained paralegal facilitators, with their extensive knowledge of local cultures and contexts, to help the poor (and other marginalised groups) to navigate their way more effectively and equitably between *adat* ('customary') law, religious law, and state law. They also highlight that experience from Indonesia is being used to inform a spate of initiatives in a number of countries in East Asia and Africa, as part of a broader Justice for the Poor research and development programme.

World Bank (2008). Impact Evaluation of the Mediation and Community Legal Empowerment component of the Support for Poor and Disadvantaged Areas project, Indonesia. Concept Note. 1 October 2008 <http://tinyurl.com/b9vdjil>

This concept note outlines a planned impact evaluation that will examine the welfare impacts of providing access to justice to poor communities. This evaluation will be the first instance of rigorous

quantitative and qualitative evidence on the effect of the provision of community level legal services and education on a range of human rights and economic outcomes. The central approach is to take a broad, multidimensional view on what welfare is and to trace the chain of effects stemming from the intervention. The team plans to examine the effects of the programme on knowledge of rights, exercise of rights, dispute resolution, reports and resolution of corruption, investment and household consumption.

3.3 Other country/thematic case studies

Menkhaus, K. (2008). The rise of a mediated state in northern Kenya: the Wajir story and its implications for state-building. *Afrika Focus*, vol. 21, iss. 2, pp.23
<http://www.gap.ugent.be/africafocus/pdf/08-21-2-KMenkhaus.pdf>

This qualitative case study explores how in northern Kenya in the mid-1990s, a collection of local non-state actors led by a women's market group created an umbrella movement that established an impressive level of peace and security across an entire region. Menkhaus reports that the Kenyan government forged a formal relationship with this group in Wajir, essentially sub-contracting out important functions of local government to local civic leaders, and using its partnership with the Wajir group as a template for similar state-sanctioned governance arrangements in other troubled border areas of the country. Menkhaus sees this experience as an example of a 'mediated state' approach to rebuilding rule of law through non-state actors in a conflict and post-conflict setting.

Golub, S. (2010). Legal Empowerment: Practitioners' Perspectives. Legal And Governance Reform: Lessons Learned. No. 2 /2010. International Development Law Organization, Rome
http://www.idlo.int/documents/legal_empowerment_practitioners_perspectives_book.pdf

This volume captures qualitative experiences of legal empowerment⁶ practitioners working across the spectrum of this emerging field in a range of countries and in thematic areas (e.g. criminal justice, land rights and health). It attempts to deepen the empirical knowledge base, looking at the questions: What is legal empowerment? Why is it important? What research methods can ascertain and improve its impact? Common themes that emerge from the various chapters include the following.

- Beyond the legal sector and livelihoods: legal empowerment should reach beyond what development agencies typically identify as the 'legal sector' or even the 'justice sector', in the use of law to strengthen the disadvantaged concerning health, education, irrigation, forestry, governance and other services and projects. Noteworthy is Maru's (in some respects groundbreaking) primary review of the benefits of integration with social accountability projects, using data from the experience of the NGO Timap for Justice in Sierra Leone and data from community groups' monitoring of medical clinics' service delivery in Uganda (Maru, 2010, in Golub, 2010, 81-89).
- Paralegals: a number of chapters refer to the help that paralegals provide as cost-effective complements or alternatives to attorneys for many tasks.
- Civil society: most chapters also feature the lead or contributory roles of NGOs, grassroots groups or other civil society organisations in legal empowerment initiatives. Stapleton (on the Paralegal Advisory Service in Malawi) and Mennen (on the Bolivia National Access to Justice Program) point out the sometimes counterproductive impact of a government taking over.

⁶ While there is no standard definition, key features of legal empowerment are: an expansive view of access to justice; a political economy approach to access to justice; a broad view of poverty; a social accountability dimension; a grassroots orientation; a civil society orientation; the central importance of gender equity; environmental priorities; the challenge of legal implementation (Golub 2010, 11-12).

- Further research: most chapters highlight the need for applied research in demonstrating legal empowerment initiatives' impact and lessons.

