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THE PROMOTION AND THE CONTRIBUTION OF NON-GOVERNMENTAL ORGANIZATIONS OF THR RULE OF LAW IN POST CONFLICT COUNTRIES

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Contents

List of Abbreviations

ABA ROLI	*American Bar Association Rule of Law Initiative*
AI	*Amnesty International*
BRAC	*Bangladesh Rural Advancement Commission*
CBO	*Community Based Organization*
CBO	*Community Based Organization*
CCDP	*Center on Conflict Development and Peacebuilding*
CICC	*Coalition for the International Criminal Court*
CIPAF	*Centro de Investigacion para la Accion Femminina*
CJIL	*Center for Justice and International Law*
COP	*Community Oriented Policing*
CSO	*Civil Society Organization*
DDR	*Disarmament Demobilization and Reintegration*
DFID	*Department for International Development*
DPKO	*Department of Peacekeeping Operations*
DRC	*Democratic Republic of Congo*
ECHR	*European Commission for Human Rights*
ECOSOC	*Economic and Social Committee*
EU	*European Union*
FEWER	*Forum for Early Warning and Early Response*
FOIA	*Freedom of Information Act*
FRY	*Former Republic of Yugoslavia*
HRINGO	*Human Rights International Non-Governmental Organizations*
HRNGO	*Human Rights National Non-Governmental Organizations*
HRW	*Human Rights Watch*
IAP	*International Association Prosecutor*
IBA	*International Bar Association*
ICC	*International Criminal Court*
ICJ	*International Court of Justice*

ICRC	*International Committee of Red Cross*
ICTJ	*International Consortium for Transitional Justice*
ICTR	*International Criminal Court of Rwanda*
ICTY	*International Criminal Court for Yugoslavia*
IDEA	*Institute of Democracy and Electoral Assistance*
IGO	*Intergovernmental Organization*
IHRLG	*International Human Rights Law Group*
ILAC	*International Legal Assistance Consortium*
ISS	*Institute of Security Studies*
J4P	*Justice for the Poor*
JRI	*Judicial Reform Index*
JSMP	*Judicial Justice Monitoring Program*
JSR	*Justice Sector Reform*
KFOR	*Kosovo Force*
NCHR	*National Coalition for Haitian Rights*
NGO	*Non-Governmental Organization*
NPWJ	*No Peace Without Justice*
NSA	*Non-State Actors*
NSJS	*Non-State Justice Systems*
OECD	*Organization for Economic Cooperation Development*
OHCHR	*Office of the High Commissioner for Human Rights*
OJI	*Open Justice Initiative*
OSCE	*Organization for Security and Cooperation in Europe*
OTP	*Office of the Prosecutor*
PAF	*Poverty Action Fund*
PHR	*Physicians for Human Rights*
RoL	*Rule of Law*
SCSL	*Special Court of Sierra Leone*
SEWA	*Self-Employed Women's Association*
SSR	*Security Sector Reform*
SYNAL	*Systeme National d' Assistance Legal*
TJ	*Transitional Justice*

TRC	*Truth and Reconciliation Commission*
UDN	*Uganda Dept Network*
UN	*United Nations*
UNDP	*United Nations Development Program*
UNMIK	*United Nations Mission in Kosovo*
USAID	*United States Agency for International Development*
WANEP	*West African Network for Peacebuilding*
WIGJ	*Women's Initiatives for Gender Justice*

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Introduction

War is a way of life – in some parts of the world it is an on-going struggle with no end in sight[1]. Years of perpetual conflict have adversely affected the way in which political, socio-economic, and cultural components of society have developed. Indeed, armed conflict negatively affects all aspects of society: not only does it destroy buildings and societies, but it also leaves surviving individuals and communities with deep wounds that can last a lifetime. Many efforts have been employed around the world to build peace following a conflict. Some interventions have proven quite successful, while others have not. Since Un peacekeeping and associated forms of international intervention in conflict zones took on a new significance at the end of the Cold War , nongovernmental organizations(NGOs) have also emerged as a vital part of the mechanism of intervention , both in conjunction with traditional forms of peacekeeping , but more importantly in longer term prevention and peacebuilding tasks .These roles are intended to contribute to the construction of neoliberal and democratic entities in conflict zones , but they also raise a series of questions about the nature of NGOs roles , objectives and relationship with states and other organizations. Yet, NGOs have become crucial in the social and political and economic issue areas that constitute international –social conflict, particularly in the regeneration of torn and divided societies, restoring infrastructure and providing basic social goods. Indeed it has often been suggested that NGOs fulfil vital roles that the states and their agencies cannot take on. This occurs both in terms of direct involvement with projects in these issue areas but also in their monitoring and advocacy roles as many of the following essay illustrates. Civil society involvement is one of the most important factors in determining whether a post-conflict peacebuilding initiative will be successful. Efforts put forth by local government officials or the international community likely will be unsuccessful in post-conflict peacebuilding absent civil involvement, and without a societal belief that these measures are beneficial. Further, an involved civil society is important to hold governments accountable for their actions, strengthen public policies, and develop the community following a conflict[2]. That is why in the last five or ten years, the concept of "rule of law" has become something of a buzzword in the international legal scholarship and practice. The concept became a prism through which many more general issues are looked at. The promotion of the rule of law notably features high on the UN Agenda. The 2005 World Summit Outcome Document identifies "Human rights and the rule of law" as one of the five issues which deserve closer attention in the UN ambit.

In the present essay, we will be discussing the role of the Non-Governmental Organizations in the promotion of the rule of law in the international and domestic level in post conflict countries. In Chapter 1, I will analyze the notion of the rule of law, the rationales of the RoL in general, and finally the evolution of the Rule of Law reform

[1] Derek Summerfield, The Impact of War and Atrocity on Civilian Populations: Basic Principles for NGO Interventions and a Critique of Psychosocial Trauma Projects, Overseas Development Institute, 20 (1996),

[2] Thania Paffenholz & Christoph Spurk, Civil Society, Civic Engagement, and Peacebuilding, 36 Soc.Dev. Papers: Conflict Prevention & Reconstruction 1, 1 (2006)

and the actors who promote this meaning. In the second part of the first chapter we will understand more in depth the notion of the rule of law, specifically in a post-conflict environment, and I will analyze in details each rationale of the RoL.

In Chapter 2, i will demonstrate the role of the Non-Governmental Organizations in a post conflict environment and their contribution in the international and domestic level in conflict prevention and conflict resolution. Finally, I will discuss some critic issues regarding the Ngos in the post-conflict field, such as cooperation with the military force and coordination with other units. Last but not least, I mention the accountability issue regarding the Ngos and their new role in the international level. In Chapter 3, i analyze the role of the Ngos in relationship with the four rationales of the RoL in details, and therefore demonstrate their role by providing examples of Ngos in the field of post-conflict environments.

CHAPTER 1: THE NOTION OF THE RULE OF LAW

Part A: Rule of Law, Definition and Cross-Cutting Themes

1.1 Definition

Aristotle said more than two thousand years ago, "The rule of law is better than that of any individual."

The notion of the "rule of law" stems from many traditions and continents and is intertwined with the evolution of the history of law itself. The Code of Hammourabi[3], promulgated by the King of Babylon around 1760 BC, is one of the first examples of the codification of law, presented to the public and applying to the acts of the ruler. In the Arab world, a rich tradition of Islamic law embraced the notion of the supremacy of law. Core principles of holding government authority to account and placing the wishes of the populace before the rulers, can be found amid the main moral and philosophical traditions across the Asian continent, including in Confucianism. In the Anglo-American context, the Magna Carta of 1215[4] was a seminal document, emphasizing the importance of the independence of the judiciary and the role of judicial process as fundamental characteristics of the rule of law. In continental Europe notions of rule of law focused on the nature of the State, particularly on the role of constitutionalism.

Recent attempts to formalize its meaning have drawn on this rich history of diverse understandings. The modern conception of the rule of law has developed as a concept distinct from the "rule of man[5]", involving a system of governance based on non-arbitrary rules as opposed to one based on the power and whim of an absolute ruler. The concept of rule of law is deeply linked to the principle of justice, involving an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Long before the United Nations, States were working towards a rule of justice in international life with a view to establishing an international community based on law.

The most commonly quoted definition of the rule of law is that proposed by British scholar Albert Venn Dicey[6] at the end of the nineteenth century, according to which the rule of law articulates around three fundamental principles[7]:

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[3] Jeremy Waldron , The Law, Theory and Practice in British Politics series , Routledge (2006)
[4] Magna Carta 1215, available at http://www.constitution.org/eng/magnacar.htm
[5] Globalisation and the rule of law , edited by Spencer Zifcak, Routledge/Challenges of Globalisations , Griffith University , Australia
[6] A. V. DICEY, Introduction to the Study of the Law of the Constitution, London, Macmillan, 1885.
[7] Dicey's conception of the rule of law is essentially formal, and may be characterized as "thin". A more recent line of scholarship has advocated for "thicker" conceptions of the rule of law, arguing that it could not be disconnected from certain substantial elements, such as a core of fundamental rights, or a democratic environment. In the face of this inflation, certain authors have

- "the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power";

- "equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts";

- "the law of the constitution is a consequence of the rights of individuals as defined and enforced by the courts".

Today, the concept of the rule of law is embedded in the Charter of the United Nations. In its Preamble, one of the aims of the UN is "*to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained"*. A primary purpose of the Organization is *"to maintain international peace and security… and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."* The Universal Declaration of Human Rights of 1948, the historic international recognition that all human beings have fundamental rights and freedoms, recognizes that "*… it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law…"*

For the UN, the Secretary-General in its report[8], defines the rule of law as *"a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency. "*

This is a good "black letter" definition of the rule of law because it covers the principal elements that lawyers expect in terms of how the law is created and applied. However, an important element is missing from any such definition .As Gerhard Casper puts it, "*the rule of law is not a recipe for detailed institutional design .It is an interconnected cluster of values"*[9]. Given these various approaches,*" the concept of the rule of law is a fairly empty vessel whose content depending on legal cultures and historical conditions , can differ considerably ,and therefore can give rise to vast disagreement and indeed conflicts"* [10] .

warned of the dangers of turning the concept of rule of law into a full-fledged social philosophy, thereby diluting the heuristic value of the concept.

[8] UN Secretary-General, The rule of law and transitional justice in conflict and post-conflict societies, Report to the Security Council, 23 August 2004, UN Doc. S/2004/616, par. 6, p. 4

[9] Gerhard Casper, RuLe of Law? Whose Law? Keynote address 2003CEELI Award Ceremony and Luncheon , San Francisco , International Encyclopedia of the social and behavioral Sciences , available on http://cddrl.stanford.edu/publications/rule_of_law_whose_law/

[10] Casper, supra nota 7

Thus while countries have different domestic legal systems, there is a widespread agreement on the essential elements of the rule of law as distilled in international human rights law. This include basis due process rights – such as the right to counsel, the right of an accused person to know the charges against him/her, and the presumption of innocence – as well as many other civil rights, including the freedom of religion, freedom of expression .In sum, there exists a set of rules –international human rights norms- that establish the minimum of what must be in place before a state or society can move towards the rule of law.

1.2 The nexus between national and international rule of law

The rule of law at the national level and the rule of law at the international level are inextricably connected. The international rule of law depends on the national rule of law and vice versa. Moreover, it is increasingly difficult and pointless to identify what is national and international. A holistic approach is needed to move beyond the slow progress of the past decades.

The principle of the rule of law applies at the national and international levels. At the national level, it supports a rule of law framework that includes a Constitution or its equivalent, as the highest law of the land; a clear and consistent legal framework, and implementation thereof; strong institutions of justice, governance, security and human rights that are well structured, financed, trained and equipped; transitional justice processes and mechanisms; and a public and civil society that contributes to strengthening the rule of law and holding public officials and institutions accountable. These are the norms, policies, institutions and processes that form the core of a society in which individuals feel safe and secure, where legal protection is provided for rights and entitlements, and disputes are settled peacefully and effective redress is available for harm suffered, and where all who violate the law, including the State itself, are held to account.

At the international level, the principle of the rule of law embedded in the Charter of the United Nations encompasses elements relevant to the conduct of State to State relations[11]. It recognizes the inherent link between the UN and the international rule of law. Its preamble emphasizes "*the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations.*[12]*"* Drawn from existing commitments in international law, the core values and principles of the UN include respect for the Charter and international law; respect for the sovereign equality of States and the principle of non-use or threat of use of force; the fulfillment in good faith of international obligations; the need to resolve disputes by peaceful means;

[11] The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations was adopted by the General Assembly on 24 October 1970 (resolution 26/25 (XXV)), during a commemorative session to celebrate the twenty-fifth anniversary of the United Nations (A/PV.1883).

[12] Available at https://treaties.un.org/doc/publication/ctc/uncharter.pdf

respect for and protection of human rights and fundamental freedoms; recognition that protection from genocide, crimes against humanity, ethnic cleansing and war crimes is not only a responsibility owed by a State to its population, but a responsibility of the international community, the equal rights and self-determination of peoples; and the recognition that peace and security, development, human rights, the rule of law and democracy are interlinked and mutually reinforcing. Appropriate rules of international law apply to the Organization as they do to States.

Rule of law promotion faces a number of key challenges, relating to the nexus between the national and the international level. One challenge is that without a strong rule of law at the national level, attempts to strengthen the rule of law at the international level are significantly hampered. As a result, all of the familiar problems of promoting the rule of law domestically also hamper the rule of law internationally. In particular, attempts to promote the rule of law at the national level should deal with a variety of forms of lack of support or even resistance from the recipients of rule of law promotion. Rule of law promotion still can be criticized for reliance on one-size-fits-all solutions that fails to distinguish between post-conflict situations and different stages of development.

A second challenge is that as international law pervades more deeply into the domestic legal order, international law should conform to rule of law requirements that we tend to pose for domestic law. International organizations should meet the standards that they prescribe for others, if only because the failure to do so undermines the credibility of its external rule of law policies and the willingness of norm-addressees to accept the prescriptions and ambitions of the UN.

A third challenge is one of agency: both the promotion of the rule of law at the national level and at the international level, and at their interface, involves a wide variety of actors (states, institutions within states, regional organizations, international courts, the UN etc.). Despite the work done in the UN, mainstreaming and coordination remains a key challenge. In the past years, several international institutions have increasingly emphasized the need for a strong domestic rule of law that entails opening of national legal orders for the application of international law. Notable examples are the European Court of Human Rights and the Inter American Court of Human Rights. In this way, not only the international rule of law is strengthened, but the national rule of law as well.

1.3 The Rationales and the Evolution of Rule of Law Reform

a. The rationales of rule of law

There are at least four rationales that have been put forward by different agencies[13] as justifications for rule of law reform in fragile, post-conflict or underdeveloped states.

(1) Economic development: the argument that rule of law is essential to economic development focuses on the need for predictable and enforceable laws for contract enforcement and foreign investment.

(2) Democratization: the protection of human rights and mechanisms holding government accountable are essential in liberal democracy, and inherent in rule of law.

(3) Poverty reduction: rule of law reform is considered essential to poverty reduction as the poor suffer more from crime, the impact of crime on their livelihood is greater, and they are less able to access the justice systems.

(4) Peacebuilding: transitional justice, creation of courts to resolve conflict, and writing constitutions and legislation to remove sources of conflict and injustice are

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13 Various organizations are involved in promoting the rule of law.

a. International Commission of Jurists: In 1959, an international gathering of over 185 judges, lawyers, and law professors from 53 countries, meeting in New Delhi and speaking as the International Commission of Jurists, made a declaration as to the fundamental principle of the rule of law. This was the Declaration of Delhi. They declared that the rule of law implies certain rights and freedoms, that it implies an independent judiciary, and that it implies social, economic and cultural conditions conducive to human dignity. The Declaration of Delhi did not, however, suggest that the rule of law requires legislative power to be subject to judicial review.

b. United Nations: The Secretary-General of the United Nations defines the rule of law as: ”a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency”.

The General Assembly has considered rule of law as an agenda item since 1992, with renewed interest since 2006 and has adopted resolutions at its last three sessions. The Security Council has held a number of thematic debates on the rule of law, and adopted resolutions emphasizing the importance of these issues in the context of women, peace and security, children in armed conflict, and the protection of civilians in armed conflict. The Peacebuilding Commission has also regularly addressed rule of law issues with respect to countries on its agenda. The Vienna Declaration and Program of Action also requires the rule of law be included in human rights education.

c. International Bar Association: The Council of the International Bar Association passed a resolution in 2009 endorsing a substantive or "thick" definition of the rule of law:
“An independent, impartial judiciary; the presumption of innocence; the right to a fair and public trial without undue delay; a rational and proportionate approach to punishment; a strong and independent legal profession; strict protection of confidential communications between lawyer and client; equality of all before the law; these are all fundamental principles of the Rule of Law. Accordingly, arbitrary arrests; secret trials; indefinite detention without trial; cruel or degrading treatment or punishment; intimidation or corruption in the electoral process, are all unacceptable. The Rule of Law is the foundation of a civilized society. It establishes a transparent process accessible and equal to all. It ensures adherence to principles that both liberate and protect. The IBA calls upon all countries to respect these fundamental principles. It also calls upon its members to speak out in support of the Rule of Law within their respective communities.”

d. World Justice Project: As used by the World Justice Project, a non-profit organization committed to advancing the rule of law around the world, the rule of law refers to a rules-based system in which the following four universal principles are upheld:
1. The government and its officials and agents are accountable under the law;
2. The laws are clear, publicized, stable, fair, and protect fundamental rights, including the security of persons and property;
3. The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient;
4. Access to justice is provided by competent, independent, and ethical adjudicators, attorneys or representatives, and judicial officers who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.

The World Justice Project has developed an Index to measure the extent to which countries adhere to the rule of law in practice. The WJP Rule of Law Index is composed of 9 factors and 52 sub-factors, and covers a variety of dimensions of the rule of law —such as whether government officials are accountable under the law, and whether legal institutions protect fundamental rights and allow ordinary people access to justice

increasingly considered essential aspects of peacebuilding in fragile and post-conflict states.

Two distinctions should be drawn when defining rule of law reform: the first is between end-goals, programmatic strategies and institutional goals; the second is a distinction between the different end-goals.

As the term suggests in institutional goals, this definition emphasizes the formal institutional attributes that are thought to embody the rule of law. This institutional approach is most widespread among practitioners and policymakers. "Modern rule-of-law practitioners still define the rule of law as a state that contains these three primary institutions:

- Laws themselves, which are publicly known and relatively settled;
- A judiciary schooled in legal reasoning, knowledgeable about the law, reasonably efficient, and independent of political manipulation and corruption; and
- A force able to enforce laws, execute judgments, and maintain public peace and safety: usually police, bailiffs, and other law enforcement bodies"[14].

This lack of specificity in defining the goals undermines rigorous analysis of the achievements of the programmatic strategies since the institutional end-goals may be achieved but this may not bring about the social goods that are the real justification for the interventions[15].

Second, the end-goals or social goods incorporated within the term rule of law fall into different categories. Kleinfeld Belton's definition, which breaks the concept down into five elements, is a helpful starting point: The rule of law is not a single, unified good but is composed of five separate, socially desirable goods, or ends: (1) a government bound by law (2) equality before the law (3) law and order (4) predictable and efficient rulings, and (5) human rights[16].

Although there are other ways of conceptualizing the categories of end-goals, this approach focuses on the outcome sought to be achieved, and allows strategic analysis of how the different elements interact, whether they are reinforcing and must advance at the same time, or whether some ought to be prioritized, and whether, in fact, some will involve conflicting reforms .

Finally, rule of law must be distinguished from rule by law. In many Asian countries the focus is on predictable and enforceable law, but the government does not consider itself subject to the law. This approach is best termed rule by law, rather than rule of law, as the latter implies that the sovereign or government is also bound by law.[17]

[14] Kleinfeld Belton, Rachel. 2005. "Competing Definitions of the Rule of Law: Implications for Practitioners." Democracy and Rule of Law Project, Carnegie Papers, Rule of Law Series.
[15] Id

[16] Carothers, Thomas, ed. 2006. Promoting the Rule of Law Abroad: In Search of Knowledge. Carnegie Endowment for International Peace.
[17] Id

Rule by law requires the use of legal rules in order to assure the uniformity and regularity of an existing legal system. Thus, even an authoritarian legal system, or one which does not protect human rights, will qualify as ruling by law if it uses and enforces legal rules routinely through the use of officials and some form of a judiciary, as long as it achieves a relative degree of certainty and predictability. In conclusion Rule by law means that the law is an instrument of government and that the government is above the law (as exemplified by the Nazi and South African apartheid regimes which were "ruled by law"). By contrast, the rule of law means that everyone in society, including the government, is bound by law.

b. The evolution of rule of law reform

Rule of law reform programming has progressed in waves. The first rule of law programming was largely driven by USAID[18] and took place in Latin America both in post-conflict (e.g., El Salvador and Guatemala) and post-dictatorial contexts. Its focus was largely on human rights monitoring, judicial training, legislative reform and physical infrastructure projects. Programming then extended to the rebuilding of the post-communist states (some of which were emerging from conflict such as Yugoslavia, the FRY, Croatia, Bosnia-Herzegovina or Albania). In these countries the economic aspects were a major target, with extensive redrafting of commercial, regulatory and banking legislation to meet capitalist market principles, creation of legislative human rights protections, as well as judicial training and emphasis on improved legal education. USAID again was a major actor, as was the American Bar Association[19], and the Open Society[20] as well as European regional and bilateral involvement. Rule of law reform programs in Africa and Asia have followed more slowly, and in more of an ad hoc fashion, ranging from anti-corruption and good governance drives, to legislative reform, judicial training and legal education reform or support to parliaments.

At the same time, since 2000 there has been increasing focus on the role of rule of law reform in UN peacebuilding. In 1993, the General Assembly first recognized that the rule of law is an essential factor in the protection of human rights. In 2000, the Brahimi report[21] first identified the need for a shift in the use of police and rule of law

[18] The United States Agency for International Development (USAID) is the United States federal government agency primarily responsible for administering civilian foreign aid. USAID seeks to "extend a helping hand to those people overseas struggling to make a better life, recover from a disaster or striving to live in a free and democratic country".

[19]The American Bar Association (ABA), founded August 21, 1878,[1] is a voluntary bar association of lawyers and law students, which is not specific to any jurisdiction in the United States. The ABA's most important stated activities are the setting of academic standards for law schools, and the formulation of model ethical codes related to the legal profession

[20] The network of Open Society Foundations (OSF), formerly the Open Society Institute (OSI) until 2011, is a grantmaking operation founded by George Soros, aimed to shape public policy to promote democratic governance, human rights, and economic, legal, and social reform. On a local level, OSF implements a range of initiatives to support the rule of law, education, public health, and independent media. At the same time, OSF works to build alliances across borders and continents on issues such as combating corruption and rights abuses

[21] The Report of the Panel on United Nations Peace Operations (2000) is commonly called the Brahimi Report, named for the chairman of the commission that produced it, Lakhdar Brahimi. UN Secretary-General Kofi Annan had convened the Panel on March 7, 2000, ahead of the upcoming Millennium Summit, and had tasked it with making a thorough review of United Nations peace and security activities and recommending improvements. The report was published on August 17, 2000. In identical letters

elements in peace operations. In 2004, the Secretary General published the first report on rule of law and transitional justice in conflict and post-conflict societies, which responded to and formalized the growing conviction that rule of law reform is fundamental to peacebuilding:

"Our experience in the past decade has demonstrated clearly that the consolidation of peace in the immediate post-conflict period, as well as the maintenance of peace in the long term, cannot be achieved unless the population is confident that redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice. At the same time, the heightened vulnerability of minorities, women, children, prisoners and detainees, displaced persons, refugees and others, which is evident in all conflict and post-conflict situations, brings an element of urgency to the imperative of restoration of the rule of law[22]".

A rule of law component has been placed within the UN DPKO[23] civilian police division and DPKO has incorporated rule of law programming into most of its recent peacebuilding missions, including Kosovo, East Timor, Haiti, Liberia, Afghanistan, Cote d'Ivoire, Burundi, the Democratic Republic of Congo, and Sudan. For example, the 2004 United Nations Stabilization Mission in Haiti provides that the Mission will monitor and report *"on the human rights situation, re-establish the prison system and investigate violations of human rights and humanitarian law, help rebuild, reform and restructure the Haitian National Police, including vetting and certifying that its personnel have not committed grave human rights violations, develop a "strategy for reform and institutional strengthening of the judiciary" and "assist with the restoration and maintenance of the rule of law, public safety and public order."* The 2003 Liberia mission was even mandated to develop a strategy to consolidate government institutions including a national legal framework and judicial and penal institutions. The focus of this programming has been on law and order, especially the police and penal systems, and some judicial capacity building.

At the same time, the World Bank has increasingly highlighted that effective, efficient and fair legal and judicial systems are essential to national economic and social development .Since the late 1990s, the World Bank has developed projects in most regions of the world covering aspects of economic and commercial legislative reform, judicial training, court modernization and land administration[24].The World Bank has also published a "World Wide Governance Indicator", which presents the updated

dated 21 August 2000 transmitting the report to the presidents of the UN General Assembly and the UN Security Council, Annan called the Panel's recommendations "essential to make the United Nations truly credible as a force for peace."

[22] Supra nota 7

[23] The Department of Peacekeeping Operations (DPKO) is a department of the United Nations which is charged with the planning, preparation, management and direction of UN peacekeeping operations.

[24] According to the report, Initiatives in Legal and Judicial Reform 2004, there have been some 600 Bank-financed projects related to legal and judicial reform across regions (e.g., Mongolia, Guatemala, Togo, Zambia, Cambodia), ranging from credit reform, land administration, judicial training, court modernization programs, to review of economic and commercial legislation. As of 2004 there were 16 active projects in four regions, and seven more projects coming up. Seven projects had been completed.

aggregate governance research indicators for 209 countries for 1996–2004, for six dimensions of governance: Voice and Accountability, Political Stability and Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law, and Control of Corruption[25.]

The EU has also put emphasis on law and order in its crisis management capability. In June 2004 it initiated the first EU rule of law crisis management operation in Georgia, followed by missions in Africa and the Middle East. The OSCE[26] also coordinated rule of law reform activities in the Former Yugoslavia, Georgia, Azerbaijan, Armenia, Moldova and Chechnya and has worked on rule of law issues in Albania and Bosnia Herzegovina. The OSCE Office for Democratic Institutions and Human Rights has been active throughout the OSCE area in the fields of election observation, democratic development, human rights, tolerance and non-discrimination, and rule of law. The High Commissioner on National Minorities has also been active in this field, particularly with respect to reforms aiming to contribute to the resolution of ethnic tensions.

1.4 Actors of Rule of Law

The area of rule of law reform has been characterized by a multiplicity of actors and largely uncoordinated projects. The main actors can be divided into those that primarily fund and those that primarily implement – although there is some cross-over. In the first category, the principal actors include UNDP[27], USAID[28], DFID[29,] the regional banks and the World Bank, United Nations Peacekeeping Operations (UNDPKO) and the Soros Foundation[30]. Key implementers include the Asia Foundation, the American Bar Association[31], and the OSCE through its Office for Democratic Institutions and Human Rights and the High Commissioner on National Minorities. Nonetheless, these large entities represent only a portion of the rule of law programming that takes place in a country.

In the pursuit of global peace and security, protection of human rights and poverty reduction, the rule of law lies also at the heart of the United Nations' mission. Activities that strengthen and enhance the rule of law at the national and international

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26 The Organization for Security and Co-operation in Europe (OSCE) is the world's largest security-oriented intergovernmental organization. Its mandate includes issues such as arms control and the promotion of human rights, freedom of the press and fair elections.

