

The Rule of Law, Peace, Security and Development

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Introduction

This paper discusses the rule of law in the context of peace, security and development. It first examines the concept of “rule of law” and then looks at its relationship to security and development and its significance to democratic governance. At the outset it is important to point out that the “*rule of law*” never has and does not mean “*rule by law*.” The later concept is devoid of values and in fact even the worst dictatorships and violators of human rights are organized through law albeit repressive law. One of the most important political and legal conceptions in good governance is the concept of the rule of law. In today’s world, nations from virtually every region recognize that the rule of law and the protection of human rights are critical factors in nation-building and good governance.

Therefore the question that arises is this: what exactly is meant by the rule of law and in what ways can it assist in nation-building, the promotion of good governance, and the protection of human rights? The rule of law mandates the elimination of wide discretionary authority from government processes. It means the existence of formal rules which do not involve a choice between particular ends or particular people, and which are there for the use of everyone, for the purpose for which people will decide to use them. The concept assumes the existence of inalienable rights and liberties which governments should not impinge upon or violate. Predominant among such rights are property rights, the right to free expression, freedom of association, equality before the law, due process, and protection against discrimination. To some extent, the essence of the rule of law lies in its juxtaposition to the “rule of men.” This aphorism is not meant to express that laws are capable of governing society without the help of men and women. Rather, it seeks to state the following basic principles: *that all state power ought to be exercised under the authority of law*, and that there should be rules of law governing the election and appointment of those who make and execute policy, as well as the manner in which they do so, in order to ensure rationality and fairness in the decision making process. Contrast this state of affairs to a regime of caprice or arbitrariness in which acts or omissions are traceable to the whims of the particular woman or man in power at a given time. The rule of law connotes the use of state power, through rules of law (agreed by the people) for the establishment of an economic and social system via constitutionally sanctioned representative institutions or other acceptable surrogates. It entails a government that lives up to its responsibility by ensuring the effective delivery of public goods and services, the maintenance of law and order, and the administration of justice. It also involves the creation of an efficient and dynamic market that secures economic growth and property, as well as a vibrant civil society, which facilitates interaction between the state and economic and social actors within that state.

Typically the division and regulation of state power is established through the national constitution. In this sense, a national constitution is a charter of government. *It is a body of fundamental principles by which a society organizes a government for itself, defines and limits the powers of the government, and regulates the relations between several government organs inter se and defines the relations of the state with its citizens.* The rule of law implies a measure of predictability in the conduct of state officials by the prior existence of a basic law covering the subject-matter that falls within their fields of operation. It demands the precise definition of the roles and status of such public officials by law. It commends the creation of control devices to ensure that public officials abide by these norms, and if they do not, their actions are rendered invalid. It embraces procedural guarantees necessary to assure fairness in the adjudication of disputes and the application of sanctions. It demands equality of treatment before the law of all persons in the application of a general rule to all applicable cases. Unifying all elements of the juridical quest for legitimacy are the demands for the existence of legal barriers to governmental arbitrariness, which can be defined as the absence of legal authority for acts done, and the demand for some procedural safeguards, especially during the trials of individuals alleged to be in conflict with the law. It means that the government, in all its actions, is bound by rules fixed and pronounced beforehand. This makes it possible to foresee with certainty how an authority will use its coercive power in any given circumstances, and thereby allow an individual to plan his or her affairs on the basis of this knowledge.

The aim of the rule of law is to limit and check the arbitrary, oppressive, and despotic tendencies of power, and to ensure the equal treatment and protection of all citizens irrespective of race, tribe, class, status, religion, place of origin, or political persuasion. It implies a legal framework that is fair, impartial (particularly in regard to human rights, public security and safety), and that legitimizes state actions. Authority is legitimate if there is an established legal and institutional framework, and if decisions are taken in accordance with the accepted institutional criteria, processes, and procedures. In every country a national constitution articulates the vision of the society, defines the fundamental principles by which the country is organized, and distributes power within it, and plays an important role in nation-building and consolidating the nation state. The idea of a constitutional democratic government, or constitutionalism, and the rule of law connote a government defined, regulated and limited by a supreme law. Constitutional democracy is founded upon the notion of checks and balances; namely state institutions - the legislature, the judiciary, and the executive - while operating independently of one another, act to check each other's operations and balance each other's power. In essence, all three institutions are duty bound to uphold the rule of law.

The rule of law is enforced by the judiciary. That means that there has to be an independent judiciary, and this entails judges who can make decisions independent of the direction in which the political winds are blowing. The judiciary, in accordance with the constitution and the nature of its functions, is the one state institution that is called upon to protect human rights and advance the rule of law, accountability and transparency. The rule of law is effective when it is impartially and effectively applied. Court decisions have to be obeyed without question. A government operating under a written constitution has no more power than is granted to it by the constitution, either expressly or by necessary implication.

