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REFORM OF LAW ENFORCEMENT AGENCIES AND THE JUDICIARY

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INTRODUCTION

1. Severe and systematic human rights violations fuel most modern conflicts. From Bosnia-Herzegovina to East Timor, from Burundi to Colombia, from Kosovo to the Ivory Coast, from Sri Lanka to Sierra Leone, torture, illegal arrests, unfair trials, banning legal organizations, prohibiting meetings and rallies, and pervasive discrimination based on race, ethnicity and religion have spawned violent conflicts that have required some form of international intervention. The ultimate success of these international efforts largely depends on their ability to address these human rights abuses and prevent further atrocities, which in turn depends on whether the international assistance effectively strengthens core institutions vital to protecting rights and resolving disputes peacefully. This means focusing intensely and immediately on the judiciary, the police and prisons. Building the rule of law where the rule by force has prevailed is the goal.
2. Yet the environment in post-conflicts is not conducive to judicial reform or strengthening human rights protection. Many challenges exist:
 - the judiciary is dysfunctional, personnel have either left the country or are completely discredited in the eyes of the public
 - the police have been part of the problem- rather than serving and protecting the population they have violated rights; they too have either fled or are completely rejected by the population
 - prisons are hell-holes, overcrowded, unhealthy places where brutality has reigned and people have languished for years without charge or trial
 - local civil society is in tatters, having borne the brunt of repression for years they are terrified, lack resources of all kinds and the most effective leaders have either been killed or forced into exile

- corruption is rife, organized crime controls much of what is left of the economy, trafficking in humans, drugs and contraband is common
3. A common thread running through many post-conflict scenarios is the failure of state institutions to protect rights. The judicial “triad” of the courts, police and prisons has worked to protect the powerful; the general population rightly sees them as something to be feared. Building trust between the population and these state agencies is a top priority in all post-conflicts and will determine whether reform succeeds.
 4. Judicial reform is a means of protection. Strong, vibrant judiciaries will protect rights and possibly prevent further violations. The reform effort serves as both a monitoring and enforcement mechanism that indicates progress or lack thereof in implementing peace accords. Sustainable, enduring peace will remain a pipe-dream if people believe the system is rigged against them; reforming courts, encouraging fair conflict resolution and insuring effective, rights-respecting policing are essential ingredients for ending the conflict.
 5. The moment surrounding a peace agreement offers a unique opportunity to exploit the breakdown of existing power relationships that often have prevented judicial independence. Parties negotiating the future of their country have to make painful concessions, and for those who have dominated, they may for the first time have to cede some control over the courts, police, prisons, intelligence services, customs and other state agencies. Real judicial reform is as much about transforming power relationships as it is about technical tinkering with constitutions and criminal law. Reformers should seize this moment aggressively because it won’t last long and may not come again soon.
 6. Some peace accords, like those in El Salvador, Guatemala, and South Africa, were relatively specific on judicial and security sector reform. Others, as in Haiti, Cambodia and Sierra Leone, were vague. The Dayton Peace Agreement ending the war in Bosnia-Herzegovina said little about judicial reform which helps explain why efforts to reform the judiciary came so late.¹ Whatever the level of detail, it appears that while it helps to authorize or mandate judicial reforms in a peace agreement, this alone is insufficient. Guatemala’s peace agreement called for major reforms of the criminal procedure code and strengthening the independence of judicial institutions. Yet 10 years and many millions of dollars of foreign aid later, progress is slow for numerous reasons, including lack of political will to pass laws necessary for reform. Guatemala is not alone in having historically powerful groups whose self-interest dictates that they block genuine reforms geared to creating independent police and judicial institutions.
 7. Regardless of the exact provisions in a peace agreement concerning efforts to strengthen the judiciary and protect human rights, the very existence of a peace process means that the international community is paying attention to the conflict and insuring that it does not re-ignite. This attention often translates into increased funding, however temporary, an infusion of outside experts and heightened attention to the root causes of the conflict: injustice, discrimination, unequal access to and distribution of resources, poor governance etc. Outsiders then flock in to

¹ One commentator has noted that the Dayton Agreement “reflected no serious commitment to judicial reform on the part of the international community, focusing instead on disarming the combatants, holding elections, establishing common state political institutions and providing for refugee return. Annex 11 of the DPA gave IPTF [the International Police Task Force of the UN] the mandate to monitor, observe and inspect ‘law enforcement activities and facilities, including associated judicial organizations, structures and proceedings’, but this was the only mention of anything even approaching judicial reform.” [get author and title of chapter] in **Constructing Justice and Security after War**, edited by Charles Call (forthcoming from U.S. Institute of Peace 2005).

try to “rebuild” the judiciary, “reform” the police and “clean up the prisons” so that the rule of law prevails.

8. This is extremely difficult, complicated work, however, involving many actors, deeply-rooted values in a society and a change in power relations that those opposing reform see as a zero-sum game that they stand to lose. Moreover, judicial reform costs money. The international community cannot fund these initiatives forever, or even for very long. So no matter how strong or sweeping the language in the peace accords may be, or how great an international presence, unless the national budget and tax revenues provide decent salaries, infrastructure and equipment, lasting change may be doomed.
9. This paper will seek to describe some of the challenges facing judicial reform in post-conflicts. I will not repeat the analyses of specific peace accords and how they have affected reform, rather I will try to identify some lessons from various peace operations led by the UN or the OSCE and highlight some recent trends. Starting with this last issue first, an important new actor has arrived with a potentially major impact on the effectiveness of judicial reform after war.

RECENT DEVELOPMENTS IN THE SECURITY COUNCIL

10. In addition to the specific peace agreements analysed in other papers as part of the ICHRP’s study, an important recent development has been the UN Security Council’s increasing involvement in human rights, the rule of law and transitional justice. Previously, the Security Council maintained that these issues had nothing to do with international peace and security and left them for the General Assembly and UN agencies to consider. But the changing nature of modern conflicts, especially their tendency to be within states and involve huge numbers of civilian casualties with massive movements of people within and across borders, the Security Council could no longer deny the connection between human rights violations, internal conflicts, the breakdown of the rule of law and threats to international peace and security.
11. This has been a relatively quick evolution, at least for the UN. After all, it was only about 14 years ago that the UN first moved seriously into the post-conflict reconstruction field. Before 1991, the UN either engaged in “technical cooperation projects” through the then “Centre for Human Rights” in Geneva in countries essentially at peace, or UN peacekeepers, overwhelmingly military, stood between two warring parties to monitor a cease fire but engaged in very few institutional reform or even humanitarian activities.
12. It was only in 1991, when the UN sent its first “field operation” to monitor adherence to the peace agreement in El Salvador (ONUSAL) that civilians worked on a sustained basis on the ground to reform core state institutions. Haiti (MICIVIH) in 1993 and Guatemala (MINUGUA) in 1994 soon followed.² Small human rights field offices eventually appeared alongside UN peace operations in Rwanda and Bosnia-Herzegovina in 1993-4. Meanwhile, the UN Transitional Authority in Cambodia (UNTAC) was a different species entirely from both the traditional peacekeeping operations in Rwanda and Bosnia-Herzegovina and from the El Salvador, Haiti and Guatemala missions. UNTAC was a throw-back to the old trusteeships where the UN took direct control of key areas of government and essentially administered Cambodia until elections in mid-1993. Yet UNTAC and the other early missions (El Salvador, Haiti, Guatemala, Rwanda and Bosnia-Herzegovina) all shared one common feature new to peace operations: human rights monitors with a mandate to work on institutional reform, especially in the judicial arena.