27 The United Nations Development Program (UNDP) is the United Nations' global development network. UNDP operates in 177 countries, working with nations on their own solutions to global and national development challenges. As they develop local capacity, they draw on the people of UNDP and its wide range of partners.

28 Supra nota 34.

29 The Department for International Development (DFID) is a United Kingdom government department with a Cabinet Minister in charge. DFID's main program areas of work are Education, Health, Social Services, Water Supply and Sanitation, Government and Civil Society, Economic Sector (including Infrastructure, Production Sectors and Developing Planning), Environment Protection, Research, and Humanitarian Assistance.

30 A Soros Foundation is one of a network of national foundations created by the international financier and philanthropist, George Soros, mostly in Central and Eastern Europe. They fund volunteer socio-political activity and have been coordinated since early 1994 by a management team called the Open Society Institute

31 Supra nota 35.

levels are integral to fulfilling the purposes of the Organization. As the responsibilities and the demands on the Organization have continued to grow, UN engagement in rule of law has expanded in numerous ways over the years and today includes a wide range of actors. Established in 2006, the Rule of Law Coordination and Resource Group chaired by the Deputy Secretary-General and supported by the Rule of Law Unit, is responsible for the overall coordination of the UN's rule of law work[32].

Many more UN entities and specialized agencies undertake rule of law activities of some kind at the national and/or international level. The Organization includes judicial mechanisms, such as the International Court of Justice and the ad hoc criminal tribunals and hybrid tribunals, and non-judicial mechanisms such as cross-border commissions and commissions of inquiry. Important partners to the UN in its rule of law work include Member States, both those who receive assistance and those who provide resources for assistance as bilateral donors; other international and regional organizations; and non-governmental organizations, including academic and research institutes, legal specialists, bar associations, judges associations, law schools, former police officers, human rights organizations, humanitarian organizations, and a range of other more or less qualified private firms. In Chapter 2 of this essay, we will concentrate more on the definition of the civil society and Non-Governmental Organizations, as well as their role in the promotion of the Rule of Law in post-conflict states in Chapter 3.

[32] The Group is comprised of nineteen UN entities (for example the DESA , DPA , DPKO, OCHA, OHCHR, OLA, OSRSG for Children and Armed Conflict, OSRSG on Sexual Violence in Conflict , PBSO , UNDEF , UNDP, UNEP , UN Habitat, UNHCR, UNICEF, UNODC, UNOPS, UN Women, World Bank) each taking a lead in various aspects of the Organization's rule of law work.

Part B: Rule of Law in Post-Conflict Countries

1.B.1. What is "Post –Conflict"

Although there is growing focus on rule of law in post-conflict countries, there is little guidance on how to approach such rule of law reform, nor how the strategy adopted ought to differ from that in developing countries. Rule of law in conflict and post-conflict states is most likely to fall into the latter two categories of rule of law breakdown suggested by Mani[33] , namely: corrupt and dysfunctional, and devastated and non-functional. The third category she identifies: illegitimate but functional, is common in the developing context but rare in the post-conflict context.

The "post-conflict" situation is not as easy to define as it sounds. In big international wars, a formal surrender, a negotiated cessation of hostilities, and/or peace talks followed by a peace treaty mark possible "ends" to conflicts. But in the sort of intra-state wars it is not so simple. Hostilities do not normally end abruptly, after which there is complete peace. There may be an agreed "peace" but fighting often continues at a low level or sporadically, and frequently resumes after a short period.

Post-conflict states will present many of the features of fragile and underdeveloped states but to a more extreme degree, and with particularly acute peace and security, law and order, and transitional justice concerns. Key features of transitions from civil conflict include a devastated infrastructure, destroyed institutions, a lack of professional and bureaucratic capacity, an inflammatory and violent political culture, and a traumatized and highly divided society. In many cases the degree of capacity, physical infrastructure, and public trust in the government and its institutions will be dramatically lower than in developing countries[34]. Other common problems include a lack of political will, judicial independence, technical capacity, materials and finances, and government respect for human rights. In addition, in the post conflict context, a shadow or criminalized economy is likely to be entrenched and there is likely to be widespread access to small arms reflected in a high level of violence in the society. Given the lack of law and order, accountability and trust it is difficult to entrench major reform, and ultimately the reforms that are sustainable may be somewhat limited.

In this paper, we propose a more productive approach to conceptualizing the post-conflict scenario and to see it not as a period bounded by a single specific event, but as a process that involves the achievement of a range of peace milestones. Taking a process-oriented approach means that "post-conflict" countries should be seen as lying along a transition continuum (in which they sometimes move backwards), rather than placed in more or less arbitrary boxes, of being "in conflict" or "at peace."

[33] Mani, Rama. 2002. "Beyond Retribution: Seeking Justice in the Shadows of War." Edit. John Wiley and Sons Ltd.
[34] "Rule of Law in Post Conflict Countries, Operational Activities" .The World Bank, Social Development Papers/Conflict Prevention and Reconstruction .Paper No.37/October 2006.

We suggest the following peace milestones[35]:

- Cessation of hostilities and violence;
- Signing of political/peace agreements;
- Demobilization, disarmament and reintegration;
- Refugee repatriation;
- Establishing a functioning state;
- Achieving reconciliation and societal integration; and,
- Economic recovery.

Box1: Peace milestone and indicators of progress

Peace milestones	Possible indicators of progress
Cessation of hostilities and violence	Reduction in the number of conflict fatalities Reduction in the number of violent attacks Time passed since major fighting stopped
Signing of political/peace agreements	Signing of and adherence to ceasefire agreements Signing and implementation of a comprehensive political agreement which addresses the causes of the conflict Endorsement of peace/political agreement by all major factions and parties to the conflict
Demobilization, disarmament and reintegration	No. of weapons handed in No./proportion of combatants released from military duty and returned to civilian life No./proportion of combatants released from active duty and returned to barracks No. of military barracks closed Successfulness of reinsertion programs for ex-combatants

[35] Graham Brown, Arnim Langer & Frances Stewart, A typology of Post-Conflict Environments, Center for Research on Peace and Development. CRPD Working Paper No. 1, September 2011, University of Leuven, Belgium.

	Reduction in total number of active soldiers/combatants Spending cuts on military procurements
Refugee repatriation	No./proportion of displaced persons and refugees that have returned home voluntarily No. of displaced persons and refugees still living involuntarily in refugees centers within a conflict country or abroad
Establishing a functioning state	The extent to which impunity and lawlessness has been reduced The extent to which the rule of law is introduced and maintained The extent to which corruption has been reduced Tax revenue as a proportion of GDP
Achieving reconciliation and societal integration	Number of violent incidents between groups Perceptions of "others" via surveys Extent of trust (via surveys)
Economic recovery	Economic growth recovery Increased revenue mobilization Restoring of economic infrastructure

1.B.2. The Rationales of Rule of Law in Post-Conflict Countries

The discussion below explores the types of rule of law reform projects that have taken place in post conflict countries across the different agencies and players. It does not represent a menu of recommended projects, but could be used as a starting point in thinking through interrelated needs. The review is broken down into four different categories representing different social goods[36]:

• Human security and order;

• A system to resolve property and commercial disputes and the provision of basic economic regulation;

[36] Carlos Santiso, Promoting Democratic Governance and Preventing the Recurrence of Conflict: The Role of the United Nations Development Programme in Post-conflict Peace-Building, 34 J. Latin Am. Stud. 555, 557 (2002).

• Human rights and Law

• Governance and Democracy

1.B.2.1 Human Security and Order

The breakdown of law and order is one of the defining aspects of any conflict or post-conflict state. During the conflict years extreme armed violence dominates the political environment and criminal violence and theft become the norm as legal rules are not enforced. The post-conflict context is likely to involve a breakdown of the formal justice system, physical destruction of the criminal justice infrastructure, a weak or destroyed legal community, and the general perception that judges who have not been killed are weak or biased[37]. The police force is also likely to be prone to corruption or non-existent, and the prison system inadequate. There is also generally a lack of essential tools for legal or judicial work, including paper, legal texts and computers although this is a common problem in many low income developing countries.

Human security[38] is one of the defining aspects of any rule of law society. Protecting human security, mainly assuring the security of persons and property, is a fundamental function of the state. Not only does violence impose wounds on society, it also prevents the achievement of other aims, such as exercising fundamental human rights, and ensuring access to opportunities and justice. In extreme situations, violence might become the norm if legal rules are not enforced. Under the rule of law, the state must effectively prevent crime and violence of every sort, including political violence and vigilante justice. It encompasses three dimensions: absence of crime; absence of civil conflict, including terrorism and armed conflict; and absence of violence as a socially acceptable means to redress personal grievances.

We can see that the Security and Order rationale of the RoL, can be divided into: a. Security Sector Reform and Governance (SSR) and b. Community Policing.

a.Security sector reform (SSR)

The Security Sector Reform is a broad concept that covers a wide variety of activities associated with 'rebuilding,' 'reforming,' or 'transforming' a state's security sector under the framework of democratic governance. Despite the growing use of the term 'SSR' since 1990, agreement on the precise meaning of this concept is highly

[37] This problem was experienced in both Rwanda and Sierra Leone, making efforts to construct legal and judicial systems exceptionally difficult.

[38] I. Bellany, Towards a Theory of International Security, Political Studies, 29, no. 1 (1981): 102 . Bellany notes that *"Security [...] is a relative freedom from war, coupled with a relatively high expectation that defeat will not be a consequence of any war that should occur"*. S. Walt, The Renaissance of Security Studies, International Studies Quarterly, 35, no. 2 (1991): 212 Walt defines 'security studies' and by extension, the concept of security, as *"the study of the threat, use and control of military forces, especially of the specific policies that states adopt in order to prepare for, prevent, or engage in war"*. Overall, the unmodified term "security" covers a wide terrain. On one end of the spectrum, it can encompass the individual's perception of safety and freedom from threats or human security. At the other end of the spectrum, it can include the state of order in the international system which has been the primary pursuit of the United Nations.

contested, as the actors involved and the relationships among various actors differ from country to country and from context to context[39].

- SSR and rule of law

As Sean McFate points out, "Within the overall context of efforts to establish a safe and secure environment and the rule of law, programs aimed at reforming the security sector and the justice sector (JSR) are interdependent and buttress one another, especially in conflict countries. How-ever, they are not synonymous."[40] SSR and JSR generally overlap in the development of criminal justice institutions and personnel. Criminal justice systems require effective institutions, coupled with professional and accountable personnel. Likewise, the success of a justice reform program in SSR is benchmarked by the legitimacy of the laws and the fairness of the judiciary and penal institutions.

The rule of law determines the degree to which political and human rights are enjoyed equally. Within the scope of SSR activities, reform of police institutions is interdependent with the reform of courts and prisons. If one of these three institutions is weak or ineffective, the other two will be undermined.

RoL is an important element in ensuring people's safety and security. Particularly in its thicker versions, because as discussed earlier RoL contributes to the integrity and security of the person providing individuals with legal instruments and judicial mechanisms to protect themselves against the abuse of power[41]. As part of their design RoL measures constitute an important non-violent conflict resolution mechanism that when efficient, can prevent a return to violence as a means of conflict resolution. Moreover, the RoL is not only a precondition for the lasting success of international peacebuilding initiatives in general but also its own success depends on the achievements of other RoL dimensions[42].

b.Community Policing [43]

Human rights violations committed by police officials and non-observance of the rule of law have contributed to reinforcing the perception of mistrust amongst some local communities. Effective police reforms need to be linked to other criminal justice

[39] Dylan Hendrickson and Andrzej Karkoszka, "Security Sector Reform and Donor Policies," in Security Sector Reform and Post-Conflict Peacebuilding, ed. Albrecht Schnabel and Hans-Georg Ehrhart (Tokyo: United Nations University Press, 2005), 22-23.

[40] Sean McFate, Securing the Future: A Primer on Security Sector Reform in Conflict Countries (Washington, DC: United States Institute of Peace, 2008), 3.

[41] Swiss Development Corporation, 'Rule of Law, Justice Sector Reforms and Development Cooperation', SDC Concept Paper, Bern (2008), p. 9.

[42] Christoph Bleiker and Marc Krupanski "The Rule of Law and Security Sector Reform: Conceptualising a Complex Relationship" , 2012 .The Geneva Centre for the Democratic Control of Armed Forces .

[43] The most widespread definition of community policing used by various actors in peacebuilding, considers the term "a philosophy and an organizational strategy" that seeks to promote a collaborative relationship between the community and local police organizations to prevent and solve the problem of crime and social disorder, and allows law abiding community members a greater voice in setting priorities and involvement in efforts to improve the quality of life in their neighborhoods. In this sense, community policing is rationalized as a way for the police to become more integrated in community culture and to increase public support.

institutions. Instilling democratic norms in police institutions mean that police actions must therefore be governed by the rule of law rather than by directions given arbitrarily by particular regimes and their members.[44]

At the same time, upholding the rule of law may conflict with the responsibility to protect human rights, especially if the law requires police institutions to act in an arbitrary and repressive manner. Furthermore, in order for police to act according to human rights standards it is necessary for them to have received extensive and practical training. Many post-transition societies were unaccustomed to security systems founded on human rights and citizen service. Human rights organizations had focused on denouncing abuses and were poorly equipped to articulate demands for citizen-oriented policing.[45] For instance, in Haiti, there was no effective system to administer justice, uphold the rule of law and provide impartial protection of human rights. Earlier human rights abuses committed between 1991 to 1994, by the Haitian National Police, were still left unaddressed and new reports on the excessive use of force by police officers and extrajudicial executions persisted as of 2006.[46] Human rights experts of the International Civilian Mission in Haiti (MICIVIH) initially designed a curriculum for the police academy that incorporated a topic called, "human dignity" that was unrelated the realities of Haitian policing and ambiguous on human rights issues. Furthermore human rights activists tend to view the police solely as perpetrators of human rights violations whereas the police often tend to feel that human rights activists are in alliance with criminals or political opposition groups, and part of the problem. The European Platform for Policing and Human Rights has developed a basic template to help human rights non-governmental organizations (NGOs) and police services develop joint-projects to foster more cooperation.[47]

1.B.2.2 Economic Recovery

More often than not, war leaves behind a destroyed economy, decimated infrastructure, and a lack of institutional, human, financial, and other capacities to rebuild. In the past, considerations of the economic context, the requirements of economic recovery and the implications for peacebuilding have not been at the forefront of early post-conflict recovery efforts. Economic recovery has been considered a lesser priority in peace consolidation than security/political reform. The last decade, however, has seen a broad consensus emerge that the economic dimensions of rule of law are vital, not only for growth and human development but also for consolidating peace

[44] David Bayley, "Democratizing the Police Abroad: What to Do and How to Do It" (Washington, DC: National Institute of Justice, U.S Department of Justice, 2001)
[45] Charles Call, "Pinball and Punctuated Equilibrium: The Birth of a Democratic Policing Norm?" (Paper for the Annual conference of the International Studies Association in Los Angeles, CA, March 16, 2000), 4-5.
[46] Amnesty International, "2006 Annual Report for Haiti," in Amnesty International Report 2006: The State of the Worlds Human Rights (London: Amnesty International Publications, 2006).
[47] See: European Platform for Policing and Human Rights, "Police and NGOs: Why and how human rights NGOs and police services can and should work together "(European Platform for Policing and Human Rights, December 2004).

alongside political and security imperatives. It is also increasingly being recognized that economic reconstruction and recovery efforts, alongside longer-term development processes, need to factor contextual and, specifically, conflict issues into their design and implementation to ensure that they serve, rather than undermine, peace.

Post-conflict economies are not "normal" economies and thus require strategies and policies that are specifically tailored for these contexts. After years or even decades of war, the economies of conflict-ridden societies are invariably seriously weakened and their institutional and physical infrastructures are damaged and in desperate need of repair,[48] if not destroyed to the very foundations. Further complicating the post-conflict environment is the likelihood that the state is extremely weakened, lacks organization and capacity, and does not have the funds to establish recovery activities without international aid. Post-crisis governments also often inherit huge budgetary deficits, overvalued exchanged rates, and a low tax base, which are challenges to early economic recovery and to rebuilding the state more generally.

1.B.2.3 Justice and Law

Justice is a universal principle that has been debated for millennia by philosophers across all civilizations, and that finds diverse expressions in all cultural, religious and spiritual traditions. In a seminal report on the rule of law and transitional justice, the Secretary-General of the United Nations defines justice as "An ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interests of victims and for the well-being of society at large."[49]This definition highlights two particular dimensions that are often debated in the transitional justice field: the retributive justice (punishing perpetrators) and the restorative justice (focusing on the needs of victims and on restoring relations between victims and perpetrators).

It is true that post-conflict justice systems have a certain number of common characteristics:

-A huge discrepancy between the increased need for justice services and the lack of national resources to provide them;

-Severe shortages of qualified judges, prosecutors, lawyers, police officers, and other functionaries;

[48] Erin McCandless, Economic Aspects of Reconstruction, Recovery and Peace, in Peace, Conflict and Development Reader, ed. Erin McCandless and Tony Karbo (Addis Ababa: University for Peace, 2009).
[49] Rama Mani, "Exploring the Rule of Law in Theory and Practice," in Civil War and the Rule of Law: Toward Security, Development, and Human Rights, eds. Agnes Hurwitz and Reyko Huang (Boulder and London: Lynne Rienner, 2008), 22.

-Politically tainted, under-qualified, and/or corrupt justice system officials, including judges, prosecutors, lawyers, and police;

-Lack of financial and material resources (e.g., salaries, office supplies)

-Devastated physical infrastructure (court buildings, prisons)

-Populations mistrust in and wariness of the justice system;

-Populations limited access and/or knowledge of justice system and any relevant rights.

For the present essay, I divided the Justice and Rule of Law thematic area into the following subtopics: a. Judicial and Legal Reform/(Re)construction, b. Access to Justice, c. Human Rights Promotion and Protection, d. Transitional Justice and e. Traditional and Informal Justice Systems.

a. Judicial and legal reform/(re)construction

Judicial and legal reform/(re)construction refers to activities aimed at, or the process of, reforming or redrafting the legal framework (or laws) and reforming or rebuilding the justice system (the judiciary, police, and prisons) of a post-conflict society[50]. Violent conflicts tend to devastate the justice system, leaving behind corrupt, illegitimate, dysfunctional, or non-existent institutions. As a result, post-conflict societies lack the capacity to manage societal conflicts through the provision of fair and efficient justice. The inability to adequately address societal conflicts can be detrimental to peacebuilding processes as it can lead to the reemergence of violence. Therefore, putting in place a legitimate and appropriate legal framework and building viable institutions is seen as a key aspect of the peacebuilding agenda[51].

The key components of judicial and legal reform/(re)construction

Judicial and legal reform/(re)construction can be thought of as a subset of justice system reform. It usually encompasses the following elements that complement what is done in matters of police and prison reform.

- Law reform

Law reform is crucial in many post-conflict societies because existing laws often tend to be outdated, irrelevant to the post-conflict context, or associated with the ills of the political system that generated the violent conflict in the first place. Moreover, existing laws may not sufficiently accord with international human rights standards. There may also be a great deal of confusion as to what is, or should be, the applicable legal framework. Revision or rewriting of laws is therefore an important element of judicial reform. Many law reform activities in post-conflict societies entail aligning the domestic legal framework with international human rights standards, especially by

[50] Christopher Stone, Joel Miller, Monica Thornton, and Jennifer Trone, Supporting Security, Justice, and Development: Lessons for a New Era (New York: Vera Institute of Justice, 2005), 20.
[51] Rama Mani, Beyond Retribution: Seeking Justice in the Shadows of War (Malden: Polity Press, 2002), 55-56.

revising criminal codes. Also, law reform is a way to enhance the independence of the judiciary by revising or drafting laws on the selection and appointment of judges and on the management of the judiciary's budget. Law reform activities can also serve as capacity-building initiatives, involving the parliament, law professionals, and the public, and not only technical advisors who draft the laws.[52]

- Enhancing adjudicative capacity [53]

This area of reform aims to improve the judiciary's capacity, efficiency, integrity, and responsiveness. A post-conflict judiciary is often characterized by a lack of judicial capacity (such as personnel, facilities, and financial resources) and a lack of legitimacy as a result of a history of political intrusion and manipulation. Therefore, enhancing adjudicative capacity entails strengthening both judicial capacity and legitimacy. The effort to increase judicial capacity in post-conflict settings includes such activities as training judges and prosecutors, improving court administration and case management, rehabilitating or constructing judicial infrastructure (such as court facilities), and providing adequate salaries to judicial personnel. As David Tolbert and Andrew Solomon point out, "*An independent judiciary is . . . at the heart of establishing the rule of law for a post-conflict society."*[54]

- Reform of legal education and training

Activities in this area of reform include establishing law faculties (including courses and curricula) and formal judicial training centers, as well as training judicial personnel and other legal practitioners so as to increase their professionalism. Yet, legal education is often a neglected area of assistance. According to Richard Sannerholm, "An interesting aspect of judicial reform is that it rarely includes a focus on legal education and support to law schools. While quickly finding, training and appointing judges are necessary measures in the short-term period, it does not address the long-term deficit."[55] Moreover, training programs should have a follow-up component that assesses the tangible and concrete impact of the training.

- Public administration and corruption issues (as an emerging area of reform)

It is fair to say that most reform activities focus on post-war criminal justice reform.[56] While this is crucial, especially in the immediate post-conflict period, there is

[52] Richard Sannerholm, "Legal, Judicial and Administrative Reforms in Post-Conflict Societies: Beyond the Rule of Law Template," Journal of Conflict and Security Dialogue 12, no. 1 (2007): 79-85.
[53] Ibid
[54] Ibid
[55] Sannerholm, "Legal, Judicial and Administrative Reforms in Post-Conflict Societies," 83. Folke Bernadotte Academy; Swedish Institute of International Affairs Spring 2007 Journal of Conflict & Security Law, Vol. 12, Issue 1, pp. 65-94, 2007
[56] Office of the United Nations High Commissioner for Human Rights (OHCHR), Rule of Law Tools for Post-Conflict Societies: Mapping the Justice Sector (Geneva: United Nations, 2006), 8.

growing recognition that corruption and deficiencies in public administration are critical issues that need to be addressed. According to Sannerholm, "Besides reforming the judiciary, bar associations, constitutions and the criminal law system, in order to remedy violations of civil and political rights, [the reform] could also encompass administrative and commercial law reform and activities to fight corruption to redress economic and social rights and ensure the principle of legality."[57] It seems that this area of reform is gaining attraction: "There is a tendency among the actors of the international community predominantly involved in rebuilding crisis states to move beyond the narrow rule of law template and also include governance and economic management issues."[58]

b. Access to justice

Access to justice refers to people's ability to solve disputes and reach adequate remedies for grievances, through formal or informal justice mechanisms, and in conformity with human rights principles and standards[59].Many post-conflict societies are marked by serious structural and operational barriers to justice. Yet the everyday justice needs of the general population do not go away; rather, they are more likely to increase precisely due to the effects of violent conflict. A combination of significant barriers to access and unsatisfied justice needs can potentially destabilize the peacebuilding process and, if unaddressed, cause a relapse into violent conflict.

"Access to justice"[60] programs are active in different areas: i. legal protection ii. legal awareness iii. Legal aid and counsel iv. Adjudication v. enforcement vi. Oversight (both by civil society and parliament) vii. Supporting activities (in particular research), viii. And initiatives aiming at making the formal justice system more accessible.

i. Legal protection entails the provision of legal standing in formal or traditional law - or both. This involves the development of capacities to ensure that the rights of disadvantaged people are recognized within the scope of justice systems, thus giving entitlement to remedies through either formal or traditional mechanisms. Legal protection determines the legal basis for all other support areas on access to justice. Legal protection of disadvantaged groups can be enhanced through: Ratification of treaties and their implementation in the domestic law; Implementation of constitutional law; National legislation; Implementation of rules and regulations and administrative orders; and traditional and customary law.

ii. Legal awareness involves the development of capacities and effective dissemination of information that would help disadvantaged people understand the following: Their right to seek redress through the justice system; The various officials and institutions

[57] Ibid 106
[58] Ibid
[59]United Nations Development Program (UNDP), Programming for Justice: Access for All, A practitioners guide to a human rights-based approach to access to justice (Bangkok, Thailand: UNDP Regional Centre, 2005), 213.
[60] Ibid

entrusted to protect their access to justice; and the steps involved in starting legal procedures.

Different organizations have put in place service lines on access to information which provide an opportunity to develop capacities and strategies to promote legal awareness. Civil society organizations play a crucial role as they engage in legal literacy campaigns. As a component of civil society, the media also play a key advocacy role by disseminating and communicating information about access-to-justice related issues, especially through radio programs. Artistic endeavors are also undertaken to raise legal awareness. In Rwanda, for example, theatre groups created short plays in Kinyarwanda that illustrated the principles of equality and non-discrimination, and what to do if these are violated. Reputable international non-governmental organizations, such as Human Rights Watch and Amnesty International, are also engaged in monitoring access to justice worldwide and in advocating for greater access to justice[61].

iii. Legal aid refers to the development of the capacities (from technical expertise to representation) that people need to enable them to initiate and pursue justice procedures. Legal aid and counsel can involve professional lawyers (as in the case of public defense systems and pro bono representation), laypersons with legal knowledge (paralegals), or both (as in "alternative lawyering" and "developmental legal aid").

iv. Adjudication--that is, the legal process by which a judge or some other type of arbiter reaches a decision regarding a legal dispute--entails the development of capacities to determine the most adequate type of redress or compensation. Means of adjudication can be regulated by formal law, as in the case of courts and other quasi-judicial and administrative bodies, or by traditional legal systems.

v. Enforcement entails the development of capacities for enforcing orders, decisions and settlements emerging from formal or traditional adjudication. It is critical to support the capacities to enforce civil court decisions and to institute reasonable appeal procedures against arbitrary actions or rulings. In some cases, these programs include basic (but critical) material support such as providing local judges with transportation (motorcycles in many cases) so they can assess the enforcement of their decisions in remote rural areas, and support to other judicial professional, such as bailiffs and marshals.

vi.The development of civil society's watchdog and monitoring capacities and parliamentary oversight capabilities strengthens overall accountability within the justice system. An illustrative example of such civil society organizations is the Judicial System Monitoring Program[62] (JSMP) in Timor Lester, an NGO that monitors and provides independent analysis of the judicial system. Founded in 2001, the organization's mission is to contribute to "the development and improvement of the justice and legislative system through objective monitoring, analysis, advocacy and

[61] Thomas, C. (2006). Promoting the Rule of Law Abroad: In Search of Knowledge . Carnegie Endowment for International Peace.
[62] Open Society Institute Justice Initiative, "World Bank Awards Grant to Pioneering African Paralegal NGO," Press Release, 23 October 2006.

training." The organization monitors the district courts and the court of appeal, and has a Women's Justice Unit that examines the state of women in the formal justice system, and a Victim Support Service that provides legal aid to victims of domestic violence[63]. In Haiti, the National Coalition for Haitian Rights (NCHR) does similar work. The organization conducts workshops in the countryside that include local human rights monitors, police and judicial officials.

vii. A critical first step is to conduct research and gather information on the state of access to justice in a particular society or community. Research activities are undertaken by both international and local actors, usually in collaboration with one another. A prominent example is the World Bank's Justice for the Poor[64] (J4P) Program, whose mission includes to "build a solid, empirically founded knowledge base of the dynamics of local decision making and dispute resolution processes and inequality traps" and to "enhance the capacity at the local level to conduct policy research and undertake evidence based policy reform." The J4P Program has conducted research in partnership with local organizations in conflict-affected and post-conflict settings, such as Cambodia, Indonesia, Kenya, and Sierra Leone.

viii. Other Initiatives to Make the Formal Justice System Accessible

While many access to justice activities are rightly situated outside the boundaries of the formal justice system, it is nonetheless "a crucial necessity to bring the tribunals closer to the people."[65] Different strategies have been employed in that regard:

-Deploying mobile courts (in the form of buses) whose objective is to broaden the geographical coverage of the formal justice system. Mobile courts commonly combine free mediation, dispute resolution, and informal services to people in rural areas.

