

**LEGAL AND JUDICIAL RULE OF LAW WORK IN
MULTI-DIMENSIONAL
PEACEKEEPING OPERATIONS:
LESSONS-LEARNED STUDY**

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As Director of the RIGHTS Consortium for the ABA, he initiated and finalized the design of an assessment tool to gauge a country's progress in civil and political rights, the *ICCPR Legal Implementation Index (ICCPR Index)*. Structured upon the *International Covenant on Civil and Political Rights (ICCPR)*, the ICCPR Index is designed to assess the implementation of a cross section of fundamental civil and political rights. In 2004, Mr. Carlson piloted this tool, assessing the Republic of Macedonia's compliance with minority rights guarantees provided in the Ohrid Framework Agreement. The overall goal of the assessment was to identify practical measures that could bolster respect for minority rights and reduce tensions that might lead to a renewal of conflict.

Mr. Carlson also co-authored the *Practical Guide to the International Covenant on Civil and Political Rights*, which is an easily accessible reference handbook for understanding the nature and scope of rights set forth in the ICCPR. This guide is intended for a variety of audiences, including international organizations, non-governmental organizations, human rights advocates and defenders, as well as governments of signatory states. The book was specifically designed to be used in post-conflict environments, where ignorance of human rights and their proper application could lead to increased tensions and possibly renewed conflict.

In 2003, he was invited to join the U.S. Institute of Peace's (USIP) project on participatory constitution-making, the *Project on Constitution-Making, Peace-building, and National Reconciliation*. On contract with USIP, Mr. Carlson composed a chapter in their upcoming book on constitution-making. USIP also has employed him as an expert adviser on constitutional matters, and he has been deployed on several USIP missions, including travel to the Democratic Republic of the Congo and Iraq.

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This paper reflects the personal views of the author and does not necessarily represent the views of the Department of Peacekeeping Operations or of the United Nations.

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1. EXECUTIVE SUMMARY

The absence of rule of law is a common cause and byproduct of conflict...

...and thus the UN is increasingly incorporating rule of law programming in peacekeeping.

This study reviews recent experience with judicial and legal reform in such operations...

...as one of the first examinations of its status and integration within the UN system.

While progress has been made, additional efforts are necessary...

...demanding not only more resources, but also changes in planning and guidance of rule of law aspects of operations.

A number of key lessons have been derived from this study...

...along with recommendations for needed changes...

Within the last 15 years, peacekeeping has undergone a rapid and remarkable transformation. Today, peacekeeping enjoys a much more expansive definition, which acknowledges the complexity and difficulty of truly winning the peace.¹ The absence of the rule of law is a common cause and byproduct of conflicts, and in recognition of this fact, the United Nations (UN) has begun to regularly incorporate rule of law programming into complex multi-dimensional peacekeeping operations (hereinafter, peacekeeping operations).²

This study reviews the recent experience with judicial and legal reform³ programming in UN peacekeeping operations and proposes measures to strengthen and integrate this programming within the mission to maximize its contribution to lasting peace and security. Though this relatively new aspect of peacekeeping has grown consistently in recent years, this study represents one of the first introspective examinations of its status and integration within the UN system.

While significant progress has been made in integrating judicial and legal reform programming into peacekeeping, this study concludes that the effort is still in its early stages, and a number of additional steps are needed to prepare the UN to address judicial and legal system issues in a post-conflict environment. Some of these measures may require additional resources, but more importantly, some demand changes in the way the UN plans and administers the rule of law dimension of peacekeeping operations.

The following are the key lessons derived from this study:

- Issue more comprehensive mandates focusing on specific judicial and legal reforms
- Implement mandates fully, addressing gaps in local judicial and legal capacity where necessary
- Establish rule of law as a core priority in mission planning
- Provide sufficient judicial positions and rapidly deploy
- Increase financial resources for judicial and legal reform initiatives
- Develop a “One UN Approach” to judicial and legal reform in peacekeeping
- Strengthen engagement with host-country rule of law partners
- Employ contemporary programme management techniques
- Serve as a center for rule of law information, analysis, and coordination in-country
- Incorporate rule of law into mission’s diplomatic dialogue
- Bolster UN Headquarters capacity to provide adequate support for judicial and legal programmes in peacekeeping operations

¹ Thus, what are generally termed “peacebuilding” activities are often core elements of peacekeeping.

² Interim administration (executive) missions, such as UNMIK/Kosovo and UNTAET/East Timor, are for the most part beyond the scope of this study. The study primarily focuses on the recent missions of ONUB/Burundi, ONUCI/Côte d’Ivoire, MONUC/Democratic Republic of the Congo (DRC), MINUSTAH/Haiti, and UNMIL/Liberia.

³ This study does not cover the related rule of law areas of police reform and restructuring, or support to prisons/corrections systems.

...which will require commitment of senior UN leadership, Member States, donors and rule of law staff.

For each of the lessons highlighted in the study, there are corresponding recommendations to effectuate needed changes. Implementing these recommendations will require the commitment of senior UN leadership and policymakers, the Security Council, Member States, donors, and rule of law staff (both in Headquarters (HQ) and in the field).

2. BACKGROUND

Rule of law is progressively more a part of the discussion on addressing threats to international peace and security.

The concept of rule of law (ROL) has become an increasingly common part of the international community's discussion about how to address threats to international peace and security. It is now more clearly understood that the absence of national judicial and legal capacity is not only a cause of conflict, but also an impediment to its sustainable resolution, and thus, to the success of the UN peacekeeping endeavor. The courts and legal system, their functioning, and reform, are inextricably linked to: supporting a safe and secure environment in line with human rights standards to combat a culture of impunity;⁴ implementing peace agreements and meeting the expectations of local populations;⁵ and reinforcing the legal system as a peaceful mechanism for dispute resolution.⁶

The functioning and reform of courts and legal systems are linked to:...

...a safe and secure environment and combating impunity; implementation of peace agreements; and peaceful mechanisms for dispute resolution.

Often, the most opportune moment in which to work for change is in the immediate post-conflict period. Thus, as now widely recognized, efforts to help host countries strengthen their rule of law institutions are often core peacekeeping tasks. It is clear that the prior focus on police reform alone was insufficient.⁷ Instead a balanced and holistic approach to rule of law reform, which also focuses on strengthening the judicial and legal system, is needed. It is clear that a focus on police reform alone is insufficient to achieve these goals.

The most opportune moment for effecting changes in these areas is often in the post-conflict period.

The Secretary-General's recent definition of rule of law...

In August 2004, the Secretary-General of the United Nations provided a definition of the rule of law that is notable both for its breadth as well as

⁴ UN peacekeeping operations are frequently deployed where the host-country's rule of law institutions have ceased to operate (e.g., MONUC/DRC, UNMIL/Liberia, and ONUCI/Côte d'Ivoire) or are largely dysfunctional (e.g., MINUSTAH/Haiti). Charged with taking all steps necessary to ensure a secure and stable environment and protect civilians, operations must frequently participate in the incarceration of members of the local population. This UN assistance contributes to a significant rise in arrests and detentions such as in the case of MONUC/DRC and MINUSTAH/Haiti at present. Experience shows that detainees are often released after a short cooling-off period, bribe or break their way out of the jail, or languish indefinitely in prison without trial. Each of these unfavorable results is typically linked to the lack of functioning judicial system. The return of criminal elements to the streets directly undermines the peacekeeping operation's attempt to bring peace and stability to the country, while leaving the accused in prison indefinitely without trial implicates the UN in serious human rights violations.

⁵ Many peace agreements highlight rule of law reforms as a central element of the peace process. Legal issues can be directly related to the conflict and at the heart of the agreement, such as in Côte d'Ivoire where issues of citizenship, strengthening the independence of the justice system, eligibility for the presidency, and land tenure are all highlighted. Affirming the independence of the judiciary and committing to reform can also be aspects of peace agreements that require international support to achieve, such as in the case of Burundi and Sudan. It is a primary concern of the peacekeeping operation to be in the position to support the peace as defined by the parties and urge those in authority to fulfill their obligations.

⁶ Where there is a lack of emphasis on the judiciary as an independent pillar of governance and the legal system as the tool for conflict resolution, politically driven actions in the early stages of post-conflict engagement have perpetuated systemic dysfunction, executive interference in the judiciary, and illegitimate and elite control of legal processes to the detriment of the protection of human rights and opportunities for sustainable peace and development.

⁷ As shown in several peacekeeping operations in the 1990s (e.g., MICIVIH/Haiti and UNMIBH/Bosnia and Herzegovina), the UN investment in police reform has often been undermined by a lack of corresponding and coherent support to the judicial system.

the specificity with which it identifies elements encompassed within the term:

...demands consistency with human rights standards and principles of accountability and transparency...

The “rule of law” is a concept at the very heart of the Organization’s mission. It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.⁸

...touching on many components of contemporary peacekeeping...

This guidance demonstrates that ROL as a concept, which includes consistency with human rights standards and principles of accountability and transparency, touches on many components of a contemporary peacekeeping operation, such as police, corrections, human rights, gender, and political and civil affairs. To achieve the legal benchmarks the Secretary-General describes requires long-term strategies that involve other UN agencies, such as the Office of the High Commissioner for Human Rights (UNOHCHR), the United Nations Office of Drugs and Crime (UNODC) and the United Nations Development Programme (UNDP). Thus, a successful relationship among UN actors is important to a mission’s success in the ROL field.

