

SUSTAINING PEACE, BUILDING JUSTICE

Discussion Note

SYNOPSIS

Armed conflict has increased around the world, exacting a very high cost in human suffering and rolling back development gains. There is growing international consensus that in preventing conflict, stabilizing societies and establishing peace, effective, accessible and accountable institutions play a crucial role. However, the international community does not have a strong track record in institutional strengthening. The many failed interventions reveal a “knowledge gap” and the need for greater investment and partnerships.

Drawing on the operational experience of the International Development Law Organization (IDLO), this paper highlights the lessons learnt, opportunities and challenges in strengthening institutions and building national capacities in fragile situations. Through concrete examples, it emphasizes contextual analysis, local ownership, adaptability and responsiveness to evolving needs, legal pluralism and a gender perspective.

I. CONTEXT AND PROBLEM STATEMENT

The number of countries affected by fragility and conflict has grown significantly in recent years. The nature of violent conflicts has also changed, becoming increasingly complex, protracted and difficult to resolve. The drivers and impact of modern conflicts are frequently linked with other global challenges such as climate change and natural disasters, the exclusionary effects of rapid economic change and cross-border organized crime. Peace is becoming ever harder to sustain in such volatile contexts.

Prolonged insecurity exacts a heavy toll on development. The World Bank projects that by 2030 the share of global poor living in fragile and conflict-affected situations will increase to 46 percent from 17 percent today.¹ The impact on women and girls is particularly severe as increased sexual and gender based violence during conflict compound pre-existing gender inequalities. In 2016 over 65 million people were forced to flee their homes and live uncertain lives as IDPs or refugees.²

There is an emerging global consensus that peacebuilding and development activities cannot wait until violence has subsided fully but must occur alongside humanitarian response and conflict resolution initiatives. Efforts to prevent conflict and sustain peace must address the root causes of conflict and promote sustainable development.³

Many root causes and drivers of conflict such as discrimination and marginalization, unequal distribution of public goods and services, corruption, impunity and lack of accountability stem from or are exacerbated by the absence of the rule of law. IDLO has long advocated the crucial role of the rule of law in preventing conflicts, building peace and advancing sustainable development and

¹ World Bank data on Fragility, conflict, and violence, available at:

<http://www.worldbank.org/en/topic/fragilityconflictviolence>

² UNHCR 2017. Global Trends, Forced Displacement in 2016, Produced and printed by UNHCR, 19 June 2017

³The UN General Assembly and Security Council have called for a comprehensive approach to ‘sustaining peace’ that prioritizes preventing conflict and stopping its recurrence by addressing its underlying causes “through a concerted focus on implementing the 2030 Agenda for Sustainable Development.” See Sustaining Peace resolutions, General Assembly Resolution A/RES/70/262 and Security Council Resolution S/RES/2282 (2016).

is greatly encouraged by recent UN resolutions that acknowledge the importance of the rule of law in sustaining peace and sustainable development, and in particular the vital role played by effective and accountable institutions.⁴

The Secretary General has acknowledged “[b]uilding effective and resilient institutions and national capacities that can withstand shocks and stresses that lead to conflict” as being key to the UN’s peacebuilding reform agenda.⁵ SDG 16 also commits to “develop effective, accountable and transparent institutions at all levels.”

Laws and institutions can be a tremendous force for peace and stability by providing equitable access to resources and services, justly adjudicating disputes, incentivizing peaceful collaboration and sanctioning violence. Through such action they help to break the cycle of violence and instability and lay the foundations for economic recovery and social development. Some analysts have even argued that international assistance for governance reform and rule of law can be more effective than other types of development assistance in reducing migration from low income countries.⁶

Notwithstanding the acknowledgement of the importance of the rule of law, the development sector has a mixed track record on strengthening institutions. Internationally supported reforms have been criticized for prioritizing form over function, being overly technical, lacking local buy in, failing to build confidence and mobilize political will and vastly underestimating the timeframes required for institution building.⁷ Increasingly, more emphasis is being placed on context-sensitive analysis, legal pluralism and innovative approaches to enhance local ownership. While practitioners and researchers have started to pool resources and draw lessons, there is need for more research and organizational learning to address the “knowledge gap” on effective approaches to institution building.⁸

⁴The term “institution” is used broadly to cover rules, laws and government entities as well as informal rules and structures for social interaction, Report of the Secretary General’s High-Level Panel of eminent persons on the Post 2015 Development Agenda available at https://www.un.org/sg/sites/www.un.org.sg/files/files/HLP_P2015_Report.pdf

⁵ Restructuring of the United Nations Peace and Security Pillar: Report of the Secretary General, A/72/525, 13 October 2017.