-Developing mediation centers, which, by settling disputes outside the courtroom, reduce the backlog of cases in the courts. Mediation services are also provided in local languages, thus reducing the cultural barriers to accessing justice.

-Establishing "justice centers." The purpose of a justice center is to "make justice more effective--and more efficient and integrated--in a particular geographic location." [66]Justice centers concentrate judicial services (adjudication, legal counseling, mediation) and actors (judges, prosecutors, justice of the peace, public defenders, police, interpreters, civil society members) in one site. The "justice center" model, pioneered in Guatemala, is considered successful in delivering more efficient judicial

[63] Ibid 60

[64] For further information, see the J4P Programs. Available at http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/EXTJUSFORPOOR/0,,menuPK:3282947~pagePK:149018~piPK:149093~theSitePK:3282787,00.html.

[65] Martin Abregu, "Barricades or Obstacles: The Challenges of Access to Justice," in Comprehensive Legal and Judicial Development: Toward an Agenda for a Just and Equitable Society in the 21st Century, ed. Rudolf V. Van Puymbroeck (Washington, D.C.: World Bank, 2001), 64.

[66] Steven E. Hendrix, "Guatemalan 'Justice Centers': the centerpiece for advancing transparency, efficiency, due process and access to justice," (report prepared for the U.S. Agency for International Development, 2000), 819.

services and in making justice more accessible to traditionally marginalized segments of society (women, the poor, and indigenous people)[67].

c. Human rights promotion and protection

Human rights promotion and protection refers to activities that aim to promote and protect those rights which are inherent to someone by virtue of being human, without distinction as to race, color, religion, sex, ethnicity, or any other social membership category. A general improvement in the human rights situation is considered essential for the rehabilitation of war-torn societies. More important, the promotion and protection of human rights must aim to deepen a culture of human rights within a society, as an ongoing part of the nation-building and social reconstruction process. As such, human rights promotion and protection contribute to the transformation of societal conditions that could potentially generate violence. There is a general consensus that human rights violations are both symptoms and causes of violent conflict[68]. "Violent and destructive conflict can lead to gross human rights violations, but can also result from a sustained denial of rights over a period of time."[69]

- Human rights and judicial & legal reform/(re)construction

Human rights promotion and protection depend on the existence of a well-functioning justice system and of laws that comply with international human rights standards and norms. The reforms in both sectors are therefore intimately linked. Most post-conflict states lack a functioning and legitimate judicial system. Reforms and efforts to (re)build that system are crucial elements in the process of promoting and protecting human rights. More specifically, the following activities explicitly refer to human rights:[70]

-Law reform: reforming/redrafting laws in accordance with international human rights standards; promulgation of legal codes and statutes including fair trial norms (civil and criminal) in line with the protection of basic human rights;

-Standards for the independence of the judiciary and other justice officials;

-Human rights training and education for judges, prosecutors, and public defenders;

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[67] Between 1995 and 2004, 19 justice centers were founded in Guatemala.

[68] Johan Galtung and Anders Helge Wirak, "Human needs and human rights--A theoretical approach," Bulletin of Peace Proposals 1 (1977): 251-258. Armed conflicts clearly illustrate the indivisibility and interdependence of all human rights. The collapse of infrastructure and civic institutions undermines the range of civil, economic, political and social rights. Additionally human rights lack of protection can be a cause of conflict: Numerous conflicts have been caused by human rights issues such as limited political participation, the quest for self-determination, limited access to resources, exploitation, forced acculturation, and discrimination. Another crucial dimension in the nexus between human rights violations and violent conflict is the role played by collective identities, such as ethnicity, race, and religion. A combination of socio-economic inequalities aligning with ethnic stratification and of political elites manipulating ethnic relations for particular ends often leads to instances of lethal violence between ethnic groups, and thus to systematic and massive human rights violations, such as ethnic cleansing and genocide. In an ethnically divided society, symptoms of a potentially violent conflict include the dominance of a particular ethnic group in state institutions (such as the judiciary or the police), as well as radio programs or other media that encourage ethnic division and hatred.

[69] Michelle Parlevliet, "Bridging the Divide: Exploring the relationship between human rights and conflict management," Track Two 11, no. 1 (March 2002).

[70] Ellen L. Lutz, Eileen F. Babbit, and Hurst Hannum, "Human Rights and Conflict Resolution from the Practitioners Perspectives," Fletcher Forum of World Affairs 27, no. 1 (Winter/Spring 2003): 192.

-Guarantee of freedom of lawyers to practice their profession without fear of retribution;

-Protection of human rights defenders who attempt to use the judicial system to redress human rights abuses;

-Oversight and accountability mechanisms: judges and lawyers must be accountable, if they engage in criminal or unethical conduct, especially corruption. Fair and transparent processes must be established to handle such disciplinary actions and to show the public that things have changed and that no one is above the law. Some law practitioners working in post-conflict settings argue that oversight and accountability may be the single most important factors in the wide range of human rights and justice and rule of law activities, but are also often missed.[71]These are important not only in the immediate aftermath of a violent conflict, but also to ensure a sustainable peace.

- Human Rights and Traditional/Informal Justice Systems

Informal dispute resolution systems often help alleviate the deep state of lawlessness and injustice created by the absence of a functioning formal justice system. In that perspective, traditional and informal justice systems may help limit the occurrence of human rights abuses. However, they are often seen, in some cases with good reason, as incompatible or at least not respectful of individual rights and other standards established in international law. In addition to discriminatory practices, recourse to inhuman and degrading punishments are the most common issues encountered with respect to traditional or informal justice systems, in particular those systems that are based on the application of a fundamentalist interpretation of religious principles. As a consequence, human rights activities are concerned with ensuring that adequate monitoring mechanisms are put in place to make sure that these systems comply with human rights standards. Human rights trainings are also organized to help improve the rules and practices of traditional/informal systems so that they comply with international human rights standards.[72]

- Human rights and transitional justice

Transitional justice refers to a field of activity focused on how societies address legacies of past human rights abuses through a combination of complementary judicial and extra-judicial mechanisms, as well as different forms of exploring the violent past. This means that human rights law constitutes the overarching frame of reference for transitional justice. More specifically, "transitional justice relies on international law to make the case that states undergoing transitions are faced with certain legal obligations, including halting ongoing human rights abuses, investigating past crimes, identifying

[71] William A. Schabas and Peter G. Fitzmaurice, Respect, Protect and Fulfil: A Human Rights-Based Approach to Peacebuilding and Reconciliation (Border Action, 2007), 47-48
[72] Elisabet Abiri, Lets talk! - Human Rights meet Peace and Security (Swedish International Development Agency, Report no. 28896, 2006), 3.

those responsible for human rights violations, imposing sanctions on those responsible, providing reparations to victims, preventing future abuses, preserving and enhancing peace, and fostering individual and national reconciliation."[73]

Transitional justice programs also have secondary effects on the capacity of a society and a state to protect human rights in a sustainable manner. Through public information campaigns organized for the transitional justice process, these programs contribute to raising public awareness about human rights protection; generally mobilize extensive civil society networks as well members of the national judicial system, potentially contributing to the building of a sustainable community engaged in the protection of human rights. The Special Court for Sierra Leone, for example, initiated a public outreach campaign that aims to inform and explain the work of the Court, the broader issues of justice and the citizen's role. The principle that effective transitional justice is integral to the ability of a state to build a sustainable human rights protection system is expressly acknowledged by the UN, as exemplified by frequent statements of the High Commissioner for Human Rights.[74]

- Human rights and access to justice

Access to justice is also framed in the language of human rights. As stated in a UNDP report on the subject, "access to justice is a fundamental right, as well as a key means to defend other rights."[75] Indeed, if citizens can access justice institutions (formal and informal), they are in a better position to get their human, political, legal, and socio-economic rights recognized and protected. On the contrary, the deprivation of that access means the denial of human rights, socioeconomic vulnerability, legal uncertainty, and political discrimination. International human rights principles and standards also constitute the normative framework by which the efficiency, fairness, and legitimacy of justice systems are assessed. Indeed, the notion of access to justice also involves the guarantee of the quality of the justice process.

d. Transitional justice

Transitional justice refers to *"a field of activity and inquiry focused on how societies address legacies of past human rights abuses, mass atrocity, or other forms of severe social trauma, including genocide or civil war, in order to build a more democratic, just, or peaceful future."*[76] It can also be defined as *"that set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law."*[77]

[73] Louis Bickford, "Transitional Justice," in the Encyclopedia of Genocide and Crimes Against Humanity 3(2004): 1045.
[74] United Nations Development Program (UNDP), Programming for Justice: Access for All-A Practitioners Guide to a Human Rights-Based Approach to Access to Justice (Bangkok, Thailand: UNDP Regional Centre, 2005), 3
[75] Ibid
[76] Naomi Roht-Arriaza, "The New Landscape of Transitional Justice," in Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice, eds. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006), 2.
[77] Ibid

Generally speaking, transitional justice entails a range of approaches, both judicial and non-judicial, that states and societies emerging from repressive rule or violent conflict may adopt to address past human rights abuses/violations with the aim of fostering sustainable peace and democratic governance. Transitional justice is generally thought to help prevent recurrence of violent conflict and foster sustainable peace by:

-Establishing an historical record and countering denial;

-Ensuring accountability and ending impunity;

-Fostering reconciliation and socio-political reconstruction.

i. Establishing an historical record and countering denial

In some cases of mass violence, human rights violations are conducted behind a veil of secrecy; in other cases, especially in post-conflict societies with enduring ethnic divisions, people tend to hold radically different interpretations of the violent past; in still other cases, victims yearn for an acknowledgment of their suffering. Establishing an accurate historical record of the violent past and thereby countering denial is considered an important peacebuilding goal.

- The contribution of transitional justice (TJ) mechanisms to establishing an historical record

A truth commission is the primary transitional justice mechanism for establishing an historical record. Truth commissions are designed to provide an independent, accurate and authoritative account of the violent past, with a particular emphasis on the causes, patterns, and consequences of the armed conflict or mass atrocities--in other words, they aim to capture the "broad truth." Truth commission reports can serve to minimize the number of blatant falsehoods that may circulate in public discourse and to set the boundaries of acceptable disagreement and debate about the past.[78]

Local justice processes can help construct micro histories of the violent conflict--that is, why, how, and with what legacies the violence unfolded in a particular community. Memorialization projects, such as monuments or museums, can preserve the history of the violent past and educate people about it, especially the young.[79]Public political apologies can also set the historical record straight by officially acknowledging historical facts. By providing an authoritative account of the past, transitional justice mechanisms can make it difficult for conflict entrepreneurs to propagate violence-

[78] See Martha Minow, "The Hope for Healing: What Can Truth Commissions Do?," in Truth v. Justice: The Morality of Truth Commissions, eds. Robert I. Rotberg and Dennis Thompson (Princeton: Princeton University Press, 2000), 235-260

[79] For a discussion about the link between memorialization and transitional justice, see Ereshnee Naidu, The Ties that Bind: Strengthening the links between memorialisation and transitional justice (Center for the Study of Violence and Reconciliation, 2006); see also Judy Barsalou and Victoria Baxter, "The Urge to Remember: The Role of Memorials in Social Reconstruction and Transitional Justice" (United States Institute of Peace, Stabilization and Reconstruction Series No. 5, January 2007).

generating myths or fallacious, politicized accounts of history for political purposes, such as fomenting violence against certain sections of society, especially other ethnic groups.[80]

ii. Ensuring accountability and ending impunity

Transitional justice is thought to contribute to post-conflict peacebuilding by ensuring accountability and ending impunity. There is a general recognition that "there can be no blanket solution in terms of the form accountability is to take" in post-conflict societies, due to the specific context of each post-conflict environment.[81]

- The role of different TJ mechanisms

Criminal prosecutions (whether international, national, or hybrid) are considered the main mechanism of accountability.[82] By bringing suspected perpetrators of grave human rights violations to account, trials signal a clear break with the past "culture of impunity" where armed combatants committed human rights violations free from the fear of prosecution. [83]

Non-judicial activities such as truth commissions, social shaming, and vetting processes also provide opportunities for accountability. For example, a perpetrator's public testimony and admission of wrongdoing in a truth commission can be said to be a non-judicial form of accountability. Another way in which truth commissions can promote accountability is by naming the perpetrators in their reports, which can lead to non-judicial sanctions such as social shaming, approbation, and ostracism. Similarly, vetting processes ensure that the newly reformed state institutions (such as the police, the judiciary) will be staffed with individuals without poor human rights records and will follow rights-respecting laws. Moreover, they signal that future abuses will be met with appropriate judicial or administrative sanctions.

- The role of traditional, informal or local justice processes

The role of traditional, informal, or local mechanisms of transitional justice has been an area of growing academic and policy interest.[84]Peru, Northern Uganda, Rwanda, Mozambique, and East Timor stand out as places where local forms of justice have been or are being practiced as an explicit approach to reckoning with mass

[80] For an analysis of the role of nationalist myths in ethnically-driven violence, see Stuart J. Kaufman, Modern Hatreds: The Symbolic Politics of Ethnic War (Ithaca and London: Cornell University Press, 2001).
[81] Edel Hughes, William A. Schabas, and Ramesh Thakur, "Introduction," in Atrocities and International Accountability: Beyond Transitional Justice, eds. Edel Hughes, William A. Schabas, and Ramesh Thakur (Tokyo, New York, Paris: United Nations University Press, 2007), 2.
[82] For a discussion about criminal prosecutions and accountability, see Juan Mendez, "Accountability for Past Abuses," Human Rights Quarterly 19, no. 2 (1997): 255-282.
[83] Alexander L. Boraine, "Transitional Justice: A Holistic Interpretation," Journal of International Affairs 60, no. 1 (Fall/Winter 2006): 19.
[84] See, for example, Erin K. Baines, "The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda," International Journal of Transitional Justice 1, no. 1 (2007)

atrocities. While there is a great deal of debate and controversy about the meaning of "traditional," "informal," and "local," there is a general understanding that these terms involve practices that take place at the community level and have some origins in that community's cultural repertoire. Those justice processes, combining elements of retributive and restorative justice, hold low-level perpetrators accountable for past abuses and impose non-criminal, community-oriented penalties, such as monetary compensation or community service.

iii. Fostering reconciliation and socio-political reconstruction

It is common for transitional justice scholars and practitioners to state that transitional justice processes play a key role in promoting reconciliation in post-conflict societies.[85] Reconciliation is generally thought to be a "process of addressing conflictual and fractured relationships" and restoring--or building--constructive ones.[86]

- Transitional justice & individual healing processes

At the individual level, the prosecution of war criminals can bring healing and closure to victims and enable them to rebuild healthy social relationships and to resume normal lives. Some studies show that "depression in war survivors appear to be independent of sense of injustice arising from perceived lack of redress for trauma [and that] fear of threat to safety and loss of control over life appeared to be the most important mediating factors."[87] However, it is generally considered that transitional justice measures can play a role in healing processes. There has been much debate as to whether the processes and procedures of truth commissions can contribute to societal and individual healing or whether they re-injure victims by eliciting and revisiting the trauma through testimony. In the case of the South African TRC, one of the most researched and debated from this point of view, some psychological analyses have explicitly presented the TRC as able to serve some of the functions of a healing ritual; how this was fulfilled remains debated, in particular by survivors themselves.[88] The role of truth commissions is also discussed in relation to different cultural approaches to trauma. The few existing studies with regards to judicial actions call for similar caution. As one study indicates, "only some of the survivors who have seen those responsible for their abuse brought to trial have found comfort, and some have

[85] For a thorough treatment of the relationship between justice and reconciliation in post-conflict societies, see also Andrew Rigby, Justice and Reconciliation: After the Violence (Boulder and London: Lynne Rienner, 2001); and Eric Stover and Harvey M. Weinstein, eds., My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity (Cambridge, Cambridge University Press, 2004).
[86] Brandon Hamber and Grainne Kelly, "A Working Definition of Reconciliation," Democratic Dialogue (Belfast, 2004), 3-4;
[87] Metin Basoglu, MD, "Psychiatric and Cognitive Effects of War in Former Yugoslavia: Association of Lack of Redress for Trauma and Posttraumatic Stress Reactions," The Journal of the American Medical Association 294, no. 5 (2005): 580-590.
[88] Brandon Hamber, "The Burdens of Truth: An Evaluation of the Psychological Support Services and Initiatives undertaken by the South African Truth and Reconciliation Commission," American Imago 55, No 1 (Spring 1998), 9-28. See also Brandon Hamber, "Do Sleeping Dogs Lie? The psychological implications of the Truth and Reconciliation Commission in South Africa," Centre for the Study of Violence and Reconciliation, presented 26 July 1995.

experienced additional distress.[89] The role survivors play in these mechanisms is also an important factor as they are often kept outside of the process.

- Reparations and socio-economic recovery

The contribution of reparation programs to the notion of social repair is less arguable. Reparations, whether material or symbolic, potentially have a more direct impact on a reconciliation process because they are usually concrete and tangible. Material reparation packages (usually monetary compensation) are tangible ways of acknowledging and (partially) compensating for the wrongs done to victims. Monetary compensation may also improve the material situation of those who have lost the means to earn an income, or whose income has been significantly reduced as a consequence of violations. Restitution of property or employment as well as rehabilitation programs can also improve the physical and psychological health and well-being of victims insofar as they can help victims re-engage in economic activity and cope better with the consequences of past violations.

e. Traditional and informal justice systems

Informal justice systems refer to *"dispute resolution mechanisms falling outside the scope of the formal justice system. The term does not fit every circumstance as many terms exist to describe such systems (traditional, indigenous, customary, restorative, popular), and it is difficult to use a common term to denote the various processes, mechanisms and norms around the world. The term informal justice system is used here to draw a distinction between state-administered formal justice systems and non-state administered informal justice systems."*[90]

There is an important distinction to be made between "traditional" and "informal." Some "traditional" justice mechanisms in post-conflict settings are not "informal" in the sense of being outside the legal framework of the state, but are instead incorporated into the formal justice system. A clear example of this are the Gacaca courts[91] in post-genocide Rwanda, which, though conceptually based on pre-colonial customs of dispute resolution, applies codified state law.

An "informal" justice system is not necessarily a "traditional" one either, in the sense of being deeply rooted in the history of a particular community or locality. For

[89] Jamie O'Connell, "Gambling with the Psyche: Does Prosecuting Human Rights Violators Console Their Victims?" Harvard International Law Journal 46, no. 2 (Summer 2005), 340.
[90] Ewa Wojkowska, Doing Justice: How Informal Justice Systems Can Contribute (Oslo: United Nations Development Programme, Oslo Governance Centre, December 2006), 9.
[91] The Gacaca court is part of a system of community justice inspired by tradition and established in 2001 in Rwanda, in the wake of the 1994 Rwandan Genocide. The "mission" of this system is to achieve "truth, justice, [and] reconciliation." It aims to promote community healing by making the punishment of perpetrators faster and less expensive to the state. According to the official Rwandan government website of the National Service of Gacaca Jurisdictions, the "Gacaca Courts" system has the following objectives:
The reconstruction of what happened during the genocide
The speeding up of the legal proceedings by using as many courts as possible
The reconciliation of all Rwandans and building their unity

example, the Rondas Campesinas[92] in rural Peru are "informal" institutions, meaning existing outside the legal framework established by the state. However, they were created in the 1980s to respond to problems of cattle rustling, and thus were not rooted in long term history or "traditional."

Existing accounts of experiences and scholar works allow situating the potential functions of traditional and informal justice in the RoL processes, in particular in post-conflict contexts. These concern in particular the support to the different dimensions of justice recovery:

-Providing access to justice and preventing a resumption of violence;

-Fostering social trust and community reintegration;

-Supporting judicial system reform/(re)construction.

i. Providing access to justice and preventing a resumption of violence

Through its immediate post-conflict functions, traditional/informal justice systems are considered to increase significantly people's access to justice, in particular for the poor and disadvantaged. Four main characteristics of traditional/informal justice systems explain their contribution to better access to justice:

-Use of local languages: the language(s) used in traditional/justice systems is local and thus familiar to the average person, whereas the formal justice system generally uses only the official language(s) of the state, which may be unfamiliar to many people living in rural communities.

-Geographical proximity: institutions of the formal justice system are usually located in the capital city or regional capitals, and are thus geographically remote from people living in rural communities. Traditional/informal justice systems, on the other hand, are located in villages and are geographically easily accessible to people.

-Cultural relevance: formal legal proceedings can be complicated and confusing, whereas traditional/informal ones are more familiar and easily understood; it has also a better chance to fit the priorities of the community and local implications of a conflict. Therefore, its verdicts may be better accepted.

-Costliness: referring to the formal justice system can be costly and time-consuming because it often entails traveling long distances, paying transportation costs, and legal fees, all costs that are generally at the very least reduced with the traditional/informal justice; this system can also be more efficient as it is generally not bureaucratic.

Moreover, in post-conflict societies, people may use traditional and informal justice systems not only because these systems outperform formal ones but also because

[92] Ronda Campesina (Peasant Rounds) was the name given to autonomous peasant patrols in rural Peru. The rondas were especially active during the early 1980s in northern Peru and during the insurgency by the Túpac Amaru Revolutionary Movement.The rondas were originally formed as a protection force against theft, especially cattle rustling. Later, they evolved into a full-blown private justice system, complete with courts.

they often deal with issues that the formal justice system does not, or they find solutions and deliver remedies in ways that are more relevant, effective or socially acceptable.

ii. Fostering social trust and community reintegration

It is generally believed that a unique contribution of traditional/informal justice systems is that they foster social trust and community reintegration in the aftermath of mass violence. This belief stems from the observation that traditional justice is almost invariably based on communitarian notions of order and society, meaning that the primary issue at stake is the well-being of the community at large, and not only the interests of the victim.

Justice according to local expectations and by local institutions may also be *"more highly valued than that of state law and tribunals."*[93] Indeed, *"in many contexts, the local law is no more than a paper somewhere which has nothing to do with the reality and the informal rules that have been developed, along the history, by the population."*[94]Acknowledging the existence of those rules and modalities may then help restoring a sense of justice for local people.

As a result, traditional/informal justice is thought *"to strengthen levels of social trust and civic engagement within these societies, for if the people believe in and trust such mechanisms, it is believed that they will participate in the activities promoted by them."*[95] Because traditional/informal justice systems are by definition local and community-based, it is believed that they will foster the reconstruction of social trust among survivors*: "Traditional and informal justice systems are best suited to conflicts between people living in the same community who seek reconciliation based on restoration and who will have to live and work together in the future."*[96]

iii. Supporting judicial system reform/(re)construction

Judicial reform activities in developing countries in general - and post-conflict countries in particular - have been the subject of important criticism. Critics have labeled the dominant approach in post-conflict settings as "programmatic minimalism": that is, judicial reform and reconstruction activities that are "largely replicable, standardized, culturally inoffensive and politically 'neutral' or inoffensive; they focus on the technical procedures and institutions rather than laws substance and ethos."[97] Critics have argued that the problem with this technical and legalistic approach is that it fails to address the key obstacles to the rule of law, which are political and cultural.

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[93] Beatrice Pouligny, "UN Peace Operations: INGOs, NGOs, and Promoting the Rule of Law: Exploring the Intersection of International and Local Norms in Different Postwar Contexts," Journal of Human Rights 2, no. 3 (2003), 373.
[94] Ibid
[95] Quinn, "The Role of Informal Mechanisms in Transitional Justice," 15.Working paper, available at http://www.cpsa-acsp.ca/papers-2005/Quinn.pdf
[96] Ibid
[97] See Neil J. Kritz, "The Rule of Law in Conflict Management," in Leashing the Dogs of War: Conflict Management in a Divided World, ed. Chester A. Crocker, Fen Osler Hampson, and Pamela Aall (Washington, D.C.: United States Institute of Peace Press, 2007): 401-424.

More often than not, these reform activities seek to resurrect the tangible institutions of a judicial system (courts, judges) without considering the historical specificities of a particular society. *"Reforms have often lacked any clear theory about the roles and functions of justice systems, and have failed to consider how successful legal systems in developed countries were actually constructed--including how they gained authority and legitimacy. Local level context and the systems of justice actually operating in many contexts were largely ignored."*[98] Yet, this knowledge is important to ensure the adequacy and legitimacy of the system to be reformed/reconstructed. "Law is not simply a set of rules exercising coercive power, but a system of thought by which certain forms of relations come to seem natural and taken for granted, modes of thought that are inscribed in institutions that exercise some coercion in support of their categories and theories of explanation."[99]

Traditional and informal justice systems are not exempt of flaws; these should be taken seriously. However, *"this does not in any way mean that we can ignore their existence. Imposing formal mechanisms on communities without regard for the local level processes and informal legal systems may not only be ineffectual, but can actually create major problems. First, the failure to recognize different systems of understanding may in itself be discriminatory or exclusionary, and hence inequitable. Second, there are often very good reasons why many people chose to use informal or customary systems, which should be considered and understood. Third, there is ample evidence that ignoring or trying to stamp out customary practices is not working, and in some cases is having serious negative implications. Finally, ignoring traditional systems and believing that top-down reform strategies will eventually change practice at the local level may mean that ongoing discriminatory practices and the oppression of marginalized groups in the local context goes unchallenged".* [100]

1.B.2.4 Governance and Democracy

Good governance sets the normative standards of development. It fosters participation, ensures transparency, demands accountability, promotes efficiency, and upholds the rule of law in economic, political and administrative institutions and processes. It is a hallmark of political maturity but also a requisite for growth and poverty reduction, for there are irreducible minimum levels of governance needed for large-scale investment to occur and for social programs to be supported. A cornerstone of good governance is adherence to the rule of law, that is, the impersonal and impartial

[98] Chirayath, Sage, and Woolcock. "Customary Law and Policy Reform: Engaging with the Plurality of Justice Systems," 1. Available at http://siteresources.worldbank.org/INTWDR2006/Resources/477383-1118673432908/Customary_Law_and_Policy_Reform.pdf

[99] Merry Sally Engle, "Legal Pluralism," Law & Society Review 22, no. 5 (1988): 889

[100] Leila Chirayath, Caroline Sage, and Michael Woolcock, "Customary Law and Policy Reform: Engaging with the Plurality of Justice Systems," (Prepared as a background paper for the World Development Report 2006: Equity and Development, July 2005), 5.

application of stable and predictable laws, statutes, rules, and regulations, without regard for social status or political considerations.

The Democracy and Governance thematic area consists of the following sub-topics: a. Constitutions b. Electoral Process, c. Corruption, d. Public Administration, local governance and participation. This section offers a concise elaboration of these points and how they are central to democracy and, through that lens, to rule of law. It is on this basis that these points have been identified as central to any discussion on democracy and governance.

a. Constitutions

Well-drafted constitutions, based on human rights and dignity, are thought to provide a framework for a democratic peace. In the aftermath of violent conflict, reforming or drafting a new constitution is viewed as a key process of (re)establishing the basis of state legitimacy, establishing and reinforcing the political community, and establishing or reforming the rules for the allocation, exercise, and accountability of power.