...as well as requiring long-term strategies which involve other UN agencies.

Within the rule of law spectrum, this study focuses on judicial and legal systems programming within peacekeeping...

Where appropriate, this study comments on these internal UN relationships. However, the focus of this study is not on ROL in the broader, more general sense, but rather, it examines specifically UN judicial and legal systems programming within the peacekeeping context. This covers a significant range of subjects, including legislation, courts and judges, prosecutors and defense counsel. The term “ROL unit” is used in this study to describe components of peacekeeping operations working to support judicial and legal reform.

...which covers subjects such as legislation, courts and the judiciary, prosecution and defense.

The study is based on a wide array of information collected through research, field visits and interviews...

This study began in June 2005 and is based on a wide array of information that has been assembled within the DPKO Peacekeeping Best Practices Section’s Criminal Law and Judicial Advisory Unit, field visits, phone interviews, research of the author, and other sources. The emphasis of this study has always been on practical lessons originating from actual UN experience in the field, and most of the observations included were “ground truthed” with a broad cross-section of UN field personnel at a November 2005 meeting held at the Kofi Annan International Peacekeeping Training Center (KAIPTC) in Ghana.⁹ Overall funding for this lessons-learned study was provided by the United Kingdom.

...and its emphasis is on practical lessons originating from actual UN experience in the field.

⁸ Report of the Secretary-General, Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, 23 August 2004, S/2004/616, para. 6, p. 4.

⁹ The workshop was made possible by KAIPTC, with support from the Royal Norwegian Government and the Norwegian Institute of International Affairs (NUPI).

3. KEY LEGAL AND JUDICIAL LESSONS-LEARNED IN PEACEKEEPING OPERATIONS

3.1 ISSUE MORE COMPREHENSIVE MANDATES FOCUSING ON SPECIFIC JUDICIAL AND LEGAL REFORMS

Peacekeeping operations usually deal with transitional or newly-elected governments...

...which can have limitations in terms of integrity, qualifications and motivation.

Opposition to rule of law reform, particularly by organized criminal elements, is common in the post-conflict period.

While the approach of “non-executive” peacekeeping is important, it must be applied to achieve the objectives of the UN Charter.

To do so, addressing gaps in national capacity before spoilers can capitalize on vacuums, such as in Haiti, can be necessary.

While the Security Council and Member States have stressed more frequently rule of law...

...recent mission mandates range in strength and continue to be weak when compared to other mission activities.

Peacekeeping operations typically deal with transitional or newly-elected governments, which may consist of representatives from warring parties, existing government, civil society, etc. While these representatives are commonly chosen because of their ability to influence members of the population, and armed groups in particular, their legitimacy as members of government may be questionable in terms of integrity, qualifications, and motivation. Moreover, in post-conflict settings, the power vacuum left by the conflict most often leads to the development of highly organized opposition to the rule of law in the form of organized crime.

“Non-executive” peacekeeping missions in this type of post-conflict environment may comply with traditional notions of sovereignty and may serve to place pressure on local actors to work together. However, these considerations must be understood and applied in a manner most likely to achieve the UN Charter’s core objective of securing international peace and security. To reach that objective, the Security Council and UN leadership must be prepared to address gaps in national capacity that create ROL vacuums before spoilers capitalize on this dysfunction to foment discord, insecurity, and a return to conflict. A cycle of conflict and intervention, as typified in Haiti over the last decade, can result if the limits of national capacity are not frankly acknowledged from the start.¹⁰

Over the past several years, the Security Council and UN Member States have stressed, in general terms, the importance of the rule of law to peace and security, and peacekeeping mandates now more regularly refer to the rule of law. Nevertheless, even the most expansive of these mandates remain extremely weak when compared with other mission activities – such as police or military functions. Recent mandates range in strength from assisting national authorities to develop a strategy for strengthening the judicial systems (UNMIL/Liberia¹¹ and MINUSTAH/Haiti¹²), inclusion of a general reference to the rule of law (ONUCI/Côte d’Ivoire¹³), or no reference at all (MONUC/DRC¹⁴). For ONUB/Burundi, despite

¹⁰ The current situation in Haiti illustrates how internationally-assisted law enforcement, coupled with a dysfunctional or inactive local judiciary, can lead to a significant rise in pre-trial detentions and subsequent prison breakouts. Serious criminals return to the streets and are often emboldened by their apparent impunity.

¹¹ Security Council Resolution 1509 of 19 September 2003, S/RES/1509 (2003), para. 3(q), p. 4 (“To assist the transitional government in conjunction with ECOWAS and other international partners in developing a strategy to consolidate governmental institutions, including a national legal framework and judicial and correctional institutions”).

¹² Security Council Resolution 1542 of 30 April 2004, S/RES/1542 (2004), para. 8(b), p. 3 (“Decides that MINUSTAH in collaboration with other partners shall provide advice and assistance within its capacity to the Transitional Government...in the development of a strategy for reform and institutional strengthening of the judiciary.”).

¹³ Security Council Resolution 1528 of 24 February 2004, S/RES/1528 (2004), para. 6(q), p. 4 (“To assist the Government of National Reconciliation in conjunction with the African Union, ECOWAS and other international organizations in re-establishing the authority of the judiciary and the rule of law throughout Côte d’Ivoire.”).

¹⁴ Though ROL was introduced as a general part of the mandate when the Security Council passed resolution 1493 on 28 July 2003, Resolution 1565 of 1 October 2004 subsequently dropped any reference to ROL altogether.

significant emphasis in the Arusha Peace and Reconciliation Agreement¹⁵ on rule of law reforms, the ROL mandate served to weaken and limit UN engagement to a minimal footprint, subordinated to ceasefire and demobilization activities.¹⁶

More clarity on the significance of judicial and legal systems and authorization for missions to engage visibly on these issues has yet to be realized.

While the necessary activities will vary, mandates should direct operations to support national engagement or undertake some functions directly where indicated...

...in line with national laws and traditions as well as applicable international standards.

Mandates should in any case provide the mission with access to rule of law institutions and processes.

Stronger mandates would correspond with increased rule of law reporting to the Security Council and its enhanced engagement on these issues.

Clarity by the Security Council on the significance of the judicial and legal systems to peace and security and its authorization of a mission to fully, and visibly, engage on these issues, has yet to be realized.¹⁷ While the activities needed in each context will vary, mandates can be tailored accordingly and can direct the peacekeeping operation to assist national counterparts to undertake certain core activities, or to undertake some functions directly where necessary to fill major gaps in local capacity. In either case, these efforts should be based upon the laws, customs and traditions of the host-country, as well as applicable international standards. Specific guidance could include: training of national actors and strengthening or developing national training institutions; the provision of international advisors to key national institutions; the development of systems to protect victims and enhance their rights; the provision of advice and assistance on specific reforms (such as strengthening the professionalism and independence of the judiciary); mentoring within key institutions; legal system assessment and monitoring;¹⁸ vetting of judges, prosecutors, and court staff;¹⁹ and development of a national legal defense resource center or other support for criminal defense. When ROL interventions are needed to address targeted areas of dysfunction, even more specific authority should be provided. In all cases, mandates should provide the mission with sufficient access to key rule of law institutions and processes (e.g., court files and proceedings).

More specific mandates would also increase the Secretary-General's reporting to the Security Council on ROL and enhance engagement of the Council on these issues.²⁰ Secretary-General reports on recent missions

¹⁵ ARUSHA PEACE AND RECONCILIATION AGREEMENT FOR BURUNDI, 28 August 2000. The Arusha Agreement is an extremely comprehensive and detailed peace agreement that reflects the years of negotiations leading up to its conclusion. The introduction espouses a commitment to rule of law and good governance, the implementation of which is detailed in a series of binding protocols and annexes.

¹⁶ The Chapter VII mandate states, inter alia, that ONUB "shall provide advice and assistance, **within its capacity and subject to carrying out tasks stipulated** [ceasefire and demobilization activities], to the transitional Government and authorities to contribute to their efforts. . . to complete implementation of the reform of the judiciary [and correction] system, in accordance with the Arusha Agreement" (emphasis added) S/RES/1545 para. 5, p. 4, of 21 May 2004.

¹⁷ While not the subject of this study, the same point is equally true for mandates in the area of strengthening national corrections systems.

¹⁸ While an older operation, the mandate of the peacekeeping operation in UNMIBH/Bosnia and Herzegovina provides a specific example. Security Council resolution 1184 of 16 July 1998 clearly mandated the mission to undertake "monitoring and assessing the court system in Bosnia and Herzegovina, as part of an overall program of legal reform." The resulting Judicial System Assessment Programme (JSAP) was successful and had virtually unhindered access to court proceedings and files in part due to the emphasis placed on it by the Security Council.

¹⁹ There is certainly specific precedence for this activity in the police area. Security Council resolution 1542 of 30 April 2004, S/RES/1542 (2004), para. 7. I (b), p. 2 ("to assist the Transitional Government in monitoring, restructuring and reforming the Haitian National Police, consistent with democratic policing standards, including through the vetting and certification of its personnel, advising on its reorganization and training, including gender training, as well as monitoring/mentoring members of the Haitian National Police.").

