

Consultations on the rule of law and transitional justice in conflict and post-conflict situations
Co-hosted by the International Peace Institute and the Rule of Law Coordination and Resource
Group supported by Rule of Law Unit

***“Strengthening security and criminal justice in conflict and post-conflict
situations”***

Wednesday, March 9, 2011, from 9:00am to 1:00pm
International Peace Institute
Trygve Lie Center for Peace, Security & Development
777 UN Plaza, 12th floor (Corner of 44th Street and 1st Avenue), New York

Concept Note

A. Overview

The strengthening of state capacity to deliver justice and security is increasingly recognized as critical to conflict prevention, post-conflict stabilization and peacebuilding. Reflecting this, the Security Council regularly calls for rule of law interventions in the context of peacekeeping operations and special political missions, and considers rule of law issues in a range of its thematic resolutions and open debates.

The 2004 Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616) articulated a shared language on rule of law and justice for the United Nations and outlined the Organization’s approaches to rule of law engagement, based on core principles and lessons learned. Since the issuance of this seminal report, the United Nations and Member States have significantly deepened their understanding of the role the rule of law plays in sustainable peace and security. The United Nations has also invested substantial resources to enhance rule of law and transitional justice activities in conflict and post-conflict settings at the national and regional levels.

In June 2010, the Presidency of the Security Council requested the Secretary-General to provide a follow-up report to the 2004 Report, which (i) takes stock of the progress made in respect to the implementation of the recommendations contained in the 2004 Report, and (ii) considers further steps in regard to the promotion of the rule of law in conflict and post-conflict situations.¹ In line with this request, the Rule of Law Coordination and Resource Group with the support of the Rule of Law Unit is conducting a broad-based consultation process to elicit insights from rule of law experts in the United Nations, partner organizations and Member States.

The consultation, *Strengthening security and criminal justice in conflict and post-conflict situations*, will focus primarily on approaches and lessons learned from international engagement with formal justice and security systems in the 7 years since the 2004 Report was issued.

¹ S/PRST/2010/11

B. Background

It is widely acknowledged that weak and ineffective criminal justice systems in fragile, failing and conflict-affected situations have serious repercussions for domestic, regional and international security. Guided by sound political analysis, international efforts that strengthen government capacity to address crime fairly and effectively can build peace, reestablish community faith in governance, and prevent conflict.

Effective criminal justice systems consist of multiple institutions and actors, including an adequate and well-trained police,² humane correctional services, a fair and effective judicial institutions and legal assistance providers. Criminal justice systems provide for the prevention, investigation and prosecution of crime and violence, as well as redress for victims. Where police, prosecutors, judges and corrections personnel are ill-trained, ill-equipped or abusive, local communities lose trust in government and may need to rely on self-help, local militias or strongmen for protection. Without effective oversight mechanisms, police personnel can exacerbate ethnic, sectarian and factional divides within their ranks and among members of the wider community.

Many conflict-affected states lack capacity for justice or judicial integrity and manage court systems which are inefficient, inaccessible, expensive or corrupt. These challenges can result in long delays in the adjudication of cases, prolonged pre-trial detention of suspects and an overall culture of impunity for criminal activity. In many situations, criminal suspects are either released unjustifiably or subjected to ill-treatment in contravention of international norms. Victims who seek justice are often re-traumatized by their treatment in the court system and are left subsequently more vulnerable to violence and marginalization as a consequence of seeking justice. Women are routinely denied access to justice in conflict-affected settings or face recriminations from the community if they are successful in reaching trial. Children, as victims and offenders are not afforded specialized treatment. Children may be imprisoned with adults and under adult sentencing guidelines. In all, most conflict-affected populations distrust formal justice authorities and lack faith that the government can provide security and justice in line with international human rights standards.

Complex and transnational organized crime threatens already weak fragile and post-conflict states and their neighbors. In some instances, criminal networks subvert government institutions and economic structures, undermining peacebuilding and public trust in the rule of law. Corruption is linked to lower economic growth, perpetuation of wartime power structures and unjust distribution of public resources. Where implicated in the political economy of conflict, economic criminality tends to be systemic and well-integrated into regional and global networks.