Rule of Law, Security and Development

Wars and conflict weaken the authority of the state, breed insecurity, erode institutions of governance and civil society, and undermine development. Post-conflict societies are characterized by lack of the rule of law, past and present gross human rights violations, impunity, and economic devastation and decay. The end of the conflict does not automatically bring peace, security and an end to violence and human rights violations (Louise Arbor: 2008). There is always a continuing risk that the conflict might resume and there is the major challenge of rebuilding society. Such societies face enormous challenges such as addressing past human rights violations, providing justice to previously marginalized groups and addressing social and economic injustices stemming from structural injustices and inequalities that are often the causes of conflict. They face the further challenge of the articulation of the vision of a new society, establishing effective governance structures, dealing with the past, defining the fundamental principles by which the country will be transformed, distributing power within the country among the various segments of the population, engaging in effective reconstruction and economic development, and establishing and securing enduring peace. The manner in which these processes are handled can play an important role in the consolidation of peace and security and the establishment of an atmosphere conducive to economic growth and development and the emergence of a legitimate and sustainable state. Many of these issues, if not handled properly, can accentuate fundamental differences and lead to a breakdown of society and renewed conflict. The legacy of conflict shared by all post-conflict societies is a lack of strong and effective national institutions to deal with past and present human rights violations, advance good governance to deal with massive poverty, violence, displaced populations, and monumental underdevelopment, and a lack of institutional and physical infrastructure to support economic development.

In response to past human rights violations, a variety of measures have been developed. They include prosecutions at both international and domestic levels, truth commissions, reconciliation and reparations for victims. All these options need strong institutions. In the context of post-conflict societies this will require the rule of law to rebuild the judicial system and the supporting services. Reforming judicial institutions and the establishment of the rule of law is therefore a core task in post-conflict societies. Post-conflict societies need judicial reform to provide mechanisms for addressing both past and current human rights violations, the advancement of the rule of law, the settlement of disputes, and to guarantee the functioning of institutions and the protection of human rights. Judicial reform can assist in the restructuring of institutions other than courts such as human rights commissions and their transformation so that they are responsive to the challenges of the protection of human rights and to development and reconstruction. In a post-conflict society, following massive human rights abuses, institutions play a critical role in preventing future abuses. They also contribute to transitional justice in that they enable the courts to provide criminal accountability for past abuses (UNHCR: 2006). It is widely acknowledged that to implement any reforms, a society must use the legal order to transform and bring about institutional change (Ndulo:1984).

This brings us to the need to modernize the law and judicial institutions in post-conflict societies. There is a need to adapt the law to meet the challenges of development as well as the need to develop legal, administrative and political institutions in light of the needs and conditions of post-conflict societies. No major social change occurs or is put into effect in a society which is not reflected in some kind of change in its laws. By the same token, the kinds of laws that are written and the way they are interpreted by the judiciary will determine the sorts of

reconstruction and development that takes place in a post-conflict society. Law is the instrument through which goals are promoted, implemented and reviewed. In the context of post-conflict societies, this leads to questions as to: what sort of institutions will effectively address past and current human rights violations? What rules are most apt to promote institution building and induce rapid economic development? What kind of law enforcing agencies are most likely to contribute to inducing those activities and promoting accountability? And what kind of sanctions will best serve the process of reconstruction and economic development? It is a policy maker's job to determine policies, but it is the role of the legal system to ensure that the policies adopted will bring the policies to fruition. Law reform must actively encourage social regulation, especially that which safeguards vulnerable groups through the protection of human rights and which ensures the just resolution of disputes.

The principle of legality which is embedded in the rule of law needs to be extended to the prosecution of past human rights violations, the provision of public services and the regulation of economic processes. It is essential to the reconstruction and development process in post-conflict societies that legal systems furnish an environment that make efficient public or private entrepreneurial activities possible. The law can further contribute to development and reform by conferring personality, legitimacy and to some extent, stability on the political structure of the nation state. The strengthening of the state is an important indirect contribution of the legal order to the development process because the state provides at once: (a) a national market; (b) a centralized source of general decision making and long-term planning and (c) a more impersonal and less restrictive center of social gravity than the primary group which may exacerbate conflict. A formal system is indispensable to the growth and workings of a modern economy, not only as a source of tools for reaching certain economic objectives but as a framework for economic life. It is important, however, to point out that any efforts at reform and institutional building in post-conflict societies which will truly bring about lasting change, must be well designed and must be developed in consultation with those among whom they will be implemented so that they reflect their particular circumstance and so that there is a sense of ownership of the reforms by the people.

Conclusion

A challenge that continues to face the rule of law discourse is how to monitor the rule of law in various diverse countries. A number of mechanisms can be used to monitor the rule of law. These include: examining the extent to which in any given country there is political representation and inclusivity in institutions, including political systems, whether there is a fair distribution of power, and the extent to which a government is accountable to its people. This should include an examination of the electoral process and the competitive environment for political parties. It is also important to examine institutional effectiveness and accountability, which should cover all three branches of government. There should also be an examination of the respect for human rights, respect for the rule of law by law enforcement agencies and freedom of civil society and the media to operate. Other things to be measured include: civil service transparency and efficiency of government services. One should also look at economic management and corporate governance, integrity of the monetary system, accountability and auditing systems.