²⁰ For example, when the executive branch of a transitional government removes judges with life-tenure under legally questionable grounds, this is a matter that council members may be interested in being quickly seized of, and possibly commenting upon. At present, the Security Council rarely is provided oral briefings on rule of law from mission leadership and from host-country legal authorities. The Council deliberations on rule of law issues may greatly benefit from making this common practice. On some

Most critically, missions would be evaluated on their treatment of rule of law, and progress in this area used as a benchmark for mission withdrawal.

have included judicial and legal systems issues, but not systematically and not completely.²¹ Through increased reporting on rule of law mandates, briefings, data collection, and analysis, peacekeeping operations should be evaluated on their treatment of ROL, and the benchmarks for the withdrawal or downsizing of operations should be based in part on progress made in the rule of law area.

Recommendations: 1) The Security Council should issue more specific and robust mandates in the judicial and legal systems area which indicate points of intervention addressing capacity gaps; and 2) Ensure that progress on rule of law is a criterion for the evaluation of mission success and for mission downsizing.

3.2 IMPLEMENT MANDATES FULLY, ADDRESSING GAPS IN LOCAL JUDICIAL AND LEGAL CAPACITY WHERE NECESSARY

Implementation of rule of law mandates has been limited, even where more robust engagement has been indicated.

Even with a clear and targeted ROL mandate, peacekeeping operations remain ultimately a concrete exercise in implementation that must be refined locally to ensure success. Once the Security Council issues a peacekeeping mandate, the local mission's management team with the support of DPKO—and in consultation and collaboration with other UN system partners—is charged with implementing the mandate. Recent judicial aspects of mandates have been interpreted in a limited fashion, pushing the ROL units of operations into a reactive, minimalist posture where more robust engagement has been indicated by the circumstances.

In the case of Côte d'Ivoire, despite the early identification of the need for mobile courts in the North...

For example, in the case of ONUCI/Côte d'Ivoire, the initial DPKO concept of operations identified mobile courts as a necessary intervention, and the ROL team moved this approach forward quickly. During the start-up period, support for the project appeared promising with the European Union expressing significant interest, but support never materialized and mission leadership did not prioritize this engagement. Thus, the northern half of the country did not, and still does not, have a single functioning court. Given the pivotal role of Ivorian courts in dealing with matters of citizenship and identification, which is directly related to participation in electoral processes, a significant portion of the northern population remains in a fundamental legal limbo.

...this was not given the support and priority it required.

As a result, a significant amount of the population remains in legal limbo with regards to electoral participation.

In Liberia, even with the dire lack of local professional and infrastructure capacity within the justice system...

In the case of UNMIL/Liberia, the judicial and legal concept of operations identified that widespread looting and destruction had occurred within the justice sector and that the professional capacity in the justice sector was

occasions the Council has given special emphasis to rule of law institutions and issues during its own field visits, for example the Report of the Security Council Mission to Haiti (S/2005/302 6 May 2005). This practice should be routine.

²¹ ONUCI/Côte d'Ivoire is a good example of this phenomenon: First report of the Secretary-General on the United Nations Operation in Côte d'Ivoire of 2 June 2004, S/2004/443; Second report of the Secretary-General on the United Nations Operation in Côte d'Ivoire of 27 August 2004, S/2004/697; Third report of the Secretary-General on the United Nations Operation in Côte d'Ivoire of 9 December 2004, S/2004/962; and Fourth report of the Secretary-General on the United Nations Operation in Côte d'Ivoire of 18 March 2005, S/2004/186. Within each of these reports, a number of activities and concerns are tracked and discussed critically. However, ROL, as a discrete concern, was not generally addressed. The fifth report did mark a shift in practice and included a ROL section, and this may well indicate a willingness to engage in more detail on this issue in the future. To the extent ROL was touched upon in prior reports, it was usually in the context of other ROL related issues, such as policing and human rights.

...the mission did not receive financial and political support for the strength and range of measures required.

Now, a few years into rebuilding, donors have demanded more direct engagement in the rule of law area.

With a Chapter VII mandate, operations should interpret mandates with the strength that is implied.

The experience in policing with direct engagement of special units to support and fill national capacity gaps is illustrative.

Thus, where required, a more involved role in the policing area should be matched in the judicial and legal systems area.

For these purposes, the UN should develop intervention templates for rapid assembly and deployment of resources, which can be tailored to the local needs and circumstances.

marginal.²² Though the Liberia ROL unit did receive significantly larger resources than most missions, it did not receive international political and financial support for the full range of measures necessary to address this established lack of local capacity. One innovative exception to this was when UNMIL used mission funds to hire local lawyers, as additional prosecutors, relieving a backlog of higher court cases. Despite this limited success, the judiciary, commonly a key player in dealing with corruption and the resolution of citizen disputes, continues to falter. It is compelling that, now, a couple of years into the rebuilding process, donors are demanding that the national government agree to direct international engagement in some functional elements of sovereignty in the ROL area as a prerequisite to the disbursement of funds.²³

As was noted repeatedly in field interviews, peacekeeping missions are often constituted under Chapter VII of the UN Charter, and they should be interpreted consistent with the force that implies. In this regard, the evolving approach of the UN to security aspects of policing is instructive. The traditional understanding was that UN civilian police (UNPOL) would serve in training, mentoring and advisory roles vis-à-vis local police. However, special units, referred to as Formed Police Units (FPUs), have been deployed for some years now to back up host-country police by directly fulfilling some crowd control and policing functions where local capacity is unprepared, unwilling, or overwhelmed. A common attitude expressed by local nationals is that such FPUs are welcomed and necessary to fill capacity gaps in the new or transitional governments.

Where circumstances so require, this more involved international role in the police area should be matched in the judicial system. Full mandate implementation should involve support for UN personnel to participate with national counterparts on judicial oversight and discipline bodies; serve as judges, prosecutors, and lawyers; participate directly in mobile courts; review legislation; or work within ministries of justice or other host-country institutions.

Though the axiom that each situation is unique is true, that fact should not stop the UN from developing a number of potential intervention templates, which could guide rapid assembly and deployment of resources tailored to the local circumstances. These templates should address a range of common circumstances, such as the rehabilitation of legal publishing capacity and the development of mobile courts to compensate for circumstances where local personnel and infrastructure are no longer intact.

Recommendations: 1) UN policymakers, including senior mission leadership, need to increase emphasis on robust implementation of ROL mandates; and 2) In collaboration with donors, DPKO should develop programme packages for ROL institutional capacities, which could be ready for rapid deployment where appropriate.

²² In terms of the national capacity, the report stated, “Most judges and prosecutors operating in the Magisterial Courts outside of Monrovia...are not attorneys, contrary to the qualification requirements.” DPKO ROL Concept of Operations for Liberia, p. 1.

²³The Governance and Economic Management Assistance Programme (GEMAP) concluded between the transitional government and international donors requires international participation in a variety of government functions, including judicial functions such as the Anti-Corruption Commission.

3.3 ESTABLISH RULE OF LAW AS A CORE PRIORITY IN MISSION PLANNING

While there has been improvement in rule of law expertise in mission planning, it still remains a second-tier concern.

Peacekeeping operations established in the late 1990s and early 2000s, such as UNAMSIL/Sierra Leone, UNMIK/Kosovo, UNTAET/East Timor, and MONUC/Democratic Republic of Congo (DRC), did not have specific rule of law expertise in their mission planning. With the UN's increasing interest and emphasis on ROL this situation has changed.²⁴ However, the topic remains a second-tier concern in the context of mission planning.

Sufficient attention and resources for rule of law in planning is an indispensable, but not sole, factor in success.

Most, if not all, of the lessons-learned discussed in this study can trace some aspect of their origins to the fact that ROL does not receive sufficient attention and resources during the mission planning phase. While increasing the priority given to judicial and legal systems in planning is critical to future success, this study describes a number of issues that are inter-related, and each will play a significant role in overall mission success in this area.

For Burundi, judicial and legal reform expertise was not included in mission planning...

In terms of planning deficits, the UN peacekeeping operation in ONUB/Burundi provides an illuminating example. The peace agreement for Burundi, the Arusha Agreement, had a significant emphasis on the independence of the judiciary and a number of institutions and mechanisms for promoting ROL reform. However, HQ staff specialized in judicial and legal reform were not included in the planning trip to the field. While representatives from other field missions did provide some assistance, they were asked not to engage with national justice actors.

...and the result was only a few international posts, no national officers, and an absence of any programmatic guidance.

The impact of these decisions was, and is, apparent. Only a few international ROL positions were authorized for the operation, and no National Professional Officer (NPO) positions were created. In addition, the small ROL unit of the mission had no planning guidance to provide strategic and programmatic focus, which might have helped it to maximize its limited resources.

In contrast, the inclusion of such expertise in planning for Liberia, Haiti and Côte d'Ivoire resulted in programmatic guidance, better staffing and the firmer establishment of rule of law as a main concern of the missions.

A contrast can be found in UNMIL/Liberia, MINUSTAH/Haiti, and ONUCI/Côte d'Ivoire, where specific ROL expertise was included in mission planning assessment teams. All three missions were then provided with concepts of operations or other guidance on the priorities and direction of their programmes. As a result, ROL concerns are established more firmly in the priorities of the Liberia and Haiti missions, which are relatively adequately staffed. Even in Côte d'Ivoire, which has a small ROL unit, the mission planning concept of operations has been important for the targeting of its interventions.

²⁴ The change can primarily be attributed to the consequences of the Report of the Panel on United Nations Peace Operations (otherwise known as the *Brabimi Report*) of 21 August 2000 (A/55/385 – S/2000/809) that highlighted the failure to have a coherent approach to criminal justice/rule of law in peace operations. It emphasized the lack of a rule of law capacity within UN headquarters and underscored the need for an adequately resourced team approach to upholding the rule of law and respect for human rights through judicial, penal, human rights and policing experts working together in a coordinated and collegial manner in peace operations. Based on this, DPKO was given the resources to establish a small unit for judicial and legal systems and prisons with two officers in February 2003.