IDLO (2013). Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment <http://www.idlo.int/Publications/Women-AccessstoJustice.pdf>

The report provides a summary of eight case studies of successful progressive reforms to secure fairer justice outcomes for women through empowerment approaches, in Afghanistan, India, Namibia, Rwanda, Mozambique, Tanzania, Morocco, Papua New Guinea and the Solomon Islands. The overall conclusion is that, in an appropriate context, carefully designed legal empowerment strategies may constitute a valuable contribution to improving women's access to justice. The case studies also confirm that programmes designed to address women's rights in informal justice systems remain a highly sensitive issue. These programmes require thorough knowledge of the social, economic and political context in which the informal system is operating. Moreover, legal empowerment approaches in both the formal and informal justice sectors are likely to be more sustainable when: a) they are locally owned; and b) they are coupled with top-down reforms to ensure domestic laws and regulations are in line with international legal standards on gender equality (IDLO 2013, 7). The report highlights that while a substantial body of analytical work on informal justice systems has mentioned the challenges engagement poses for women's rights, much of the analysis fails to provide practical guidance as to how to foster women's rights in these systems. Some solutions tend to be contradictory, arguing for compliance with human rights standards, but at the same time supporting local ownership even where local practices are clearly at odds with women's human rights (ibid, 20).

4. References

ADE (2011). Thematic Evaluation of European Commission Support to Justice and Security System Reform. Final Report. Volume I – Main Report. November 2011. Evaluation for the European Commission <http://tinyurl.com/abqrvyh>

Asian Development Bank (2009). ADB Technical Assistance for Justice Reform in Developing Member Countries. Special Evaluation Study. August 2009 <http://tinyurl.com/b5rq958>

Ball N., Biesheuvel, P., Hamilton-Baillie, T. and Olonisa, F. (2007). Security and justice sector reform programming in Africa. Evaluation Working Paper 23. April 2007. DFID London and Glasgow http://www.coffey.com/Uploads/Documents/Security-and-Justice-Sector-Reform-Programming-in-Africa_20120712141959.pdf

Bull, C. (2008). No Entry without Strategy: Building the Rule of Law under UN Transitional Administration. <http://tinyurl.com/bg9rrej>

Bull, C. (2007). Building the Rule of Law under UN Transitional Administration, Policy Brief Number 7, United Nations Diversity <http://tinyurl.com/bkpgjbl>

Carothers, T. (2003). Promoting the Rule of Law Abroad: The Problem of Knowledge. *Rule of Law Series. Democracy and Rule of Law Project. Number 34. January 2003* <http://www.carnegieendowment.org/files/wp34.pdf>