Any constitutional process for rule of law involves a number of core activities, both technical engineering in nature and supportive of or related to the formulation of the document. The central activity is the drafting of the constitution itself. In addition, such a process may involve the formulation of sub-national constitutions. To support this process, international agencies are often involved in the provision of technical assistance, advice, and training. Finally, both international and domestic actors engage in civic education and public information programs in order to raise awareness in populations around the constitution and their consequent rights and roles[101].

Constitution drafting

The main activity on constitution building is the actual drafting of the constitution. This process puts in place all of the components that make up the legal framework for a given context. These are establishment of rights and rules of citizenship; the separation of executive, legislative, and judicial powers and determination of checks and balances in this triad; the designation of an electoral system; and the arrangement of levels of power between central and local government.

Technical assistance, advice, and training

International organizations, a range of experts, academics, and civil society provide technical assistance as well as consultation and offer trainings on constitutional issues. The expertise on the domain, particularly in peacebuilding contexts, has considerably expanded in the last two decades. International agencies also support

[101] Kirsti Samuels, "Constitutional Choices and Statebuilding in Postconflict Countries," in The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations, ed. Roland Paris and Timothy D. Sisk (London: Routledge, 2008).

human resource capacity to constitutional assemblies, and provide legal advice on domestic constitutional law.[102]

Civic education and public awareness on constitutions

At a minimum, a substantial public education campaign should accompany any constitution-building process and be prioritized by donors. It should include topics such as "the basis and forms of political authority, the working of governments, and the necessity of controls and accountability, based on the theory of popular sovereignty. People should be enabled to understand their constitutional history, and encouraged to assess the past and do an audit of past governments. The education program must enable the people to understand the nature of public power and imagine alternative forms of government, rejecting the notion of the inevitability of older systems. The process must also aim to educate the people in the values, institutions and procedures of the new constitution, and how they can participate in the affairs of the state and protect their constitutional rights."[103]

In addition, international and local non-governmental and civil society organizations may be involved in the dissemination of copies of the constitutions or in translating the constitution into local languages so that populations can better understand their rights and responsibilities. For example, the National Endowment for Democracy[104] has funded Radio Anfani in Niger, in part to support the translation of the constitution into a number of local languages. In Myanmar (Burma), the Chin Forum[105] has translated and distributed a draft constitution to get information out to people and to serve as an advocacy tool to promote democratic protections in a constitution.

b. Electoral Processes

The right to vote as an international human right

The "right to take part in government directly or through freely chosen representatives"[106] became not only accepted as a fundamental tenet of the democracy paradigm, but as a fundamental human right. The right of suffrage is now enshrined in

[102] Michele Brandt "Constitutional Assistance in Post Conflict Countries: The UN Experience in Cambodia, East Timor , and Afghanistan". United Nations Development Program, June 2005.
[103] Ibid.
[104] The National Endowment for Democracy (NED) is a U.S. non-profit soft power organization that was founded in 1983 to promote democracy.
[105] The Chin Forum is a platform open to all Chin of different political views and/or affiliations who are interested in working together for common democratic objectives. The Forum is not a political party but an organization focused on doing research and documentation projects to assist the Chin peoples' struggle for freedom and democracy. For additional information go to http://www.chinforum.info/
[106] United Nations (UN), Universal Declaration of Human Rights, Article 21.1,21.2 : (Adopted December 10, 1948)
Article 21:
(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
(3) The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures

international and regional human rights instruments, within which elections are seen as "human rights events" for two reasons: "First because they give voice to the political will of the people. Secondly, because to be truly free and fair, they must be conducted in an atmosphere which is respectful of human rights."[107]

In the context of rule of law, elections are considered a process necessary for a political solution to violent conflict and a basis for a durable peace. Support to political parties and organization of elections can also be seen as preventive mechanisms, in particular as they facilitate a peaceful transition from an authoritarian regime to democracy or a change of government party. In these cases, however, elections can also catalyze violence and destabilize states, in particular if the conditions or results of elections are contested, which is an additional reason to support their organization.

Purpose of post-conflict elections

In countries emerging from conflict, elections are supposed to serve a dual purpose: to put in place a legitimate and democratic government, and to consolidate peace structured by a durable democratic system.[108]

To the first point, in the early 1990s, the holding of elections was often a formal element of peace accords, providing a peaceful means to determine who would hold power in a post-conflict government. The political transformation of former combatant groups into political parties was also generally part of the agreement. During this period, in most cases, the ruling government was in charge of organizing these elections.

On the other hand, elections encourage the consolidation of peace structured by a durable democratic system. From that perspective, international electoral assistance not only aims at helping organize one election or a series of elections but also at building or rebuilding a sustainable democratic state that can function without direct international involvement.[109]

Organization of elections encompasses a range of activities, including the establishment of electoral laws, structuring of an electoral system, the establishment of electoral administrations and electoral management bodies, boundary delimitation, voter registration, political party and candidate registration, and voter and civic education. Many of these features may receive the support of electoral assistance, while monitoring and observation missions are meant to guarantee the efficacy and legitimacy of the whole process. Depending on the post-conflict scenario, responsibility for organizing elections may reside with national or international (provisional administration) electoral organizations.

[107] Commission of the European Communities, Communication from the Commission.
[108] Krishna Kumar, Post conflict Elections, Democratization and International Assistance (Boulder, CO: Lynne Rienner, 1998), 5;
[109] Ibid

c. Corruption

Corruption has become an increasingly salient issue in war to peace transitions, both for the populations of war-torn countries and for the international and regional organizations, donor governments, and NGOs who are supporting peacebuilding and rule of law efforts. War-torn states are recognized as highly susceptible to corruption: their administrative and judicial institutions are weak, and they lack the capacity to monitor and enforce rules against corruption. Lingering social divisions from the war weaken shared conceptions of the public good and social norms that could otherwise constrain corrupt behavior. There is extensive evidence, both quantitative and qualitative, of the prevalence of corruption in conflict-affected countries, which tend to cluster in the bottom of corruption indices such as Transparency International's Corruption Perceptions Index, and the World Bank's Governance Indicators.[110]

Corruption has also been identified by scholars and practitioners alike as a major obstacle to peacebuilding efforts. It is claimed that corruption undermines state legitimacy and effectiveness by distorting the distribution of public goods; complicates states' abilities to manage and resolve social conflicts; and potentially (re)ignites conflict and causes violence by fuelling political, economic, and social grievances and by weakening security institutions. Despite the broad range of social ills that have been attributed to corruption in peacebuilding contexts, the ways in which corruption actually affects peacebuilding efforts is less straightforward and less well understood than some of the literature seems to suggest.

The relationship between RoL and corruption is complex and cannot simply be framed as a trade-off between corruption and development, corruption and good governance, or corruption and stability. It is also not susceptible to simple and universalist policy prescriptions. Just like peace, corruption is a political problem that cannot be addressed through technical fixes alone. In practice, this means that establishing anti-corruption institutions and reforming public administrations are unlikely to be effective without real political support from local political elites. This will hold true no matter how generously funded or well-designed a donor's anti-corruption initiative may be. Corruption is difficult to tackle because in conflict-affected countries it is a rational response to the constraints that people face. Without understanding and addressing these underlying incentives for corrupt behavior, anti-corruption reforms are likely to fail.

[110] In the 2010 Corruption Perceptions Index (CPI), 10 of the 11 countries with a CPI score lower than 2 ('highly corrupt') were classified by the Uppsala Conflict Database as experiencing conflict. The one exception is Turkmenistan.

d. Public Administration/Local Governance/Participation

i. Governance[111] and Administration[112] as a key component of rule of law

The structure and capacity of local institutions is broadly considered as a key factor in any successful rule of law process. "Rebuilding the capacities of the state and the (re-) establishment of credible, transparent, participatory and efficient governance and public administration institutions in fragile post-conflict settings is the key ingredient to achieving peace, stability and sustainable development. A solid governance infrastructure, based on well-articulated horizontal and vertical divisions of power, is crucial to delivering political promises along with the needed public goods such as security, health care, education and infrastructure. State- or nation-building is the central objective of every peace building operation and is dependent upon the reconstitution of sustainable governance structures. Post-conflict nation-building comprises, at minimum: the rule of law, judicial, constitutional and security sector reform, the establishment of mechanisms of political participation and inclusive policies, the effective provision of basic services and goods, fighting corruption, fostering a democratic culture, free and transparent elections, and the promotion of local governance."[113]

Perhaps the centerpiece of an effective governance model is a well-functioning public administration, which is the channel through which policies are actuated. "At the center of credible governance and public administration is an effective public service [...]. Therefore, a capable public service, based on a merit and incentive based system, has a greater bearing on recovery than is generally recognized, both in terms of delivering aid and basic services and in rebuilding national cohesion and the credibility, legitimacy, and trust in government."[114]Of course, public administration mechanisms may have been significantly eroded by conflict. Yet those that make up this sector are central actors in putting in place public policy, and therefore, where legitimate, are paramount agents of statebuilding. On this basis, "the public service is called upon to be an agent of change and to ensure that it undergoes self-transformation to adapt to

[111] Ibid –Definition of Good Governance by the World Bank :1.Voice and accountability: the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media.-2.Political stability and absence of violence: perceptions of the likelihood that the government will be destabilized or overthrown by unconstitutional or violent means, including domestic violence and terrorism-3.Government effectiveness: the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies.-4.Regulatory quality: the ability of the government to formulate and implement sound policies and regulations, which permit and promote private sector development.

[112] Protais Musoni, Reconstructing Governance and Public Administration Institutions for Effective, Conflict-Sensitive Rule of Law (United Nations Network in Public Administration "Ad Hoc Expert Group Meeting," Yaound, Cameroon, July 2003), 5: Some experts suggest conceptualizing public administration as "an organizational structure, a system, a function, an institutional construct, procedures and processes or just a set of practices in the exercise of public authority." It also refers to a much broader process, in which the notions of public policy and civil service are contained and sequenced, an aspect particularly important in the post-conflict reconstruction period, as a government cannot implement all components of these changes at once. Hence, phases need to be distinguished in the building or rebuilding of a public administration.

[113] United Nations Department of Economic and Social Affairs (UNDESA), Governance Strategies for Post Conflict Reconstruction, Sustainable Peace and Development (New York: United Nations, 2007), 9.

[114] Ibid

and manage the changed and changing overall socio-politico-economic and social governance terrain."

ii. Participation and social capital

The call for greater participation also comes from the urge to enhance the deliberative quality of policy-making, help generate politic consensus and also a sense of ownership for state reforms, and activate the endogenous potential of local communities all elements that are often lacking in post-conflict reform processes.[115] Conversely, the state must organize specific, demonstrable initiatives to regenerate social cohesion through policies and programs that promote participation, equity and inclusion. At a more fundamental level, rule of law programs deal with societies in which violence and tensions have eroded social capital and community in many ways, breaking down trust in local spaces. This is even more evident in the ways citizens and civil society actors perceive the state apparatus.

The enhancement of civil society may lead to a wider participation of citizens in the policy-making. The government must take actions to boost the creation of civil initiatives, as they are a key pillar of democratization. Further, civil society contributes in a number of other areas of the rule of law agenda, including facets of economic and psycho-social recovery, justice and, and security and public order. Finally, through its involvement across sectors, civil society serves a number of important functions that span different peacebuilding themes and institutions.

The media may also play an important role in participation of citizens in policy-making. It is true that the media contribution to conflict is more often noted than praise is given to its role in peacebuilding processes. Media and journalists are victims of conflict, but they also at times play an active role in exacerbating tensions in divided societies. In many respects, however, the news media and journalists are also at the forefront of rule of law initiatives because, when they function effectively, they are crucial for the safeguarding of peace and democracy. During a rule of law program, it serves multiple purposes and is an important complement to almost every program pursued in different sectors .When the Media function properly they help disseminate information and represent a diversity of views sufficient for citizens to make well-informed choices and be able to participate in public life;

They also serve as a watchdog over leaders and officials, as well as other actors in the rule of law program. Medias presence is essential in the monitoring of human rights and the functioning of other civil society actors but also during an electoral period.

[115] Keng-Ming Hsu and Chun-Yuan Wang, "The Institutional Design and Citizen Participation in Local Governance," (In Jak Jabes (ed). Selected Papers from the Launching Conference of the Network of Asia-Pacific Schools and Institutes of Public Administration and Governance, The Role of Public Administration in Alleviating Poverty and Improving Governance, Kuala-Lumpur, Malaysia, December 6-8, 2004, 338

Hence, in reforming or reconstructing a public administration or local government apparatus, many rule of law actors focus on different methods to rebuild that trust. In this respect, different participatory processes such as forums for dialogue may play a vital role. "Stable networks of mutual acknowledgment and recognition allow individuals and groups to secure access to other forms of capital and resources."[116]

[116] United Nations Department of Economic and Social Affairs (UNDESA), Participatory Dialogue: Towards a Stable, Safe and Just Society for All (New York: United Nations, 2007).

CHAPTER 2: CIVIL SOCIETY IN CONFLICT TRANSFORMATION: STRENGHS AND LIMITATIONS

2.1 Definition

The number of agencies engaged in international development policy, humanitarian aid, human rights protection and environmental policy has increased substantially over the last two decades. A similar development can be witnessed in the field of conflict prevention, peacemaking and post-conflict regeneration. But while civic engagement and the role of social actors within the framework of the nation state is widely accepted in both politics and academia (at least in the OECD[117] world), there is less agreement on the significance of civil society for international politics and in conflict settings. Politicians, practitioners and scholars continue to debate the capacities, impacts and legitimacy of civil society actors.

Definitions and classifications remain contested: whether in academic debates or development discourses, different terms are used to describe the topic of discussion. International relations theory introduces the term non-state actors (NSAs). This definition reflects the assumptions of realist theories, which assert that interactions between states are of central concern in studying international policy. NSAs in this view include non-governmental organizations, firms and businesses (especially multinational corporations), the international media, international organized crime and mafia-type actors, and international paramilitary and terrorist groups. The term has also begun to be used in development cooperation, especially since the Cotonou Agreement[118] between the European Union and the African, Caribbean and Pacific (ACP) countries, in which the participation of non-governmental actors in ACP-EU cooperation was formally recognized.

The non-governmental organizations (NGOs) is also used widely in this field. NGOs are usually referred to as "non-state, non-profit orientated groups who pursue purposes of public interest", excluding the private sector[119]. In recent years, the term civil society organizations (CSOs) has gained importance and been adopted by international organizations. Unsurprisingly, there is no commonly-agreed definition of what civil society is. Scholars have focused on the impact of civil society on democratization and power balances and on global governance.

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[117] The Organization for Economic Co-operation and Development (OECD) (French: Organisation de coopération et de développement économiques, OCDE) is an international economic organization of 34 countries founded in 1961 to stimulate economic progress and world trade. It is a forum of countries committed to democracy and the market economy, providing a platform to compare policy experiences, seek answers to common problems, identify good practices and coordinate domestic and international policies of its members.

[118] The Cotonou Agreement, signed in June 2000, is a treaty between the European Union and the African, Caribbean and Pacific Group of States ('ACP countries').The aim of the Agreement is the reduction and eventual eradication of poverty while contributing to sustainable development and to the gradual integration of ACP countries into the world economy. The revised Cotonou Agreement is also concerned with the fight against impunity and promotion of criminal justice through the International Criminal Court.

[119] Ropers, Norbert 2002. Civil-Society Peace Constituencies. NGO Involvement in Conflict Resolution/Areas of Activity and Lessons Learned, in: Günther Bächler.

Given the diverse range of competing and overlapping terms, it is important here to specify the particular definitions being used in the discussion. In this chapter, the term NGOs refers to non-profit organizations active in development and humanitarian aid, human rights advocacy and peace work on international, regional and local levels. In contrast, the term civil society is used as a broader concept related to the activities of state-building.

2.2 Main actors

a. Insiders

Local NGOs

Local non-governmental organizations (NGOs) are perhaps the central actor in what is often conceptualized as civil society. These organizations are generally engaged in one specific sector of activities (e.g., human rights, development, humanitarian relief, conflict resolution/transformation, education and public information, and support to local associations and community groups). Traditionally, funding is highly concentrated on these NGOs, which mirror the western model. They often serve as intermediaries between outsiders (donors, international agencies, and international NGOs) and other civil society organizations, in particular community-based groups.

Civil society may be composed of a number of other actors, as well. For instance, business associations may be considered a form of civil society. Outsiders increasingly have tried to engage the business sector, particularly in order to place pressure on political actors to move toward peace (as in the cases of South Africa, Northern Ireland, and Sri Lanka)[120]. Other organizations that may make up civil society are trade unions and professional associations, which play important roles in organizing and representing specific groups, as well as research and academic institutions, which play important roles in training and policy dialogue.

Other domestic actors have functions within civil society, though their relationship to this sector is somewhat debated. For instance, media and journalist associations and religious and faith-based communities and organizations are often considered a part of civil society. An important and frequently mentioned feature of civil society is community-based organizations and grassroots organizations and networks, including neighborhood associations and committees, women and youth local associations, farmer associations, self-help groups, and more traditional forms of organizations at the community or cell level, such as Ubudehe in Rwanda[121] .

[120]Fitzduff, Civil Society and Peacebuilding : Potential , Limitations, and Critical Factors, Report No. 36445-GLB,December 20,2006, Social Development Department ,Document of the World Bank.

[121] Following the Rwandan genocide, national and international initiatives focused on state reconstruction. To ensure community participation in this process, the traditional concept of ubudehe was utilized to facilitate community development projects in which existing local governance structures, or cells, were allocated funds to target local priorities and initiatives. These projects attempt

Finally, traditional leaders often play a role in civil society. These grassroots expressions of civil society are involved more as individuals than as organizations, though they are often part of networks. They include traditional healers and mediums, as well as traditional justice leaders.

b. Outsiders

Outsider groups are heavily involved in capacitating and working with local civil society. Such institutions may include:

- "Northern" and international NGOs;
- Research and policy centers;
- Inter-governmental organizations and agencies (IOs);
- Bilateral donors; and
- Private foundations.

It is important to note that the collaboration of donors and IOs with civil society, in particular at the policy level, mainly concerns northern and international NGOs. These NGOs are most active in consultations and discussions with:

-The World Bank, in particular for the preparation of its Operational Policy on Development Cooperation and Conflict, also referred to as OP/BP 2.30[122] and

-The United Nations (UN), in particular the new UN Peacebuilding Commission and UN Security Council members, which call upon international NGOs to provide them with contacts and to help facilitate meetings with civil society actors at UN headquarters and at the field level as a normal part of their procedure.[123]

In addition to playing an active consultative role, northern and international NGOs are the main recipients of grants from IOs, although donors are increasingly trying to give grants to local NGOs. Despite these efforts, most of the aid to local civil society continues to be channeled through international and northern NGOs. Research and policy centers also play a role as civil society actors. They also produce salient information on civil society's contribution to conflict reduction. For instance, the Centre on Conflict, Development and Peacebuilding (CCDP) at the Graduate Institute in Geneva is completing a three-year research project aimed at better understanding the role of civil society in peacebuilding.

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to build a political space in which citizens can communicate with governing bodies and through which a relationship of trust is built between the state and society.

This program is not exempt from criticism, but it is interesting because it contrasts with other initiatives in which aid is channeled through NGOs that some analysts claim do little to build civil society capacity within the state. Among the negative effects of this funding is the emergence of top-down, client-based CSOs. Some analyses of the Rwanda case have shown what it would mean to support a system of collective action in which all people can demand access to rights and services on the basis of their citizenship. Development of such a system would necessitate both predictable, long-term funding that passes through decentralization structures and action that supports capacity building of both state and civic structures.

The Rwanda case also provides an interesting illustration of the kind of challenges that might obstruct the construction of a vital civil society in that kind of environment: poverty, collective trauma and pain, mutual distrust among people and between the state and society, dearth of political space, and acceptance of vertical, authoritarian governance.

[122] Ian Bannon, The Role of the World Bank in Conflict and Development: An Evolving Agenda (Washington, DC: World Bank, 2004)

[123] Henry F. Carey, Oliver P. Richmond , Mitigating Conflict: The Role of NGOs ,Psychology Press, 2003

2.3 NGO Activities at the International and Regional Level

Antecedents of present-day international NGOs were already emerging in the 19th century, when the International Committee of the Red Cross (ICRC) was founded and non-state actors began to fight for a range of issues: voting rights for women, international law and disarmament, ending the slave trade, and so on. After World War II, NGOs engaged not only in humanitarian areas, but also played an important role in identifying the need for human rights to be included in the UN Charter and, more generally, to develop the UN human rights system. For example, they provided input into the drafting of the Universal Declaration of Human Rights and influenced the UN anti-discrimination policies[124] .

During the last two decades, the number of NGOs has substantially increased. The UNDP recently estimated the number of NGOs active in the fields of international development, human rights, security and peace politics at approximately 37,000 to 50,000. In their larger numbers, NGOs play an important role in mobilizing a diverse number of campaigns and activities. For instance, they are supporting the International Climate Convention, working on designing adequate instruments for poverty reduction, creating better conditions for human rights and justice, and supporting the International Criminal Court.

NGOs also have been increasingly active in a) conflict prevention, b) peacemaking and c) peacebuilding. For example, they are engaged in early warning activities, preventive diplomacy through third-party intervention, facilitation of dialogue workshops and mediation, negotiations, networking and initiatives for cross-cultural understanding and relationship-building .Each of these activities are explained in turn below.

2.3.1 Conflict Prevention

Conflict prevention in a broader sense is one of the classical fields of NGO activism. The roles of NGOs in this area are multi-faceted. They do not only include the collection and evaluation of conflict-related information, but extend to the preparation of humanitarian and human rights standards and monitoring functions. NGOs are particularly apt to assume a watchdog functions of the international community because they are, by their very nature, independent actors, capable of reminding states of their obligations under international law.

a. Dissemination of Information and Human Rights Monitoring

NGOs play an important role in conflict prevention, owing to their knowledge of and their involvement in potential conflict areas. NGOs are often inside the country or nearby and able to respond quickly. In addition, they are mostly not only the best

[124] Supra nota

informed actors concerning human rights violations and conditions in the field, but also more willing than governments to investigate and report their findings and recommendations publicly[125]. The need for an active involvement of NGOs in human rights monitoring is further increased by the growing number of internal armed conflicts in which close-to-the ground cooperation is essential for receiving detailed and valuable information on the conflict and its victims.

Because of their nature and their organization, which allows them to react quickly to situations of emergency, NGOs are particularly valuable as early warning mechanisms. They may, for example, provide useful information to United Nations organs on local developments such as the political situation in the area, refugee flows or concrete relief needs. This has been recognized even by the Security Council, which has on several occasions engaged in consultations with NGOs (the so called "Arria" consultations[126]), by adjourning its session and continuing in an informal meeting[127] .

But this is just one of many ways in which NGOs provide important help. Perhaps the greatest impact of prevention NGO action lies in the early submission of information to specialized human rights mechanisms and special United Nations rapporteurs. In fact, the work of international human rights institutions such as the Human Rights Commission or the United Nations treaty monitoring bodies relies heavily upon information provided by NGOs. The Commission on Human Rights, which is composed of government representatives, has given NGO representatives the opportunity to present documentary evidence of human rights abuses at its plenary sessions. In 1994, the chairpersons of all human rights treaty committees have agreed that NGOs should be allowed "to make oral interventions and to transmit information relevant to the monitoring of human rights provisions through formally established and well-structured procedures. In some cases, NGOs have even been charged with the undertaking of fact-finding missions within particular states. These significant tasks provide evidence that the activities assumed by NGOs in the area of humanitarian affairs and human rights protection introduce a rudimentary form of "checks and balances" in the international legal system[128] .

b. Human Rights Standard-Setting

Due to their unique capacity to gather public support for and raise awareness on a number of important subjects, NGOs have also gained an important role in the norm-building-process of the international community[129]. Various international instruments designed to improve respect for human rights have been promoted or actively shaped by NGOs either through NGO campaigns or through their participation in the treaty

[125] For a recognition of the role of NGOs in conflict prevention, see Report of the Secretary General to the Security Council on the protection of civilians in armed conflict of 30 March 2001, para. 53, UN Doc. S/2001/331.
[126] Arria is the name of a former Representative of Venezuela who initiated this practice.
[127] On 12 Feb. 1997, for example, three NGOs (OXFAM, Care and Medecins sans Frontieres) briefed the Security as well as the bureau of ECOSOC on the situation in the Great Lakes region.
[128] Ibid 121
[129] R. Wedgwood, Legal Personality and the Role of Non-Governmental Organizations and Non-State Political Entities in the United Nations System, in: Hofmann (note 20), 21, at 25.

conferences and negotiations. The Ottawa process, which was initiated by an umbrella group of NGOs and led to the adoption, in December 1997, of the Convention banning anti-personnel landmines[130] was a landmark in this regard. Another example of effective partnership between inter-governmental, governmental and non-governmental actors is the adoption of the Rome Statute of the International Criminal Court in 1998[131].

Although NGOs neither hosted nor organized the underlying treaty conferences, they can no longer be seen as disseminators of information only. They are, in the words of the UN Secretary-General "shapers of policy and indispensable bridges between the general public and "intergovernmental processes"[132] . Admittedly, NGOs do not have at this stage a direct role in formal law-making. However they can adopt soft law instruments. Furthermore, they exercise pressure on governments to prepare draft standards and to ratify international conventions in the area of humanitarian and human rights law.

Early warning activities include analysis and development of communication strategies that raise public awareness of emerging crises. There are also joint initiatives between state and non-state actors orientated to improving early warning systems on a global level. In the late 1990s, for example, UN organizations, research institutions and NGOs (International Alert in the UK, the PIOOM Foundation in the Netherlands, the Russian Academy of Sciences and Institute of Ethnology, the US-American Council on Foreign Relations, Canadian York University and Swisspeace[133]) founded a Forum on Early Warning and Early Response (FEWER). Through its FAST[134] program, the research institute Swisspeace has been a standard-setter in developing early warning methodology, monitoring programs in the Americas, Africa and Asia. The International Crisis Group[135] delivers regular background reports and briefings on conflict zones. CARE International[136] has launched several community-based early warning systems in high-risk areas of El Salvador, Honduras and Nicaragua. In Africa, the West African

[130] See Ottawa Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Landmines and on their Destruction, reprinted in I.L.M. 36 (1997), at 1507.

[131] See Rome Statute of the International Criminal Court of 17 July 1998, UN-Doc.A/CONE183/9, reprinted in I.L.M. 37 (1998), at 999.

[132] See Report of the Secretary-General, at para. 57.

[133] Swisspeace is a practice-oriented peace research institute. It carries out research on violent conflicts and their peaceful transformation. The Foundation aims to build up Swiss and international organizations' civilian peacebuilding capacities by providing trainings, space for networking and exchange of experiences. It also shapes political and academic discourses on peace policy issues at the national and international level through publications, workshops and conferences. swisspeace therefore promotes knowledge transfer between researchers and practitioners

[134] Swisspeace's early warning program, which was operational from 1998-2008, covered 25 countries or regions in Africa, Asia and Europe. It was aimed at enhancing the ability of decision makers and their staff in state and non-state institutions to identify critical developments in a timely manner so that coherent political strategies could be formulated to either prevent or limit destructive effects of violent conflicts, or to identify windows of opportunity for peacebuilding.