⁶ Funk, Mc Namara, Pardo and Rose, Tackling irregular migration through development – a flawed approach? European Policy Centre, 22 May 2017

⁷ Sarah Hearn, Peacebuilding and Institution-Building, Thematic paper submitted to the Advisory Group of Experts 2015 Review of the United Nations Peacebuilding Architecture, United Nations University Centre for Policy Research, Feb. 2015

⁸ Id.

II. IDLO's EXPERIENCE

As an organization with over 30 years' experience in developing national capacities, IDLO has identified the building of effective, accessible and accountable institutions as a key goal of its current strategic plan, *Strategy 2020*⁹.

IDLO provides technical assistance and supports capacity development for constitutional, legal and judicial reform processes. Most of this work is carried out in transitional, fragile or post-conflict situations. Some insights drawn from IDLO's ongoing institutional strengthening work around the world are presented below to contribute to the emerging knowledge base and inform institutional development interventions:

1. Sustained engagement is essential for developing and transitioning to national capacities

Institutions in fragile and conflict affected situations are often going through or recovering from profound shocks caused by violence, instability and political upheaval that have severely degraded their human, organizational and resource capacities and ability to govern and provide critical services¹⁰. Building strong institutions in such contexts is a long-term process that involves assessing needs, mobilizing political support, marshalling resources, changing mindsets and effective change management.

The World Bank's 2011 World Development Report on *Conflict, Security and Development* emphasized that building strong, legitimate institutions usually takes a generation.¹¹ In an environment where aid budgets are under increasing pressure to show tangible, short-term results, it is worth underlining that development initiatives with short funding cycles and unrealistic timeframes for achieving change rarely allow for the sustained engagement needed for institution building and can perversely have a negative impact on the longer-term success for reforms when targets are unmet, desire for reform is squandered or stakeholders are alienated.

Building Justice Sector Capacity in Afghanistan

While IDLO has been engaged in capacity development of Afghanistan's justice sector since 2002, IDLO's largest institutional capacity development intervention was the Justice Training Transition Program (JTTP) from 2013 - 2017. The objective was to strengthen the performance of all four institutions in the criminal justice sector (the Attorney General's Office, the Supreme Court and the Ministries of Justice and Interior) through individual capacity development as well as building the institutional capacity for own continuing professional development (CPD).

The project provided nearly 29,000 training hours to over 5,300 legal professionals, including judges, prosecutors, defense lawyers, and investigators covering all 34 Afghan provinces. IDLO also worked actively to embed capacity with national actors through coaching, training of trainers (TOT) courses, and developing professional training departments. IDLO supported the institutions to carry out a comprehensive training needs assessment.

Afghan institutions have now started taking responsibility for building their own long-term professional capacity. Since 2016, they have taken the lead in designing, delivering and in some cases financing capacity development activities at a high-quality level and at low unit costs (since April 2016, 99% of legal trainings have been delivered by the justice institutions themselves).

The roll out of Afghanistan's new Penal Code in the coming year will be a test of the capacity of national criminal justice institutions to train professionals in the application of the new rules. IDLO remains ready to provide transitional support.

⁹ Strategy 2020 available at <http://www.idlo.int/strategic-plan-2017-2020>

¹⁰ UNDP, Capacity Development in Post-Conflict States, 2012

¹¹ Conflict Security and Development: World Development Report 2011, World Bank

The nature of institution building and the need to ensure sustainability after international support is phased out means that there is no alternative to identifying, developing and transitioning to national capacities and systems over a prolonged period. Support needs to be provided in line with a nationally owned long-term vision for reform, with predictable funding flows and a clear plan to transition capacities and expertise to national actors. In IDLO's experience, it is important to focus on incremental and progressive change.

2. Quick wins can generate support for longer term institutional reform

The long timescale needed for meaningful change means that establishing the credibility and legitimacy of reform efforts at an early stage is important to help secure the breathing room, political backing and resources needed for longer term institution building efforts.¹² Identifying and implementing quick, visible improvements in key areas of public concern can be an effective way to build momentum and support around important areas of reform.

Supporting Anti-Corruption Reform in Ukraine

Public anger at rampant government corruption was a key motivation behind the protests at Maidan square that resulted in the political transition in Ukraine. While the government is committed to making reforms, breaking resistance and maintaining the pace of change has been challenging. Retaining public support through visible results is therefore considered to be a critical success factor.