² The Mission in Haiti was a joint venture between the UN and the Organization of American States (OAS).

13. All six had mandates authorizing them to monitor and report on the human rights situations, intervene with the authorities to convey concerns and complaints and to make recommendations so that violations cease. The mandate for MICIVIH is typical:

“To obtain information on the human rights situation in Haiti and to make any appropriate recommendations to promote and protect human rights; ...draw up official reports and communicate its official conclusions to the relevant international organizations. The Mission shall make known to the Haitian authorities its concerns about the human rights violations and shall take their response into account when preparing their reports and conclusions.”³

14. It soon became apparent to the human rights field officers that merely monitoring and reporting human rights violations, while necessary, were not sufficient to address the causes of the violations and to prevent their recurrence. Justice systems were weak and subject to interference, police abused instead of protected citizens and prisons were hellish where most in detention were awaiting trial, some for years. Also, human rights officers who only offered criticisms without solutions soon lost credibility and any chance to change behaviour. While not yet using the term “rule of law,” these human rights missions started to engage in institutional reform that would buttress respect for human rights, enhance accountability for perpetrators and seek to involve non-governmental organizations so that they would have a say in how their state operates.
15. The next five years saw a concerted effort to combine monitoring human rights with initiatives to reform the core institutions fundamental to the rule of law: the judiciary, the police, the military and the prisons. Human rights field officers in El Salvador, Haiti, Guatemala, Rwanda, Cambodia and Bosnia did most of this work. New peace operations in Angola, Sierra Leone, the Democratic Republic of the Congo (DRC) and Liberia had small human rights divisions whose officers, with extremely limited personnel and budgets, trained judges and prosecutors and worked with the increasing numbers of UN CIVPOL to reform or completely rebuild local police forces. Stand-alone offices of the OHCHR in Burundi and Colombia engaged in a variety of judicial reform efforts. In the late 1990s, the OSCE in Kosovo and Macedonia and the UN in East Timor deployed hundreds of human rights field officers to tackle the twin objectives of reporting on human rights violation and strengthening the institutions charged with protecting rights.
16. In addition to a shortage of people and money, these peace operations often had weak mandates to engage in activity often deemed as “intrusive” by the host state and even certain Security Council members. For example, the United States ended a successful program of judicial reform in Bosnia-Herzegovina in 2000 because this type of work was not “peacekeeping” according to several US Senators.
17. The Security Council was also catching up, helped along by the Brahimi Panel Report which emphasized the importance of the rule of law in peace operations.⁴ Many Security Council Resolutions creating peacekeeping operations since 2001 have explicitly authorized peacekeepers to engage in core rule of law activities, providing added impetus to the evolution in peacekeeping and strengthening the capacity for judicial reform. While the exact legal status of a peace agreement may be unclear, no one can deny the binding authority of a Security Council Resolution bestowing Chapter VII powers on a peace operation.

³ These terms of reference were agreed to by then President Aristide and the de facto Prime Minister but were not published as a UN document. The government of Haiti later requested the UN to circulate the terms of reference which it did as UN Doc. A/48/944, 23 May 1994.

⁴ *Report of the Panel on United Nations Peace Operations*, A/55/305-S/2000/809 (21 August 2000)

18. A recent example is Security Council Resolution 1542 on Haiti (30 April 2004) establishing the UN Stabilisation Mission in Haiti. The Council specified that the Mission will monitor and report on the human rights situation, re-establish the corrections system and investigate violations of human rights and humanitarian law, help rebuild, reform and restructure the Haitian National Police- including vetting - and certify that its personnel have not committed grave human rights violations, develop a “strategy of reform and institutional development of the judiciary” and “assist with the restoration and maintenance of the rule of law, public safety and public order.”⁵ This clear and aggressive approach represents a quantum leap from MICIVIH’s 1993 Terms of Reference which timidly called for “talks between the O.A.S. and the U.N...and the Haitian authorities ... with a view to establishing an agenda and schedule for instituting and effecting institutional reform.”
19. This 2004 mandate captures crucial elements of rule of law reform in a post-conflict setting: dealing simultaneously with key institutions like the judiciary, police and corrections, vetting personnel as a way to reform institutions while insuring that past violators do not continue to wield power and developing broad-based reform strategies for these institutions.
20. Similarly, a recent Security Council Resolution on Afghanistan (SCR 1536 of 26 March 2004) specifically requests action to establish a fair and transparent judicial system while working to strengthen the rule of law.⁶
21. On Burundi, the Security Council Resolution 1545 (21 May 2004) established the United Nations Operation in Burundi (ONUB). The Resolution authorises ONUB to provide advice and assistance to carry out institutional reforms and “to complete the implementation of the reform of the judiciary and correction system.” ONUB has a specific section dedicated to judicial and penal reform and works with the police to enhance their training and accountability.
22. For the Democratic Republic of the Congo (DRC), in Resolution 1493 (28 July 2003), the Council called for a direct UN role to support the rule of law. MONUC, in coordination with other United Nations agencies, donors and non-governmental organizations, is to provide assistance to reform the security forces and re-establish the rule of law.
23. In its early resolutions on Liberia (866 of 22 September 1993 and 1020 of 10 November 1995), the Security Council mandated the United Nations Observer Mission in Liberia (UNOMIL) only to investigate human rights violations and monitor the general situation. UNOMIL had no authority or means to support rule of law initiatives. Ten years after these initial Resolutions, the Security Council took a different approach reflecting the evolution in peacekeeping doctrine and the realities of modern post-conflict situations. In Resolution 1509 (19 September 2003) the Council decided that the new operation, the United Nations Mission in Liberia (UNMIL) must support the implementation of the Peace Process, which requires it to “assist the transitional government (...) in developing a strategy to consolidate governmental institutions, including a national legal framework and judicial and correctional institutions.”
24. Finally, the Security Council in Resolution 1528 (27 February 2004) creating the UN mission in Cote d’Ivoire (MINOCI), mandated MINOCI to help restore the rule of law and the authority of the judiciary throughout the country. Likewise, the Security Council asked the mission to help extend the presence of civilian police and to advise the government on restructuring the security

⁵ This is the first time that the Security Council has explicitly authorized “vetting” of serving police or security officers. Vetting has become an important part of transforming institutions, especially the police, by removing from office those who have committed serious acts of malfeasance or crimes. See Alexander Meyer-Rieckh, “*Vetting and Personnel Reform in Countries in Transition: An Operational Framework*” (September 2004)

⁶ This section relies on an excellent paper produced by Stefano Varriale for the International Center for Transitional Justice, November 2004.

forces. In an important innovation, the Security Council called on all the peace operations in the region, specifically those in Liberia and Sierra Leone, to cooperate with MINOCI concerning disarmament, demobilisation and reintegration, since fighters freely cross borders to take up arms with militias and militaries in these inter-connected conflicts. The Council tasked the mission with investigating human rights violations, especially those involving women and young girls, with the objective of helping to end impunity.