[135] The International Crisis Group (ICG) is a conflict-prevention non-profit, non-governmental organization with many prominent Western politicians and diplomats involved in its governance, particularly those from the United States and other NATO countries. Like some other NGOs it carries out research on conflict issues, but it distinguishes itself by enthusiastic advocacy of its research recommendations,[1] and a willingness to recommend humanitarian intervention

[136] CARE (Cooperative for Assistance and Relief Everywhere) is a major international humanitarian agency delivering broad-spectrum emergency relief and long-term international development projects. CARE's programmes in the developing world address a broad range of topics including emergency response, food security, water and sanitation, economic development, climate change, agriculture, education, and health. CARE also advocates at the local, national, and international levels for policy change and the rights of poor people.

Network for Peacebuilding [137](WANEP) is setting the stage for a civil society-based initiative called the Warning and Response Network[138] (WARN) that will operate in 12 of the 15 member countries of the Economic Community of West African States (ECOWAS). The Institute for Security Studies[139] (ISS) in South Africa is another key organization in early warning analysis and crisis reporting in Africa.Other NGOs are active in preventive, for instance International Alert (UK), the Carter Center (USA) and its International Negotiation Network.

2.3.2 Conflict Resolution

Throughout the years, NGOs have become indispensable actors in the area of humanitarian aid and disaster relief within the framework of United Nations peacekeeping operations. Their action is of essential importance for the realization of humanitarian assistance, which has been qualified as the solidarity right with the best chance to emerge as a true legal right with "the best chance to emerge as a true legal right of populations in emergency situations"[140].

a. The spectrum of tasks performed by NGOs

The scope of activities exercised by NGOs within the framework of relief operations is as widespread as their focus of action in general. In the initial phase of a conflict, which is usually marked by starvation, disease and death, the focus of NGO activity lies in the provision of water, food, sanitation equipment and shelter to distressed populations and on the prevention and treatment of diseases. Moreover, some NGOs disseminate information on impending crises, thereby ensuring broader media coverage of events and perspectives on the conflict. On a more long-term basis, NGOs assume community building tasks such as health care training or repatriation assistance. In the Kosovo crisis for example, NGO developed innovative methods to assist family reunification. They used Internet-based information and Yugoslavian phone books in order to create a database for the identification of refugees and displaced persons[141].

Some tasks may also emerge within the course of the conflict. In Kosovo, local NGOs played a crucial role in assisting refugees. NGOs established an information network which permitted local NGOs to alert -larger and more influential organizations such as the ICRC or Human Rights Watch in cases, in which the Macedonian border authorities denied refugees access to the territory. As a result of the international

[137] The West Africa Network for Peacebuilding (WANEP) is a leading Regional Peacebuilding organization founded in 1998 in response to civil wars that plagued West Africa in the 1990s. WANEP places special focus on collaborative approaches to conflict prevention, and peacebuilding, thereby complementing efforts at ensuring sustainable peace and development in West Africa and beyond

[138] The West Africa Early Warning and Early Response Network (WARN) is a civil society-based early warning and response network with emphasis on human security. WARN Policy Briefs offer analysis and recommendations, covering the entire West African sub-region

[139] The Institute for Security Studies is an African organisation which aims to enhance human security on the continent. It does independent and authoritative research, provides expert policy analysis and advice, and delivers practical training and technical assistance.

[140]Ibid 121

[141] Ibid

pressure, refugees were often allowed to enter the country within 24 hours. In Ethiopia, NGOs have acted as diplomatic agents by helping to negotiate agreements between the warring parties, in order to facilitate the delivery of humanitarian assistance to inaccessible crisis areas[142].

b. A civil Society Building

The overall purpose of peacebuilding efforts is to rebuild a properly functioning state system and a vibrant civil society. The input of NGOs is an extremely valuable resource in this process. Long lasting political objectives such as the establishment of a stable democracy and a pluralist society cannot be imposed by the international community; their realization requires a bottom-up dynamic that has often been lacking in post-war situations. The organization of elections at the national level, a widely promoted goal of second-generation peacekeeping operations, is crucial and necessary. But democracy-building involves more than elections, it requires citizen's participation and a solid foundation at the local level NGOs play an important role in this regard because they are usually better positioned to cooperate and work with local forces than international institutions. Moreover, in post-war societies, the establishment of local NGOs takes on a special significance. The creation of indigenous organizations pursuing community- based activities is an important prerequisite of a stable and peaceful society, capable of shaping its own political and social system. In many ways, task-sharing with service-providing NGOs can thus be considered as central to improving post-conflict reconstruction.

c. The provision of community-based services

Devolving responsibilities to local actors and outsourcing public services can take several forms. NGOs have, most notably, performed state-type functions in areas like health care, the re-establishment of water and sanitation systems and in the agricultural and environmental sector. Besides filling gaps in basic infrastructure NGOs have also provided useful services in the information sector by conducting impartial and needs-based radio programs or by supporting existing media. Other fields of NGO activities are education and election-monitoring.

Complex peacekeeping missions such as the operations undertaken in the former Yugoslavia illustrate the important role of NGOs in post-conflict reconstruction and the broad range of tasks performed by them in this context. In Bosnia and Herzegovina, the allocation of funds to civic groups has contributed to the creation of over 400 local NGOs covering many tasks vital to the long-term development of the country. In Kosovo, an astounding 642 NGOs have been registered by United Nations Interim

[142] Ibid

Administration in Kosovo (UNMIK).[143] About 400 of them are local NGOs. Many NGOs carry out functions which are under normal circumstances discharged by public institutions.

d. Reconstruction

In the aftermath of a conflict, repairing conflict-related damage to housing and infrastructure is a key issue[144]. NGOs provide very useful services in this field. For example, mine clearing has become a well-established task of NGOs after the cessation of hostilities[145]. In Kosovo, this task is carried out by the United Nations Mine Action Program, by KFOR[146] and by NGOs[147] . There is great need for NGO involvement, because KFORs role in demining is restricted to securing the routes, roads and sites necessary for their deployment. Several NGOs (Handicap International, Norwegians Peoples Aid and the Mines Advisory Group) are developing a mine action response in Kosovo. Many of them have already been involved in mine action programs in Bosnia. Moreover, NGOs play an important role in transmitting information concerning mine-endangered areas.

A number of other NGOs work in the field of housing and reconstruction. Shelter Now International for example is designed to assist in the reconstruction of 450 houses in Kosovo through a "Materials for Work" project that provides labor for community cleanup. Furthermore, several NGOs have launched projects to build schools in Kosovo and in Bosnia.

e. Education and Health

Another important field in which NGOs exercise public service tasks is the area of education. NGOs can carry out educational programs in schools or provide higher education. A good example is the Kosovo Law Center, which, was established d by the OSCE as a locally run and independent NGO designed to comment on the legal system in Kosovo and to revive education in law at the University of Pristina[148] . Furthermore, health care is a sector which remains at the focus of NGO attention even after the end

[143] Ropers, Norbert 2002. Civil-Society Peace Constituencies. NGO Involvement in Conflict Resolution Areas of Activity and Lessons Learned, in: Günther Bächler.
[144] In Kosovo, some 120,000 buildings were destroyed in the course of the conflict. This is roughly one third of all the houses in Kosovo.
[145] In Afghanistan, the United Nations Office for the Coordination of Humanitarian Assistance set up facilities to train Afghan de-miners and created several local NGOs for that purpose.
[146] The Kosovo Force (KFOR) is a NATO-led international peacekeeping force which was responsible for establishing a secure environment in Kosovo.KFOR entered Kosovo on 12 June 1999, two days after the adoption of UN Security Council Resolution 1244. KFOR has gradually transferred responsibilities to Kosovo Police and other local authorities. As of December 26, 2013, KFOR consists of 4000 troops.
[147] Mines and unexploded cluster munitions continue to pose a major threat in Kosovo. Currently, there are about 16 de-mining organizations at work, which are coordinated by the United Nations Mine Action Coordination Centre.
[148] The KLC is staffed with national legal advisors working side-by-side with OSCE staff. For further details, see http://wwwkosovolawcentre.org.

of a crisis. Improvements in the delivery of health-care services are often dependent on support and training by NGOs active in the field of medical assistance[149].

In their response to emergencies NGOs have several comparative advantages to other types of relief organizations. These advantages include flexibility, quick response capacity and grass-root contact. Due to their private status, NGOs may more easily than states or international organizations conduct humanitarian assistance operations s on a particular territory without the invitation or consent of the territorial state. Furthermore, NGOs have often remained in dangerous conflict areas, long after national governments had withdrawn their civilian and military personnel. Moreover, their informal decision-making procedures and their intensive links to the local level have allowed NGOs to adopt inventive solutions and case-to-case approaches corresponding to the needs of the particular relief operation. Another factor encouraging NGO involvement in peacekeeping operations is the fact that governments in crisis areas are often more willing to accept help provided by NGOs than assistance by other states or international organizations.

In the light of this overview, we can conclude that NGOs have gained more and more ground in influencing international politics. Likewise, they are now more readily accepted by state agencies and international organizations as cooperation partners. However, assessments of NGO roles in international politics remain ambivalent and controversial debates on the role, impact and legitimacy of NGOs are ongoing.

2.4 Standards of accountability for NGOs

An issue frequently raised in the context of NGO involvement in complex peace operations is the question of accountability. Over the last years, the observance of humanitarian law by military forces operating within the framework of UN peacekeeping operations has been a subject of legal debate[150].The ICRC, in particular, has made extensive efforts to ensure that the rules of international humanitarian law apply to all parties to a conflict, including forces acting under UN authorization. A somewhat parallel question arises with respect to NGO. NGOs are not parties to the conflict and therefore not formally accountable under international humanitarian law, as states or individuals may be. However, as principal actors in a relief response they have to act in line with basic humanitarian standards such as impartiality and neutrality.

Humanitarian relief NGOs acknowledge more and more that they must not allow themselves to become allied with a party to the conflict, but respect the principles of humanity, impartiality, and neutrality. When NGOs operate on the basis of cooperation arrangements with UN agencies, they work within mandated system which mostly implies the acceptance of neutrality and security guidelines agreed by the lead

[149] For example, in Kosovo a polio immunization program was successfully carried out by several NGOs in cooperation with the WHO, UNICEF and KFOR, as part of which 69,579 children were immunized. See Report of the Secretary-General on the United Nations Interim Administration in Kosovo, 15 Dec. 2000, UN. Doc. S/2000/1196.

[150] The adoption of the Secretary-General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law lends support to the proposition that humanitarian law is :in principle applicable to UN peacekeeping operations. See UN Doc. ST/SGB/1999/13 (1999), reprintedin I.L.M. 38 (1999), at 1656.

agency with the warring parties. But general standards of behavior in disaster relief have even gained wider recognition. In 1996, several NGOs and the Red Cross agencies elaborated a Code of Conduct for the International Red Cross and Red Crescent movement and Non-Governmental Organizations in Disaster Relief[151] , which sets out a number of important general principles, including the principle of neutrality which requires that humanitarian aid be provided without bias to any party involved in the conflict. The drafters of the Code affirm that human suffering should be relieved wherever it is found. Furthermore, they emphasize their commitment to deliver aid on the basis of need alone, irrespective of the race, creed or nationality of the recipients and without adverse distinction of any kind. Particular weight is also given to the independence of humanitarian relief organizations.

The Sphere Project[152], launched in 1997 by NGOs and the Red Cross, goes even one step further than the above-mentioned Code of Conduct. Over 800 people contributed to a handbook, which includes a humanitarian charter, a set of minimum standards in core areas of humanitarian relief and guidance notes on the five basic life-sustaining sectors of disaster: water and sanitation, food aid, nutrition, shelter and site selection and health. The handbook is an important instrument in the field of disaster relief, which combines principles, legal norms and quality standards providing a reference point for the evaluation of NGO relief action. The humanitarian agencies involved in the Sphere Process define their role in the area of humanitarian assistance with reference to the major human rights treaties.[153] Moreover, they declare that they "expect to be held accountable to [their] commitment and undertake to develop systems of accountability within [their] respective agencies, consortia and federations". Many humanitarian actors have recognized the principles contained in the handbook as a framework for, and commitment to, quality and accountability in humanitarian practice.[154]Unfortunately, in the Kosovo crisis, awareness and application of the principles enshrined in the Sphere handbook and in the Code of Conduct have been poor.[155] In order to overcome these shortcomings in future conflicts, governments should consider incorporating the Sphere standards in their criteria, for funding decisions.

[151] See Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, prepared jointly by the International Federation of Red Cross and Red Crescent Societies and the ICRC, 29 Feb. 1996, available under icrc.org and reprinted in French in: RICR 817(1996), 124 et seq.

[152] See http://wwsphereproject.org.

[153]See para. 2.2 and para. 2.3 of the Humanitarian Charter: "2.2 International law recognises that those affected are entitled to protection and assistance. It defines legal obligations on states or warring parties to provide such assistance or to allow it to be provided, as well as to prevent and refrain from behaviour that violates fundamental human rights. These rights and obligations are contained in the body of international human rights law, international humanitarian law and refugee law. 2.3 As humanitarian agencies, we define our role in relation to these primary roles and responsibilities …"

[154] The consensus-building process included agencies and networks of experts from a variety of NGOs and United Nations agencies.

[155] See Disasters Emergency Committee, Evaluating the Humanitarian Response to Kosovo, ODIHPN Report, available under http://wwwodihpn.org.

CHAPTER 3: THE ROLE OF THE NGOS IN THE FRAMEWORK OF PEACEBUILDING AND THE RULE OF LAW IN POST CONFLICT-COUNTRIES

3.1 Introduction

As correctly pointed out by some observers "*NGOs provide the international community with both a window from which they can observe and monitor developments in… zones of conflict and a door through which assistance can be delivered to the victims of ….conflicts"*[156]. But the function of NGOs within the international community goes even a step further than conflict prevention and conflict resolution.

NGOs have also specialized in post-conflict regeneration and in the promotion of rule of law. After the end of a war, there is mostly a void in civil governance including the absence of ordinary policing, judicial systems and administrative management. Humanitarian aid must therefore be replaced by development assistance. NGOs can play a crucial role in this process.

Rule of Law programs have increasingly given support to civil society organizations (CSOs), echoing the growing importance of these groups in development cooperation, as well as recognizing their role in both the domestic and international arenas. In societies transitioning from war to peace and democracy, this interest corresponds to even more specific motivations.

CSOs may serve as intermediaries between outsiders and local communities. In many cases, they operate as sub-contractors for international agencies. CSOs may also provide complementary (or even alternative) governance structures where the state is weak, incapacitated, or indifferent to its people's needs. Here, their role is actually twofold. They often play a key role in delivering a certain number of public goods and basic social services, reaching the poorer sectors of the population, providing socio-economic opportunities, and enhancing the national capacity. They sometimes serve as actual substitutes for the state, filling a nearly total political vacuum. In addition, through monitoring and lobbying activities (in particular on issues such as human rights violations or corruption), civil society pushes the state to fulfill its obligations to its citizens and provides some of the necessary checks and balances on government excesses.[157]The support and development of civil society may appear more feasible and promising to donors in terms of effecting quick and visible change than the reform of government institutions, which requires large-scale and long-term undertakings.

[156] Id. 121

[157] Pouligny, "Civil Society and Post-Conflict Peacebuilding;" Mashumba and Clarke,2002, 16

3.2 Civil society in democracy and good governance

3.2.1 Introduction

Civil society has the capacity to serve a number of key functions in service of democracy and good governance in rule of law scenarios. For instance, civil society is envisaged as one of the pillars of any democratic structure, and thus is a paramount institution in restoring and consolidating democracy. Civil society may also facilitate participatory local governance mechanisms. Further, civil society can provide a check on political power, pressing on behalf of citizenry for better governance. Finally, civil society bolsters elections, another pillar of democratic systems, by providing voter education and encouraging turnout and participation in related processes. While these are civil society's optimal functions and do not always reflect the possibilities or realities of each circumstance, they are representative of the valuable contribution civil society has the potential to play in regard to democracy and good governance in conflict-prone environments.

a. Civil society as a key pillar in a democratic system

A vibrant civil society is broadly considered one of the three main pillars of a democratic system (or what Thomas Carothers has called the "democracy template"), along with elections and capacity building for state institutions.[158] The ideal is to attain "a diverse, active, and independent civil society that articulates the interests of citizens and holds governments accountable to citizens."[159]Major bilateral donors, as well as international organizations, engaged in democracy and governance work are now giving attention to civil society development. Major private American, European, and Japanese foundations are also deeply involved in this arena.[160] In the literature on democratization, the assumption that civil society promotion and democratic viability go hand in hand is debated. That link is based on the idea that civil society is key to the establishment and maintenance of competent citizen activity *"a necessary component of democratic sustainability"*. These arguments are themselves often premised on Alexis de Tocqueville, who, in Democracy in America, considered civic engagement in associations to be schools of democracy, capable of checking abuse of authority.

Some scholars argue that "*even if CSOs are not democratically organized or do not fully articulate democratic values, agreement on the rules of the game may be sufficient to underpin 'democracy as process,' particularly in deeply divided, post conflict societies."* From that perspective, any CSO, whatever its purpose and sector of activity, would contribute to the democratization process. However, under the democratic agenda, donors and international agencies tend specifically to target groups that are directly involved in, or pursuing, political activities.

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[158]Thomas Carothers, Aiding Democracy Abroad: The Learning Curve (New York: Carnegie Endowment for International Peace, 1999).
[159] Id
[160] Id. 121

b. Civil society and participation in local governance

The notion of civic engagement--of citizen organizations, associations, businesses, neighborhood committees, and the like--has become central to the concept of local governance. CSOs deliver services at the local level, provide information to the public, articulate interests in society, advocate for social needs and reforms, give opportunities for citizen participation and consultation, and provide technical services, such as gathering data on social problems. In post-war contexts, local government institutions may try to rely on more participatory and democratic governance models through partnerships with CSOs, which can introduce more participatory approaches to community-level decision making. Development projects themselves often form community-based organizations (CBOs) that act as intermediaries between communities and external development organizations.[161]

NGOs can also provide very useful services in the media sector by- organizing informative and impartial broadcasting or by supporting local radio stations and newspaper publishers[162] . Frequently, after a war, a new media culture needs to be established in the crisis area, which meets the requirements of objectivity, tolerance and pluralism and allows all parts of the population to voice their concerns. In most cases, an international organization such as the UN or the OSCE is vested with the overall media mandate, i.e. the authority to develop the regulatory framework, issue licenses and foster a code of conduct for the media [163]. International NGOs play an important role in setting the standards for objective journalism. Furthermore, they may help reducing tensions by working in cross-cultural settings and designing programs to overcome ethnic rivalries[164].

3.2.2 Civil society as a check on political corruption

Civil society, and more specifically Ngos can play an important role as a check on the state. Generally speaking, CSOs contribute to making the local government more responsive to its population, in particular through monitoring and lobbying activities. Ngo can also contribute to the reduction of corruption. Citizen engagement is very important in fighting corruption, and there are particular advantages in getting NGOs more involved in the fight. NGOs have limitations, but also great potential strengths, and these can be better realized through better project management. The methods the

[161] World Bank Social Development Department, Engaging Civil Society Organizations in Conflict-Affected and Fragile States: Three African Country Case Studies (Washington, DC: World Bank, 2005)

[162] The crucial role of the media in conflict situations was recently emphasized by the United Nations Secretary-General in its report to the Security Council on the protection of civilians in armed conflict. The Security-General recommends "that the Security Council make provision for the regular integration in mission mandates of media monitoring mechanisms that would ensure the effective monitoring, reporting and documenting of the incidence and origins of "hate media". Such mechanisms would involve relevant information stakeholders from within the United Nations and other relevant international organizations, expert non-governmental organizations, and representatives of independent local media".

[163] For the situation in Kosovo, see UNMIK Regulations 2000/36 and 2000/37 establishing a Temporary Media Commissioner and a Media Appeals Board working under the auspices of the OSCE.

[164] One NGO active in this field is Media Action International, which conducts needs-based radio Programs in Kosovo, Albania, Macedonia and Mozambique.

Non –Governmental Organizations use to combat corruption are monitoring and advocacy.

a.Monitoring

Monitoring[165] is one of the principal tools used by human rights, environmental, and other NGOs in pursuing their reform objectives. It is a tool increasingly used in the fight against corruption. Monitoring diagnoses problems (particularly the difference between rhetoric and reality), assesses actual situations and the actual functioning of systems, and can highlight corrupt practices systematically over time (thus providing a base for advocacy action). It is a tool that is valuable in itself, but is made most effective when joined with public information and advocacy[166].

Monitoring is an important part of this watchdog role, and NGOs are likely to be able to have a considerable amount of access to local knowledge, local experience, and local contacts. A great number of NGOs in many societies around the globe monitor the work of public and private institutions in their country to protect the public in a number of different areas they consider important – elections, land appropriation, gender representation – and many others. Such monitoring will also vary from merely keeping themselves informed through to a systematic information collection structure.

When an NGO decides to monitor corruption, the target for the monitoring can be a wide range of institutions and individuals, including for example the Government, the Ministries but also the private sector as private sector companies and associations but also political parties and the Judiciary system (judges, lawyers).

Complex monitoring actions can also involve a group of individuals carrying out the same monitoring operation at the same time under an umbrella structure that analyses and consolidates results at the national level. This is the story of the monitoring of the Ministry of Education Budget in Uganda where large numbers of parents active in Poverty Action Monitoring Committees tracked whether funds that were announced as having been sent from the capital, Kampala, to village schools, had in fact arrived at these schools. Village level associations were operating all over the country to ascertain the situation and were reporting to the Ugandan Debt Relief Network that coordinated the effort, and placed the information before the government and the public.

165 HURIDOCS (Human Rights Documentation and Information System, International), Volume1: "What is Monitoring?" 2001, Manuel Guzman and Bert Verstappen.

166 It is appropriate to begin our discussion with a definition of monitoring published by HURIDOCS(note 223): Monitoring is an activity carried out to find out what is wrong with a certain situation or individual case. The following elements constitute monitoring:

- It is carried out over a long period of time - It involves collecting or receiving as much data as possible - It means close observation of the situation, usually through constant or periodic examination or investigation or documentation of developments - Standards or norms are used as reference to determine what is wrong with the situation - Tools or instruments are used in the process of monitoring - The product of monitoring is usually a report about the situation - The report embodies as assessment of the situation which provides a basis for further action

b.Advocacy

If an NGO has been monitoring the State's public commitment to decreasing corruption, and monitoring its actual practices even more tightly, it may well find that there are significant problems and disparities between the rhetoric and the reality. The NGO feels it is time to push for some changes to the status quo that it has been monitoring, so that the public will be educated about the real situation, and so the public will pressure the government to get serious about making changes. In other words the NGO is ready to start using the tool of advocacy[167].

A limited advocacy campaign in a remote community possibly will have no need for the involvement of the radio, the TV, the newspapers, and/or the Internet. But very many advocacy campaigns about national or sub-national issues will not be able to have a face-to-face discussion with those who are likely to be affected, or those who are likely to be responsible. They will need to get their message across via the media, and it will be a message designed to be heard and seen as much as possible by particular groups in the country likely to support the NGO's position. The media is, however, a tricky partner in advocacy. Firstly, the media is often owned by individuals with a political agenda, and an NGO may find itself caught up in events not of their own choice. Secondly, the media has its own ways of working that often tend towards exposes and scandal. If that is what the NGO wants, and it is aware of the dangers of this approach, then it may use that strategy – but if it is looking for consensus and partnership building, the media is a dangerous ally. The media is not just the formal newspapers, radio and TV. It is possible to both educate and amuse people at the same time, and this is greatly to be desired. It may well be worth working with popular singers, actors or comedians[168].

-Example of NGO dealing with corruption

i. American Bar Association

Example of an Ngo working and promoting corruption initiatives is the American Bar Association, and its program the "Rule of Law Initiatives" .The goal of the ABA Rule of Law Initiative's (ABA ROLI's) anti-corruption and public integrity work is to contribute to host countries' efforts to develop legal frameworks, institutions and capacity to prevent and sanction corruption, to encourage public integrity, and to foster accountability, transparency and public participation. ABA ROLI works with local counterparts to reform laws, to train prosecutors and judges, and to strengthen

[167] "A series of actions designed to persuade and influence those who hold governmental, political, or economic power so that they will adopt and implement public policies in ways that benefit those with less political power and fewer economic resources". Definition from the Advocacy Institute, Washington DC (please see www.advocacyinstitute.org)

[168] Two years ago Eric Wainana, then a 27 year old musician, hit the Kenyan stage with a popular song Nchi ya Kitu Kidogo ("a Country of Bribes"). The song, which captured the public's imagination, was on everyone's lips. It exhorted Kenyans to shun corruption or "kitu kidogo ("something small"). Wainana was performing the song at a gala attended by then Vice-President George Saitoti and a host of other government officials. Inexplicably the microphone went dead just when he started singing the second verse. Undeterred by the technical hitch, the audience continued singing the song. Kenya Corruption Notebook CPI-GA.

government bodies and non-governmental organizations (NGOs) to combat corruption and increase accountability[169]. ABA ROLI also assists governments and NGOs with developing, publicizing and refining their national anti-corruption strategies and action plans. The anti-corruption policy of the organization consists of the following five areas[170]:

1. Ethics and accountability

Ethics codes help enforce strict standards for conduct and service delivery in the public sector. ABA ROLI has supported the drafting and enforcement of ethics codes for judges, lawyers, prosecutors and public officials. The organization provides judicial training, develop ethics curricula and offer assistance that facilitates judicial accountability. Example of the organization role is found in Kosovo, where the organization helped the Pristina University and Mitrovica University law schools develop and introduce a legal ethics and professional responsibility course. In 2008, ABA ROLI completed the Legal Ethics Handbook, which will serve as a primer for a full course.

2. Legislation

Comprehensive anti-corruption legislation advances the rule of law and combats corruption. ABA ROLI helps national governments and NGOs assess and draft anti-corruption legislation and create appropriate bodies and practical mechanisms to implement anti-corruption efforts. It also helps support the drafting, monitoring, enforcement and public education of freedom of information laws.

Example of the organization projects concerning anti-corruption legislations is found in Lebanon .In February 2008, ABA ROLI initiated its anti-corruption program, which seeks to strengthen the rule of law and civic participation on anti-corruption initiatives through a multi-sector network. The network of 17 governmental and non-governmental organizations committed to corruption reform in Lebanon, with the ABA ROLI's support, has established an advocacy and public outreach subcommittee. The subcommittee, with support from international specialists, has worked to refine the access to information and whistleblower protection draft laws.

3. Anti-corruption strategies

International cooperation is essential for combating trans-boundary corruption, for promoting national and regional cooperation and for sharing best practices. ABA

[169] The ABA Rule of Law Initiative was established in 2007 by the American Bar Association to consolidate its five overseas rule of law programs, including the Central European and Eurasian Law Initiative (ABA CEELI), which was created in 1990 after the fall of the Berlin Wall. Today, the ABA Rule of Law Initiative (ABA ROLI) implements legal reform programs in 50 countries in Africa, Asia, Europe and Eurasia, Latin America and the Caribbean, and the Middle East and North Africa.

[170] To learn more about the activities of the American Bar Association go to http://www.americanbar.org/advocacy/rule_of_law.html (last visit 1-09-2014)

ROLI supports multilateral cooperation through resource centers, advisory boards, peer reviews and capacity-building workshops and is also assisting governments and NGOs with their anti-corruption strategies and action plans is also part of the ABA ROLI policy.

Ukraine is an example of the organization's role. With a significant number of international donors, government agencies, and national and international organizations working in the area of anti-corruption in Ukraine, communication and collaboration can be a challenge. ABA ROLI has established a monthly forum to discuss programming, identify needs, form partnerships and coordinate its work. These efforts led to the Anti-Corruption Coordination Initiative, which facilitates anti-corruption coordination through an electronic database, weekly news updates, monthly meetings and briefing memos, and an anti-corruption resource website (http://acrc.org.ua).