It is imperative that DPKO have the resources for effective mission planning of judicial and legal programmes, while also the capacity to generate lessons and best practice guidance for all operations.

It is important that DPKO have sufficient resources to support planning, reporting, and other crucial, mission-specific activities in the area of judicial and legal reform. At the same time, DPKO needs to have capacity to collect, review, and analyze legal and judicial system information across peacekeeping operations to distill and disseminate general lessons-learned. From March 2003 until the recent budgetary process concluded in July 2005, there was only one judicial officer in DPKO.²⁵

Recommendation: Experts in judicial and legal reform should be included as full-fledged members of every mission planning team, and they should be provided with the resources and support necessary to conduct a preliminary survey of the legal and judicial system.

3.4 PROVIDE SUFFICIENT JUDICIAL POSITIONS AND RAPIDLY DEPLOY

3.4.1 International Staff

The staff resources for judicial and legal reform in missions have not correlated with mission mandates and needs on the ground.

As a general proposition, mission planners, senior mission management, and Member States involved in budgetary decisions appear to have supported proactive judicial reform capacity and activities in only a few cases. The number of staff provided for in mission budgets does not appear to correlate with mission mandates, nor with the needs observed in the mission area. The missions in ONUB/Burundi, MONUC/DRC, and ONUCI/Côte d'Ivoire provide clear examples of this problem.²⁶

This is exemplified by the missions in DRC, Burundi, and Côte d'Ivoire where staffing is minimal...

MONUC was initially planned without a ROL unit, but in 2003, when one was created, it was given 3 international staff positions on legal and judicial issues all based in the capital, Kinshasa. This lack of emphasis on judicial and legal reform is particularly evident given the size of the DRC and the centrality of ROL to conflict in the Great Lakes Region.

...and the needs for judicial and legal reform related to peace and security in these countries are considerable.

Similarly, ONUB was staffed with just three international positions dedicated to judicial and legal systems issues and no NPOs. The result was only minimal progress in the judicial and legal systems area during the first eighteen months of the mission's work, despite the importance of ROL reforms in the peace agreement.

For example, in Côte d'Ivoire, there is only one international officer to cover the entire North where there are no functioning courts and few legal professionals.

In ONUCI, the ROL unit consists of 5 international staff positions to fulfill its mandate. With these resources, the peacekeeping operation has only one international judicial officer located in, and covering, the entire northern half of the country. This lack of capacity contrasts with the needs sharply, since the North suffers from a complete lack of legal actors, particularly judges and prosecutors, and has no functioning courts.

²⁵ Before March 2003 there were none. The 2005 peacekeeping support account budget provides for one more judicial officer and a head of the Criminal Law and Judicial Advisory Unit which covers judicial and corrections issues in peacekeeping. Since August 2004, the unit has made the use of one temporary position.

²⁶ The mission in Afghanistan, UNAMA, planned in 2002, has a particularly light footprint in this area aligned with its mission philosophy, with two authorized international staff on judicial and legal reform. There are, however, some parts of the mission with more staff, such as human rights with 23 international professional posts.

Such staff numbers are also not aligned with police, civil affairs and human rights capacities.

Moreover, for each of these missions, staffing numbers are minimal when compared with the footprints authorized for UNPOL, Civil Affairs and Human Rights units.²⁷

Recommendation: Provide a sufficient number of international staff in mission budgets, commensurate with the mission mandate and needs on the ground.

3.4.2 Staff Recruitment, Deployment, and Retention

Delays in staffing rule of law components undermine credibility and harm mission start-up.

Currently, delays in the staffing of ROL units routinely undermine UN credibility in the field and have been particularly detrimental to mission start-up in some cases, e.g. MINUSTAH/Haiti. This situation is complicated by the fact that the universe of judicial and legal systems professionals with post-conflict experience is limited and that competition for these personnel with bilateral donors is fierce. For the UN to be competitive in this environment, several components are important: a targeted system of outreach and recruitment, rapid contracting and deployment capacity, the ability to adjust staff structures quickly to reflect changing on-ground conditions, and the possibility for career development and advancement.

This is complicated by the limited pool of professionals in this area with competition from well-resourced bilateral donors.

Rule of law expertise is a special area, which goes beyond knowledge of legal or judicial practice...

Identification of appropriate candidates for ROL positions is difficult. ROL is a special subset of legal practice, and standard legal training and practice experience form only a small part of the skill set needed. In a post-conflict environment, professional staff cannot expect to employ many of the legal tools, materials, and institutions that they would normally rely on. Rather, staff must work within a foreign legal environment to assist national counterparts in the creation and rehabilitation of institutions that are appropriate for the existing local conditions and limited available resources. In this sense, humility and the ability to respect host-country counterparts are crucial attributes.

...and requires, in particular, the skills and ability to build national capacity with humility and respect.

Since such specialized and qualified individuals are hard to identify, attention should be given to training and career development.

These specialized qualifications are not easy to find, and when qualified personnel are recruited and hired, considerable attention should be devoted to their development and retention. At a minimum, there should be a commitment to ongoing ROL skills training, and consideration should be given to the development of rule of law career paths.

While UN's Galaxy Database is an excellent platform, it needs to be supplemented with professional human resource outreach in order to be effective.

The UN's online Galaxy Database is an excellent platform for collecting and organizing a substantial quantity of useful information, and its integration into ROL recruitment is a significant benefit. However, simply posting vacancies on this system is not a substitute for an aggressive, targeted recruitment programme. Those organizations competing for candidates maintain similar online database systems while at the same time conducting targeted recruiting outreach programmes.

²⁷ In ONUB there is 1 P post, and 120 police officers, and 39 international civil affairs posts. ONUCI has 4 P posts, 725 police, and 24 international human rights officers. MONUC has 4 P posts, 1,141 police, and 34 international human rights officers.

Expedition of candidate identification through pre-screening and up-dating rosters is also important...

...if the UN is to be a competitive employer in this field.

Once suitable candidates are identified, they need to be pre-processed, regardless of whether there are existing openings matching their skill sets. This preparation should be sufficient to expedite the ability of the UN to reach out and contract with these individuals rapidly when the openings do arise. The development of pre-cleared rosters at HQ, which is currently underway along with other recruitment reforms, is a significant positive step towards this goal. Ongoing posting of vacancies and screening of candidates is essential if the UN is to be competitive in the judicial reform field, and the recruitment process should be refined as necessary to ensure that it meets all evolving needs.²⁸

Recommendations: 1) Recruitment for ROL posts must involve outreach and target specialized forums, such as the IBA, SAFDEM, NORDEM, CANADEM, ABA/CEELI Alumni Listserve, DevelopmentEX, Civil Society International (CSI), et. al.; 2) UN HQ should continue to expand and refine the roster of pre-cleared professionals available for rapid deployment and be more involved in the screening of ROL management for appropriate skill sets, as well as their preparation and orientation for deployment; and 3) Investment in the professional development and retention of ROL personnel needs to be formalized.

3.4.3 National Professional Officer (NPO) Capacity

The numbers of national professional officers in missions are currently not a function of strategic design.

Mission ROL units have widely varying percentages of NPOs, which generally appears to be more of a function of chance, or budget vagaries, as opposed to strategic design. In some operations, there are substantial numbers of these posts, while in others there are few or none.

Such capacities are critical for ensuring that missions have an understanding of the national legal context and that their activities fit local conditions and have a lasting impact.

In the ROL context, NPOs with a solid knowledge of the pre-existing legal system and, if possible, a knowledge of international standards, are crucial to the development of ROL programming that is tailored to the local conditions and likely to make a lasting impact. Furthermore, there are frequently linguistic and cultural challenges that will play a significant role in the reform and rebuilding process, which require intimate knowledge of local conditions.

A diverse pool of qualified national legal professionals, reflecting ethnic or cultural and gender representation of the host-community, is vital.

A diverse NPO staff can work on these sensitive and important issues, such as ensuring that legal texts are available in the applicable official languages, and they can link the ROL component to key justice sector actors. Moreover, NPO staff can identify and explain cultural and gender factors that should shape programme design. Thus, cultural and gender diversity in the selection of NPOs is crucial to assembling a representative understanding of local circumstances and the ability to communicate with local ROL actors. Only a couple of missions, MINUSTAH/Haiti and UNMIL/Liberia, have an NPO footprint that could make this possible currently.

²⁸ The actual contracting and deployment of staff present additional challenges. Negotiations, execution of contract paperwork, briefings and orientation, and travel all take time to arrange. While the administrative processing of UN paperwork is standardized and functions adequately, communications and updates with candidates throughout this process need improvement. In most cases, candidates do not have substantial advance notice of their status in the recruitment process and the details of the position involved, and this situation prevents candidates from evaluating the potential opportunity and arranging their affairs for rapid departure.

The number of such officers should ideally be increased compared with internationals over time, but detrimental impact on the national system capacities should be factored into such decision-making.

Most importantly, on-going mentoring and capacity-building of national officers is a must.