REPORT OF THE SECRETARY-GENERAL TO THE SECURITY COUNCIL ON THE RULE OF LAW

25. The UN Secretary-General's Report to the Security Council in August 2004 reinforces this trend that has developed since the first large civilian deployments in peace operations in 1991. "*The rule of law and transitional justice in conflict and post-conflict societies*" distils many of the principles, "lessons" and guidance, most learned through trial and error, in the 18 peace operations deployed since the end of the Cold War.⁷ Enthusiastically endorsed by the Security Council in September 2004, some of whose members had rejected the very notion that the rule of law or human rights had anything to do with peacekeeping only a few years earlier, this report summarises current UN doctrine on the paramount role of the rule of law in securing a lasting peace. The Secretary-General affirmed his commitment by making the rule of law the central theme in his speech at the opening of the General Assembly in September 2004, noting that fair and predictable application of laws is an essential element and guarantee of human dignity, especially for people who have endured war. This report has provided added impetus to judicial reform and its central place in post-conflict peace operations.
26. The principal findings in the Secretary-General's report reflect some of the trends that have emerged in the most recent post-conflict judicial reform efforts:
 - Avoid "one size fits all" approaches to rule of law initiatives; each peace operation will have specific, sometimes unique characteristics that cannot be addressed from a pre-cooked template.
 - National assessments, national guidance and real, meaningful national participation is essential; identifying genuine and reliable local partners is a challenge because relying on the wrong national advice and guidance will reap disaster.
 - Technical reform of laws and institutions is necessary but not sufficient; political will is essential and this must be nurtured and supported by the peace operation and senior political figures like the Special Representative of the Secretary-General and the Secretary-General.
 - The UN must support "domestic reform constituencies" and build real capacity in the core rule of law institutions. Facilitating "national consultations" on judicial reform and related rule of law questions is a major task for UN peace operations.
 - Strategic planning is vital, best done by national counterparts with significant input and support from the UN peace operation.
 - Justice, peace and democracy must be mutually reinforcing goals and not antagonists.
 - See the rule of law broadly as an integrated system. The police, judiciary, military, penal institutions work as a unified whole. Rule of law may also involve, depending on the

⁷ *Report of the Secretary-General*, UN Doc. S/2004/616 (23 August 2004)

context, issues and institutions like juvenile justice, property matters, public administration (regulating building/construction codes and permits, business licenses, garbage removal, public health inspections), civil registration (birth, death, marriage certificates), statelessness, inheritance, adoptions and internally displaced persons.

- Reinforce, not replace: whenever possible the peacekeepers should strive to reinforce local institutions and local actors and not replace them. This is the best way to insure the sustainability and “legacy” of the peace operation’s efforts.
27. The next sections examine in more detail how efforts to reform the courts and police in particular have fared in recent post-conflict settings and have exploited openings offered either by a peace accord, a security council mandate or the creativity of human rights field officers.

REFORMING THE JUDICIARY: CHALLENGES AND PROSPECTS

28. Human rights protection, essential to building an enduring peace, depends fundamentally on the existence of a free, fair and independent judiciary. A country that does not have a functioning justice system that inspires the trust of the entire population offers scant protection for human rights and will soon fall back into conflict. In virtually every modern conflict- Kosovo, Bosnia-Herzegovina, Guatemala, El Salvador, Haiti, Liberia, Cambodia, Angola, Democratic Republic of the Congo, Macedonia - to name just a few, the legal system was, and was seen to be, biased, corrupt, and therefore illegitimate. Grievances, real and imagined, could not be resolved peacefully through the courts so they were addressed through violence. Re-establishing, or more accurately in most cases, establishing for the first time, the rule of law is a quintessential prerequisite for building a modicum of trust in war-torn societies.

The Judiciary (constitutional and legal reforms)

29. Some believe that judicial reform means merely writing a new constitution, reforming laws and modernising administrative codes. While these are usually part of the reform effort, they are often not the most important priority and by no means sufficient to improve observance of the rule of law. The reality in most post-conflict situations is that constitutions and laws are often fine on paper; they provide for all kinds of guarantees and proclaim that human rights shall be rigorously observed. The problem is that the constitution and laws were flagrantly violated and the offenders enjoyed complete impunity. A Haitian proverb captures the difference between wonderful laws and awful reality: “Laws are made of paper, bayonets are made of steel.”
30. In Kosovo and East Timor, international legal experts have collaborated with local lawyers to draft new penal codes and codes of criminal procedure to insure that they comply with international human rights standards. Minority rights experts have run workshops to share their knowledge on how legislation protecting minority rights in Western Europe could be adapted to the Balkans, Africa and Asia. In Guatemala in the early 1990s, international lawyers primarily from Argentina launched a project to draft a new Criminal Procedure Code and new guidelines for the Public Prosecutor’s Office, strengthening its independence. MINUGUA reinforced this initiative when it started work in November 1994.⁸

⁸ MINUGUA rule of law experts understood that code reform would not suffice, so they started a one-on-one mentoring program, pairing a foreign prosecutor with a Guatemalan counterpart to help them learn how to conduct oral trials which were mandated for some cases by the new code. Previously, as in most civil law countries, criminal trials depended almost solely on written documents, not on oral arguments or live testimony in court from witnesses.

31. With the growth of internet access local legal professionals can now more easily consult foreign constitutions and conduct comparative analyses of constitutional protections for human rights. Donors have found that providing computers and internet access facilitates has transformed what had been a cumbersome process of gathering relevant materials to revise and/or modernize constitutions and laws.

Judicial System Reform

32. This is by far the most complex undertaking. Building a justice system on the ashes and enmities of conflict requires huge resources, skilled personnel and enormous patience and modesty. This work often involves trying to change the way people think about power, the state and the relationship between the individual and government. “Changing mindsets or mentalities” is often the unstated goal; understandably, this is a long-term and difficult undertaking.
33. Three operational challenges typically arise: coordinating the large number of actors, designing sustainable and appropriate programs, and planning for the long-term. Among the many tasks involved are the following:
 - participating in designing and delivering training programs for legal professionals and court administrators
 - procuring equipment, vehicles, computers and other physical hardware necessary for a judicial system to operate
 - monitoring and assessing the judicial system’s performance
 - building the capacity of the institutions to function effectively and efficiently: paying attention to management, administration, personnel, finance, logistics and procurement
 - trying to coordinate donors to optimise assistance and minimize waste and duplication
 - reporting on the functioning of the judiciary to identify strengths and weaknesses (this includes notifying the donors so they can see how their money is having an impact)
 - arranging for a limited number of local jurists to attend seminars and degree courses outside the country to deepen their expertise
 - working closely with local community groups to insure that their perspective is included in legal reform projects in a meaningful way from the outset.
34. The main domestic actors- courts, judicial professionals, bar associations, law school faculties, court reporters, court administrators and clerks- are in dire straits. For example, KFOR troops encountered a lawless void when they entered Kosovo in June 1999. Revenge attacks by Albanians against Serbs began immediately. The local judiciary dissolved. Most were Serbs and, fearing retribution, they had fled to Serbia-proper. Some Albanians had worked in the Serb-dominated judiciary during 1989-99, but they too feared revenge since the rest of the Albanians saw them as traitors. Virtually no judges, prosecutors, defence lawyers or jailers were left once NATO troops arrived. Those fleeing also took whatever they could carry and destroyed what remained. The Serbs took official vehicles, computers, printers, phones, copiers, law books, court files, even office furniture with them. Court buildings looked like a plague of heavily armed locusts had swept through, scouring the grounds for anything valuable and leaving broken windows and ripped out electric sockets in their wake. Similar scenes awaited international observers in Rwanda, Sierra Leone, Liberia, Angola, Cambodia, DRC and in February 2004 in Haiti, following the second coup against President Jean-Bertrand Aristide.
35. The material needs of the judiciary are often overlooked and this is a mistake. One major donor once said regarding the needs of the justice system in Haiti that “we don’t do bricks and mortar.” Fortunately, another donor did and Haiti’s basic courthouses were refurbished in many parts of