Also, in June 2008, ABA ROLI, along with Organization for Economic Cooperation and Development (OECD), the Organization for Security and Cooperation in Europe, and the government of Georgia, helped to organize the seventh general meeting, held in Tbilisi, Georgia, of the OECD Anti-Corruption Network for Eastern Europe and Central Asia. The meeting provides a unique regional multi-stakeholder forum for the transition economies. The Tbilisi meeting attracted about 100 participants from more than 40 countries. It served as a discussion forum between national governments, civil society, donors, international organizations and international financial institutions, and provided valuable networking opportunities.

In January 2009, Adala ("Justice"), a prominent Moroccan human rights non-governmental organization and ABA ROLI partner, completed a working draft of a judicial anti-corruption assessment report. The report findings will be used to inform an upcoming conference on judicial reform. On February 27, 2009, ABA ROLI entered into a memorandum of understanding with the Ministry of Justice. ABA ROLI plans to utilize its new partnership and the findings of the anti-corruption assessment report to build consensus on a strategy to advance judicial reform[171].

4. Education and awareness

ABA ROLI provides anti-corruption trainings, seminars and conferences in response to host government needs. As markets and financial sectors become more open, emerging democracies can be sources of and targets for money laundering, drug and arms smuggling, human trafficking and terrorism-related activity. ABA ROLI monitors these trends to develop effective training and programming to address corruption.

Example the organizations role are found in Lebanon, where it seeks to strengthen the rule of law and civic participation through a multi-sector network. The network, comprised of Lebanese governmental and non-governmental organizations,

[171] Supra note 121.

has developed a comprehensive action plan aimed at promoting the right to access information and providing whistleblower protection for public administration, media and private enterprises. ABA ROLI and the Focus Group Research Center at the Lebanese Center for Policy Studies conducted public perception surveys to inform an anti-corruption public awareness campaign.

Examples of the ABA ROLI work can also be found in the Ecuador, where the organization and the U.S. Department of Treasury brought together Ecuadorian legal system representatives for a 2008 conference to discuss the expanded role of the Unidad de Inteligencia Financiera (Financial Intelligence Unit), an investigative unit responsible for analyzing potential corruption and money laundering cases. The conference featured both Ecuadorian and international speakers and underscored the importance of increased collaboration in investigating and prosecuting money laundering and corruption cases. Police, judges and prosecutors gave first-hand accounts of cases in which they had been involved. A mock trial, featuring a law enforcement agent accused of taking bribes, was also held.

3.2.3 The role of NGOs in the Constitution-making process.

The design of a constitution and its constitution-making process can play an important role in the political and governance transition [172].Constitution-making after conflict is an opportunity to create a common vision of the future of a state and a road map on how to get there. The constitution can be partly a peace agreement and partly a framework setting up the rules by which the new democracy will operate.

An ideal constitution-making process can accomplish several things. For example, it can drive the transformative process from conflict to peace, seek to transform the society from one that resorts to violence to one that resorts to political means to resolve conflict, and/or shape the governance framework that will regulate access to power and resources—all key reasons for conflict. It must also put in place mechanisms and institutions through which future conflict in the society can be managed without a return to violence[173].

Initiating changes to the political culture of a society is one of the most difficult aspects of any post-conflict transition. It requires substantial changes to behavior as well as to expectations and norms. These sorts of societal changes require long-term strategies involving large segments of society. They require extensive education and sensitivity campaigns as well as dialogue and consensus building within society. These more intangible aspects of peace-building are frequently overlooked in favor of more technical rebuilding and assistance. Nonetheless, they are essential to long-term change.

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[172] Id. 121.

[173] Kirsti Samuels, "Constitutional Choices and Statebuilding in Postconflict Countries," in The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations, ed. Roland Paris and Timothy D. Sisk (London: Routledge, 2008).

Many countries are implementing legal and constitutional reforms as part of their overall development programs. There is a strong realization that economic reform requires an up-dated legal framework and a well-functioning constitution that can interpret and enforce the laws in an equitable and efficient manner. Much of the same can be said regarding poverty alleviation: laws and legal systems need to be responsive to the needs of the poor, with the resulting economic benefits flowing to both the disadvantaged and society as a whole. Many developing post conflict countries find, however, that their constitution is obsolete.

To solve these problems, governments across the world are launching constitutional reforms. Academics, experts, civil society, and ngos, play important roles in constitutional engineering. Academics and, to a less frequent extent, civil society are at times asked to actively engage by providing advice on constitutional issues. While many governments are undertaking reforms that aim to improve the legal and constitutional system, there is a growing realization that civil society plays a vital and even necessary role in these efforts. Ngos are critical in these, as well as the reform, efforts which are outside of government-initiated programs.

Civil society, and more specifically ngos, play a crucial function in educating citizens on the constitution. At a minimum, a substantial public education campaign should accompany any constitution-building process and be prioritized by donors. It should include topics such as "the basis and forms of political authority, the working of governments, and the necessity of controls and accountability, based on the theory of popular sovereignty. People should be enabled to understand their constitutional history, and encouraged to assess the past and do an audit of past governments. The education program must enable the people to understand the nature of public power and imagine alternative forms of government, rejecting the notion of the inevitability of older systems. The process must also aim to educate the people in the values, institutions and procedures of the new constitution, and how they can participate in the affairs of the state and protect their constitutional rights"[174].

The participation of civil society in designing and monitoring the reform process is important. Civil society can contribute to the implementation of the activities in a reform program. Reform requires both a cultural change and a systematic change in the delivery of justice[175] and countries need to develop a program with stages for the reform process. Civil society's participation in the constitutional reform may also take the form of legal information, legal education and legal assistance, thus using law to promote social change.

International and local non-governmental and civil society organizations can also be involved in the dissemination of copies of the constitutions or in translating the constitution into local languages so that populations can better understand their rights and responsibilities. For example, the National Endowment for Democracy has funded

[174] Ibid 167

[175] John Henry Merryman et al., Law and Social Change in Mediterranean Europe and Latin America: A Handbook of Legal and Social Indicators for Comparative Study, in Law and Development, in Stanford Studies in Law and Development (1979).

Radio Anfani in Niger, in part to support the translation of the constitution into a number of local languages[176]. In Myanmar (Burma), the Chin Forum[177] has translated and distributed a draft constitution to get information out to people and to serve as an advocacy tool to promote democratic protections in a constitution.[178]

International non-governmental organizations (NGOs) also support constitutions for peacebuilding purposes, for instance by providing funds to local organizations for civic education. Other agencies are involved in advocacy on constitution building. For instance, the United States Institute of Peace has produced a number of reports on the Iraqi constitutional process. Other organizations attempt to build practical tools, such as the ConstitutionNet website, in development by Interpeace and the International Institute for Democracy and Electoral Assistance (IDEA).

3.2.4 The role of NGOs in Election- monitoring

Another field of NGO activism in a post-war society is election-monitoring. CSOs generally play a key role in voter information and education activities, in particular in encouraging broader participation and turnout. Voter education initiatives are of particular importance in countries with a limited democratic tradition and/or low levels of literacy. CSOs also often participate in electoral processes through domestic non-partisan election monitoring, enhancing the transparency of the electoral process and public confidence in the credibility and legitimacy of an election. CSOs may also contribute by promoting codes of conduct for candidates, undertaking parallel vote tabulations, hosting public meetings or debates, and proposing and commenting on electoral reform. Election monitoring serves different functions. First, the presence of international observers furthers the credibility of the election results; second, election observers may provide useful assistance, ranging from the improvement of voter registration lists to the development of quick-count methods.

Election monitoring has become an important aspect of United Nations peacekeeping operations in the 1990s[179]. Some of the most prominent examples of United Nations-led elections are those held in Namibia (1989), Cambodia (1993) and El Salvador (1994)[180].All these findings illustrate that the transformation of United Nations peacekeeping in the 1990s and the breadth of functions undertaken by the United Nations in these operations goes hand in hand with a proliferation of opportunities for non-state actors. In the aftermath of a civil strife, NGOs may take on roles usually filled by governments or international organizations. Election monitoring

176 National Endowment for Democracy (NED), 2000 Grants: Africa (Washington, DC: NED, 2000).

177 The Chin Forum is a platform and an organization in Myanmar, focused on doing research and documentation projects to assist the Chin peoples, founded in 1998.

178 For more information go to ChinForum.info.

179 Second-generation peacekeeping usually involves executive, mediatory and guarantor tasks including the restoration of security and public order, election monitoring, the exercise of governmental authority and refugee repatriation.

180 In Cambodia, the United Nations organized and conducted the 1993 election entirely; in Namibia, it supervised an election organized by the South African government.

commonly focuses on activities such as the process of voter registration, media access and fairness, campaign finance, election violence, the candidates and parties standing for election, women in politics, and other election-related issues.

-Examples of NGOs

i. DemocracyWatch Project/Bangladesh

A case study exemplifying activities as described above is provided by the non-partisan Bangladesh DemocracyWatch[181] Project, which has monitored elections since 1996.Elections in Bangladesh have historically been disrupted by political interference, including intimidation at the polling stations, vote rigging, undue influence and manipulation. The threats of violent disruption are heightened by close election results and party polarization, coupled with a tradition of "hartal" politics involving direct actions, political strikes, and street protests.

To deter such practices, Democracywatch conducted comprehensive election monitoring training programs all over the country for parliamentary, Union Parishad, municipality and by-elections. They published a training manual which describes the voting process, counting process, reporting and duties and responsibilities of election monitors. It also included checklists and other forms, by which the monitors record their observations.

During the 2008 parliamentary elections, the organization deployed almost 12,000 local observers (including many women) throughout the country. The main functions of observers are to:

a. report any violence or threats to voters;

b. to detect fraud and vote manipulation;

c. help voters to vote independently;

d. count how many votes are cast;

e. check the ballot box is empty before voting starts;

f. performance of the election officials;

g. performance of the security forces.

The organization has also been involved in Media-watch monitoring politics and election related news in radio and television stations and in several daily national newspapers. The Media-watch unit delivered daily press releases during the campaign and its findings have been regularly covered in a number of national dailies and

[181] Democracywatch is an independent non-profit, non-partisan, non-government organization with a vision to establish a democratic culture and value. Democracywatch emerged as a trust in 1995 and became a registered NGO with the NGO Affairs Bureau in 1997.

weeklies. During the 2008 parliamentary elections, for example, the unit highlighted issues of media bias towards some political parties, sparking a debate which led to more balanced coverage later in the campaign.

ii. The Carter Center

The most important NGO in election mediation is the Carter Center[182], a nongovernmental organization that has helped to improve life for people in more than 80 countries by resolving conflicts[183]; advancing democracy, human rights, and economic opportunity; preventing diseases; improving mental health care; and teaching farmers to increase crop production.

Example of the Centers work in monitoring elections is in 2012, Presidential and Parliamentary elections in Sierra Leone. Sierra Leone held presidential, parliamentary, and local government elections on Nov. 17, 2012. The presidential elections were the third to take place since the end of the devastating war in Sierra Leone, and the first elections that were fully self-administered. This represented a significant step for the country toward a functioning post-conflict democracy.

In September, The Carter Center deployed eight long-term observers from six countries to launch an international election observation mission in Sierra Leone. The Center's observers, who were deployed to each of the four regions of Sierra Leone, and the Freetown-based core team remained in Sierra Leone for the seven weeks prior to the election. In November, this team was joined by a larger short-term delegation, composed of 40 observers from 18 countries, to witness election-day processes in all 14 districts. The Center found the process to be generally orderly and transparent and in general accordance with Sierra Leone's legal framework and obligations for democratic elections. While the Center noted some limited administrative shortcomings, observers reported that the electoral process was well-conducted by election commission officials, that polling staff performed admirably in difficult conditions, and that the people of Sierra Leone turned out in high numbers to cast their ballots freely

To support impartial, credible election observation, The Carter Center, in cooperation with the U.N. Electoral Assistance Division and the National Democratic Institute, played a key role in producing the Declaration of Principles for International

[182]The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide.

[183] Here are some examples of the Center work:

- Observing 96 elections in 38 countries to help establish and strengthen democracies
- Furthering avenues to peace in Ethiopia, Eritrea, Liberia, Sudan, Uganda, the Korean Peninsula, Haiti, Bosnia and Herzegovina, and the Middle East
- Helping to establish a village-based health care delivery system in thousands of communities in Africa that now have trained health care personnel and volunteers to distribute drugs and provide health education
- Strengthening international standards for human rights and the voices of individuals defending those rights in their communities worldwide
- Pioneering new public health approaches to preventing or controlling devastating neglected diseases in Africa and Latin America

Observation, which established professional guidelines for election observation. The Declaration has been endorsed by more than 40 organizations worldwide and endorsing organizations meet annually to discuss key challenges.

The Carter Center has also played a leading role in building consensus on standards for democratic elections, based on state obligations under public international law. In 2010, the Center launched the Database of Obligations for Democratic Elections, which consolidates more than 150 sources of international law related to human rights and elections. It is used by The Carter Center and other election observers to provide a basis to assess elections against international and regional laws and standards. The Center is also one of nine organizations that together manage the ACE Electoral Knowledge Network[184].

iii. The Asia Foundation practice: Afghanistan

The Asia Foundation[185] supported the electoral process in Afghanistan starting with the first presidential election in 2004. The Foundation cooperated with Afghan civil society partners on a range of civic education and electoral training activities aimed at increasing the meaningful participation of women and youth. The Foundation encouraged increased public awareness especially women's, and civic rights and democratic processes by training and establishing a cohort of registered female election observers, conducting student government elections, and working closely with the Afghan Electoral Reform Consultative Forum (AECRF) to strengthen its ability to effectively advocate for electoral reform . The Foundation also worked closely with the Independent Election Commission (IEC) to improve its ability to conduct free and fair elections in addition to assessing the public perception of democracy in Afghanistan in order to assist policy and program developers. Finally, it has also supported election observation by its Afghan partner, the Free and Fair Election Association (FEFA), as well as the regional body, the Asian Network for Free Elections (ANFREL).

3.3 Civil society and Economic Recovery

Recent years have witnessed a considerable upsurge of interest throughout the world in CSOs, which are now recognized as strategically important participants in the

[184] ACE is an online community and knowledge repository that provides comprehensive information and customized advice on electoral processes to electoral management bodies, political parties, civil society organizations, and researchers.

[185] The Asia Foundation, founded in 1955, is a non-profit, non-governmental organization professing a commitment to the "development of a peaceful, prosperous, just, and open Asia-Pacific region." The Foundation supports Asian initiatives to improve governance, law, and civil society; women's empowerment; economic reform and development; sustainable development and the environment; and international relations.

development process and an effective but underutilized vehicle of development. The rising popularity of CSOs is largely in response to the widespread disillusionment with the performance of the public sector in developing countries. In fact, even governments are now increasingly viewing CSOs as an integral part of the institutional structure particularly for addressing the problem of rising poverty. This is reflected in the poverty reduction strategy put in action by governments in most developing countries.

Although the primary focus of this sub-section is civil society as a pillar of democracy and good governance, it is important to highlight that this sector also plays vital roles in other areas of rule of law. Within economic recovery, CSOs support poverty reduction processes, promote employment, engage in monitoring and advocacy around public finance and natural resources, and facilitate service delivery and socio-economic reintegration. Civil society also contributes to psycho-social recovery processes, such as dealing with the trauma and memory of violence, and community reintegration and reconciliation. Further, civil society is entrenched in justice and rule of law dynamics by supporting issues of human rights, justice assistance, alternative and traditional justice measures, access to justice, and transitional justice mechanisms

Specifically ngos, both local and international, can potentially contribute to local economic development and respond to the growing problem of poverty in a number of ways. Their responses can be categorized into the following: improve the local business investment climate; encourage new enterprises and livelihood programs; deliver social services, provide training and capacity building programs; and contribute to relief and rehabilitation. A summary of their roles and activities is present in the Box bellow.

Box 2: NGO´s role in local economic development and poverty alleviation.

Type of role	Activities
1.Improve the Local Business Investment Climate	
1. Economic Infrastructure Provision and Maintenance	• Implement programs on portable water supply, sewerage and sanitation and garbage disposal. • Management of irrigation water. • Housing development program
2. Improve Policy for Business	• Encourage and expand alternative source of energy.
3. Improved Governance	• Advocacy for improved legislative and fiscal policies. • Advocacy for curtailment of corruption and inefficiency. • Improve information flow and networking for increased accountability.

4. Investment Promotion and Marketing	• Initiate crime prevention measures. • Improve flow of information to improve awareness.
2.Encourage New Enterprises and Livelihood Programs	
1. Income Generating Project 2. Micro-finance Project 3. Organize Cooperatives	• Assist and finance small projects for community groups and individuals like women's industrial homes etc. • Give credit and loans to feasible projects and small business individually or collectively. • Provide advice on finance, business planning, marketing, laws etc. • Assist communities and sectors in establishing cooperatives, like in agriculture, housing etc.
3.Deliver Social Services	
1. Education 2. Social Welfare and Other Social Sector 3. Integrate Low Income and Head-to-Employ Workers	• Conduct literacy programs. • Provide increased business focused education. • Implement heath programs. • Organize occupational health standards. • Implementing programs and projects for child labor • Helping women access employment and self-employment programs. • Skills retaining and job placement programs particularly for minorities and other marginalized groups
4.Training and Capacity Building 1. Entrepreneurial 2. Vocational/Technical 3. Institutional Capacity Building	• Provide training for building entrepreneurs. • Provide specific skills training • Provide workshops and seminars for upcoming grassroots organization in basic institutional skills like book keeping/accounting, management etc.

3.3.1 Improve the Local Business Investment Climate

Civil society sector's contribution to the improvement of the local business environment is multidimensional. It accomplishes this through provision and maintenance of crucial economic and social infrastructure; advocacy for improved policy and governance; investment promotion and marketing and networking to improve flows of information to enhance opportunities.

Access to services, infrastructure, research and technology have a decisive influence on the level and pattern of growth and private investment. Better infrastructure can lead to increased production, technical change and strengthen market linkages. There are examples in developing countries where civil society has taken charge and substantially augmented or more or less substituted provision of basic services like water, sanitation by public sector. Furthermore, through advocacy, CSOs can also play a very significant role in influencing economic and political policies that impact upon local development in general and the poorer sections in particular[186]. The agents of an active society, for example, can give useful input on the thrust and design of economic policies. Public policy think-tanks, as well as academic and journalistic writers are able to provide support in terms of intellectual vision and can help to define development paradigms and objectives, as well as design and promote specific policy agendas.

An example demonstrating the role of Ngos is the Uganda Debt Network[187] (UDN), an organization that aims to monitor the expenditure side of the Poverty Action Fund [188](PAF) in Uganda. The main objective of the PAF project was to ensure, by monitoring and controlling the process that the funds designated by the Government of Uganda for the improvement of delivery of social services to the poorest communities actually reach the intended beneficiaries. To succeed that, in May 2000, the UDN established Poverty Monitoring Committees[189] (PMCs) in twelve districts in Uganda and also created the Community Based Monitoring and Evaluation System (CBMES). The essence of CBMES is that monitoring committees were established at all levels, right from the village up to the district level. Information on service delivery, behavior and practices of civil servants, quality of service or goods provided were thus monitored every day. If a child reports that the teachers at his/her school are coming late or not engaging in class work, or that there are no textbooks, the parent as a monitor can try to verify and feed the information to the village committee.

UDN has also linked PAF monitoring with the anti-corruption campaign that it has been implementing for some time, and also with some other advocacy projects as

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[186] Id.121

[187] Uganda Debt Network (UDN) is an advocacy and lobbying coalition of NGOs (both local and international), academic, research and religious institutions, and individuals initiated by the World Bank and the International Monetary Fund. It was established in 1996, as a result of civil society concerns about the level of Uganda's debt burden and its implications on the long-term economic and social development of the country.

[188] The Poverty Action Fund (PAF) was established by the Government of Uganda in the 1997/98 fiscal year. The main function of PAF is the mobilization of additional resources to be spent in the social sector in order to alleviate poverty in the country.

[189] PMCs are voluntary civil society groups whose main task is monitoring of PAF. The committees are composed of persons selected from various sections of civil society. These monitors include women, youth, people with disabilities, men, religious leaders, and the elderly.

well, such as, for example, advocacy for accountability and transparency. UDN has also created a larger audience for the monitoring project through sponsoring various radio shows run by community monitors. UDN has been sponsoring three radio programs run by the community monitors. The programs, which run weekly, are live phone-in talk shows. The monitors agree in advance with the moderator on the topic for discussion arising out of their monitoring. The listeners phone in, and the monitors answer the questions or register the complaints. In this way, and also by holding press conferences and working with the electronic and print media, UDN has created a tool by which it informs the people about their PAF monitoring project, but also receives important feedback. By the end of the program, the Ugandan MPs, and the government officials agreed that, the CBMES concept and the PAF monitoring done by UDN, needed to be adopted officially by the government and the various stakeholders as one of the approaches for fighting poverty.

Social mobilization – organization and strengthening of CBOs at grassroots / sectorial levels is another major contribution of CSOs. Many civil society groups are constituted around specific issues of social concern such as the environment, labor rights, gender equality and public health. The advocacy role played by these groups helps to bring these issues to the public spotlight and in some cases even helps to change prevailing social norms. The box bellow presents an illustration of how a CSO in Dominican Republic is committed to changing the status of women in the country. Although this function of civil society has often been the source of controversy, there is little doubt that it does contribute to the inclusion of issues of social concern into the policy-making process, thus improving the quality of development policies and practices[190].

Box 3

Dominican Republic- Centro de Investigacion para la Accion Feminina (CIPAF)
The Centro de Investigacion para la Accion Feminina (CIPAF), a women's NGO in the Dominican Republic, is promoting lasting social change in the status of women. It tries to engineer basic changes in attitude through programs of research, education, training and public information. By mobilizing the energies of middle-class women, it has organized over 200 workshops, trained thousands of workers and issued 31 publications. One of CIPAF's major studies has been Mujeres Rurales – a report on the condition of peasant women. It followed this up with a nationwide information campaign to highlight the findings of the report and seek concrete changes in government policy. It is now completing a sequel on the problems of urban women. CIPAF publishes a

[190] Dr. Aisha Ghaus –Pasha " Role of Civil Society Organisations in Governance" , Paper of the 6th Global Forum on Reinventing Government Towards Participatory and Transparent Governance 24 – 27 May 2005, Seoul, Republic of Korea, December 2004, Available at http://unpan1.un.org/intradoc/groups/public/documents/un/unpan019594.pdf

monthly newsletter that is reproduced in a nationwide daily newspaper and it has conducted graduate seminars in the Dominican Republic, Honduras and Panama.

3.3.2 Encourage New Enterprises and Livelihood Programs

Encouraging new enterprises involves providing advice, technical support, information and resource to help individuals set up their own businesses in the form of sole entrepreneurs, partnerships, cooperatives or community enterprises in various agricultural, industrial or trading fields. Micro-enterprise financial support is key to enabling businesses to start up, as they usually cannot access traditional financial institution.

Civil society organizations in recent years have increasingly widened their activities to include income generating program and micro-credit. Their success is in part based on their comparative advantage in both identifying the needy segments and their ability to target them. Their impact can be significant, of course depending on the prevailing socio-economic condition in the country. A number of countries, for example, have replicated the successful Grameen Bank[191] experiment of micro-finance in Bangladesh where NGO sector is well developed (see Box 4 below).

Box 4

Sustainable Livelihoods: Putting Principles to Practice

The example of Grameen Bank of Bangladesh in initiating microfinance is a widely quoted one. Here we give examples of other institutions, more or less, replicating the Grameen experience. Bangladesh Rural Advancement Committee (BRAC), PROSHIKA and ASA are examples of large NGOs operating in Bangladesh is the sphere of poverty alleviation through micro-credit, skill development and employment generation. About 95% of the micro-credit disbursed by the NGOs is in rural areas, benefiting about 8.7 million people (85%) of which are women. Micro-credit is provided to the poor for self-employment, income generating activities, afforestation and other poverty alleviation programs. The income generating activities where substantial micro-credit disbursement has been made, include small trade (42percent), livestock (18 percent), agriculture (13 percent) and food processing (9 percent). Till June 1999, total number of active members benefiting from the NGO operational program stood 9.7 million. Their impact on poverty alleviation, therefore, is not insignificant.

[191] The Grameen Bank is a Nobel Peace Prize-winning microfinance organization and community development bank founded in Bangladesh. It makes small loans (known as microcredit or "grameencredit") to the impoverished without requiring collateral. The name Grameen is derived from the word gram which means "rural" or "village" in the Sanskrit language.Micro-credit loans are based on the concept that the poor have skills that are under-utilized and, with incentive, they can earn more money

Besides finance, someone establishing a business for the first time needs to know how to produce his /her product. They also need to understand finance, business planning, marketing, and some aspects of the law including employment, taxation, and safety environmental legislature and so on. The provision of un-formable training and support in these areas is a basic need[192]. Also, people learn from each other. Networks facilitate that learning. These services can be effectively provided by CSOs like is being done by Sungi and NGO Resource Centers in Pakistan, etc. The box bellow, provides an example of a successful civil society intervention of technology development in promoting sustainable livelihood in Pakistan[193].

Box 5

Rehabilitation Land: Promoting Sustainable Development
Between 1998-2003, Pakistan Community Development Project for Rehabilitation of saline and waterlogged land operated in three districts in Central Punjab with the objective to develop and promote sustainable biological farming systems for reclamation and rehabilitation of saline and water logged land. This AID and UNDP initiated project's primary focus is to develop productive and profitable farming systems for these lands. A central aspect is the development of community organizations – Salt Land User Group and Women's Interest Groups – to promote the demonstration and adoption of appropriate, biological and sustainable technologies. These included planting salt-tolerant trees, shrubs, grasses and crops in addition to other biological interventions to reduce salinity and water logging. The process required a great deal of hard work and commitment from the farmers. Effective social mobilization technologies generated interst, hope and commitment. Over the past four years, the project has yield significant results. The project has helped farmers facing the threat of deep poverty reclaim more than 13000 acres of degraded land. There has been over a 300 % increase in the assets value of poor farmers.
Source: UNDP, Good Practices in Asia and the Pacific, Expanding Choices, Empowering People

[192] Eigen, Peter, "The Central Role of Civil Society in Combating Corruption in the Era of Globalization", paper presented at Transparency for Growth Conference, Atlanta, Georgia, 1999.
[193] Social Development in Pakistan, 1999, Annual Review, Social Policy and Development Centre, Karachi, Pakistan.

3.3.3 Delivery of Social Services

Efforts to sustain economic development and reduce poverty are unlikely to succeed in the long run unless there is greater investment in human capital, particularly of the poor. Ample evidence exists that improvements in education, health and nutrition not only directly attack some of the most important causes of poverty but is also ensure sustained supply of productive labor – an important factor of production and contributor to economic growth.

The link between education and productivity is well established and documented. The principal asset of the poor is labor time. Education and training leads to a higher income at the individual level and higher growth at the macro level. A study of small and medium-size enterprises in Colombia showed that entrepreneur's background – skills, education and previous experience – strongly influences both technical efficiency and the profitability of the enterprise[194].

