



Rule of Law and Equal Access to Justice

“[I]n the Preamble to the Charter it is stated to be a principle and purpose of the Organization ‘to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.’ In these words ... it gives expression to another basic democratic principle, that of the rule of law.”



UN Secretary-General Dag Hammarskjöld in his last Introduction to the Annual Report to the General Assembly of the United Nations, 17 August 1961.



The UN General Assembly adopted in September 2012 the *Declaration on the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels*. It reaffirmed the “commitment to the rule of law and its fundamental importance for political dialogue and cooperation among all States and for the further development of the three main pillars upon which the United Nations is built: international peace and security, human rights and development.”

Core Issues

Rule of Law (RoL) means authority of law and not of individuals. More than the law of the rulers and their rule *by* law, it is a codified norm system, respected and practiced independently of political power. Applied in practice, however, there is no common understanding. Differences exist in the definition of the social contract between a state and the individuals under its jurisdiction.

RoL is both a means and an end in itself. A comprehensive RoL is inclusive: all members of a society must have equal access to legal procedures based on a fair justice system applicable to all. Therefore, equality before the law is essential. RoL is measured against the international law in terms of standards of judicial protection. A national RoL is derived from the minimum procedural guarantees of individuals and needs to have supremacy over other law concepts.

Traditional law might exist in parallel. Its application can contradict national law. It can discriminate women (in terms of property, heritage, participation in communal affairs, moral code of conduct etc.) or children, and can violate the rights of minorities through homophobic and xenophobic interpretations. Similarly, customary law guided by *religious beliefs* may also infringe on secular, universal legal norms. For this reason, the balance between locally and culturally rooted value systems and democratic equality before the law based on universal human rights remains a challenge in many, if not all countries. Likewise, national law requires respect for local, indigenous value systems not in conflict with established human rights norms.

RoL requires:

- » a defined, publicly known and fair legal system protecting fundamental rights and the security of people and property;
- » full access to justice for everyone based on equality before the law;
- » transparent procedures for law enactment and administration;
- » accountability by governments.

Among the most significant obstacles to RoL today are lack of infrastructure (i.e., the presence of legal institutions), high costs of advocacy, illiteracy and/or lack of information.

Continuous efforts to empower citizens and foster an increased awareness of their rights, through popular education by state and non-state actors, are of vital importance. This is especially the case in poor countries with high illiteracy rates or countries with a high rate of marginalized people, often living in destitution. Empowerment strategies need to be geared towards those most vulnerable (women and children) and discriminated against (e.g., indigenous people and sexual minorities), and other groups, such as migrants and refugees, which are often denied full access to a RoL.

Challenges

The General Assembly Declaration is a building block for a global consensus. But the views and action among states differ and the recognition of a RoL does not imply consensus on its components. RoL cannot be imposed from the outside; it must be anchored in local institutions and cultural norms as a legal framework and practice as well as in the minds and values among the people.

At the same time traditional beliefs, customary practices and religious fundamentalism can be barriers to the full and equal implementation of a RoL to all members of society. The tensions between universal norms and cultural or religious particularism have to be addressed both internationally and internally.

Adherence to the RoL in combination with a strong commitment to human rights can support and reconcile justice and sustainable development. It consolidates democracy and enhances trust into those governing, and thereby promotes social and political stability. Moreover, by building trust and impartiality before the law, RoL can play an important role for *transitional justice*, enabling reconciliation and contributing to sustainable peace.

RoL has to be constantly gained and regained. The instrumental and selective application of a RoL (rule by law) could be turned against those struggling for emancipation and decent living conditions to serve those who want to protect their vested privileges. This might erode the legitimacy of those in power and give rise to popular uprising.

A weak RoL puts peace, security and democracy at risk and provides entry points for authoritarian rule, whereas a strong RoL strengthens society more than most other features.

Future steps: RoL and the post-2015 agenda

There is a strong case to be made for the inclusion of RoL on the post-2015 agenda. Sustainable development, in the broad, meaningful sense of the term, and a functioning social protection floor cannot materialize in the absence of a legal system based on the RoL.

To ensure the successful implementation of the RoL, the imbalance in present policy debates between civil and socioeconomic rights needs to be addressed. The former must be brought in to a greater extent, but not at the expense of the latter. Because they are intrinsically related, necessary conditions for true development, the greater challenge is to dissolve the dichotomy between civil and socioeconomic rights. Only as an integrated totality are rights able to secure good governance based on mutual respect and acceptance, domestically and abroad.

Thus, the post-2015 agenda seeking to promote sustainable development will have to reconcile socio-economic rights with civil and political rights within a globally accepted RoL as part of a universal social contract.

This is not to say, however, that the identification of targets and indicators is a straightforward task in view of the difficulties which RoL confronts. Cultural and political differences will continue to have profound implications for human rights, national sovereignty, (non-)interference in domestic affairs, and many other key concerns at the center of present political reality, which poses a challenge to the inclusion of RoL on the multilateral agenda.

About DHF

The Dag Hammarskjöld Foundation was established in memory of the second Secretary General of the United Nations. With a focus on United Nations-related issues, the foundation pursues a range of activities in the broad fields of security and development, drawing on the Foundation's long-standing involvement with civil society across the world to give voice to those most affected by conflict and deprivation. Presently the work is concentrated on the post-2015 development agenda and peace-building in post-conflict societies.

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