International efforts to build justice and security capacity, ensure fair treatment and due process, and support judicial independence are increasing at a significant rate. The United Nations and its partners are taking more strategic and integrated approaches to this field, emphasizing national ownership and the development of national strategies and plans. There has been progress in integrating gender equality considerations in programming and in addressing common

² Broadly defined here to encompass all law enforcement capacities.

weaknesses in criminal justice systems in conflict-affected states, such as responses to sexual and gender-based violence and justice for children. However, it is also recognized that donor support falls far short of the resources required to strengthen women's access to justice and address the multifaceted concerns of children as offenders and victims. It is also increasingly acknowledged that the impact of rule of law interventions remains unclear.

C. Key issues for discussion

Strengthening criminal justice and security capabilities

- The state's inability to fairly adjudicate legal questions implicating sensitive political and human rights issues is at the heart of many conflicts. How do we best ensure judicial impartiality and independence in resource-poor and highly politicized settings?
- Continued investments in the capacity of law enforcement, prosecutors, judges and lawyers/paralegals are required to strengthen the legitimacy of states transitioning from conflict. Since 2004, where have these efforts paid dividends and how? How do these efforts translate into the protection of civilians? Are capacity building efforts addressing the specialized needs of children, and if so how? What technical skills development should be prioritized? How and where are women participating in these capacity building efforts in a meaningful way?
- Transnational organized crime and serious crimes such as piracy, kidnapping for ransom, corruption, and terrorism are cited as both the causes and consequences of weak rule of law environments. Have specialized approaches to tackling these crimes proven effective, and if so, what are they? To what extent should these be prioritized over other criminal justice programming? For transnational criminal threats, how can the UN integrate regional and sub-regional approaches with country-specific programming efforts?
- Corrections issues are not given adequate attention in many conflict and post-conflict settings, despite widespread reports of human rights violations in prisons. What can the United Nations do to ensure that prison facilities operate in a humane and just manner? What are the links between prison conditions and peace and security? How can the UN improve the impact of rehabilitation and reintegration programmes?

Programme implementation and impact

- A history of incoherent and uncoordinated donor support for reform of police, corrections and the criminal courts has raised awareness of the need for integrated and comprehensive approaches to building criminal justice systems. To what extent are integrated programmes being implemented in countries? To what extent are programmes focused on building institutional capacities and oversight, including financial, administrative and human resource and infrastructure? How have links between justice and security sectors been strengthened at the country level? Overall, how has enhanced integration in approaches led to greater impact?

- United Nations entities involved in the rule of law have increased their focus on establishing coherent, functional definitions and methodologies for the design, implementation, and evaluation of projects; yet measurement of real impact remains elusive. Have UN rule of law programmes set targets too ambitiously or is impact in the criminal justice sector simply too difficult to measure in conflict-affected environments? How can the United Nations conduct more credible evaluations? What are some of the strengths and weakness in the way the UN conducts joint situational assessments and other baseline studies? How does the sector meet the calls from donors for greater transparency, accountability and impact?
- Long-standing gaps in criminal justice responses, including corrections issues and issues related to complex and transnational crimes, are regularly highlighted but have yet to garner substantial focus. Should these gaps be filled by the UN and what needs to be done to overcome obstacles to progress? More broadly, in what areas does the UN have comparative advantage on supporting criminal justice sector reforms in conflict and post-conflict situations, and in what areas are others (bilateral donors, NGOs, etc.) better placed? How can we make prison issues attractive for investment by donors alongside other criminal justice partners?
- National ownership of rule of law programmes is increasingly cited as important means for realizing greater impact on the ground. Yet, for national ownership to succeed national capacity in strategic development and programme management must be resourced. Where are these types of national capacity building efforts leading to measurable results? What other national perspectives on criminal justice need to be adopted as practice?