

Data as a United Nations Rule of Law Programming Tool: Progress and Ongoing Challenges

Jim Parsons and Monica Thornton

Vera Institute of Justice, International Program

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In recent years, there has been a marked increase in the demand from donors to demonstrate the impact of United Nations (UN) initiatives across all sectors, including rule of law programming. The importance of measurement is recognised at the highest levels of the UN, as the following quote from a 2011 report of the Secretary-General illustrates:¹

‘The United Nations must base its rule of law assistance on thorough assessments, baseline data and ongoing monitoring and evaluation. Measuring the effectiveness of assistance will increase recognition of successful methods and encourage new approaches to improving results.’

The increased focus on measurement and accountability has led to the development of a number of data collection initiatives designed to inform rule of law programming and, in some cases, demonstrate impact. However, as a result of the fragmented governance structure of the organisation, and because a wide range of entities are involved in rule of law programming, measurement initiatives have been developed and implemented within the various UN agencies with limited coordination. As a result, the data collection initiatives that have been developed to date are as diverse as the agencies providing rule of law support, ranging from one-off assessments of local justice programmes in a single jurisdiction to large sector-wide initiatives covering several countries. Some of the organisations with large rule of law data collection initiatives include the United Nations Office on Drugs and Crime (UNODC), the United Nations Development Programme (UNDP), the United Nations Children’s Fund (UNICEF), the Department of Peacekeeping Operations (DPKO), and the Office of the High Commissioner of Human Rights (OHCHR).

A comprehensive review of rule of law data collection activities across the UN system is beyond the scope of this short paper. As a useful alternative, we present examples of progress within the UN in the use of empirical measurement to inform rule of law programming over the last decade. The paper concludes with a discussion of the ongoing challenges facing UN rule of law assessments that may limit their effectiveness.

Building national capacity

There is a well-founded acknowledgement within the international community that national ownership is an essential component of sustainable rule of law reform. However, principles of national ownership and capacity transfer are less commonly applied to data collection initiatives. There are, however, some notable exceptions. For instance, the UNDP Oslo Governance Centre (OGC) supported the Mongolian national government to develop a series of Democratic Governance Indicators. These measures included a subset of twelve “MDG-9” indicators, designed to assess compliance with the Universal Declaration of Human Rights, freedom of the media, access to information, and measures of democracy and freedom from corruption.² Working with OGC, the Mongolian government produced a methodological guide that provides conceptual definitions of the indicators, data sources, data collection, and analysis techniques.

The OGC has taken substantial steps to institutionalise governance assessment within the government by: translating methodological guidelines into local languages; conducting trainings on indicators in provinces across the country; and working with the National Statistics Office and universities to incorporate questions on corruption and the independence of the mass media into ongoing national public perception surveys.

Tracking improvements and highlighting good practice

The joint DPKO/OHCHR United Nations Rule of Law Indicators provide a detailed and multi-faceted assessment of the progress of the police, courts and prisons towards a range of rule of law goals in post-conflict and unstable settings.³ These indicators are designed to be tracked over successive implementations, highlighting areas where the rule of law is registering improvement as well as those sectors where justice institutions are failing. By tracking performance over time, indicators can spur reforms and strengthen government accountability by acknowledging progress and directing donor resources towards programmatic gaps. The project includes 135 indicators measuring the performance of justice institutions, their capacity, integrity (including transparency and accountability), and the treatment of vulnerable groups. For example, the integrity and independence of the court system in a given country is assessed using four indicators, including: reviews of policies regarding judicial tenure; surveys asking experts whether judges are protected from arbitrary removal; and public opinion polls to assess perceptions of judicial corruption and independence.

Addressing corruption

Data can help counteract the kind of endemic corruption and lack of accountability that often undermines efforts at strengthening the rule of law. For instance, in 2010 UNODC partnered with national statistical offices in seven countries in the Western Balkans to conduct public surveys assessing the prevalence of corruption.⁴ The survey, which sampled between 3,000 and 5,000 people in each country, included a range of questions to assess the prevalence of bribery, the professional groups implicated in corrupt practices, the form of corruption (requests for cash, food and drink or other forms of bribery), and rates of reporting to authorities. In each of the participating countries the survey found that police officers were amongst the four professional groups most likely to request bribes and, in several countries, judges and prosecutors were also heavily implicated. Well-constructed surveys provide an opportunity to document the experiences of people from across a country including marginalised groups, who may suffer the most at the hands of corrupt officials. These data are an important tool for combating corruption, providing empirical evidence of an activity that is often hidden and typically defined in terms of anecdote.

Focus on vulnerable groups

UNICEF and UNODC have developed a series of indicators that specifically focus on the experiences of children in conflict with the law.⁵ In a similar fashion to the Rule of Law Indicators, the Juvenile Justice Indicators combine de jure measures, describing the policies and institutional mechanisms, alongside de facto measures of the treatment of juveniles. For example, policy (de jure) indicators assess whether the country has a specialised juvenile justice system, mechanisms for conducting regular inspections of detention facilities and investigating complaints, and national plans for preventing child involvement in crime. Eleven administrative data indicators describe a range of issues, including rates of child involvement in the justice system, duration of sentenced and pretrial detention, conditions of confinement, sentencing, diversion and aftercare. In contrast to other rule of law data collection initiatives, the juvenile justice indicators are designed to be incorporated into ongoing government data collection initiatives, as a way of enhancing national ownership and sustainability.