While there is no magic formula or ratio for determining the balance between internationals and NPOs, private sector ROL programmes commonly have ratios of 1:3 or higher, of internationals to nationals. As many have noted, the prospect for detrimental brain drain on limited local capacity is a real consideration, and it should be factored into the decision-making process. However, the lack of adequate legal training at the local level also commonly implies that international staff will need to mentor NPOs extensively, and this type of on-the-job training should also be factored into the analysis. The return of these newly trained NPOs to the local talent pool can represent a substantial contribution to local capacity building. NPOs with international organization experience frequently contribute significantly to local development in their future careers.

Recommendations: 1) Provide for a sufficient number of NPO positions in all ROL units to ensure capacity to hire a diverse range of local legal professionals; and 2) ROL units should ensure that NPOs are provided structured mentoring and capacity-building on a regular basis.

3.5 INCREASE FINANCIAL RESOURCES FOR JUDICIAL AND LEGAL REFORM INITIATIVES

3.5.1 Access to Assessed Budget Funds

Despite the importance of courts and laws to initial peace and security, peacekeeping operations have suffered from a lack of funds and material resources.

Without a functioning legal profession, office of prosecution, or judiciary, checks on executive and legislative abuses are unlikely. Thus, lasting peace and the welfare of the common citizen justify the UN committing to a leadership role in the resuscitation and reform of legal and judicial institutions. However, a lack of access to funds and material resources has historically limited the ability of peacekeeping operations to help strengthen these ROL institutions.

Targeted interventions in the immediate post-conflict phase can indicate a change in 'business-as-usual' and generate momentum for reform.

In the immediate post-conflict phase, resources are particularly necessary to promote targeted change and take momentum away from business-as-usual in the justice sector. A few quick wins at the start of a mission can illustrate to national counterparts that the UN and its partners are serious and competent.²⁹ A slow start and lack of funding can signal just the opposite. Assessed budget funding is particularly important in this phase because donors have proven slow to respond, or even reluctant to devote funds, to what they see as a fledgling government of questionable moral, political, or legal legitimacy.

Assessed budget funds are critical in this stage when donor funding is mostly inaccessible.

Despite past practice which has limited the use of assessed budget funds for rule of law interventions, steps should be taken to reverse this trend.

Initial peacekeeping budgets therefore need to provide specifically for some basic assistance to the post-conflict ROL institutions. While past practice may have led some to assume that assessed budgets will not cover these needs, the lessons-learned from this past practice demand that this situation be revisited. Policymakers, planners, budget officers, budgetary bodies, and Member States need to take the necessary steps to ensure that basic support

²⁹ Despite the lack of assessed budget funding, some ROL units have been creative with using assets of the peacekeeping operation for targeted rule of law interventions, for example both MONUC/DRC and UNMIL/Liberia have used the air assets to transfer judges to inaccessible parts of the country.

for the rehabilitation of the judicial and legal system is provided in the immediate post-conflict phase.

In addition, while quick impact funding is limited, it can assist with targeted and critical support as in the case of Liberia.

However, greater access should be given to rule of law components of operations.

Peacekeeping operations' budgets also have some limited funding for Quick Impact Projects (QIPs) in amounts not to exceed \$25,000 USD. While QIPs funding alone is not enough, it does provide one existing vehicle for providing some early assistance to the justice sector. QIPs have been used successfully in UNMIL/Liberia to make targeted renovations of courts and provide basic equipment to the judiciary. However, this took over a year to access. ROL units in other missions have had similar difficulties securing QIPs resource.

Recommendations: 1) Assessed budgets should provide explicitly for legal and judicial system initiatives; and 2) DPKO and missions should ensure equal, if not priority, access to QIPs funds for ROL programming.

3.5.2 Accessing Donor Funding and Partner Resources

The international community's rhetoric on the importance of the rule of law has not been met with donor resources.

Recent donor conferences have failed to secure significant funding for this area...

...and where pledged, realization has been slow or non-existent.

Increasing UN leadership on rule of law should serve to focus donors and motivate funding...

...as well as encourage follow through on unmet pledges.

Funding attributed to the transitional justice area has often been devoted to small numbers of cases with little impact on local justice capacity.

While the international community has increasingly cited democratic governance, human rights, and rule of law as primary goals in a post-conflict environment, in fact, judicial reform programming consistently receives only a small fraction of the assistance that is designated for a particular country. Recent donor conferences have failed to secure significant ROL resource pledges for post-conflict reconstruction. Where ROL pledges have been made, there have been generally at least two attendant difficulties: realization of the pledges has been slow or nonexistent, and the pledges have focused disproportionately on high-profile transitional justice concerns. ROL personnel involved with ONUCI/Côte d'Ivoire, UNMIL/Liberia, and UNAMSIL/Sierra Leone³⁰ identified these issues as a significant concern.

The first issue may be addressed through a number of the measures discussed throughout this study. UN leadership, through comprehensive ROL assessments and diplomatic dialogue, could serve to focus interested donors on ROL issues and motivate funding. Establishing ROL as a priority will also give UN leadership a clear role in monitoring and encouraging follow through in the deployment of ROL programme resources.

The second issue presents several interrelated, and perhaps more delicate, concerns. Recent experience with transitional justice efforts has demonstrated that they can absorb a very large percentage of available resources. Particularly in the context of international, or hybrid, tribunals, significant resources have been devoted to the prosecution of a small number of individuals with only modest leftover contributions to local judicial capacity. With the attention focused on transitional justice in Burundi, the ROL unit of ONUB has advocated an innovative alternative,

³⁰ Other than comments received by mission personnel during discussions of this lessons learned study at the Rule of Law Workshop in Ghana, the experiences of the mission in Sierra Leone are not a part of this study.

Linking funding for transitional justice with required national capacity building is an innovative approach.

Such linkages need to be discussed with donors to ensure that funding benefits overall national justice capacity.

which links and sequences funding for a hybrid tribunal to an initial period of local judicial capacity building.³¹

Resources should not be siphoned away from transitional justice, which if implemented correctly can have a lasting positive impact on the rule of law. Rather, donor resources for both transitional justice and judicial and legal systems initiatives need to be increased. To realize this goal, the inextricably intertwined nature of ROL and transitional justice must be recognized and openly discussed with donors to ensure that funding decisions benefit overall national justice capacity.

Recommendations: 1) Senior UN leadership should take an active role in soliciting ROL pledges and following-up on their fulfillment; and 2) DPKO ROL personnel should be present at donor conferences to facilitate a more nuanced discussion on ROL issues, in particular, the relationship between transitional justice mechanisms and legal and judicial systems.

3.6 DEVELOP A “ONE UN APPROACH” TO ADDRESS JUDICIAL AND LEGAL REFORM IN PEACEKEEPING

3.6.1 Joint UN System Programme

Competition in the rule of law area is complicated by the number of UN entities claiming expertise and, in some cases, different reform programmes in the same country.

Inconsistent and disjointed approaches will bring out the worst in the UN.

Joint programming is the solution to ensure the UN provides the best it has to offer in this area.

This would require joint staffing, shared resources and trust funds, common strategies, work plans, facilities, and leadership.

Competition and discord are unfortunately common among the various units of peacekeeping operations involved in ROL-related activities (e.g., judicial affairs, police, human rights, and corrections). This sense of competition is compounded by the fact that more than ten different departments and agencies within the UN system claim some expertise in the rule of law area, and in several instances, different UN system agencies have separate legal reform programmes in the same country. A peacekeeping operation needs to be able to capitalize on existing UN capacities in the host-country and build on any existing activities, by joining forces with other UN partners. Finding synergies and engaging the various UN actors will bring about the best the UN has to offer. Disjointed, inconsistent approaches that are competitive, rather than cooperative, will bring out the worst.

The most obvious solution to these challenges is for UN departments and agencies engaged in judicial and legal system reform to join forces and form a single joint programme in a particular country. For the programme to be truly joint, it would have the following attributes: joint staffing; shared financial resources and trust funds; common facilities and location; a single plan of action; common programme leadership; and support from all relevant UN HQ units regardless of affiliation. During the life of the peacekeeping operation, the joint programme would be integrated within the mission, operating under the authority of the Special Representative of

³¹ This proposed strategy was in concert with a high-level assessment of the transitional justice issues, which was dispatched by the Secretary-General. Though the assessment report focuses on transitional justice issues, the report was broad enough in scope to reach ROL issues more generally. It noted in pertinent part, “The establishment of the [transitional justice mechanisms] should...be placed within the general context of the overall judicial reform and capacity building in Burundi, and be pursued in complementarity with any such justice and rule of law initiatives.” Letter of the Secretary-General to the Security Council, 11 March 2005, S/2005/158 para. 68, p. 22.

Such programmes should be within the mission and authority of the SRSG, moving to the UN country team at the end of the operation.

the Secretary-General (SRSG). As the operation withdraws, the ROL programme would continue—making a smooth transition from peacekeeping to development—under the authority of the UN Country Team.

Recommendation: The UN system should have a single joint programme for judicial and legal reform in the host-countries of peacekeeping operations, drawing upon the strengths and resources of the many UN system agencies that engage in such rule of law work.

3.6.2 Common Doctrine and Guidance

Clearly defined rule of law doctrine and guidance is lacking...

Clearly defined ROL doctrine and guidance materials are needed to facilitate effective, integrated programming across all actors in the UN system. Grounding UN ROL programmes in a common approach will also help define the jurisdiction of ROL units vis-à-vis other collegial units and reduce the potential for competitive tension.

...yet necessary for effective and integrated programming.

Such guidance should be based on the pre-existing body of UN standards.

