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The Rule of Law and Development Nexus: A New Deal for Asia?
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The Rule of Law & Sustainable Development: The Post-2015 Development Agenda
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Introduction
Countries emerging from conflict or repression invariably face significant challenges in getting sustainable development off the ground. In some cases these obstacles appear to be overwhelming. Countries devastated by years of conflict face hard choices. These include where to allocate extremely limited resources, funds and skills.

The ultimate challenge is how to balance competing demands facing post-conflict societies. Aside from maintaining the peace and addressing the most pressing wrongs of the past, such countries have to meet the most basic needs of their peoples.

Often times it is the rule of law and the pursuit of justice that is jettisoned, ostensibly in favour of maintaining the peace and the pursuit of economic development. This of course is one of the central debates of transitional justice, namely what comprises to make. In this short paper I suggest that the pursuit of justice and the building of the rule of law are essential building blocks for sustainable development, even in countries devastated by conflict.

Starting point
My starting point is UN GA resolution 67/1 of 2012 which adopted the “Declaration of the high-level meeting of the General Assembly on the rule of law at national and international levels”.

In paragraph 7 of this resolution, the heads of states recognized that “the rule of law and development are strongly interrelated and mutually reinforcing, that the advancement of the rule of law at the national and international levels is essential for sustained and inclusive growth, sustainable development, and the eradication of poverty and hunger....”

In relation to countries emerging from conflict the heads of state stressed: “the importance of a comprehensive approach to transitional justice incorporating the full range of judicial and non-judicial measures to ensure accountability, serve justice, provide remedies to victims, promote healing and reconciliation, establish independent oversight of the security system and restore confidence in the institutions of the State and promote the rule of law.”

These paragraphs underscore the link between the rule of law and development, even in countries shattered by war and conflict. Once this link is understood the abandonment of

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1 Paragraph 21.
the rule of law, supposedly in favour of other policy objectives, becomes less convincing. Subsequent resolutions adopted by the General Assembly in the last 3 years have recognized the serious threat that ongoing crime poses for development. These resolutions call for the rule of law and crime prevention to be mainstreamed in the post-2015 development agenda.\(^2\)

It is no coincidence then that the rule of law is embedded in one of the 17 new goals of the UN-mandated Open-Ended Working Group on Sustainable Development Goals. Sustainable Development Goal 16 calls on states to promote “…peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”.

**Discussion**

The principles highlighted in these resolutions are not just lofty ideals. I wish to focus on a country where the link between the rule of law and development is, in my view, discernable. This country experienced one of the most brutal and devastating conflicts in recent history. It is slowly emerging from the darkness of the past. The country in question, Sierra Leone, has held the dubious distinction of being declared the least developed country in the world by the UN’s Human Development Index every year between 1983 and 2004.\(^3\) In 2005, the country was ranked as the 124th most corrupt nation out of 159 countries listed in Transparency International's Corruption Perceptions Index.\(^4\)

A truth and reconciliation commission was established in 2003 to investigate the causes of the conflict and recommend measure to address such causes. The first 5 primary findings of the final report of the Truth and Reconciliation Commission speak to very serious failings in the rule of law. These were:

1. **The conflict, and the post-independence period preceding it, represented the most shameful years of Sierra Leone’s history.** These periods reflect an extraordinary failure of leadership on the part of all those involved in government, public life and civil society.