Ongoing challenges

These initiatives encompass a number of significant steps that the UN has taken towards empirically informed rule of law programming over the past decade. Nevertheless, there are a number of serious ongoing challenges that limit the ability of the UN to use data effectively. Not least of these is the problem of data availability. In many countries where the UN provides rule of law assistance, existing data on governance, security and justice are hard to find and often suffer from quality issues related to the coverage and accuracy of government records and census data.

A number of the initiatives described here account for a lack of reliable data by basing measurement on a range of different data sources. For example, the Rule of Law Indicators combine information from public and expert surveys, administrative data sources, document reviews, and field observations to provide a system of measurement that can be used in post conflict countries that typically have very little existing data or data collection capacity. However, collecting data from multiple sources is often expensive and requires expertise in social science research methods. While there are examples of agencies within the UN system that have extensive experience collecting and analysing empirical data, such as the OGC, there is a general lack of expertise in this area. This is particularly true at the country level and indicator initiatives that are designed in New York, Vienna or Geneva may founder because of a lack of this data collection capacity within country offices.

According to the 2011 Secretary-General's report, the United Nations provides rule of law assistance in 150 countries.⁶ In almost half of these settings there are three or more UN agencies engaged in providing rule of law support and in nearly a quarter, five or more entities are active. As the number of rule of law initiatives continues to expand, duplication of activities is an increasing challenge. Acknowledging the potential for duplication of efforts, coordinating bodies such as the Rule of Law Coordination and Resource Group (ROLCRG) have been developed to help streamline activities. However, while coordination efforts between representatives of agencies at UN headquarters may be effective, political obstacles and barriers to communication abound at the country level. A lack of cooperation between agencies can lead to duplication of data collection efforts, limiting the effective use of resources and causing frustration amongst national partners. Some common manifestations of this underlying problem include representatives from different UN agencies approaching heads of national justice institutions to request the same information within a short time frame without agreements to communicate priorities or share data.

Many of the existing data collection activities seek to describe the impact of a particular rule of law programme or UN agencies' work. However, in countries where there are several UN agencies, NGOs and other donors active in the development of rule of law programmes, attributing impact to a particular programme or intervention may be impossible. For example, in post-conflict settings, several organisations may be involved in police training or prison rebuilding programmes. Disentangling the "added value" of a particular intervention from the support offered by other donors may be difficult or impossible. In most cases, coordinated donor assistance and data collection activities will be far more effective than piecemeal, fragmented activities. Furthermore, from the perspective of residents in countries receiving rule of law support, the source of donor funds is mostly immaterial.

Finally, the "elephant in the room" is the fact that, in many countries receiving rule of law assistance from the UN, large sections of the population rely on customary justice systems to resolve disputes and access justice. There is a growing acknowledgment within donor organisations of the central role that these systems play. However, measurement initiatives have yet to catch up and there is currently no comprehensive system in place to describe the role of customary justice systems in empirical terms.

In conclusion, while the use of data as a tool for rule of law programming within the UN is still in its infancy, the last ten years has seen considerable progress towards a culture of empirical measurement. With the current proliferation of measurement activities, there is a need for improved coordination of data collection and consolidation of measures. This process will undoubtedly raise difficult questions and surface tensions between UN agencies and international partners. However, we firmly believe that enhancing the ability to use data to inform rule of law programming will ultimately deliver new opportunities, increased accountability, and greater impact.

Endnotes

¹ UN Secretary-General, *Strengthening and Coordinating United Nations Rule of Law Activities: Report of the Secretary-General*. UN Doc A/63/226 (August 6, 2008).

² For further details see: Gerardo L. Munck, *Democratic Governance Assessments in Latin American and the Caribbean: An Overview and Some Proposals*: Background paper for UNDP's Oslo Governance Centre Regional Workshop on Democratic Governance Assessments In Latin American and the Caribbean (June 10-11, 2010), http://gaportal.org/sites/default/files/mdg9_report_mongolia10.pdf.

³ Office of the High Commissioner of Human Rights, Department of Peacekeeping, *The United Nations Rule of Law Indicators: Implementation Guide and Project Tools*, UN Sales No. E.11.I.13 (2011), http://www.un.org/en/events/peacekeepersday/2011/publications/un_rule_of_law_indicators.pdf.

⁴ See: UN Office on Drugs and Crime, *Corruption in the western Balkans: Bribery as Experienced by the Population* (2011), http://www.unodc.org/documents/data-and-analysis/statistics/corruption/Western_balkans_corruption_report_2011_web.pdf.

⁵ United Nations Office on Drugs and Crime and United Nations Children's Fund, *Manual for the Measurement of Juvenile Justice Indicators* (2007), http://www.unodc.org/pdf/criminal_justice/06-55616_ebook.pdf.

⁶ UN Secretary-General, *Third Annual report on strengthening and coordinating United Nations rule of law activities*. UN Doc A/66/133 (2011).