There already exists a body of UN ROL guidance that provides a significant amount of context and direction (e.g., *UN Principles on the Independence of the Judiciary*), as well as international criminal, human rights, and humanitarian law. These international standards should be the starting point for the formulation of operational guidance. While there have been several recent initiatives by individual UN agencies to develop guidance materials based on these international standards, there is no clear procedure for gaining system-wide endorsement of these materials, nor of assuring their use by all UN actors.³²

While some guidance is being developed...

...as of yet, there is no procedure for gaining system-wide endorsement of the various materials.

In ROL areas where UN doctrine is lacking or underdeveloped, the identification of additional, goals, objectives, and principles should be pursued. UN HQ should be prepared and resourced to take a proactive stance to define new doctrine in the judicial and legal systems sphere.

In addition, where there are gaps in existing doctrine, the UN at headquarters needs to be proactive to address this.

Recommendations: 1) Common doctrine should guide all UN system ROL programming – policy and guidance materials should be agreed upon and used by all UN actors involved in ROL-related work – and where there are gaps in doctrine, DPKO should be prepared to lead in the development of additional guidance as needed; and 2) DPKO, with UN partners and peace operations, should develop common UN policy guidance grounded in established international standards that states the goals and objectives of ROL unit work and defines its jurisdiction.

3.6.3 UN System Coordination

Coordination within missions, required for effective collaboration, is ad hoc and informal.

Coordination structures within a mission, and within the UN system, are also needed to ensure effective collaboration. Too often in missions, coordination between related units is ad hoc and informal, depending on personal relationships and convenience.

³² OHCHR, UNDP, DPKO and UNODC are all developing various types of tools in the rule of law area.

The Rule of Law Task Force in Liberia provides a good example of institutionalized coordination...

...as it includes all related units, follows professional protocols and covers not just updates on activities, but also substantive discussions on strategies and mission positions.

While the integrated mission concept is gaining more momentum, there remain challenges to the effective incorporation of UN agencies.

Success of coordination will depend on senior management vigilance and commitment, but it is critical for providing lasting guidance throughout the life of the operation.

Significant attention is given to formulating relationships with transitional governments for effective reform.

However, the usual focus on the executive can overshadow the importance of the independent judiciary...

...and lead to reinforcement of executive control and interference in the administration of justice.

The concept of partners should include independent professionals, and civil society groups, including women's groups.

UNMIL/Liberia's Rule of Law Task Force is a good structural example of how a mission can effectively institutionalize coordination. The Deputy Special Representative of the Secretary-General (DSRSG) in charge of ROL chairs this weekly meeting where all the heads of units who are engaged in ROL-related work (UNPOL, Civil Affairs, Human Rights, Gender, Corrections, and Legal and Judicial Affairs) are invited. These Task Force meetings follow a standard professional protocol, including the use of agendas and minutes. Issues discussed range from basic updates on activities to substantive discussions geared to the development of common mission positions on rule of law topics.

The most significant structural challenge to developing a comprehensive coordination mechanism will likely be the incorporation of UN agencies. Though the pursuit of the "integrated mission" ideal has led to positive developments, agencies such as UNDP continue to operate largely independently of the mission—particularly in terms of ROL project selection and funding. The success of any comprehensive coordination mechanism relies on senior management vigilance and commitment. Where that is present, coordination and integration is greatly facilitated, not only for the parties present, but also for future additions to the peacekeeping operation. Discussions and policy decisions that are recorded memorialize the resolution of differences and misunderstandings and provide lasting guidance for the duration of the mission.

Recommendation: DPKO policy guidance should require the establishment of coordination structures that allow for policymaking and dispute resolution, which is recorded and accessible to all UN personnel involved in ROL activities.

3.7 STRENGTHEN ENGAGEMENT WITH HOST-COUNTRY RULE OF LAW PARTNERS

The most common host-country ROL partners are the transitional government and its constituent organs, and UN missions have as a rule focused a considerable amount of attention on formulating relationships with these crucial counterparts. Nevertheless, the focus on ROL relationships with the executive (usually the Ministry of Justice) often overshadows the importance of the judiciary as a key and independent partner. For reasons of political import or expediency, the UN can unintentionally reinforce executive control and interference in the judicial realm by relying too heavily on relationships with executive actors. While partnering with the judiciary can be difficult in situations where there is little in the way of an independent institutional structure, it can also be highly rewarding, particularly when agents of reform and change are found within the existing body of judges and prosecutors.

Moreover, the concept of ROL partners should always be understood in its broader sense. The post-conflict environment is all too often dominated by elite concerns about protecting, or increasing, their spoils. Assuming any significant degree of altruistic motives among post-conflict elites is perilous and unwise. On the other hand, professional legal organizations, civil society groups, and human rights advocates can be enthusiastic partners

Encouraging participation of these actors in reform efforts should be a core concern of the mission.

Public relations and promotion is equally important for engaging the public in such efforts and reflects the priority that post-conflict populations usually give to rule of law concerns.

In the changing environments of transitional communities, these approaches are essential for ensuring sustainability, and legitimacy of reform efforts...

...but concerted outreach and public participation creates additional resource demands.

with an understanding of, and interest in, the specifics of reform. Women's groups in particular tend to place ROL at the forefront of their agendas. Thus, supporting the activities of such groups and pursuing their full participation in legal and judicial reforms should be a core concern of UN peacekeeping operations.

Equally important is the public relations aspect of ROL promotion. Public information, public outreach, and public education can be core elements for the success of any ROL reform initiative. Surveys of public opinion in post-conflict societies usually identify ROL issues, such as security and justice, as top priorities. Raising public awareness about basic aspects of ROL reform can be an important driving force for change. For example, UNMIL/Liberia's judicial support unit has effectively used the mission radio to broadcast information on ROL reform efforts and developments on a weekly basis.³³ Similarly, meaningful public consultation in reform processes can increase the likelihood that initiatives are appropriate and sustainable and offer a type of legitimacy which is difficult to otherwise garner in a transitional and post-conflict environment.

Cultivating broad-based relationships and supporting national initiatives by a range of actors is essential for success. Societies in transition are highly dynamic and, with processes such as elections and institutional reform ongoing, changes in the composition of national policy-makers and power brokers are a virtual certainty. The more constant element is the citizenry. However, effective broad scale consultation and public involvement will require more concerted outreach, and this type of undertaking will place additional resource demands on UN peacekeeping operations and their ROL units to achieve.

Recommendations: 1) ROL units and senior UN leadership need to consistently engage with the full range of ROL partners, including the judiciary as an independent institution; and 2) National actor involvement in reform should not be limited to formal dialogue with the transitional government or its immediate successors, but should also involve independent legal actors, civil society and the population at large. Public information campaigns and consultation initiatives should be preferred mechanisms to achieve these goals.

3.8 EMPLOY CONTEMPORARY PROGRAMME MANAGEMENT TECHNIQUES

3.8.1 Assessments

Rule of law programming focuses on producing concrete results.

State of the art ROL programming focuses on producing concrete results in resuscitating or reforming key segments of the justice system. This results-emphasis is donor-driven in substantial part because donors are accountable to taxpayers, foundations, and other entities, and they are under pressure to

³³ More and more frequently peacekeeping operations are given resources for effective public information, and the critical role of this aspect of missions is being recognized. Such capacity is a comparative advantage of a UN operation, and it should be utilized fully, in partnership with ROL units, to systematically promote ROL, inform the public of developments and raise awareness about fundamental principles in the administration of justice.

Detailed assessments of the local legal context, the needs and the problems are fundamental to maximizing impact and available resources.

Current assessments rarely devote the necessary attention to structural legal and judicial issues, and human rights reports only identify specific instances of system failure.

DPKO mission planning assessments come closest to filling this need, but are not intended for this purpose.

While some missions, such as in Burundi, have conducted significant assessments, this is not a matter of standard practice.

The emphasis for UN assessments must stem from its standards.

Where there are existing tools, they need to be collected and reviewed for applicability, and gaps must be filled through the development of new tools.

Efforts are being made to improve UN system-wide strategic planning which is acknowledged as deficient.

However, this has not reached rule of law planning across mission components.

show impact for the funds expended. Furthermore, in the post-conflict situation in particular, this trend is an honest acknowledgement that the range of rule of law deficiencies far exceeds available resources. So, the limited available resources should be targeted to maximize the promotion of rule of law. To target activities effectively, the local situation must be adequately understood, which implies the need for a detailed assessment.

The international and donor community does support a variety of general assessment vehicles, e.g., the UN-IMF-World Bank Joint Assessment Missions,³⁴ but these assessments rarely devote substantial attention to the critical, structural issues facing the legal and judicial systems. Similarly, human rights reports may identify specific instances of legal and judicial system failure, but their focus on human rights violations is not the equivalent of a thematic, structural analysis.

The closest thing to a baseline assessment of the ROL structural issues usually arises from a DPKO combination assessment-concept of operations exercise done for mission planning purposes. Though the report that emerges gives basic ROL information, its purpose is not to comprehensively assess the legal and judicial situation, but rather, to collect a general outline of the judicial and legal system challenges and the related mission staffing needs. There have been exceptions, e.g., ONUB/Burundi's initial legal and judicial assessment, but more detailed assessments are not a matter of standard practice.