the country. This seemingly superficial gesture was important since it raised the status of the judiciary in the eyes of the population (they saw that the police buildings were also being repaired, so why not the courthouses too) and raised morale among the court personnel. No one likes to work in shabby surroundings.

36. Logistics also require attention. Are there vehicles for judges or prosecutors to travel to conduct investigations, visit prisons or examine the crime scene? In Rwanda, many prisoners remained in detention because police investigators could not travel to interview witnesses to corroborate or exculpate the accused. The UN Human Rights Operation started to take police investigators in its vehicles on regular trips to the countryside so that the police could conduct their investigations.
37. What is the appropriate technology for a war-torn judiciary: does it make sense to try to install a complicated case-tracking computerised system when electricity is erratic and computer expertise rare? Are there enough pens, paper, forms and other basic office necessities? In Haiti and Rwanda, judges, court clerks and prosecutors were charging people to fill out forms or issue judgements when they were not legally authorized to do so. The reason: the officials were buying the paper, forms and other supplies with their own money because the Justice Ministry was not supplying their needs. This practice generated scorn for the justice system from the population who viewed it as just another example of corruption and venality. It is important for those working in post-conflict situations to dig deep to understand the causes of the problems plaguing the administration of justice.
38. Judges, prosecutors, lawyers, court clerks, notaries, bailiffs, all segments of the personnel of the state's legal system will be crucial interlocutors for internationals working on judicial reform. Observing trials, monitoring pre-trial procedures to insure adherence to international and national guarantees on limits to pre-trial detention, access to counsel and speedy trials, are integral effective international assistance. Creating a solid working relationship with justice officials, from the Minister of Justice down to the lowest level trial judge or court clerk, is also important.
39. Appealing to the professional pride of various actors reinforces independence and integrity; this tactic worked well in El Salvador where the Supreme Court traditionally had exerted enormous power over the entire judiciary. ONUSAL's mandate allowed it to "offer its support to the judicial authorities of El Salvador in order to help improve the judicial procedures for the protection of human rights and increase respect for the rules of due process of law."⁹ The peace accords established a requirement that the constitution be amended to allow the legislature to choose the Supreme Court, thus increasing its independence from the executive. ONUSAL took advantage of this development by working closely with skilled jurists who were subsequently appointed to the court who were committed to high levels of professionalism and independence.
40. Monitoring the performance of the justice system, noting problems, instances of interference or intimidation from outsiders attempting to influence a jurist's behaviour or the outcome of a case is essential. It is best if locals do this but this is not always possible so internationals may have to step in. Any threats, attacks or other violence directed at anyone working in the legal system should be thoroughly investigated and reported. For example, when a prosecutor was beaten up and suspended for failing to follow a local politician's order to arrest people, the UN human rights mission in Rwanda investigated the case and issued a public statement calling for an official inquiry. The prosecutor was deeply grateful to the Mission and felt that his case would have been ignored without the Mission's intervention. Similarly, the OSCE in Kosovo has denounced interference in the judiciary based on ethnic hatred and this has led to increased

⁹ Diego Garcia-Sayan, "The Experience of ONUSAL in El Salvador," in **Honouring Human Rights**, ed. by Alice Henkin (Aspen Institute) (Kluwer Law International, The Hague 2000), p. 29.

international involvement and in some cases greater protection for judges and prosecutors. Because of extreme polarization between Serbs and Albanians and the sensitivity of war crimes cases, the UN had to create mixed panels with a majority of international judges to prevent miscarriages of justice. While a sad reflection of reality, these mixed panels provided an opportunity for “mentoring” local judges by experienced internationals.

41. Corruption, bribery or extortion undermine the rule of law, yet the economic realities of post-conflict situations usually generate conditions ripe for chicanery. Bosnia-Herzegovina offered an extreme but not unique situation where prosecutors brought cases for corruption only against the losers when the winners assumed office after elections. A public opinion survey in 2002 showed that 20% of the population believed that judicial officials regularly took bribes. Judges’ and prosecutors’ salaries are very low even when compared to the pay received by drivers and interpreters employed by international agencies. It is hard to resist bribes of just a few dollars when one’s salary is so low.
42. Judicial reformers must take into account the power, wealth and violence of trans-national organized crime. These organizations thrive on the absence of state power or their ability to manipulate it. They often have a regional reach (across the Balkans, Southeast Asia, West Africa) so that an international presence in one country will have to cooperate across borders with other states to attack trafficking networks, smugglers, drug-traders and all forms of organized crime. This requires specific expertise and equipment which usually does not exist in the host state. The amounts of money at stake are huge, so the traffickers, especially those involved with the sex trade, do not hesitate to use violence to protect their incomes.¹⁰
43. Another is the usually weak management and administrative capacities in the courts. Discipline is often lax, judges show up late or not at all for court, many because they have another job or two in order to support their families who cannot survive on the judge’s salary alone. Nepotism reigns; people are appointed because of their connections and not on their achievements. Accountability and transparency are mere buzzwords, everyone agrees they are important but few actually do anything to make them real. Generations of lax attitudes, cronyism and bias infect the judiciary and will not be eliminated overnight.
44. One successful approach has emphasized open competition for judicial posts based on objective criteria. When people don’t owe their jobs to someone, they are much more likely to be independent and decide cases on the merits, not on their assessment of who has more power. A study by MINUGUA in Guatemala showed that the judges who had been selected through competition under the new Judicial Career Law showed more commitment to their jobs, were more likely to use legal reasoning in their decisions and demonstrated greater independence than judges employed under the old system.¹¹ A sweeping change in the judicial personnel in the Special Brcko District in Bosnia-Herzegovina yielded a marked increase in quality and integrity. Hiring was done entirely on a rigorous and objective basis looking at education, experience and behaviour during the war.
45. Coordination of legal assistance is another challenge. In Haiti, Bosnia, Kosovo and Rwanda, meetings of donors and government representatives regularly convened so that people knew what others were doing to minimize duplication or waste and to insure that no key problem was overlooked. For example, the main donors to judicial reform in Rwanda agreed to meet monthly and the UN Human Rights Field Operation maintained this regular forum to present its findings

¹⁰ See Nicholas Kristof, “Cambodia: Where Sex Traffickers are King,” **The New York Times**, January 15, 2005 for a description of how traffickers invaded a woman’s shelter in Phnom Penh to force back into prostitution 83 women and young girls who the police had rescued the previous day from conditions amounting to slavery.