- Cohen, E., Fandl, K., Perry-Kessarlis, A. and Taylor, V., (2011). Truth and Consequences in Rule of Law: Inferences, Attribution and Evaluation. *Hague Journal on the Rule of Law*, Vol. 3, No. 1, 2011 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1757977
- Cox, M., Duituturaga, E. and Scheye, E. (2012). Building on Local Strengths: Evaluation of Australian law and justice assistance. AusAID ODE Evaluations and Reviews. December 2012 www.ode.usaid.gov.au
- Dahl-Østergaard, T., Schulz, K and Svedberg, B. (2008). Experiences and Lessons Learnt from Sida's Work with Human Rights and Democratic Governance. Final Report. Sida Evaluation 2008:29 <http://tinyurl.com/a8ncubt>
- Goldstein, M. (2010). The SPADA/MCLE impact evaluation: work in progress. Presentation at the 2010 World Bank training session on Assessing Programs and Policies Using Impact Evaluation and PSIA <http://tinyurl.com/arotjb3>
- Golub, S. (2010). Legal Empowerment: Practitioners' Perspectives. Legal And Governance Reform: Lessons Learned. No. 2 /2010. International Development Law Organization, Rome http://www.idlo.int/documents/legal_empowerment_practitioners_perspectives_book.pdf
- Henderson, K., Jakosa, C. and Gibson, C. (2009). Evaluation of Rule of Law Programs In Liberia. April 2009. The QED Group, LLC for USAID <http://tinyurl.com/bb73dkq>
- IDLO (2013). Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment <http://www.idlo.int/Publications/Women-AccessToJustice.pdf>
- Kleinfeld, R. (2005). Competing Definitions Of The Rule Of Law. Implications for Practitioners. Democracy and Rule of Law Project, Carnegie Papers, Rule of Law Series, Number 55, January 2005 <http://carnegieendowment.org/files/CP55.Belton.FINAL.pdf>
- Luchsinger, G. (2010). Access To Justice In Asia And The Pacific. A DGTTF Comparative Experience Note. Covering Projects in Cambodia, India, Indonesia and Sri Lanka. The DGTTF Lessons Learned Series <http://tinyurl.com/b8lt6b5>
- Menkhaus, K. (2008). The rise of a mediated state in northern Kenya: the Wajir story and its implications for state-building. *Afrika Focus*, vol. 21, iss. 2, pp.23 <http://www.gap.ugent.be/africafocus/pdf/08-21-2-KMenkhaus.pdf>
- Quigley, F. (2009), Growing Political Will From The Grassroots: How Social Movement Principles Can Reverse The Dismal Legacy Of Rule Of Law Interventions. *Columbia Human Rights Law Review*, Vol. 41, No. 1, pp. 13-66, 2009 http://www3.law.columbia.edu/hrlr/hrlr_journal/41.1/Quigley_Final.pdf
- Sage, C. and Woolcock, M. (2007). Breaking Legal Inequality Traps: New Approaches to Building Justice Systems for the Poor in Developing Countries. December 2007. BWPI Working Paper 17 <http://tinyurl.com/ayhcbdr>
- Samuels, K. (2006). Rule of Law Reform in Post-Conflict Countries Operational Initiatives and Lessons Learnt. *Social Development Papers. Conflict Prevention and Reconstruction. Paper No. 37, October 2006* http://siteresources.worldbank.org/INTCPR/Resources/WP37_web.pdf

UNDP (2010). Global Programme On Strengthening The Rule Of Law In Conflict And Post-Conflict Situations. Building Peace Through Justice And Security. Annual Report 2010
<http://tinyurl.com/a4583bz>

United Nations Security Council (2011). The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General to the Security Council (S/2011/634), United Nations Rule of Law http://www.unrol.org/files/S_2011_634EN.pdf

World Bank (2008). Impact Evaluation of the Mediation and Community Legal Empowerment component of the Support for Poor and Disadvantaged Areas project, Indonesia. Concept Note. 1 October 2008 <http://tinyurl.com/b9vdjil>

World Bank (2012). The World Bank: New Directions in Justice Reform. A Companion Piece to the Updated Strategy and Implementation Plan on Strengthening Governance, Tackling Corruption
<http://tinyurl.com/acv8c8a>

5. Additional Information

Other publications (unable to obtain in time to include in this report)

Jensen, E. and Heller, T. C. eds., (2005). Beyond Common Knowledge: Empirical Approaches to the Rule of Law, Stanford University Press, Stanford <http://tinyurl.com/a5j5pah>

Kleinfeld, R. (2012). Advancing the Rule of Law Abroad: Next Generation Reform. April 18 2012. Washington, DC: Carnegie Endowment For International Peace.
<http://carnegieendowment.org/2012/04/18/advancing-rule-of-law-abroad-next-generation-reform/a9o6>

Magen, A. and Morlino, L. (2009). International Actors, Democratisation and the Rule of Law. Anchoring democracy? Routledge <http://tinyurl.com/b6n65kk>

Related GSDRC Helpdesk Reports

Haider, H. (2010) Rule of Law Approaches (GSDRC Helpdesk Research Report). Birmingham, UK: Governance and Social Development Resource Centre, University of Birmingham
<http://www.gsdr.org/docs/open/HD694.pdf>

Key Websites

Eldis <http://www.eldis.org>

International Network to Promote the Rule of Law <http://inprol.org>

International Development Law Organisation <http://www.idlo.int>

United Nations Rule of Law <http://www.unrol.org>

World Bank Law and Justice Institutions <http://tinyurl.com/ae3kt87>

World Bank Justice for the Poor <http://tinyurl.com/42hsz8c>

World Justice Project <http://worldjusticeproject.org>

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