What is most important to emphasize in the assessment context is that the UN is the lead producer of ROL standards and should not shy away from employing its own doctrine, e.g., the *UN Principles on the Independence of the Judiciary*. Existing tools which utilize UN standards developed within or outside the UN system should be collected and reviewed within DPKO and where appropriate should be adopted. DPKO (along with interested partners, such as OHCHR) should be prepared to assert a leadership role in developing new tools tailored to the needs of peacekeeping operations.

Recommendations: DPKO should produce a standardized framework which every newly established ROL unit should use to establish a baseline appraisal of a national justice system's needs and compliance with international standards.

3.8.2 Strategic Planning

As the UN Expanded ECHA Core Group *Report on Integrated Missions* stated bluntly, "the UN lacks a system-wide 'strategic culture'...[or]...real culture of planning'..."³⁵ While interviews with those in peacekeeping operations did yield indications that this problem is being addressed to some degree at the overall mission level, these steps have yet to reach down to the level of coordinated ROL strategic planning across the various units of a peacekeeping operation. The new Peacebuilding Support Office, which

³⁴ These missions are now being called Post-Conflict Needs Assessments.

³⁵ ESPEN BARTH EIDE, ANJA THERESE KASPERSEN, RANDOLPH KENT, & KAREN VON HIPPEL, REPORT ON INTEGRATED MISSIONS: PRACTICAL PERSPECTIVES AND RECOMMENDATIONS, p. 20 (May 2005).

While the new UN peacebuilding entities may have a positive influence, the roles and capacities are not yet clear.

National participation and ownership are essential for the development of an effective strategic reform plan.

Effective planning requires the engagement of all actors in the justice system, many aspects of the mission, donors and technical assistance providers.

While difficult, rule of law strategic planning must be the goal...

...and, in any case, internal strategic planning within the mission should be undertaken.

Current programme design in mission is inconsistent and varies widely across operations.

While missions make important contributions to rule of law, monitoring and evaluation of programme impact is also too informal.

Development of workplans, which integrate strategic and thematic issues, is becoming more common...

will support the Peacebuilding Commission, may positively influence this situation, but its precise role and capacity has yet to be elaborated. Thus, with current resource constraints at HQ and in the field, the near-term prospects for coherent, strategic ROL planning are limited.

Furthermore, strategic planning should incorporate significant national participation and ownership, and this additional component may prove even more challenging to incorporate fully. Transitional and newly elected governments rarely pursue ROL reform enthusiastically. The Liberia experience demonstrates that, even when the development of a strategy with local actors is mandated, transitional governments can resist playing a role as a productive partner in strategic planning; and Burundi illustrates that newly elected governments can prove equally reluctant to engage on the full range of ROL issues and support necessary international assistance.

General strategic planning in the rule of law sector requires the inclusion of a wide range of actors, technical assistance providers and donors, and collegial mission units, such as human rights, police, and gender. Coordination and cooperation among all these international players is often difficult to achieve, but anything less is unlikely to provide effective incentives for national authorities and actors to engage strategic planning.

Despite the current constraints, coherent, general ROL strategic planning should remain a long-term goal. In the meantime, ROL units will need to pursue strategic planning internally and prepare staff to identify and capitalize upon opportunities for effective and targeted interventions. Such opportunities could be incorporated into a broader strategic framework if that proves feasible at a later date.

Recommendations: 1) ROL units should develop their own internal strategic plans, based on key points identified in prior, thematic assessments; and 2) Potential synergies with collegial units, donors and local actors should be identified and strategic planning pursued, utilizing all available means.

3.8.3 Programme Design, Monitoring, and Evaluation

While current programme design in missions does reflect local priorities, needs, and preferences to some extent, the process of programme design is ad hoc and varies widely among peacekeeping operations, and monitoring and evaluation is likewise too informal. There are clearly cases where UN ROL units have crafted programmes that have made targeted and important contributions to strengthening ROL in the local context. For example, the ONUCI/Côte d'Ivoire ROL unit led an internal working group to develop a directive for criminal justice procedures in the demilitarized "zone of confidence."

Furthermore, the development of programme workplans is increasingly common, and it should be encouraged at all levels. Through the development of clear, polished workplans that consider thematic and strategic issues, ROL units will be able to demonstrate their needs and constraints more clearly to other mission units and senior management.

...and will assist in clearly demonstrating rule of law components' core tasks and priorities.

Standardised reporting against workplans will allow UN HQ to monitor progress as well as facilitate the identification of best practices across missions.

More broad evaluations to examine and catalogue the reasons for effectiveness of activities...

...need to be done, and DPKO should develop guidelines on systematic evaluations of rule of law components across operations.

A comparative advantage of peacekeeping operations is the ability to collect, analyse and report on legal and judicial situation over time, including tracking of progress.

Donor and development organizations focus assessments on programme planning and, once done, the focus narrows to implementation.

While topics and form of on-going analysis and reporting will depend on the particular circumstances,...

Without a clear understanding by mission management of a ROL unit's core tasks, judicial officers have at times been detailed away from their primary mission to perform other legal advisory and investigatory functions, i.e., ONUCI/Côte d'Ivoire and UNMIL/Liberia.

As the use of programme workplans becomes more widespread, reporting against these workplans can be standardized, allowing for efficient monitoring of results on an ongoing basis at UN HQ and within the mission. When standardized information is available, it will also facilitate the identification and exchange of ROL best practices and lessons-learned across all peace operations.

Evaluation is closely linked to the process of monitoring programmes, but it goes further to examine and catalogue what activities have worked, what has not, and why. Currently, evaluations are ad hoc and the methodologies are unclear. DPKO should devote resources to the development of guidelines for sophisticated, systematic evaluations of ROL projects. With this methodology, DPKO HQ will be well-positioned to assemble lessons-learned for the design and deployment of future ROL peacekeeping activities.

Recommendations: 1) ROL unit workplans should be developed at the start of activities, revised at least annually, circulated within the peacekeeping operation and, as a policy, provided to DPKO HQ; 2) Regular reporting on programmatic progress vis-à-vis a structured workplan should be required; and 3) DPKO should develop a programme evaluation methodology for all peacekeeping operations and apply it to systematically assemble lessons-learned and best practices.

3.9 SERVE AS A CENTER FOR RULE OF LAW INFORMATION, ANALYSIS, AND COORDINATION IN-COUNTRY

3.9.1 Analysis and Reporting

The potential ability of ROL units to collect, analyze, and report on legal information is an extremely important comparative advantage. If UN peacekeeping operations become a central source for coordination and reliable, relevant information on the status of ROL structural reforms particularly vis-à-vis international standards, this could dramatically focus and accelerate judicial and legal reform efforts.

Donors and development organizations will initially fund some limited assessments of their own, but typically once project implementation starts, focus switches to programme management and subsequent assessments and reporting narrows in scope accordingly. Thus, ROL units should take a leadership role through assessing and reporting publicly on the ROL situation, as well as systematically reviewing original assessment results for indications of progress.

The topic and form of assessments may vary. For example, in Côte d'Ivoire, ONUCI conducted analyses of the compliance of national

...ensuring wide distribution to national actors and donors is necessary in all cases.

Unfortunately, effective communication and information exchange between UN HQ and the field has yet to be achieved...

...despite the necessity for UN HQ to have a clear and condensed picture of the situation.

legislation with the peace agreement. While in Liberia, UNMIL has assessed the capacity of legal actors involved in the courts. The reports detailing these analyses should be distributed as widely as possible. Continued Member State and donor cooperation may well be contingent on the UN's ability to continually demonstrate ROL opportunities and needs in the local context.

For the UN to effectively communicate this information to key constituents, UN HQ and field staff must be able to work together efficiently to collect the information and demonstrate the impact of ROL programming. At present, HQ-field communications have not achieved this level of seamless information exchange. UN ROL HQ personnel must have a clear, condensed picture of the ROL situation in the field so that they can share this information in meetings with donors and Member States at a moment's notice. Given that ROL programming is so commonly under-funded, any missed opportunity to garner interest and lobby for additional support should be considered a shortcoming.

Recommendations: ROL units should continually analyze national legal conditions for compliance with international standards, peace agreements, and evolving local needs, and distribute them to HQ and as widely as possible, to facilitate donor coordination and encourage broad international involvement.

3.9.2 Coordination

Similarly, operations, by virtue of their mandates and political weight, should catalyse coordination and strategic planning efforts supporting national authorities, donors, and technical assistance providers.

From the earliest stages of an operation, a forum for information sharing needs to be established, which is, ideally, nationally led.

However, this cannot replace strategic planning and policy level deliberations.

Similarly, ROL units of peacekeeping operations are well-placed to engage national and international stakeholders, including donors, in dialogue on coordination mechanisms and strategic planning. By virtue of their location in the operation, ROL units can provide a broader and more strategic overview of the needs, apart from donor preferences. From a more objective, neutral perspective, ROL units can wield more independent leverage, particularly vis-à-vis fledgling governments, than most development organizations or bilateral donors.

In the early stages of an international intervention, it is necessary to establish a forum which, at a minimum, promotes information sharing among all types of technical assistance providers and donors. While this coordination ideally should be nationally-led, a number of peacekeeping operations have played an important catalyst and bridge function, and where national leadership has proven untenable, served as facilitators.

However, as the past experience in UNAMA/Afghanistan illustrates, coordination alone cannot replace strategic planning and policy level deliberations.³⁶ Without this additional level of engagement, initiatives will remain ad hoc, mitigating their impact, or worse, rendering interventions

³⁶ Nevertheless, UNAMA's commitment to effective coordination has pioneered some best practices that show great promise, e.g., a commonly accessible database of ROL programming in-country.