¹¹ Luis Pasara, “Los juices provenientes de concurso, son distintos?” *Funcionamiento del sistema de justicia en Guatemala: Un analisis de comportamientos institucionales*, (Guatemala: MINUGUA 2000)

and recommendations on the various assistance projects to the legal system. The Belgians and Dutch gave priority attention to providing managerial and administrative support to the Ministry of Justice. The US and UK focused on providing training to judges and prosecutors. The Canadians offered help in drafting and translating legislation since their experience with a bilingual judiciary was relevant to Rwanda. UNDP and UNICEF agreed to help in the crucial area of juvenile justice due to the many children implicated in the genocide or who had been orphaned by it.

46. Similar divisions of labour were agreed to in Haiti among the principle donors. In both Haiti and Rwanda, the Legal Division of the UN peace operation's human rights component prepared a chart to show donor activity in each sphere. Regular follow-up meetings occurred where progress was charted, obstacles identified and deadlines established. Most importantly, the respective Ministers of Justice chaired these meetings, set the agenda and most importantly, defined the priorities for the donors to address. The UN Mission in Rwanda also helped insure that funding from the Irish NGO Trocaire met the priorities of local NGOs working on judicial reform.
47. In Guatemala, MINUGUA and UNDP created a joint coordinating body to define strategies, identify and design appropriate projects and seek greater international support. MINUGUA learned from the mistakes of earlier missions and emphasized coordination. Moreover, agencies like UNDP will stay in countries long after the peace operations leave so it is important to build in continuity from the outset.¹²

REFORMING LAW ENFORCEMENT AGENCIES: THE POLICE

48. The police are a key element in building sustainable human rights protection after a conflict. A common feature in most societies that have experienced conflict is that the police have abused human rights and the population views them as an occupying army, not as public servants there to serve and protect them.
49. Efforts to reform the police, prisons and judiciary must proceed in tandem as much as possible. They are interdependent and mutually reinforcing. Yet usually police reforms outpace the judiciary. In Kosovo, Haiti, Rwanda and East Timor, as difficult as it was to create a new police force from scratch, it has proven even harder to get the judiciary functioning at a minimally acceptable level. So the police after about two years were doing a fairly decent job, arresting people according to the constitution and law, observing their rights and holding them for trial. The courts, however, failed to process the charges expeditiously so that the police lock-ups and prisons soon started to overflow with suspects awaiting trial. Prison conditions, which had dramatically improved, soon deteriorated; overcrowding led to increased tension and violence in the prisons. Then prisoners started to be released because they had not been formally charged within constitutionally mandated time limits, frustrating the police who had followed all the rules and the public who saw dangerous people back on the streets. Some took justice into their own hands, summarily executing suspected drug traffickers and leaders of criminal gangs. This completely undermined efforts to establish the rule of law and gave human rights a bad name. This phenomenon is by no means limited to these four cases (*see especially Bosnia and Guatemala*) but has repeated itself in virtually every post-conflict situation.

¹² Leonardo Franco and Jared Kotler, "Combining Institution Building and Human Rights Verification in Guatemala: The Challenge of Buying In without Selling Out," in **Honouring Human Rights**, edited by Alice Henkin (Aspen Institute) (Kluwer Law International 2000), p.212

50. Both the new police and the population want to feel secure; the challenge is to provide security while respecting human rights. They should not be seen as choices, but rather as twin and mutually supporting objectives.
51. If the peace operation or international assistance network has a UN Civilian Police component and human rights field officers, as in Haiti, Bosnia, Kosovo, Rwanda, Angola, East Timor, El Salvador, Guatemala, Liberia and Sierra Leone, then human rights officers and CIVPOL need to work closely together and exploit the comparative knowledge and expertise that each side brings. CIVPOL units now frequently have "human rights liaison officers" who are the most natural link with the human rights field officers working on judicial reform. These officers often know the local language and have established ties with community organizations and NGOs, while police officers have investigative skills, interviewing techniques and forensic capacities: combining the two can yield real synergy and impressive results.
52. Human rights officers may assist in assessing the qualifications of local police officers and new police recruits to ensure their personal integrity, aptitude, and adherence to human rights standards and principles. Human rights officers and their international police colleagues may also help develop procedures to address grievances in the police service and establish how the public can file complaints about police misbehaviour. Finally, human rights officers have frequently worked with their local colleagues to develop community outreach programs to make local police agencies and individual officers more responsive to the needs of the public. Such work can include bringing together local police officials and members of the media, human rights groups, and other representatives of civil society to yield increased community-police understanding and cooperation (good examples are El Salvador, Sierra Leone, Kosovo and East Timor). People feel safer and more secure and the police see that protecting human rights and fighting crime are mutually reinforcing and not antithetical.
53. The process of rebuilding a local police service takes time and sustained effort. Recruiting, selecting, and training police officers who will operate in a drastically new way, one that reflects a new attitude towards the public requires deep change and cannot be done overnight. Any misbehaviour by the police must be immediately addressed; to gain the public's confidence and necessary cooperation, impunity cannot be tolerated and the new police cannot be above the law. Otherwise, the new police will look exactly like the old police and the effort will be doomed from the start. Intense interaction with the community, commonly called "community policing," has proved successful in many and varied peace operations. A crucial element to enhance police accountability while fighting impunity is an energetic and independent media. Local police agencies will require extensive training in how to work with independent media and come to view them as valuable allies rather than adversaries.
54. For example, the CIVPOL contingent in Haiti from Benin was enormously successful; when it was time for them to leave the Haitian population begged them to stay. The Beninois had visibly patrolled their region with their Haitian counterparts, sponsored several community projects like restoring the local football field and elementary school building. The head of the contingent was a regular guest on a local radio call-in show where he discussed crime rates and strategies for the population to help combat crime. By their daily behaviour and relations with Haitians, these CIVPOL officers from Benin provided valuable lessons to both the new Haitian police and the population on democratic, rights-respecting policing.
55. "Mentoring" or on-the-job training is an extremely effective and efficient way to reinforce classroom training and to provide immediate feedback to both the police trainee and to the trainers back at the police academy. In Kosovo, UN CIVPOL accompanied the new Kosovo Police Service (KPS) trainees after they had completed their initial six months of academy training. The CIVPOL officers critiqued the KPS when they made an arrest, questioned a

witness, sealed off a crime scene, stopped a car and other basic policing tasks. They would note the positive and the negative and in a few cases the CIVPOL officer would perform the task him/herself so that the KPS officer could observe first hand a seasoned professional doing the job. International Police (IPTF) in Bosnia-Herzegovina fulfilled a similar function, providing detailed and quick feed-back to the local police officers on such difficult assignments like the forced eviction from apartments that would allow an ethnic minority family to reclaim its home.