Furthermore, integrating low income or hard-to-employ workers and the targeting of disadvantaged groups is also an important cornerstone of poverty alleviation strategies. This implies institution of measures targeted at groups of individuals such as ethnic minority groups, poor, women, redundant workers, the unemployed and youths[195]. There are examples of CSOs rising because market fails to offer the goods and services these groups need. The Self-Employed Women's Association in India is a striking example of how poor and disadvantaged people can enhance their bargaining strengthen through cooperation (see box bellow)

Box 6

India Self-Employed Women's Association (SEWA)
The Self-Employed Women's Association (SEWA) is a trade union of poor women in Ahmedabad, India. Although it started in response to the needs of urban women, SEWA now also covers rural women in agriculture and other sectors. SEWA's aim is to enhance women's income-earning opportunities as well as their working environment. It does this in several ways. • Savings and credit cooperatives provide working capital to hawkers, vendors and home-based workers. • Producer cooperatives help women get better prices for their goods. • Training courses impart such skills as bamboo work, block printing, plumbing, carpentry, ratio repaid and accounting and management. • Legal services enable women to obtain the benefits of national labor legislation. Until SEWA was formed in 1972, the women in the informal sector were not recognized as workers, either in law or by society.

[194] Ibid
[195] Ibid

SEWA has also developed a welfare component. It now gives assistance to its members through a maternal protection scheme, windows' benefits, child care and the training of midwives.

CSOs due to their flexible and need responsive nature of their activities can play an important role in the provision of such social services in very innovative ways as demonstrated in the example presented in the box bellow.

Box 7

A Community Child Care And Nutrition Program In Colombia

A high proportion of Colombia's population lives below the poverty line. In the towns the worst poverty is borne disproportionately by children, who are at risk from malnutrition, illness, neglect, isolation, and violence. To address these problems, the Colombian government and local NGOs developed a system of pre-school child-care that includes a feeding program and health monitoring.

The target group-children age 2 to 6 and their parents-is drawn mainly from the poorest 20 percent of the population. A group of parents selects a "community mother" to provide day care and other services for fifteen children in her home. With the help from the National Family Welfare Institute, the community mother receives training, a small monthly stipend, and a credit to upgrade the home to minimum standards of hygiene and safety. The institute also provides food, including a domestically produced nutritional supplement, to meet 80 percent of the daily requirements of each child. Community mothers are benefiting from additional income, and parents – often single female heads of household-gain an opportunity to seek remunerative employment outside the home. In addition, the program's subsidies are better targeted to the poor; day care centers largely serve a middle-and lower income[196].

[196] Salamon, L.M.., Sokolowski, S.W. and Associates, "Global Civil Society: Dimensions of the Nonprofit Sector", Volume Two, Kumarian Press, Inc, 2004 .

3.4 Ngos contribution to justice and law

CSOs generally play a leading role in justice and rule of law issues. This is probably one of the sectors of peacebuilding and rule of law in which they are the most active. CSOs have been increasingly involved in a broader justice agenda. Their role is particularly crucial in the so-called "bottom-up" approach, which focuses on civil society and local communities.[197] It is part of an effort developed by outsiders to build domestic justice capacity.[198] The activities typically developed in such programs include legal aid in rural communities, monitoring of the justice system in order to strengthen its overall accountability, promotion of non-state mechanisms of dispute resolution, and training activities. Victims groups, legal reform advocacy groups, and groupings of lawyers, such as women and young lawyers or law students, as well as human rights advocates, are the most active in this field.

3.*4.1 Judicial/Legal Reform*

A functioning, independent and transparent justice system is fundamental to support the rebuilding of democratic institutions, to restore the protection of basic and to promote urgently needed private sector development and investments in post-conflict countries. There is urgent need for building and strengthening institutional capacity, producing qualified professionals, rehabilitating infrastructure, developing information, and recreating depleted documentary resources. While many governments are undertaking reforms that aim to improve judicial and legal systems, there is a growing realization that civil society and ngos play a vital and even necessary role in these efforts

A well-functioning judiciary should provide predictability and resolve cases in reasonable periods of time. It also should be accessible to the public. Many developing post conflict countries find, however, that their judiciary is not consistent in its conflict resolution and that it carries a large backlog of cases, causing the erosion of individual and property rights. Delays affect both the fairness and the efficiency of the system. They impede access to the courts by the public. To solve these problems, governments across the world are launching legal and judicial reforms. Their aim is to improve access to justice by increasing the quality, efficiency, and transparency of dispute resolution. This is part of economic and social development-to achieve a judicial system which is efficient and transparent and provides quality decisions and access to the public. In this way, the overall objective is to create trust in a judicial system that is both independent and accountable.

One way to improve access to justice is through the participation of civil society in designing and monitoring the reform process. Civil society and more specifically ngos, can also contribute to the implementation of the activities in a reform program. Reform requires both a cultural change and a systematic change in the delivery of

[197] Id.121
[198] Ibid

justice,[199]and countries need to develop a program with stages for the reform process. Another way to improve access to justice is through civil society participation in undertaking formal legal and judicial reform programs; that is, using law to promote social change through legal information, legal education, legal assistance, and law reform[200].

In many countries, there is a weak public trust in the judiciary but civil society's ties to the communities can help to strengthen the public's confidence. Civil society also has provided a voice to different perspectives and experiences and often helps to bring to the surface the more difficult issues. As a group, civil society can make governments listen and can help secure greater sustainability in the reform process by promoting the participatory approach. Legal and judicial reform activities have benefited from the assets of civil society[201]. For example, Judicial Sector Assessments are often conducted in borrowing countries when there is interest in judicial reform by a combination of academics, researchers, and NGO staff. These assessments permit greater dialogue with the government on the issues involved and may bring up matters that had not previously been considered. In one such case, the Ecuador Sector Assessment, conducted by the World Bank, the issue of domestic violence was raised by women's organizations and resulted in the inclusion of a special activity in the project to provide legal aid for poor women. The strong grassroots links and language skills that such organizations often have make them valuable partners in this work.

In addition, developing National Judicial Reform Action Plans also benefit from NGO involvement. These plans set the stage, as discussed previously, in describing the long-term goals of legal and judicial reform with respect to priorities as well as donor involvement. Here, NGO participation ranges from consultation in identifying problem areas, obstacles, and strategies to actually preparing the entire plans themselves, as mentioned in the case of Ecuador.

A well-developed civil society can potentially influence the government in two ways: (1) by enhancing political responsiveness by gathering and expressing the public's wishes through nongovernmental forms of association, and (2) by safeguarding the public's freedom by the limiting the government's ability to impose arbitrary rules.[202] Civil society increases government accountability and contributes to good governance. Government institutions which serve or distribute entitlements to citizens can be held accountable for discriminatory or arbitrary distribution. In order to ensure that such institutions are held accountable, there is a need for a strong civil society. It is common that civil society may be heard more loudly in a democratic process.

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[199] See John Henry Merryman et al., Law and Social Change in Mediterranean Europe and Latin America: A Handbook of Legal and Social Indicators for Comparative Study, in Standford Studies in Law and Development (1979).

[200] Of course, as illustrated later in this Paper, many and even most civil society actors also carry out law-oriented work completely independent of any formal government.

[201] John W. Kennedy Jr., Personality Type and Judicial Decision Making, 37 No. 3 JUDGE'SJ., at 4, 6-7 (1998) (on file with the author). One study shows that the majority of judges resist change and working in committees. However, women judges acted as leaders for change while male judges are resistant to change

[202] Id.121

One of the key objectives of legal and judicial reform is improving access to justice-that is, to use law to improve conditions and promote equality. [203] One way to improve access to justice is to use the law to promote social change through legal information education, legal assistance, and legal reform. Legal aid can take many forms, including private attorneys providing pro bono services, a system of Judi care which entitles eligible people (based on income) to use a private lawyer; legal insurance or prepaid legal services for eligible parties; staff attorneys who specialize in public interest law; law school clinics; and non-governmental public interest organizations to protect the legal rights of groups or causes.

-Examples of Ngos

i. The American Bar Association

The American Bar Association, with its Rule of Law Initiative, has taken many initiatives around the world concerning the judicial reform in many post-conflict countries. An important asset for the organization for its work in the legislation reform is the Judicial Reform Index(JRI), an assessment tool comprised of 30 objective factors against which a judicial system can be evaluated and measures progress in judicial reform[204].The ABA Rule of Law Initiative is currently implementing second and third rounds of JRI assessments in selected countries throughout Central and Eastern Europe and Eurasia, monitoring the degree to which deficiencies identified in the previous reports have been addressed. During 2005-2006, the ABA Rule of Law Initiative conducted second JRI reports for Armenia, Bosnia and Herzegovina, Moldova, Serbia and Ukraine, and a third volume of JRI assessments for Albania and Bulgaria, as well as an initial JRI for Georgia.

The ABA Rule of Law Initiative's global legal reform programs play also a central role in bringing together key stakeholders to discuss ways to promote judicial independence and the rule of law. For example, to facilitate the sharing of common concerns and the exchange of ideas, the ABA Rule of Law Initiative sponsored a series of "judge-to-judge" dialogues in the Iraq. Under this project, judges from the United States and other countries meet with judges from the Iraq Supreme, appellate and trial courts to discuss a variety of issues and provide a comparative perspective on the role of the judiciary as an independent and co-equal branch within the Iraq system of government.

The ABA Rule of Law Initiative is also supporting the Arab Council for Judicial and Legal Studies (ACJLS), a regional institution that addresses judicial development issues and facilitates interaction among judicial system actors in the Middle East and North Africa. The Council brings together top leaders from the regional Ministries of Justice, courts and other key stakeholders within the legal community and civil society

[203] See FORD FOUNDATION, MANY ROADS TO JUSTICE: The Law Related Work of Ford Foundation Grantees Around the World (Mary McClymont & Stephen Golub eds., 2000) (discussing public interest litigation in the United States).

[204] To learn more about the activities of the American Bar Association go to http://www.americanbar.org/advocacy/rule_of_law.html (last visit 1-09-2014)

with the goals of supporting the policy dialogue on independence of the judiciary, increasing training opportunities, promoting the development of codes of conduct and enhancing the transparency of judicial systems and procedures[205].

In Iraq, the ABA Rule of Law Initiative conducted a needs assessment to determine the needs of three pilot courts in the areas of court administration and case management, and provided equipment, software, and training to support improvements in these areas. The ABA Rule of Law Initiative is also facilitating the integration of mediation and other alternative dispute resolution mechanisms into the courts in Azerbaijan, Jordan, and Serbia. In 2006, the ABA Rule of Law Initiative sponsored a study tour for Azerbaijan judges and Ministry of Justice officials, which emphasized transparency and accountability in court administration. Finally, the ABA Rule of Law Initiative is cooperating with the Supreme Courts or judicial associations in a number of countries to improve consistency and transparency in judicial decision making by developing electronic databases of judicial decisions.

In Kosovo, after its announcement in 2008 of its independence from Serbia, the ABA Rule of Law Initiative, established an office in Pristina to implement a technical legal assistance program. Since commencing its program in Kosovo, ABA ROLI has been primarily focused on the establishment of basic legal institutions in the post-conflict environment; on the promotion of self-sustaining training for judges, attorneys and prosecutors; and on conducting a war crimes documentation project. ABA ROLI has worked on several major projects including: training for all newly-appointed judges in Kosovo and the creation of the Kosovo Judges Association in May 2001, the design of a two-week, intensive course on human rights standards and on Kosovar criminal and criminal procedure laws conducted in Prague and finally it has published the Judicial Reform Index of the Legal Profession Reform Index and of the first Legal Education Reform Index.

The ABA Rule of Law Initiative actively promotes the establishment and development of national judicial associations, which serve as excellent vehicles for ensuring a more visible role of the judiciary in reform efforts. The ABA Rule of Law Initiative performs numerous programmatic activities in partnership with or through such associations. For example, the ABA Rule of Law Initiative is partnering with the Philippine Women Judges Association to build its organizational capacity and support its efforts in contributing to the Supreme Court's judicial reform plan. The ABA Rule of Law Initiative and its Ukrainian partner, the National Independent Judicial Association, held a series of regional roundtables as part of a civic forum on judicial reform, bringing together lawyers, judges, and politicians to discuss proposed changes to the laws on the judiciary and the status of judges. As a result of the ABA Rule of Law Initiative's efforts, the Association of Judges of the Republic of Armenia adopted a resolution endorsing the proposed constitutional amendments that significantly

[205] For further information go to http://www.americanbar.org/advocacy/rule_of_law.html.

restricted the executive's authority over the judiciary and approved a revised Code of Judicial Conduct.

The ABA Rule of Law Initiative has also training programs. The Organization cooperates with the existing judicial training schools in Burundi, Jordan, and Morocco to provide training opportunities for judges and court staff on a variety of substantive and skills issues[206]. The goal of the partnership between the ABA Rule of Law Initiative and the National Institute for Judicial Studies (NIJS) and the Ministry of Justice in Burundi is to promote judicial independence through training and institution building, develop the skills of judicial trainers and NIJS staff, and expand the training curriculum. The ABA Rule of Law Initiative is also supporting an initiative by the NIJS to develop a judicial curriculum focusing on human rights and on the consistent implementation of Morocco's relatively new family code, enacted in 2004. The standardized curriculum will include substantive course materials, syllabi, and online learning tools, which will be adaptable for use in other countries in the region.

ii. *International Legal Assistance Consortium*

The ILAC (International Legal Assistance Consortium) is a non-profit organization headquartered in Stockholm, Sweden and registered under Swedish Law and is an umbrella organization for associations of legal and human rights experts and non-governmental organizations interested in promoting the rule of law .Its role consists of providing an expert team to make an initial assessment of what is needed to begin rebuilding a workable justice system. The reports are provided to the national government (where one exists), to the UN, other inter-government organizations, donor governments and NGOs, including ILACs member organizations, as a basis for further action. ILAC also actively promotes and assists with the coordination of the implementation of its report. ILAC has completed several projects including Myanmar, Tunisia, and Lydia, assisting the government revitalizing an independent judiciary, developing a democratic constitution and safeguarding human rights[207].

More specifically in Tunisia, after the first visit(March 2011 weeks after president Ben Ali was forced into exile in January 2011), ILAC contacted the International Bar Association (IBA) and the CEELI Institute in Prague, which has ties to the American Bar Association. In a two-fold training program, which was initiated and coordinated by ILAC, these organizations implemented during 2004-2007 the training of almost one thousand Iraqi judges and prosecutors in, on the one hand, international human rights law with an emphasis on fair trial and due process (IBA), and, on the other, the role of a judge in a democratic society (CEELI).

ILAC also conducted a post-conflict assessment of the Haitian judicial system in January 2005, at the invitation of the UN Mission in Haiti. Because of difficult

[206] Pouligny. (2002). "Civil Society and Post-Conflict Peacebuilding. Mashumba and Clarke.
[207]More information available at: http://www.ilacnet.org/ (last visit 01-09-2014)

relations with the then interim government, ILAC initially decided to focus on civil society activities. In August 2006, ILAC sponsored the first meeting of the Federation of Haitian Bar Associations, in order to help the 15 local bar associations to consolidate into one national bar association[208]. In November 2007, ILAC, UNDP and key civil society organizations held a two day hearing in Port-au-Prince to discuss the lack of confidence between civil society and the legal establishment. Close to a hundred representatives from civil society and the administration attended the hearing, including the Prime Minister, the Minister of Justice and several other cabinet members as well as a number of top judicial officials[209].

However, the centerpiece of ILAC´s activities in Haiti since 2008 has been a nation-wide legal aid program, the SYNAL (Systeme Nationale d´Assistance Legale), which is designed and administered by ILAC, with logistical support by the UN mission in Haiti, which also seconds key staff to the ILAC Haiti office. In November 2011, SYNAL employed some 250 Haitian lawyers in 14 offices around the country. Most of the work consists of legal aid in criminal cases. During the three years that the SYNAL has been operative, we have handled some 9 000 cases, and managed to get more than 4 000 individuals out of jail. An important contribution to the SYNAL program is being made by the New York-based ILAC member ISLP (International Senior Lawyers Project), which provides pro-bono mentor attorneys on a continuing basis to the SYNAL offices.

Until the beginning of 2011, the entire ILAC program in Haiti was funded by Sida. Today, the funding for SYNAL is provided by UNASUR (Unión de Naciones Suramericanas – the political and economic cooperation project, which brings together 12 South American countries). The money from UNASUR will enable SYNAL not only to continue the operation of the existing offices, but also to expand the number to 20, to cover all of Haiti´s jurisdictions, with 3 offices in the capital Port-au-Prince. The cooperation between UNASUR and ILAC constitutes an important break-through as it is the first time that ILAC will receive funding from a donor in Latin America.

Additionally, ILAC made an assessment mission to Iraq in August 2003. The mission's recommendations were made part of the proposal for judicial reconstruction put forward by the Iraqi Governing Council at the international donor's conference for Iraq in Madrid in October 2003. In early 2004, with funding from UK and Sweden, ILAC embarked on a two-year program of justice sector support for Iraq. Five areas of assistance were identified which everyone agreed were of high priority:

1. Training in independence of the judiciary and how this informs the daily work of a judge. This project was led by the CEELI Institute in Prague and managed by the American Bar Association (ABA).

2. A tour for the leadership of the Iraqi Judicial Training Institute to observe best judicial training practices in other countries with a similar judicial system, and for that

[208] Id.121
[209] Ropers, N. (2002). Civil-Society Peace Constituencies. NGO Involvement in Conflict Resolution Areas of Activity and Lessons Learned. Günther Bächler.

reason the project was led by the ABA's Justice and Rule of Law Committee. The Iraqis were taken to the Ecole Superieure de la Magistrature in Bordeaux, France.

3. Training in international human rights law for judges, prosecutors and lawyers, with a focus on fair trial and due process, led by International Bar Association (IBA) working with the International Association of Prosecutors (IAP).

4. Direct assistance to the Iraqi Bar Council in strengthening entry standards, regulation of the profession and continuing legal education

5. Training in international humanitarian law for judges, prosecutors and lawyers.

3.4.2 Alternative traditional and informal justice systems

For many countries it is important to acknowledge the role played by traditional, or 'informal', systems of law — including traditional, tribal, and religious courts, as well as community-based systems — in resolving disputes[210]. These systems often play a large role in cultures where formal legal institutions fail to provide effective remedies for large segments of the population or when formal institutions are perceived as foreign, corrupt, and ineffective. While recognizing the importance of these informal systems, a necessary element of the rule of law is that informal systems are effective, impartial, and protect fundamental rights, and are held to the same standards of fairness in resolving disputes as formal systems.

Informal justice systems are the principal mechanism for dispute resolution in many societies, but they suffer from two drawbacks. First, in individual cases, well-off and/or well-connected individuals may engage in transactional corruption, distorting justice processes and outcomes. Second, over time, elites may use their control over these systems to perpetuate their power, status, and financial advantage, resulting in systematic unfairness that is closely linked to transactional corruption.

Non-state justice and security (NSJS) systems refer to all systems that exercise some form of non-state authority in providing safety, security and access to justice. This includes a range of traditional, customary, religious and informal mechanisms that deal with disputes and/or security matters. The relationship between NSJS systems and the state varies considerably. Systems include community-based practices that are relatively isolated from the state, systems fostered by non-governmental organizations (NGOs), and systems set up by the state outside the formal justice system for a specific purpose.

It is estimated that, in many developing countries, NSJS systems[211] deal with the vast majority of disputes. They are widely used in rural and poor urban areas, where

[210] Ruri, T. (2003). Transitional Justice Geneology . Harvard Human Rights Journal , p. 239.

[211] Examples of NSJS systems:1. Shalish, Bangladesh: Shalish is a means of dealing with disputes within the community. It generally takes the form of a public event in which civil disputes are resolved through arbitration and/or mediation, by people with some standing in the community. There are three types: (1) traditionally administered by village or religious leaders; (2)

there is often minimal access to formal state justice. They tend to address issues that are of deep concern to poor people, including personal security and local crime; protection of land, property and livestock; and resolution of family and community disputes. They may also be used to defend and protect people's entitlements, such as access to public services.

NSJS systems also have a particular significance in many post-conflict situations. It is likely that non-state systems will have operated in some form throughout the conflict period, and may play a critical role in the immediate aftermath of conflict where restoring security and rule of law is a high priority.

CSOs and Ngos may establish or help run alternative traditional and informal justice systems, such as informal dispute resolution mechanisms, paralegal mechanisms, and security committees. These systems are particularly crucial when the state judicial system is unable to administer justice or the number of perpetrators is high enough that it is logistically impossible to prosecute each individual. Ngos may train traditional and informal justice systems personnel on procedural or substantive issues, or they may train them as paralegals to advise or represent parties in a dispute. They also monitor the activities of non-state judiciary systems, report on human rights abuses and discrimination against women and marginalized groups, and help ensure more equitable outcomes in the justice system. CSOs help raise awareness and can engage in advocacy and lobbying for alternative justice systems.[212]

Ngos may contribute to the improvement of the informal justice system by responding to requests for assistance .It is true though that donors ,like ngos, have limited experience in supporting measures affecting NSJS systems. The following requests for assistance are some of the most frequent, but may not be the most appropriate. If needed, objectives should be clarified and alternatives identified.

Codification: Governments may request help from Ngos with writing down customary law. Past experience with restatement and other codification projects suggests that there is a danger that law will become "frozen" and that judges and lawyers will start formally applying customary law without taking into account the particular context. It is more useful to work with multidisciplinary teams, including anthropologists, to understand the norms and principles of non-state systems, and assess options for collaboration between state and non-state systems.

Record keeping: Informal or traditional systems for settling disputes may ask for assistance with formal record keeping. The aim of this might be:

administered by a local government body; (3) a modified form introduced and overseen by NGOs to make the traditional form fairer, such as by reducing gender discrimination.

2.Rondas Campesinas (Night Watch patrols), Peru: The Rondas are community-based organisations set up to control crime, particularly theft of private property including livestock. They have taken on both policing and judicial functions, which have expanded to address offences such as slander, assault and domestic disputes. Their members carry arms, and suspects are handed over to a general assembly, which determines guilt and administers punishment.

[212] Department for International Development (DFID). Non-State Justice and Security Systems: A Guidance Note. (London: DFID, 2004); Ewa Wojkowska.Doing Justice: How Informal Justice Systems Can Contribute(Oslo: United Nations Development Programme Oslo Governance Centre, 2006)

• to ensure that decisions are based on fact

• to use during appeals in formal courts

• to monitor decisions using objective information

Such initiatives can have positive results, but should be carefully designed. Elaborate or computerized systems are probably not appropriate, though they may be requested to enhance the status or power of the institution. Before measures are designed, it will be important to identify what the recorded information will be used for, how the system will be maintained and what linkages with the formal system are envisaged[213].

-Human rights training: Training may help improve the laws and practices of NSJS systems so that they comply better with international human rights standards (e.g. non-discrimination, non –use of inhuman or degrading punishments). At the same time, human rights training should take into account why NSJS systems operate in certain ways, given cultural, political, institutional, and economic or security constraints. Human rights training are also organized to help improve the rules and practices of traditional/informal systems so that they comply better with international human rights standards (e.g. non-discrimination, nonuse of inhuman or degrading punishments). Awareness and training programs are also designed for representatives of the traditional/informal system and traditional leaders to learn about the formal judicial system; similar programs target judges, lawyers and police officers of the judicial system about the traditional/informal justice system. Workshops and seminars uniting both groups may support mutual learning. One of the limitations noticed with many training programs is that their impact may be limited if they are not accompanied by practical measures to lead to sustainable changes. Parallel efforts are needed in cooperation with local Universities (in particular the faculties of law) so that teachings about the traditional/informal justice system are incorporated in the curriculum of students[214].

-Mitigating harmful practices: One of the more challenging issues is how to bring customary justice systems in line with international human rights norms and standards[215]. Top-down prohibitions tend to be ineffective at best and counterproductive at worst. While developing progressive legislation is a positive step, it is important not to overestimate the ability of law to change deep-seated beliefs and cultural practices. Programmatic options should be aimed at protecting the vulnerable and promoting change from within, such as by:

• Working with communities to encourage the development of culturally acceptable alternatives to harmful practices; and

[213] Mani, R. (2002). Beyond Retribution:Seeeking Justice in the Shadows of War. John Wiley and Sons
[214] Naomi, R.-A. (2006). The New Landscape of Transitional Justice in the Twenty-First Century. Cambridge : Cambridge University .
[215] Supra note

• Developing meaningful alternatives to customary justice for those who are victims of harmful practices and violations of international standards by these systems, for example, by providing legal aid and additional resources to enable them to access the formal system.

•Disseminating Information: NGOs and the media can play a key role by informing and educating the general population on the existence of diverse systems inside a single society, organizing public debates on the linkages between the different systems. Some NGOs organize a wide range of activities, including the organizations of outreach days on alternative dispute resolution, the organization of public conferences, the publication of books or leaflets on the traditional/informal justice system[216].

-Examples of NGOs

Here are some examples bellow of some organizations work concerning the traditional justice sector.

i. Open Society Justice Initiative, the American Bar Association Rule of Law Initiative and the Open Society Institute for Southern Africa /Mobile courts in the Democratic Republic of Congo

The DRC's national courts have fallen short in delivering meaningful justice for victims of sexual violence. Despite a strong legal framework, years of conflict and corruption have rendered a large portion of the country's judicial system lacking in both capacity and integrity. There has been some progress, particularly in the Ituri district where a court has held prosecutions resulting in 10 convictions on rape charges, but at the moment the DRC's judicial system simply cannot deal with the scale of the crimes. And even with a more robust and transparent system, there remain practical problems, such as the fact that many victims cannot easily reach courts or police stations and often cannot afford the direct and indirect costs of a trial. It was with these numerous weaknesses in mind that mobile gender courts were conceived. Launched in October 2009 and focused in South Kivu, mobile gender courts are an enhanced version of existing mobile courts in the DRC which, unlike most national and international measures of delivering justice, primarily seek to bring justice to victims of gender violence.

Supported by the Open Society Justice Initiative, the American Bar Association Rule of Law Initiative and the Open Society Institute for Southern Africa in collaboration with the Congolese government, these itinerant civilian and military courts emphasize local-led justice and rule of law especially in the larger cities of Baraka, Bukavu and Uvira. In areas such as these where justice had previously

[216] Ibid 121

remained elusive, these courts bring justice to the people. Most court sessions are public and audiences come from far and wide to see the trials first hand[217].

The mobile gender courts nevertheless operate within the national judicial system , and use entirely Congolese staff, including police, judges , prosecutor and defense counsel, and court administrators .This is important for promoting the project as one aspect of improving the country's judicial system as a whole rather than creating a parallel externally-led judicial structure. From their initiation in October 2009 to May 2011, these courts have handed out 195 convictions, 75 per cent of them being for sexual crimes and 25 for crimes such as murder and theft[218].

Alongside the trials, the American Bar Association Rule of Law Initiative also works in conjunction with local society groups and the South Kivu Bar Association to provide sustainable training on the rule of law, educate people about their rights, and offer medical help and counselling to victims .This offers a more holistic approach to dealing with the problem of sexual violence and goes beyond mere justice and begins to address victims' other needs.

Despite the positive work of these mobile gender courts, they have limitations. The speedy nature of the trials, while beneficial in one way, can also make summoning witnesses in time difficult. There is also a lack of resources for basic equipment like writing paper or computers, the prison system is inadequate, and the state has failed to pay out for any form of reparations as of yet. Overcoming these problems, however, requires addressing other areas of the DRC's judicial system. Mobile gender courts are no quick fix to the problems surrounding impunity and injustice in DRC. Just as the scope of the ICC and the national courts are limited, these courts can only reach out to some of the many victims. These itinerant courts could, however, be a crucial foundation upon which the national judicial system and restoration of rule of law can be strengthened. In conjunction with the ICC and national courts, mobile gender courts can help tackle impunity at various levels and inculcate a sense of accountability around sexual violence.

ii. The Carter Center: Liberia traditional Justice Reform

In Liberia, formal and traditional systems of justice have coexisted since the founding of the state, although not always in perfect harmony. Local chiefs, elders, and spiritual leaders have used traditional methods of administering justice for generations. Some of these practices have been codified in executive administrative regulations that govern areas outside of Monrovia. As the new government has brought changes to laws and sought to enforce existing ones that impact traditional communities, it has been

[217] Belton, K. (2005, March). Competing Definitions of the Rule of Law: Implications for Practitioners . Carnegie Papers.