Otherwise, initiatives will remain ad hoc, mitigating their effectiveness.

Insufficient attention is paid to assembling legal texts and, where acquired, they are scattered throughout the operation.

Moreover, sharing of rule of law information does not occur systematically, and every operation's knowledge management and reporting relationship with HQ is unique,...

...to the detriment of the collection of lessons-learned and best practices.

Changing this requires the standardization of rule of law information and the development of a shared database accessible to all relevant personnel.

Rule of law work is as much political, as it is technical, in post-conflict environments,...

...which demands its incorporation into the diplomatic dialogue of the operation at the highest levels.

value neutral and fueling perceptions that improvements in the judicial and legal sectors are unattainable.

Recommendation: ROL units should catalyze coordination efforts that serve, not only an information sharing function, but also a strategic and policy purpose, to whatever degree possible, and this initiative should involve all national and international stakeholders from the early stages of the operation.

3.9.3 Information Sharing

Assembling a basic set of local laws, ministerial orders, regulations, decrees, and court decisions is generally difficult in a post-conflict environment, and operations rarely dedicate sufficient resources at the beginning to this task. Law libraries within peacekeeping operations are basically unknown. Legal texts that are collected are often scattered throughout the mission.

Sharing of legal texts and other ROL information within the UN system does not occur regularly or systematically. Every peacekeeping operation's approach to knowledge collection, storage, and sharing is different, and every mission's reporting relationship with HQ unique. Even in the best of cases, sharing of information between collegial units within the operation can be erratic, and UN HQ does not routinely receive timely, structured information on ROL sufficient to make comparisons across peacekeeping operations to identify potential synergies and lessons-learned.

Changing this state of affairs requires the standardization of ROL information, such as assessment and programmatic reports, as well as storage of this information in a database that is widely accessible, lowering information transaction costs for all relevant UN personnel. Of course, not all information should be made publicly available, but even basic databases now have security features that allow for limiting access where necessary.

Recommendations: 1) Additional resources should be devoted to the formation of law libraries within peacekeeping operations; 2) DPKO should establish an information protocol for storing and sharing ROL information using existing word processing tools as soon as possible; and 3) DPKO should develop a secure, web-based UN ROL information database that can receive information subject to a standard protocol, serving as a central archive of all relevant ROL material and allowing for public access as appropriate.

3.10 INCORPORATE RULE OF LAW INTO MISSION'S DIPLOMATIC DIALOGUE

Rule of law work is at least as much political as it is technical. Often, where the technical fix is relatively easy or evident, the political will for reform is lacking. Thus, the incorporation of ROL issues into the diplomatic dialogue should be understood as an essential ingredient for the ultimate success of a peacekeeping operation. Too often, international and local political leadership have avoided these issues as sensitive or overly technical.

However, senior political leadership has often considered these issues as too sensitive or overly technical.

In cases where the SRSG and DSRSG have taken a particular interest in rule of law, there has been recognizable progress on the issues. Thus, the mission's senior political leadership should remain seized of core ROL concerns and be ready to raise them with host-country leaders and with others in the international community.

Thus, it is important that the rule of law component of the mission be headed at an appropriately senior level.

Where the mandate of the operation and the peace agreement incorporates rule of law issues, it is important that the ROL unit be headed at an appropriately senior level and that its leadership be part of the mission's senior management. While most judicial affairs components are headed at a director level, where they are not, the ROL unit may lack access to key information such as sitreps, code cables, and to policymaking forums, thus limiting its ability to raise concerns effectively and properly brief mission leadership. The ONUCI/Côte d'Ivoire ROL unit has faced this difficulty on more than one occasion.

It is, however, the SRSG that is best-placed to convene ambassadorial forums to discuss key rule of law concerns and work towards a common international approach.

The SRSG is best-placed to keep ROL on the agenda of the international community and local government leaders and serve as a coalition builder. When core rule of law issues surface—such as the illegal removal of tenured judges, the establishment of an appointment process for high courts, executive interference with the judicial or legislative powers, development of a new constitution, or failure of a government to follow or enforce key court judgments—the SRSG is uniquely well-placed to convene ambassadorial roundtables (or similar forums) to apprise the international community of the situation and work together for a common international approach.

Other vehicles for high-level political engagement include joint national-international implementation councils, media events, public statements, and external delegation visits.

In the past, a variety of other vehicles have also been employed to achieve this objective: e.g., joint national-international implementation councils, media events, public statements, high-level external delegation visits. The choice of appropriate vehicle(s) in a particular circumstance should be left to the mission leadership closest to the situation, but whenever ROL is in the operation's mandate, the decision about whether to make rule of law a top priority should not be discretionary.

Recommendations: 1) SRSGs should regularly engage the international community and national authorities on key ROL issues, including through regular ambassadorial roundtables; 2) Heads of the judicial components of peacekeeping operations should be a members of the mission's senior management team and have access to relevant management information and policymaking forums regardless of grade; and 3) DPKO should ensure that rule of law is part of training and induction provided for senior mission leaders.

3.11 BOLSTER UN HQ ROL CAPACITY TO PROVIDE ADEQUATE SUPPORT FOR JUDICIAL AND LEGAL PROGRAMMES IN PEACEKEEPING OPERATIONS

Progress in increasing UN HQ rule of law capacity has been slow...

Despite a considerable amount of discussion concerning the need to increase UN HQ ROL positions, progress in this area has been slow. The recent approval of a Peacebuilding Commission, and its attendant

...and staffing plans for the peacebuilding support office are insufficient for rule of law and another small capacity could be counter-productive.

This study demonstrates the need for a dynamic and well-resourced UN HQ capacity in rule of law.

All of the HQ tasks required are related and interdependent, and current resources are inadequate to address the needs.

Existing rule of law positions should be brought together to form a “critical mass” in order to decrease fragmentation of roles and approaches, and accelerate progress.

This study should be considered in light of the fact that rule of law in peacekeeping is a relatively new and evolving area.

Though there is no single solution to the lessons identified, the development of a “One UN Approach” should be a priority.

Peacebuilding Support Office, may increase net overall ROL staff, but the modest staffing model being discussed will not be sufficient to meet ROL needs; and even worse, it might serve to diffuse ROL authority and responsibility.³⁷

The need for a dynamic and well-resourced UN HQ capacity is highlighted throughout this study. In order for the UN to effectively address ROL in post-conflict environments, its HQ must be in the position to: participate in all mission planning, review, and support exercises; engage in senior policy making, providing reports and briefings to the Member States and Security Council; develop templates and strategies for more targeted activities in mission environments; create rosters and screen candidates; standardize guidelines for assessment and programme management; conduct programme evaluations; cultivate increases in assessed budgetary resources and donor engagement; develop training and induction programmes; document best practices and lessons-learned; formulate policy, standard-setting doctrine, and guidance; and form partnerships with all inter-governmental, regional, Member State and non-governmental organizations engaged in ROL. This list constitutes a considerable array of tasks that cannot be addressed fully with current resources.

Perhaps more importantly, ROL positions need to be brought together to form a “critical ROL mass” within the UN system. Pooling scarce resources will limit fragmentation of roles and approaches, as well as accelerate progress on the issues involved. The development of a robust and coherent integrated ROL structure at HQ should ameliorate misunderstandings and competition among UN agencies, reduce redundancy, frustration, and the potential for “burnout” of qualified ROL staff, as well as enhance efficiency and productivity of HQ ROL efforts.

Recommendation: Establish a ROL service that draws together existing ROL resources within the UN Secretariat that is adequate to meet existing demands for ROL in peacekeeping operations.

4. CONCLUSION

The lessons-learned and recommendations in this report should be considered in context. Less than two decades ago, the issue of rule of law in peacekeeping was unknown, and today, it is a focus of discussion and change.

Though no single lesson-learned or recommendation will serve as a talisman to guide the next steps in the reform process, the issue of a “One UN Approach” to rule of law peacekeeping efforts does stand out as an initial priority. Managing this type of organizational change is never easy.

³⁷ There had been earlier indications that this office would have a small ROL assistance unit with at most only several officers dedicated to ROL. Support for even this minimal capacity appears to be waning. This situation contrasts starkly with the recommendations included in the High Level Panel Report: “...United Nations field representatives (including heads of peacekeeping operations) require dedicated support on the broader aspects of peacebuilding strategy, especially in the area of rule of law. The creation of a Peacebuilding Support Office... would address this need.” High-level Panel on Threats, Challenges and Change, *supra* note 4, at para. 230, p. 62 (emphasis added).

Shaping existing UN expertise into a coherent whole needs to be handled with care and vision,...

...and at the same also emphasize the potential for expanding overall resources.

Although UN reform holds possibilities, a renewed engagement of UN senior leadership and Member States is needed if rule of law reform is to be realized.

The UN's rule of law actors bring a diversity of talents and experience to the table. Efforts to shape this expertise into a coherent whole must be handled with care, transparent participation of affected parties, and vision. Resistance to change is often based on concerns about job security, loss of resources, and competing philosophies and approaches. Given the very limited resources available, the UN can ill afford to lose any of this diverse capacity. So, the management of this change will need to emphasize the potential for expanding the overall ROL resources through the effective use of a common voice.

The prospect of UN reform holds many possibilities. However, support for raising the profile of rule of law within the UN appears to be waning. Implementation of the structural reforms recommended in this study will require a renewed engagement of UN senior leadership and Member States if reform in the rule of law area is to be realized.