56. Most peace operations mandates include the obligation to monitor the rights to physical integrity and liberty (freedom from torture or cruel, inhuman and degrading treatment or punishment, freedom from arbitrary arrest and detention, and most crucial of all, the right to life). These rights are found in the major international human rights treaties (*International Covenant on Civil and Political Rights*, *Convention Against Torture* and regional human rights treaties) and in domestic law. Thus the right to be free from illegal or arbitrary arrest and detention and the right to humane treatment if detained are core rights that should receive priority attention from human rights field officers. Every police officer should be familiar with the *UN Code of Conduct for Law Enforcement Officials*, the *UN Basic Principles on the Use of Force and Firearms*, and the *UN Standard Minimum Rules on the Treatment of Prisoners*.
57. The methodology of how the peacekeeping operation works in the rule of law sector is also crucial. The Security Council Resolution on Haiti incorporates a lesson learned from many post-conflict experiences in the 1990s: there is an intimate connection between monitoring and institution building/reform. While those responsible for monitoring human rights must investigate and verify whether the police, prisons and courts are operating properly, the primary purpose of this monitoring is not necessarily or primarily to amass evidence for public reports denouncing those responsible for violations. Rather, sound monitoring is necessary to understand the strengths and weaknesses of the justice system so that projects aiming at reform are based on a thorough understanding of actual practice, including on-going weaknesses and problems. Efforts to build the rule of law are doomed to failure unless the peace operation knows the strengths and weaknesses of the courts, police, prosecution and corrections, how judges are appointed or removed, the root causes of corruption, police abuse or the simple dysfunction of court administration. This knowledge results from intense, on-going observation and interaction by civilian peacekeepers whose job is to know and follow intimately the key actors in the justice sector.
58. Merely noting the defects of the local police is not enough because it does not change the behaviour or attitudes that cause the abuses. Active monitoring which notes faults but also identifies solutions to problems is much more effective and should be the preferred approach. Monitoring should not be seen as an end in itself but rather a means to diagnose weaknesses, identify steps to address the weakness and then assess whether the cure has been effective.
59. This “virtuous circle” of analysis, diagnosis, planning, implementation, review and assessment has proven the best approach to rule of law reform in post-conflict countries.
60. All those working on police reform and broader judicial change should ask themselves whether their work will achieve the following goal: to impart skills, knowledge and tools so that local institutions responsible for the rule of law are stronger than before. Can local NGOs, National Human Rights Commissions, Police Civilian Review Boards, an independent, impartial Judicial Inspection Unit and the Ombudsperson investigate, analyze, report, monitor and continue strengthening their institutional capacity without the further help of international experts? Nationals should implement projects themselves wherever possible. Training trainers should become instinctive. The operating principle should always be "reinforce, not replace" local institutions or individuals. And the goal should be to make yourself obsolete, to work yourself out of a job.

MEASURING THE IMPACT OF REFORMS

61. “You can’t improve what you can’t measure” is a famous dictum from management studies. Judicial reform aiming at greater protection of human rights must identify ways to measure whether all of this money, effort and time is yielding real results. Much greater rigor in program assessments is needed in this area and fortunately, recent trends are promising. More and more professionals in human rights field operations are trying to measure the effectiveness of their work, identify problems and make adjustments. Here are two representative examples.

BOSNIA-HERZEGOVINA

62. The OSCE’s Human Rights Department (OSCE/HRD) in Bosnia-Herzegovina has deployed over 40 field officers throughout the country; since the 1995 Dayton Peace Accords (DPA), it has focused on both civil and political and economic and social rights. Because the Office of the High Representative (OHR), the senior civilian official in Bosnia-Herzegovina, has the power to remove government officials for malfeasance or non-cooperation, the OSCE/HRD has an unusually strong capacity to enforce compliance with international law and the DPA.
63. Property rights are crucial to the human rights situation in Bosnia, and an important indicator of the state of human rights is whether an ethnic group can return to an area in which it is a minority. The OSCE/HRD has established several programs to encourage and monitor ‘minority returns’. First, it launched an intensive campaign to inform pre-war occupants of their right to return to their homes, and how to file a claim to repossess their property. By April 2000, 190,000 such claims had been filed.¹³ Secondly, the OSCE/HRD and other groups helped establish ‘Double Occupancy or Property Commissions’, charged with identifying cases where pre-war occupants should receive authorization to repossess their property.
64. Next, it drafted police guidelines for evictions. It distributed these guidelines to the police, including the International Police Task Force (IPTF) and discussed the human rights components of an eviction from property. Before these guidelines were developed, police presence at evictions had been rare, resulting in violence, recriminations and failure to enforce judicial orders. Police now regularly attend evictions and ensure that they are carried out lawfully. The OSCE/HRD assesses its impact in the property rights area by measuring the effectiveness of the claims procedure, police presence and willingness to enforce eviction orders and the number of people able to return to their pre-war homes, thus providing an important measure to evaluate the impact of its training and awareness-raising projects. Moreover, every international Human Rights Officer in the HRD and all its units in Headquarters have adopted quarterly work plans to identify priorities, goals and performance measures, especially those related to property issues.
65. The OSCE/HRD has also drafted guidelines for local prosecutors in cases involving officials who block minority returns. This initiative began in the spring of 2000; the plan is to monitor whether prosecutors use the guidelines and to follow the number of cases prosecutors launch against obstructive officials. The OHR can then remove any official who persistently refuses to apply the law. In November 1999 alone, the OHR removed 22 officials, mostly for property-related matters and largely on information documented by the OSCE/HRD. These removals had a salutary effect on the human rights situation.

¹³ OSCE Human Rights Department, “Examples of Impact of Human Rights Officers in the Field,” April 2000 (on file with the author).

SIERRA LEONE

66. The first United Nations Mission in Sierra Leone (UNOMSIL) had a human rights unit of five people that began work in May 1998. A major component of its work was monitoring, investigating and reporting on the human rights situation. The unit contributed its human rights analysis to the weekly reports that UNOMSIL sent to UN headquarters which helped the Security Council understand the human rights elements of the conflict and craft a framework for action that included a human rights perspective.¹⁴ Human rights issues also soon predominated in Security Council discussions of how to understand and react to the Sierra Leone crisis. The Unit also reported on human rights abuses committed by the West African peacekeeping forces (ECOMOG) in early 1999, which led to a huge outcry and immediate improvement in their behaviour.
67. Similar to other missions, UNOMSIL invested considerable time and effort to provide human rights skills training to local human rights groups. One clear measure of the effectiveness of this training was when UNOMSIL had to evacuate from Sierra Leone in January 1999 due to a rebel offensive. Local NGOs produced high quality reports on their own while UNOMSIL was absent. The Unit also promoted the status of human rights NGOs within civil society, which had the measurable effect of moving them from the periphery to the center of the debate on the peace accords. One concrete example of this ‘empowerment’ of human rights NGOs was the statutory role given to them in the Truth and Reconciliation Commission.
68. The Human Rights Unit, working first in UNOMSIL and then later in the follow-on mission called UNAMSIL, promoted human rights awareness in the various UN military components. A decrease in human rights and IHL violations was noted; also, the Unit played a key role in convincing UN military observers to break up a child prostitution ring in the eastern town of Kenema.
69. The Unit also had an impact on the way the amnesty issue was treated. The Lomé negotiations, which attempted to end the conflict, included a sweeping amnesty for the RUF despite their well-documented atrocities against civilians. Members of the Unit went to Lomé and helped craft the human rights language and formulations of the agreement. The Unit conveyed its concerns about the amnesty provisions to DPKO in New York and the Office of the High Commissioner for Human Rights in Geneva and helped convince the UN to distance itself from the amnesty. This was a major step for the UN in its fight against impunity. The collapse of the Lomé Agreement, the resumption of fighting and RUF’s abduction of UN peacekeepers in May 2000 only underscored the accuracy of the Unit’s warnings on the amnesty.