IDLO's efforts in Ukraine include support to the three major Public Service Centres (PSCs) in Odesa, Mariupol and Kharkiv and assisting eight smaller PSCs in the war-affected Donetsk Region. These are "one stop shops" that expedite the delivery of a wide range of public services, from marriage licenses to pensions and passports, and reduce bribery and corruption by simplifying rules and regulations and introducing transparent procedures. Public response has been very positive, with the largest PSC established in Kharkiv handling more than 45,000 requests from citizens during its first month of operation in September 2017 alone.

IDLO is also supporting structural reforms to build public confidence in the integrity of government institutions and provided assistance through local partners to the National Anti-Corruption Bureau and is helping the newly created Special Anti-Corruption Prosecutor's Office. Other support includes targeted technical assistance to Justice, Interior and Regional Development Ministries to undertake institutional, legal and regulatory reforms to enhance efficiency, effectiveness and transparency, reduce public expenditures, and promote deregulation and decentralization to achieve European standards.

¹² Id.

3. Reform must be contextually sensitive and responsive to evolving local priorities

Enabling the Implementation of Kenya's New Constitution

The peace agreement in the aftermath of the violence that marred 2007 elections in Kenya, called for the development of a new national constitution. IDLO supported constitutional reform in Kenya from its inception at the request of the Kenyan Government including providing technical assistance to the Committee of Experts that drafted the 2010 Constitution of the Republic of Kenya. The new constitution is a historic document that seeks to address many of the drivers of past violence and IDLO continued to provide follow on support for its implementation. Assistance included the development of improved legislation and regulations and increasing in the capacity and knowledge of the judiciary and national and local government partners particularly in the areas of increasing accessibility and accountability of the judiciary, devolution of functions to local government and tackling gender inequalities.

A key element of efficiency was IDLO's unique ability to quickly mobilize regional networks of legal experts to deliver training or provide legal expertise or technical assistance at the request of its partner institutions. An independent evaluation found that unlike many other development partners, IDLO can respond flexibly and quickly to requests for expertise from various institutions, in different thematic areas, which constituted a clear comparative advantage for IDLO¹³.

Rule of Law reform requires acknowledging power dynamics, identifying potential sources of conflict and recognizing issues of leadership. It also involves politically sensitive values and choices on justice, accountability, individual rights and distribution of resources – issues that are best decided by those to whom they will apply.

Reforms are also most effective and sustainable when they are nationally owned. In working with national actors, IDLO seeks to provide support that is grounded in an understanding of the social, cultural and political context, respectful of local needs and legal pluralism, while ensuring international human rights standards and principles are respected and upheld.

4. Sustaining peace requires building inclusive grassroots partnerships

Building broad coalitions that increase mutual trust between government and communities and can support institutional reform efforts is important, particularly at the grassroots level¹⁴. Perceptions of exclusion and unfairness can generate grievances that drive conflict even when they are not objectively accurate¹⁵. Inclusive governance is therefore critical particularly in fragile contexts where citizens may be marginalized, excluded or alienated from government. Institutional reforms tend to be incremental and iterative and require constant and persistent engagement with the full range of stakeholders so that needs can be identified and consensus can be developed on the nature of the change required.

¹³ Thematic Evaluation of IDLO's support to Kenyan Constitution Implementation Process with a focus on Devolution and Gender Reforms available at

<http://www.idlo.int/sites/default/files/pdf/initiatives/IDLO%20Evaluation%20Brief%20Kenya%204P.pdf>

¹⁴ Pathways for Peace, Main Messages and Emerging Policy Directions, World Bank and United Nations 2017

¹⁵ Id.

Strengthening the Criminal Justice Chain in Mali

In Mali, where State institutions in the north had all but disappeared due to violent conflict, IDLO is working to strengthen the criminal justice chain with the objective of ending impunity for crimes, one of the main causes of instability in the region, and increasing confidence in the justice system. The project objective is to strengthen the horizontal links in the justice chain (police, courts and prisons) at the grassroots for increased coordination and the generation of best practices.

As part of a five-year project, IDLO is working with criminal justice sector actors and institutions (formal and informal) in the northern regions of Gao, Mopti, Segou and Timbuktu, using an innovative approach (based on Program Driven Iterative Adaptation methodology) which brings stakeholders together to jointly identify key justice problems in their communities and devise solutions to them, assess the effectiveness of the response and adjust the intervention accordingly. IDLO and the UN Mission supported the establishment of “cadres de concertation” or consultation frameworks in all four project locations that convene key stakeholders, including police officers, court administration, civil society members and correction officers once a month. The project has helped communities to identify concerns such as the need for training of judicial police, greater respect for human rights in penitentiary systems and increasing awareness about the criminal justice system and is now working to implement the solutions they designed to address these challenges

5. Institutions perform better when citizens are empowered

Legal empowerment is a bottom-up effort to mobilize and arm those living in poverty with knowledge and tools to engage with those who administer the laws and institutions that affect their daily lives, from local government to social service providers. Laws and institutions are more effective and responsive to public concerns when justice seekers are aware of their rights and know how to access public services. Legal empowerment not only helps citizens to engage with the authorities, but also contributes to building mutual trust and confidence in fragile and conflict affected situations.