2. **The central cause of the war was endemic greed, corruption and nepotism that deprived the nation of its dignity and reduced most people to a state of abject poverty.**

3. **Successive political elites plundered the nation’s assets, including its mineral riches, at the expense of the national good.**

4. **Government accountability was non-existent. Institutions meant to uphold human rights, such as the courts and civil society, were thoroughly co-opted by the executive. Political expression and dissent were crushed. The rule of law was well and truly dead. Those in power became a law unto themselves.**

5. **This context provided ripe breeding grounds for opportunists who unleashed a wave of violence and mayhem that swept through the country.**

These findings are likely to strike some resonance with those who have experienced conflict and repression in Africa and elsewhere. The primary findings dealing with the failings of the justice system are also likely to ring true in other post-conflict settings. These include:

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\(^2\) GA Resolutions 67/186; 68/188; and 69/195


1. Lawyers and jurists failed to stand up to the systematic violations of the rights of the people.
2. Successive governments used the death penalty to eliminate political opponents.
3. Successive regimes used emergency powers to suppress political dissent.
4. Corruption is rife at all levels of the judiciary.
5. There is little or no meaningful access to the courts for the majority of people.
6. The Office of the Attorney General is not free of political interference from the executive arm of government.

Unsurprisingly the recommendations of the Commission focused in large part on the building of the rule of law. The recommendations encompassed 118 topics under 17 subject headings. These included the protection of human rights, establishing the rule of law, including the reform of the judiciary; promotion of good governance, reform of the security services, the management of mineral resources and the combatting of corruption. The recommendations on the rule of law were preceded by an extract of a poem submitted by a young Sierra Leonean. He wrote:

All Sierra Leoneans must be equal before the law. And the laws this time must be like a cloth, they must be made to fit the people that they are meant to serve.

Several key recommendations of the Commission have been implemented in recent years. Some of these steps are beginning to serve the people. These include:

- The granting of independent prosecuting authority to the Anti-Corruption Commission;
- The introduction of:
  - An ethical code of conduct for civil servants under enforceable regulations;
  - A binding code of conduct for judges and magistrates;
  - A practice code of conduct for members of the Bar;
- The required disclosure of financial interests of public officials and the protection of whistle blowers;
- The enactment of:
  - Public Procurement Act, including the establishment of a monitoring body and a complaints review body;
  - Legal Aid Act establishing a Legal Aid Board and public defender offices;
  - Child Rights Act;
  - Gender laws, including the Sexual Offences Act and the Domestic Violence Act. The Gender Rights Bill is before parliament. The President has apologized to the women of Sierra Leone for the gross violations they suffered in the conflict.

Sierra Leone is slowly creeping up the Human Development Index. It is now 4 places up from the bottom of that index and has improved its position on the Corruption Perceptions

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6 Extract from the essay “My Vision, Hope and Aspiration for Sierra Leone” by Augustine Lavai-Tiva Bundu


Index by 5 places.\(^9\) It is of course not possible to submit conclusively that this modest progress is the product of the steps to build the rule of law. A range of other factors are also at play. However, some remarkable things have taken place over the last few years. Two cabinet ministers, a judge and several senior officials have been convicted of corruption. This would have been unthinkable just a few years ago. Some serious backlogs in the criminal courts have been addressed. The army has been downsized and now provides peacekeepers to other conflict zones in Africa.\(^{10}\)

One needs of course to make a reality check. These gains are made off the lowest possible base. Moreover they are not necessarily irreversible. Sierra Leone has suffered some serious setbacks, not least of which, is the devastating impact of the Ebola crisis. Most of its institutions remain in an incredibly fragile state. Unemployment remains chronic and the country is still donor dependent. Worryingly, the Anti-Corruption Commission lists only one conviction for 2014\(^{11}\) and has been accused of failing to investigate senior members of the ruling party.

Conclusion

I would suggest that the steps taken by Sierra Leone to put in place the necessary rule of law infrastructure and the recent developmental gains, as modest as they are, are not coincidental. For countries like Sierra Leone, building the rule of law is both an end goal and a process for pursuing transitional justice, namely addressing the wrongs of the past and meeting the current and future needs of its people.

There seems to be a growing acceptance in the country of an important finding made by the truth commission, namely that the longer-term security for Sierra Leone rests in the developing of the potential of its people, and that such development is not possible without the entrenching of the rule of law.

\(^{9}\) https://www.transparency.org/cpi2014/results

\(^{10}\) Sierra Leone Country Summary, Human Rights Watch, 2011