COMPREHENSIVE JUDICIAL REFORM: SOME LESSONS “IDENTIFIED”

70. Practitioners have identified over the past few years numerous “lessons” or “good practices” for judicial reform in post-conflicts. One tension to manage, however, is how to implement these lessons while recognizing that allowances must be made for unique characteristics specific to every country.
71. **First**, judicial reform and the rule of law must be seen as flexible concepts. The work involves more than just the reform of the courts, criminal justice systems or penal law. Depending on the circumstances, property disputes, birth registrations, juvenile justice citizenship/statelessness and demobilisation, disarmament and reintegration (DDR) can be essential issues to address to insure an end to the conflict and establishing the rule of law. For example the situations in Haiti,

¹⁴ This information is drawn from correspondence with Michael O’Flaherty, former head of the Human Rights Unit, UNOMSIL, May 5, 2000 (on file with the author).

Liberia and Afghanistan require a robust and properly sequenced DDR program if there is to be any chance of success for reform of the police, security forces and the judiciary. Likewise, experts on the ground maintain that resolving property disputes is the major challenge to the rule of law in Bosnia-Herzegovina and Kosovo and is a thorny issue in Timor Leste.

72. **Second**, attention must be paid right away to rule of law initiatives in a peace operation. It must be among the top priorities from the outset. Waiting too long, or allowing "spoilers" to get established can make the job much harder and it is almost impossible to make up for the time and momentum lost. The looting and lawlessness in Iraq following the downfall of Saddam's regime provide a powerful example of the failure to apply this lesson. Similarly, in Kosovo, NATO's failure to prevent systematic reprisals by Albanian extremists against the Serb and Roma populations continues to complicate efforts to bring peace and justice to that troubled territory, as does the failure to disarm various armed groups by the US-led military intervention in Haiti in 2004.
73. **Third**, the UN, bilateral donors and the host government must agree on an overall rule of law strategy, specifying priorities, sequencing, benchmarks, indicators, evaluation mechanisms, responsibilities and deadlines. Follow-up is as essential as planning and coordination. The failure to agree to an overall strategy dooms the effort to piecemeal, *ad hoc* initiatives that often result in waste and duplication.
74. Likewise, non-governmental organizations and civil society in general should participate in the strategizing process; public information campaigns explaining the importance of the population's participation in rule of law reform efforts are vital. Regular meetings should be held between the police and community organizations and between judges, prosecutors and court personnel and the community they serve. This will also help manage expectations since the process is long and slow. And expectations are often unrealistic. Some in Bosnia, for example, thought that "a highly politicized, nationally divided, financially dependent and institutionally deficient judiciary" would transform itself quickly into a "competent, freedom-loving and disinterested bastion of democratic values, human rights and civil society."¹⁵
75. **Fourth**, there must be local ownership of the rule of law strategy and its implementation. Such ownership must involve both governmental and non-governmental institutions. One positive example is Rwanda, where the authorities seized the initiative and presented their strategy to the donors who in turn agreed to divide the labour based on their own expertise and resources. The government clearly ran the process and held donors and itself accountable for measurable progress in each of the core areas: police, judiciary, military and corrections.
76. In Sierra Leone, the Special Court has an extensive public outreach program where a coalition of local NGOs working on human rights regularly meets with court officials to discuss specific cases and legal reform efforts. The public's role in providing evidence, appearing as witnesses and helping investigators is discussed and the NGOs in turn disseminate this information to their members and the population at large. In a country where the courts and law enforcement have repressed the population and helped perpetrate human rights violations, the people understandably have little faith or experience in cooperating with these institutions. To reverse this dynamic, the reformers must make a concerted effort to reach out to the general public and solicit their advice and involvement. The Special Court hopes to leave a "legacy" of improved expertise and practice for all the Sierra Leonean judiciary, police and prison administration.
77. A warning, however, people often have hidden agendas and local organizations have their own feuds, goals and alliances and internationals can easily be manipulated if not very careful. As one

¹⁵ International Crisis Group, "Courting Disaster: The Misrule of Law in Bosnia and Herzegovina," Balkans Report No. 127, 25 March 2002, p. 37.

South African police reform expert noted: “Communities are neither homogeneous, simple nor benign, particularly in post-conflict societies. In South Africa, this is illustrated by high levels of interpersonal violence, xenophobia and ongoing local conflicts. Old patterns of division, intolerance and conflict do not simply disappear when a democratic order comes into existence.”¹⁶ The same is true of most post-conflict states.

78. **Fifth**, the intense, early and meaningful involvement of local experts, both inside and outside government is a prerequisite for success. The UN should never adopt a "cookie-cutter" approach to rule of law issues; while some principles are universal and many approaches have been proven effective in a variety of settings, the exact recipe for rule of law strengthening or reform originate from an informed analysis of local conditions. When possible, UN, OSCE, AU, OAS or other international organizations should hire local experts to insure that their programs respond to real needs and priorities. These “reality tests” can help avoid many pitfalls. UN operations in Haiti, Timor Leste and Sierra Leone have made good use of local experts while the OSCE in Bosnia, Kosovo and Macedonia have developed excellent models to incorporate local lawyers’ and judges’ knowledge in designing and implementing program in all the major rule of law areas. The most technically sound, substantively perfect rule of law initiative will not succeed unless it includes meaningful local participation and support.
79. **Sixth**, insuring that the general public understands its role reinforces the point that rule of law reform has a political dimension. Some people stand to lose if reform occurs. Power relations will change. Focusing too narrowly on technical capacities like case management, forensics skills and investigative techniques while ignoring key issues like who has power over the institutions, who can nominate, promote or remove officials will fail to yield real reform. Those used to controlling the police and using it as an arm to enforce their will, control the population or steal property will see reform as a threat. So will those who have used the courts to insure their economic or political dominance. Therefore, the SRSG must publicly support those working on rule of law matters. If successful, reforming the courts and police, holding all government officials accountable, and giving the formerly excluded a voice in how they are governed will constitute a major transformation in post-conflict states like Timor Leste, Sierra Leone, Burundi, Afghanistan, Haiti, Rwanda, Cambodia, the DRC and other countries where there are on-going peace operations. Too often those working on rule of law issues have been seen and treated as mere technicians and the full political impact of their work has not been understood or recognized, with grave consequences for both the UN and for the population it is trying to help.
80. **Seventh**, enhancing access to justice to people historically marginalized and left unprotected by the law should be a first order priority. The lower courts should not be overlooked at the expense of the higher profile cases and tribunals. Most people's contacts with the judiciary are at the lowest level courts and it is here that they must see that changes are occurring, and quickly. Also, judicial reform should immediately address creating greater transparency and accountability in public administration (vehicle registration, building permits, trash removal, public health inspectors, banking regulations, tax collection) since even more people have contact with these agencies and their past histories of discriminatory practices and corruption. Any continuing bad practices by these agencies can quickly deepen “lawlessness” and the reality/perception that things are out of control or have not changed. In Kosovo, for example, the UN and KFOR’s failure to enforce traffic laws and building regulations created a widespread fear that the situation was out of control. Hard rains in Haiti killed more people in 2004 than the military did in three years; failure to enforce building and environmental regulations meant that thousands died and the state bears some responsibility for their deaths.