Legal Empowerment in Myanmar

The justice sector in Myanmar suffers from the legacy of unchecked power of state officials, widespread corruption, the absence of an independent judiciary, and policies that systematically undermined legal education and the private legal profession. IDLO partnered with UNDP to establish Rule of Law Centres (ROLC) to provide communities and local justice officials in Myanmar with the knowledge, skills and values to apply universal rule of law principles including fairness, equality and respect for human rights to their own contexts. Reports show that legal empowerment not only enabled participants to better access government services but also led to at least 14 civil society organizations being formed to replicate similar legal awareness activities and provide legal aid and other services to wider communities.

An independent evaluation of the ROLCs found that the Centres were aligned with justice sector reform priorities and responsive to the needs of host communities. The evaluation recommended the expansion of the program to other parts of the country in 2018 (including in Rakhine State as part of a longer-term approach to promote reconciliation among communities).

6. Informal institutions can play a critical role

While exact figures are unavailable there is broad consensus that majority of disputes around the world are resolved through informal means.¹⁶ Although informal justice institutions often lack basic procedural safeguards and do not recognize the full rights of women, children and other vulnerable groups, they are often preferred by communities because of their greater accessibility, affordability and compatibility with local cultures and customs. Furthermore, state institutions are weak or distrusted in fragile or conflict-affected areas, making informal justice the predominant option. Given their popularity and significance, informal institutions cannot be ignored but must engaged in a way that promotes reforms to ensure the rights of justice seekers from vulnerable or disadvantaged groups.

IDLO is committed to legal pluralism and recognizes the importance of engaging with informal as well as formal justice systems. It has significant research and operational experience of working with informal justice systems and is developing policy guidelines, to be published in 2018, on when and how to best engage, identify enabling factors for reform, and design viable and effective programs.

Reforming Traditional Dispute Resolution in Somalia

In Somalia, IDLO is implementing several projects that support both formal and informal justice institutions. Alongside a more traditional project that aims to strengthen the Attorney General's office, IDLO is helping to reform and modernize the traditional alternative dispute resolution (ADR) system in Somalia, used by a large majority of Somalis to resolve disputes at the community level. While many provisions of Somalia's traditional ADR system do not comply with the Provisional Constitution, particularly on issues related to the rights of women and other marginalized groups, ignoring this informal justice mechanism heightens the risk that grievances between social groups and individuals will instead be 'resolved' through violence, undermining peace-building and state-building efforts. The objective of IDLO's project is to work with the traditional system to promote human rights protections and increase social cohesion.

Another IDLO project seeks to counter violent extremism in Somalia by partnering with civil society to engage with traditional community mechanisms for reconciliation and social healing. IDLO and its national partners will organize twelve-week trauma healing and peace building sessions, for vulnerable groups and disengaged low-risk ex-combatants. Subsequently the Traditional Dispute Resolution Unit within the Somali Ministry of Justice, in conjunction with Peace Committees/Reconciliation Sub-Committees, will undertake community forgiveness ceremonies to complete their reintegration into communities.

¹⁶ Erica Harper, Working with Customary Justice Systems: Post-Conflict and Fragile States, IDLO 2011

7. Combatting violence against women and girls is crucial to peace-building

Armed violence affects women and girls disproportionately. Conflict and the general breakdown of the rule of law exacerbates pre-existing inequalities, results in higher incidences of gender based violence and its increasing use as a tactic of war. IDLO is committed to promoting gender equality through non-discriminatory, gender-responsive laws and institutions, enhancing women's access to justice and increasing their participation and leadership before, during and after situations of violent conflict. Post-conflict transitions and reforms can also provide opportunities to address societal structures and customs in place before the conflict to promote greater gender equality and respect for women's rights.¹⁸

Combatting Gender Based Violence in Afghanistan

In Afghanistan, IDLO is employing a multipronged approach to addressing gender based violence. It has supported the Attorney General's Office (AGO) to establish and develop Elimination of Violence Against Women (EVAW) units for the prosecution of gender-based violence. The EVAW case management and tracking system set up with IDLO's help now includes over 10,000 cases from 23 of the 34 provinces of Afghanistan. An independent evaluation of the project found that EVAW units were the strongest department of the AGO despite being relatively new¹⁷.