¹⁶ A. Rausch, “Police Reform in South Africa,” in **Constructing Justice and Security after War**, edited by Charles Call (forthcoming from the U.S. Institute of Peace 2005)

81. In fact, if you ask people in Sierra Leone and Afghanistan, just to take two examples, they will tell you that the number one problem they face is widespread and systematic corruption. Police, judges, prison guards, court clerks, bureaucrats in virtually every ministry who dole out permits, documents, ID cards or whatever, are on the take. Often their salaries are abysmally low and it is “understood” that this is a way for them to supplement their meager pay. But the damage this does to the rule of law ethos is enormous.
82. Creating the capacity among citizens to “demand” justice, accountability, and performance from the range of public servants working in the rule of law arena should be a major objective of all judicial reform. Nurturing a free and independent media also reinforces the local capacity to demand ethical, rights-respecting governance and greater accountability. Nothing gets government’s attention more quickly than adverse or positive local press coverage.
83. Whether it stems from individuals, neighbourhood organizations, NGOs or quasi-state institutions like National Human Rights Commissions or Ombuds offices, people demanding that the police, prosecutors, judiciary and penal authorities fulfil their responsibilities while upholding respect for human rights is the best guarantee of sustaining the rule of law long after the international community leaves. A by-product of the international community’s judicial reform efforts in Guatemala is the growth of an increasingly savvy network of NGOs who monitor, criticize and propose solutions to problems. Similar groups have sprung up in Bosnia, Cambodia, Haiti, Sierra Leone and Burundi; their ability to advocate and pressure for deep-rooted change is an important legacy of the international community’s efforts. Local research groups in Guatemala gathered data and proposed creative solutions to the crime wave that followed the peace accords. A group in Haiti, the National Coalition for Haitian Rights, proved its impartiality by receiving death threats from both the pro- and anti-Aristide factions in 2003-4. One should never underestimate, however, the heavy legacy of authoritarianism in so many of the post-conflict countries.
84. **Eighth**, creating greater accountability and ending impunity must be priorities. Accountability mechanisms, internal and/or external, are vital to any rule of law effort. For the courts, judicial inspection units or internal disciplinary bodies must have adequate resources and total independence; judicial misbehaviour must be punished quickly and fairly, otherwise everyone will lose faith in the enterprise, concluding quite reasonably that nothing has really changed. Judges, prosecutors and lawyers in general must be held to the highest standards of professional conduct and integrity.
85. Police internal and external accountability mechanisms are likewise a first order priority. Effective, transparent and fair accountability mechanisms, both internal and external, will help insure police discipline and secure public trust. This is one of the most important aspects of improving police respect for human rights. A major problem in many countries has been police impunity. The police literally got away with murder, torture, rape and extortion. Any misbehaviour by the new police will have devastating impacts on reform. The population will see that the new police are just like the old, not worthy of their trust or support, and a dangerous dynamic will develop quickly. An energetic Inspector General of the new Haitian National Police in 1994-5 created trust with the population for a while, disciplining, suspending and even handing over for prosecution misbehaving and abusive police officers. This was literally revolutionary in Haiti and sent a clear signal to both the police and the population: impunity is over; you can lose your job and even go to jail if you violate the law or police code of ethics.
86. In addition, Security Council resolutions or the peace operation’s terms of reference should include a monitoring mechanism so that the UN can track any progress in the administration of justice, law enforcement and related rule of law activities. Measures or benchmarks for the judiciary and police, for example, should include ethnic, racial and gender diversity of key staff,

financial resources (percentage of the national budget dedicated to the courts), objective appointment and promotion criteria, transparency in decision-making, accountability and applicability of professional codes of ethics and protections from external interference.

87. **Ninth**, successful rule of law reform hinges on institutional development of what have heretofore been dysfunctional, corrupt, bloated and distinctly user-unfriendly institutions riven by nepotism and complete lack of accountability and transparency. All international efforts must devote much more attention and resources to issues like recruitment, career development, transparency in administration, budgeting, oversight, planning and procurement. Too often, training is the only intervention offered by the internationals. While training is important, programs designed to strengthen the capacity of government institutions to function properly are absent. It is pointless to train officers whether in the police, the courts or the prisons and then send them back into dysfunctional, corrupt and unaccountable organizations. This not only wastes time, money and effort but breeds cynicism.
88. Promotion based on merit, after carefully reviewing an officer's or judge's performance, evaluations, record of any complaints by citizens, would be revolutionary in many police forces or judiciaries in crisis and post-conflict countries. Successful police or judicial reform is every bit as much about personnel management, career paths, and transparent disciplinary procedures as it is about human rights training and awareness campaigns or about improved crime-fighting equipment or computerised case management systems. Yet the former set of issues has often been overlooked at the expense of the latter. The UN must recognize the broader governance challenges inherent in judicial reform. These institutions do not operate in a vacuum, and it is often a national political ethos and system of incentives and punishments that need reforming.
89. Any reformed judiciary or police force will need help in strategic planning- how to budget, allocate resources, anticipate training and deployment needs, identify specialized needs (forensics, crime lab, domestic violence intervention and counselling, tackling organized crime, trafficking in humans, drugs etc.). Reform teams should include planning specialists and experts in administration, management, personnel and finance. These areas, along with logistics and infrastructure, are pivotal to success.
90. The police, courts, prisons, parliament and other rule of law entities should be seen as institutions with responsibilities to all branches of government and the general public, and not merely as a group of law enforcement officials, judges, prosecutors or prison guards needing enlightenment on human rights and gender issues. Tools developed for other areas such as diagnostics of what is wrong with the institution, sound data-gathering and analysis, merit-based performance evaluations, measures to assess impact of programs, leadership development, sound management practices and budgetary oversight are as important to rule of law reform as are initiatives to improve customs regulations, tax collection or other public services that the UN, World Bank or IMF typically supports in their various "good governance projects." Judicial reform deserves no less rigor or strict accountability for producing measurable improvement.