IDLO has also facilitated the development of the Afghan Shelter Network - a network of nationally run women's shelters - by providing technical advice, training and a common forum for sharing information and resolving problems. IDLO helped in the development of standardized service guidelines for the shelters and is now working with the shelter network to help improve the quality and range of services they offer and to increase their management and operational capacity with support to improve monitoring, strategic planning and advocacy. Both internal and independent evaluations have acknowledged the value of the network as a critical capacity development measure. The evaluation has identified the rebuilding of the lives of women in the shelters as the biggest challenge, highlighted the need for a more broad-based response to gender-based violence in the Afghan context. IDLO's activities to address sexual and gender-based violence in Afghanistan have been funded by the US State Department since 2011. The program was renewed recently until 2020.

Securing Women's Land Rights in Burundi

In Burundi land titling initiatives were being carried in districts that had been affected by conflict and were areas to which large numbers of displaced persons had returned. Women's customary rights to land were largely ignored in the registration process. A survey found that while women were the principal rights holders to 24.94% of land parcels, only 4.18% were successfully registered in the name of women.

IDLO launched a pilot project to raise awareness of women's property rights, strengthen the capacities of officials working on land registration. The pilot also organized an intensive information campaign and convened dialogues between women and community leaders. The results of a study carried out by IDLO following the pilot demonstrated a considerable increase in the level of protection of women's land rights, with the level of recognition increasing to 28.40% in two provinces and to 46.74% in an additional province.

¹⁷ <http://www.idlo.int/what-we-do/initiatives/evaluation-project-supporting-access-justice-saja-afghanistan>

¹⁸ Office of the High Commissioner for Human Rights, Women, Peace and Security available at <http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/PeaceAndSecurity.aspx>

8. Staying engaged during conflict lays the foundation for post-conflict peacebuilding

Supporting the Judiciary through South Sudan's Civil War

IDLO's presence in Juba and activities to strengthen legal education predated the independence of South Sudan. Post-independence, IDLO made a significant contribution to the development of the new Judiciary. After the outbreak of conflict in 2013 and the subsequent civil war when many development partners left the country or shifted their focus to humanitarian response, IDLO remained engaged with the Judiciary, which was recognized as one of the few institutions that retained some measure of public trust and credibility due to its "professional" handling of a treason trial against the main political opponents of the government¹⁹.

An independent evaluation of IDLO's judicial support program in South Sudan acknowledged that IDLO's ability to remain engaged through the conflict and tailor its activities to the rapidly changing context comprised a "distinct comparative advantage" and a good basis for support moving forward²¹. The Judiciary of South Sudan will be a part of any post-conflict transitional justice mechanisms set up to address rights violations, preventing its failure as an institution should therefore be a key priority during the conflict.

Modern day conflict can be a recurring, downward spiral or can morph into a low level of constant insecurity. It is important for international actors to remain engaged during such times to prevent the escalation of violence by ensuring that development activities are sustained alongside the political and humanitarian responses. Preserving the capacity of justice institutions, which act as constraints on the arbitrary exercise of power and are responsible for holding perpetrators, including state actors, accountable for violations in the post-conflict period, is particularly important. Preventing institutional failure and preserving capacity to guarantee minimum human rights standards during conflict can also provide a stronger foundation for post-conflict engagement.²⁰

III. FUTURE ENGAGEMENT

Building effective, accessible and accountable institutions in fragile and conflict affected areas of the world is a significant challenge for the international community as well as national governments. Establishing resilient institutions requires sustained investment and a better understanding of how institutions can be strengthened through international support. IDLO's work on institutional strengthening is valued at 107.3 million euro, constituting around 60% of its total program portfolio.²² Most of its institution-building programs are in fragile and conflict-affected countries. Under its Strategic Plan 2017 - 2020, IDLO is committed to further consolidating and expanding its work, especially in Africa, Asia and the Middle East and North Africa region. It is also taking a number of initiatives to improve results monitoring, research and learning with a view to improving the quality of future interventions and contributing to the global knowledge base. IDLO welcomes the opportunity to work with existing and new partners on these and related endeavors.

¹⁹ ABA ROLI, Assessment of Justice Accountability and Reconciliation Measures in South Sudan, June 2014

²⁰ Pathways to Peace, supra

²¹ IDLO EVALUATION BRIEF: EVALUATION OF THE PROJECT "ENHANCING THE CAPACITY OF THE JUDICIARY OF SOUTH SUDAN" available at: http://www.idlo.int/sites/default/files/pdf/initiatives/IDLO%20Evaluation%20Brief_South%20Sudan-2.02.16.pdf

²² EUR 107,280,478.00 as of November 2017