[218] Ibid 123

necessary to both inform communities of the changes and to provide opportunities for people to understand the purpose of the law and discuss ways in which they will impact their communities.

The Carter Center, in support of the Ministry of Internal Affairs and traditional leaders represented by the National Traditional Council and working with other stakeholders including the Ministry of Justice, Ministry of Gender and Development, and women's and youth groups, has helped to convene trainings and dialogue opportunities to explore the differences between national laws, rural administrative regulations, and customary practices and to begin to discuss ways that national legal reform might be embraced in traditional communities. In 2008, The Carter Center helped to facilitate three regional dialogues between traditional leaders and the Ministry of Internal Affairs (PDF). As a result of these dialogues, the National Traditional Council produced a resolution on its stance on various legal issues and contentious traditional practices. Also, the Center co-convened with the Ministry of Justice and U.N. Mission in Liberia legal and judicial office a lessons-learned consultation on Access to Justice in a Transitional Period[219].

Additionally in 2009, the Ministry of Internal Affairs, the National Traditional Council, and The Carter Center partnered to hold county-level trainings for traditional leaders on the rule of law and gender mainstreaming in each of the 15 counties. These trainings also allowed the government to solicit input from traditional leaders on issues of legal reform and give the traditional leaders the chance to be heard on important questions that will affect their lives. In this way, The Carter Center is a valuable interlocutor between the government and traditional leaders.

The Center is also working to strengthen the capacity of traditional dispute resolution processes and is supporting the Catholic Justice and Peace Commission (JPC) in a community-based pilot project that provides concrete, practical solutions to everyday justice problems in underserved rural areas. The JPC is a national organization that has historically engaged in human rights monitoring and advocacy. Together, the JPC and The Carter Center have created a cadre of 32 Community Legal Advisers (CLAs) who receive ongoing training and monitoring and are currently working in Bong, Lofa, Nimba, and the five southeastern counties, helping to guide people through the different formal, informal, and traditional means available for settling disputes. They work closely with lawyers on staff and are trained in legal procedure, labor law, family law, basic criminal law, mediation training, and advocacy skills[220].

[219] For more information go to http://www.cartercenter.org/index.html
[220] Ibid 121

Specifically, CLAs:

- Provide information on rights and the law;
- Help people interact with government, courts, and traditional authorities;
- Mediate small-scale conflicts; and
- Advocate for justice.

iii. The Open Justice Initiative (OJI)/World Justice Project: Liberia

The Open Justice Initiative , in conjunction with World Justice Project has designed and developed to put in place a monitoring and evaluation system for local courts in Liberia to make them more accountable to the citizens they exist to serve. The pilot phase of the project is focusing on four local courts in Montserrado County - Paynesville, Brewerville, New Kru Town and West Point[221]. These areas have been chosen because they are highly populated, low income neighborhoods where significant legal problems exist; and are also logistically accessible from Monrovia, so can be visited by the team easily and often. The idea is to test the concept in these communities, and then roll the project out further as experience, capacity and funding allows.

The pilot phase of the project will focus on three key objectives. First, working with Community Based Organizations (CBOs) in four communities to conduct outreach programs within communities to build an understanding of how the legal system works and their rights and responsibilities under law. This process will also include collaboration with local judges and lawyers to ensure their buy-in and support for the program. Second, the OJI team will place volunteer monitors in the courts in these four communities - every day for a year - to objectively monitor the proceedings of the courtroom. This will include monitoring of issues such as: whether Miranda rights are read to defendants; the number of cases heard per day; the punctuality of judges; the presence or absence of state-appointed lawyers or clerks in court; and the return of bond fees to defendants. Every six months, the team will release a "Local Justice Scorecard" that will objectively provide details of this accumulated data to citizens in an easy to understand format through illustrations and articles in local newspapers and on the radio. The team has already agreed for publication of the scorecards through the most popular daily newspaper in the country, Front Page Africa. This process will generate significant local debate about the justice process in Liberia and the accountability of the legal system. Over time, with scorecards released every six months, a clear, trusted and reliable means to monitor local justice in Liberia will emerge. Third, the team will carry out regular "perception surveys" of local justice in these four communities, polling local citizens on issues including the fairness, timeliness, integrity,

[221] For more information go to http://www.opensocietyfoundations.org/about/programs/open-society-justice-initiative

effectiveness and efficiency of the courts - in order to create additional qualitative and quantitative data. This will be synthesized on a regular basis and provide the basis for further citizen-focused analyses that can be used for discussion with Liberians across the country.

The beneficiaries of this project are the long-suffering citizens of Liberia who tell us that above all else - including even regular social services - they want justice. In the short-term the project will benefit citizens in the four pilot communities to the largest extent - as these will be the local courts that are monitored and assessed. However, the scorecards and analyses produced will be shared through local and national newspapers and radio stations, thereby ensuring that the debate about the accountability of the local legal system - and the pressure for accountability within it - will be widespread. Subsequently, the OJI will be rolled out in communities across the country, benefitting Liberians of every geography, language and ethnic group.

3.4.3 Ngos and Transitional justice mechanisms

Those who have written about the subject seem to agree that there is an important role for civil society to play in transitional justice processes. "The competences of NGOs and other civil society actors," writes David Backer, "justify a role in addressing human rights issues that arise in transitional settings. Some even make vital contributions to transitional justice processes"[222] . Others agree. "Not surprisingly," observes Eric Brahm, "civil society organizations have often played important roles in promoting and supporting transitional justice experiments around the world" [223].According to Priscilla Hayner, civil society is a factor in the effectiveness of transitional justice efforts. "The strength of civil society in any given country—how many and how well organized the nongovernmental advocacy, community-based, research, and other such organizations are," she argues, "will partly determine the success of any transitional justice initiative. Because of their information, contacts, and expertise in human rights issues, the contribution of nongovernmental organizations (NGOs) can be critical"[224].

Civil society has played an important role in every country that has experienced a successful transitional justice endeavor. National NGOs have helped to initiate, advocate for, and shape some of the strongest and most interesting transitional justice initiatives that have been implemented around the world. In Ghana, Sierra Leone, East Timor, and Peru, for example, national or local organizations played central roles in giving shape to the justice mechanisms put in place to confront past crimes[225].

[222] David Backer, "Civil Society and Transitional Justice: Possibilities, Patterns and Prospects," Journal of Human Rights 2, no. 3 (2003): 297.
[223] Eric Brahm, "Transitional Justice, Civil Society, and the Development of the Rule of Law in Post-Conflict Societies," International Journal of Not-for-Profit Law 9, no. 4 (2007): 62.
[224] Priscilla Hayner, "Responding to a Painful Past: The Role of Civil Society and the International Community," in Dealing with the Past: Critical Issues, Lessons Learned, and Challenges for Future Swiss Policy, ed. Mô Bleeker and Jonathan Sisson, KOFF Series Working Paper (Bern: Swiss Peace, 2005), 45.
[225] Ibid

Others points out that civil society's engagement with transitional justice measures is not limited to human rights organizations, but includes humanitarian aid organizations, victim and survivor associations, development NGOs, lawyers, academic, mental health and medical associations, religious organizations[226], and conflict transformation and peacebuilding groups.

What are the contributions that civil society organizations can make to transitional justice efforts? "A nation's civil society," suggests Crocker, "is often well suited to specify and prioritize the ends of transitional justice as well as choose and implement the means." More specifically, "civil society can play an important role in deliberating about, formulating, scheduling, and prioritizing goals and in forging measures to realize them." And, in addition to such a "public deliberation" function, civil society can help with victim assistance, investigation, and adversarial public action[227]. Brahm sees civil society playing a "central role" in terms of mobilizing society to participate and disseminating the lessons of justice efforts[228] .

As Backer points out, however, the extent of civil society engagement with transitional justice depends on the demand for it—that is, the need, opportunities, and state receptivity to non-state participation. In developing countries, this demand may be significant because of a lack of resources and state institutional capacity. In Southern African countries, for example, civil society organizations have acted both as pressure groups and service providers in response to the "failure of states to implement sustained, integrated, widely accepted, and effective reconciliation programs[229].

It seems, then, that at a general level, there are a number of potential ways in which civil society contributions to transitional justice can be characterized and categorized. What about particular transitional justice measures, such as truth commissions, reparations programs, prosecutions, and institutional reform? Here, too, there is widespread acknowledgement of a potential role for civil society.

For truth commissions, Hayner describes civil society as "the essential ingredient"[230].According to the UN Office of the High Commissioner for Human Rights' (OHCHR) rule-of-law tool on truth commissions, for example, "national NGOs have a key place in the work of truth commissions. Indeed, the strongest commissions have been those that work in the context of a strong and active civil society." The tool advocates the establishment of truth commissions, including their mandates and design, based on a thorough consultation process with victims groups and other civil society organizations. Civil society contributions during the work of a truth commission, it explains, can include: the provision of training and background material; the provision of access to records; making connections within local communities; the accompaniment

[226] Naomi Roht-Arriaza, "Civil Society in Processes of Accountability," in Post-Conflict Justice, ed. M. Cherif Bassiouni (Ardsley, NY: Transnational Publishers, 2002), 98
[227] David Crocker "Transitional Justice and International Civil Society: Toward a Normative Framework", Constellations Volume 5, Issue 4, pages 492–517, December 1998.
[228] Ibid 214 , p62
[229] Christopher J. Colvin, "Civil Society and Reconciliation in Southern Africa," Development in Practice 17, no. 3 (2007): 326
[230] Priscilla Hayner, Unspeakable Truths: Facing the Challenge of Truth Commissions (New York and London: Routledge, 2001), 234-239

of victims providing statements in public hearings; lobbying government officials; the provision of support services; and offering public feedback on methodology and impact[231].

According to the International Center for Transitional Justice's guidelines for NGOs engaging with truth commissions, civil society actors are "key interlocutors," often determining the commission's success. They can play a "vital role" by mobilizing public opinion and engagement, developing or enhancing the commission's mandate and operational structure, and ensuring its credibility and legitimacy[232]. In Liberia, to offer a specific example, one practitioner has described civil society's role to be growing as the truth commission's work continues. "In addition to serving as a watchdog and assessing and evaluating the work of the TRC," writes Ezekiel Pajibo, "civil society groups have agreed to work cooperatively and collaboratively with the TRC especially in the areas of community outreach and education, victim mobilization and research on key issues including amnesty and accountability, reparations, memorials and economic crimes"[233]. In Morocco, where there has been no transition to democracy, the Equity and Reconciliation Commission, a truth commission established in 2004, represented in itself in the view of one author "a negotiation between civil society and the monarch—sometimes cooperative, sometimes adversarial—over the shifting social ground on which Morocco's political structures are founded"[234].

Civil society groups may also play a role in the design of reparations programs. As with truth commissions, their role can relate to the information they hold and their connections to local communities. The OHCHR tool on reparations programs states:

"*Civil society organizations may, on their own and, particularly, collectively, have more information about that universe [of victims] than official institutions. Bringing these organizations into the process from an early stage increases the likelihood that they will share information that is relevant for the design of reparations programs. Throughout the registration process these organizations may have closer links with, and a deeper reach into, victims' communities than official institutions. Their active efforts are, therefore, necessary to achieve completeness*[235]".

Furthermore, observes Roht-Arriaza, "NGOs may be helpful as legal advocates for the poor, helping them document and present their claims," and they "may be in a better position than a newly-formed government to publicize and administer" reparations programs that distribute benefits in the form of medical and psychological services[236].

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[231] Office of the United Nations High Commissioner for Human Rights, Rule-of-Law Tools for Post-Conflict States: Truth Commissions (New York and Geneva: United Nations, 2006), 7, 33-34

[232] International Center for Transitional Justice (ICTJ), "Truth Commissions and NGOs: The Essential Relationship," Occasional Paper Series, ICTJ, April 2004, 4, 9.

[233] Ezekiel Pajibo, "Civil Society and Transitional Justice in Liberia: A Practitioner's Reflection from the Field," International Journal of Transitional Justice 1 (2007): 294.

[234] Luke Wilcox, "Reshaping Civil Society through a Truth Commission: Human Rights in Morocco's Process of Political Reform," International Journal of Transitional Justice 3 (2009): 55.

[235] Office of the United Nations High Commissioner for Human Rights, Rule-of-Law Tools for Post-Conflict States: Reparations Programmes (New York and Geneva: United Nations, 2008), 15-16.

[236] Ibid 217, p 109

Efforts to prosecute perpetrators of massive human rights abuses may also benefit in various ways from civil society's engagement. The involvement of local civil society in hybrid tribunals, for example, "can yield important benefits, including access to valuable information and evidence, additional technical expertise, political support, and an additional medium of outreach and public engagement"[237] .For domestic prosecutions as well, civil society organizations can help prosecutors to map out trends of human rights violations, facilitate outreach and feedback, monitor due process standards, and reduce time and costs. Importantly, "they can also contribute to the strategic development of domestic prosecutions in ways that official prosecutorial bodies cannot. Because of their proximity to victims, NGOs can and should develop programs that allow victims to participate meaningfully in the prosecution process"[238].Civil society can also "press the judicial system to act upon past human rights violations" in the first place, as happened in Argentina and Chile [239].

Even with international prosecutions, civil society efforts can make a difference. In July 2009, after the African Union issued a decision not to cooperate with the International Criminal Court (ICC) regarding its indictment of President Omar al-Bashir, more than 160 civil society organizations from around Africa endorsed a call for African states to commit to enforcing the arrest warrant. In South Africa, where 17 organizations denounced the decision and called on their government to honor its obligations under the Rome Statute, the government soon announced that it would in fact cooperate[240].

Finally, there is room for civil society organizations to play a role in institutional reform measures, such as vetting processes to dismiss public officials or employees who committed human rights violations in the past. "Broad consultations with civil society and an opinion survey," states the OHCHR tool on vetting, "will ensure a comprehensive identification of the public needs. Particular attention should be paid to the needs of victims, women, minorities and vulnerable groups[241]."Indeed, one of the lessons learned from the UN's experience with vetting processes during peace operations, says the UN Secretary General's report on the rule of law and transitional justice, is that "civil society should be consulted early and the public must be kept informed[242]."

It seems clear that civil society can play a potentially positive role in relation to transitional justice measures. It is important to note, however, that civil society's contribution can be limited in the context of countries emerging from armed conflict or authoritarian rule, especially underdeveloped countries, for reasons related to capacity

[237] Office of the United Nations High Commissioner for Human Rights, Rule-of-Law Tools for Post-Conflict States: Maximizing the Legacy of Hybrid Courts (New York and Geneva: United Nations, 2008), 22-21
[238]Office of the United Nations High Commissioner for Human Rights, Rule-of-Law Tools for Post-Conflict States: Prosecutions Initiatives (New York and Geneva: United Nations, 2006), 6, 11, 17, 27
[239] Ibid
[240] Howard Varney, "In the End, South Africa Did the Right Thing," City Press, August 16, 2009, p 54.
[241] Office of the United Nations High Commissioner for Human Rights, Rule-of-Law Tools for Post-Conflict States: Vetting: An Operational Framework (New York and Geneva: United Nations, 2006), 14.
[242] United Nations Security Council, "The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, Report of the Secretary General," S/2004/616*, August 23, 2004, 18.

among others things. "Unfortunately," as Brahm puts it, "civil society is often weak, disorganized, and lacking independence in post-conflict nations[243]. " Crocker makes the point specifically in relation to transitional justice: civil society, he writes, "is not without some limitations, and there are some dangers in putting undue (and the wrong kind of) emphasis on it. Groups in civil society, especially following prolonged authoritarianism, may be very weak and disunited, which limits their potential impact on transitional justice." Similarly, Crocker argues that civil society's relationship with transitional justice will depend in part on the "supply equation"—that is, its ability and inclination to participate. "In transitional settings," he echoes Brahm, "civil society is often under-developed, under-equipped and diffuse, not to mention politicized and financially dependent. Thus, there is no guarantee non-state actors will be positioned to respond to demand conditions in this or any realm[244]."

In Liberia, for example, challenges related to operating in a context of mass poverty and an underdeveloped civil society sector have had a "direct impact on the capacity of the sector to engage with and support the work of the TRC and of transitional justice debates more generally. In particular, they are constrained by financial considerations that limit their ability to sufficiently support the process[245]." Also in Liberia, civil society's ability to play a role in the reform of the police and military has been constrained by a lack of capacity. "In terms of drawing lessons from the engagement of CSOs [civil society organizations] to date," concludes Alexander Loden, "the initial starting point should be an appreciation of the enormous lack of capacity to engage with SSR [security sector reform] and the sheer scale of reform and restructuring that is ongoing in a very challenging context[246]." In Uganda, civil society is "weak and fragmented, event oriented and donor driven." Furthermore, in a context where there has been no democratic transition, civil society must work in a "stifling environment," in which it has only a "restricted space" to advocate for transitional justice. While some civil society efforts are focused on transitional justice issues, such as the Beyond Juba Project, other initiatives, such as the Coalition of Organizations for Reconciliation in Uganda, have proved unsustainable[247]. Roht-Arriaza suggests that, as service providers connected to transitional justice processes such as reparations programs, civil society groups' "effectiveness as such can be enhanced if their capabilities and limitations are factored into post-conflict planning.[248]"

[243] Ibid 214,p 62.
[244] Ibid 218.
[245] Alexander Loden, "Civil Society and Security Sector Reform in Post-conflict Liberia: Painting a Moving Train without Brushes," International Journal of Transitional Justice 1 (2007): 304.
[246] Ibid.
[247] Jackee Budesta Batanda, "The Role of Civil Society in Advocating for Transitional Justice in Uganda," Institute for Justice and Reconciliation, Wynberg, South Africa, 2009, 1, 4-6.
[248] Ibid 217 p 100.

3.4.4 Ngos and Human Rights Promotion-Protection

a. Introduction

Under the rule of law, fundamental rights must be effectively guaranteed. A system of positive law that fails to respect core human rights established under international law is at best "rule by law". Rule of law abiding societies should guarantee the rights embodied in the Universal Declaration of Human Rights including the right to equal treatment and the absence of discrimination; the right to life and security of the person; the right to the due process of the law; the freedom of opinion and expression; the freedom of belief and religion; the absence of any arbitrary interference of privacy; the freedom of assembly and association; and the protection of fundamental labor rights, the protection of Women's ,and children's Rights.

Non-governmental organizations (NGOs) have played an important role in the overall development of the human rights movement since the early 1800s. It was then focused on the abolition of slavery and humanitarian assistance in armed conflicts. Some organizations deserve special attention, such as the anti-Slavery Society, which lobbied actively for the abolition of slavery at the Vienna Congress in 1815, and the International Committee of the Red Cross founded in 1859 by Henri Dunant, a Swiss national who had been profoundly affected by his experience at the battle of Solferino the same year. The last three decades have witnessed a dramatic increase in the number of human rights NGOs .They are involved in many more issues than previously, and their political influence has grown both at the international and domestic level.

A human rights NGO is a non-governmental organization that works to protect human rights and end human rights violations. The topic of "human rights" encompasses a wide range of issues, including freedom of expression, right to due process, gender equality, and freedom from poverty and violence. Many NGOs turn to the UN's Universal Declaration of Human Rights in order to fully outline organizational goals. NGOs in the field of human rights are of two types which may exist in a country. They are human rights international non-governmental organizations (HRINGOs) and local or regional human rights non-governmental organizations (HRNGOs)[249]. These organizations take their cue from the most widely endorsed international declarations to promote and protect human rights. Some HRINGOs are the Amnesty International (AI), the Human Rights Watch (HRW) etc. These groups have a specific objective to protect human rights. There are also HRNGOs whose human rights concerns are more general. Some of these groups are International League for Human Rights, International Commission of Jurists, etc. These NGOs work to uphold those rights which are listed in the International Covenant on Civil and Political Rights (ICCPR).

Human rights NGOs vary in their approach. Some NGOs perform extensive research in order to document human rights abuses. These organizations serve as "watchdogs," monitoring the potentially abusive actions of governments. Many human

[249] Ibid 121

rights NGOs work to bring public attention to human rights abuses through information campaigns, NGO member updates, and coordination with the press. By garnering public support of an issue, human rights NGOs can put intense pressure on perpetrators to end human rights abuses[250]. Human rights NGOs work at the local, national and international level and may focus their efforts on government advocacy or grassroots organizing .To sum up NGOs play a crucial role in: fighting individual violations of HR, offering direct assistance to those whose rights have been violated, lobbying for changes to national or international law, helping to develop the substance of those laws, promoting knowledge of, and respect for, human rights among the population.

b.Ngos and the UN system

Many NGOs have formal affiliation with intergovernmental organizations (IGOs), such as the United Nations (UN) .These organizations may agree to grant NGOs a consultative or observer status, for example the observer status granted by the UN General assembly to the International Committee of the Red Cross (ICRC) in 1991 and to the International Federation of Red Cross and Red Crescent Societies in 1992. Yet there are numerous NGOs without such formal relationships, in particular at local level, whose work is of importance to the international community's efforts to promote and protect human rights .The UN has since its inception sought to define its relationship with NGOs. Article 71 of the Charter provides that the Economic and Social Council (ECOSOC) "may make suitable arrangements for consultations with non-governmental organizations, which are concerned with matters within its competence"[251]. An important purpose of this system is to enable organizations

[250] The imperative of human rights ngos derives from a lack of fidelity to human rights goals among nation-states across the globe: 1.Government's infidelity to human rights goals: Governments across the globe -the advanced democracies, developing countries and the so-called third world-are noted to have failed to demonstrate the needed fidelity and commitment to the promotion and protection of human rights. Indeed, it is an undeniable and inescapable fact that governments across the globe remain the greatest human rights violators. See, J.A. Dada, "Judicial Remedies for Human Rights Protection in Nigeria", Journal of Law, Policy and Globalization, International Institute for science, Technology, & Education, vol. 14 [2013]1.

2.Weak Institutional Infrastructure for Human Rights Protection: It has been insightfully noted that the major deficiency in the human rights regime across the globe is not the absence of good standards and laws, but one of enforcement. Effective enforcement of human rights largely depends on the domestic machineries of the national governments. It is for this reason that major international human rights instruments mandate State parties to take appropriate domestic measures to ensure the realization of the rights proclaimed.

3.Need for Multifarious Strategies and Approaches: It is widely recognised that in order to ensure effective implementation of human rights, wide-ranging strategies and approaches are required. Indeed there is no enforcement mechanism, which can exclusively and adequately ensure optimal human rights protection. The need for multifarious strategies was trenchantly articulated by Atonio A. Cancado Trindade as follows: "There is a great need to conceive new forms of protection for human beings facing the present diversification of sources of violations of their rights. Virtually all existing mechanisms of protection were conceived as responses to human rights violations. New responses are now needed. The current paradigm of protection [for the individual vis-à-vis public power] runs the risk of becoming insufficient and anachronistic, as inadequately equipped to confront those violations. New responses should be conceived on the understanding that the State remains responsible for those violations that it fails to prevent."

[251] In establishing consultative relations with NGOs and in order to organize the consultation with the accredited NGOs, the above mentioned resolution distinguishes among NGOs in three different categories, entailing different rights:

Category I — general consultative status (§ 22) covers organizations which are concerned with most of the activities of ECOSOC. In consequence, NGOs in this category have the most comprehensive rights with regard to standard-setting and supervisory mechanisms. They may propose through the Secretary-General and the Committee on Non- Governmental Organizations to place items on the provisional agenda of ECOSOC and its subsidiary bodies.

Category II — special consultative status (§ 23) is obtained by NGOs with a special competence and which are concerned with only a few of the fields of activity covered by the Council .NGOs of categories I and II may have authorized representatives as observers at all public meeting of ECOSOC and its subsidiary bodies .

NGOs with roster status (§ 24) may designate representatives at public meetings concerned with matters within their field of competence, i .e ., they may make occasional contributions to the work of the Council and its subsidiary bodies or other UN bodies within their competence

representing important elements of public opinion in a large number of countries to express their views as well as to "secure expert information or advice from organizations having special competence in the subjects for which consultative arrangements are made" (§ 20 ECOSOC Res . 1996/31 of 25 July 1996) . As early as 1946 ECOSOC established a Committee on Non-Governmental Organizations (CONGO) entrusted with the examination of NGO applications for consultative status[252].

NGOs may participate as observers or with consultative status at meetings of the UN specialized agencies, UN conferences and special sessions of the General assembly. Of particular importance for debates on various human rights questions within the Human Rights Council (which was established in 2006 as the successor of the Human Rights Commission), the Sub-Commission for the Promotion and Protection of Human Rights or the Commission on the Status of Women are the written and oral statements submitted by NGOs concerning the subject under discussion . In addition, NGOs with consultative status may be requested to carry out specific studies or papers for commissions. There are similar arrangements for the regional African and Inter-American human rights systems[253].

Broadly speaking, NGOs may cooperate with the United Nations System in at least four ways:

1. NGOs may receive accreditation for a conference, summit or other event organized by the United Nations. Such accreditation is issued through the Secretariat preparing the event and expires upon completion of the event. It entitles NGOs to participate in the preparation process and in the event itself, thus contributing to its outcome.

2. NGOs may establish working relations with particular Departments, Programs or Specialized Agencies of the United Nations System, based on shared fields of interest and potential for joint activities complementing the work of the United Nations office in a particular area.

3. International NGOs active in the field of economic and social development may seek to obtain consultative status with the United Nations Economic and Social Council (ECOSOC).

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[252] The conditions and procedures for obtaining consultative status are elaborated in ECOSOC Resolution 1996/31 of 25 July 1996 . Accordingly:
– an NGO shall be concerned with matters falling within the competence of ECOSOC and its subsidiary bodies (§ 1);
– the organization shall be of representative character and of recognized international standing (§ 9);
– the aims and purposes of the organization shall be in conformity with the spirit, purposes and principles of the Charter of the United Nations (§ 2);
– it must undertake to support the work of the UN and to promote knowledge of its principles and activities (§ 3)

[253] It should also be mentioned that several special procedures of the Human Rights Council and the Sub-Commission allow for direct access of NGOs without consultative status. ECOSOCResolution 1996/31 (Part VIII) also indicates the circumstances under which consultative status may be suspended or withdrawn.

4. NGOs that have at their disposal regular means of disseminating information, either through their publications, radio or television programmes, or through their public activities such as conferences, lectures, seminars or workshops, and that are willing to devote a portion of their information programmes to dissemination of information about the United Nations, may apply for association with the United Nations Department of Public Information (DPI).

c. Ngos in the human rights field

Brief overview of their activities

Thus, in addition to judicial and other governmental protection agencies, human rights NGOs are a veritable tool to drive the goal of human rights. From the above, it becomes clear that the role of NGOs in the promotion and protection of human rights is not only extensive but very important and crucial[254]. Human rights NGOs apply various strategies in their work towards achieving compliance with international human rights standards. Some NGOs may concentrate on a particular activity, such as standard-setting, promotion or technical assistance, while others may combine several of these activities in their programs .To demonstrate the importance and near indispensability of human rights NGOs in the implementation of human rights, the role characteristically played by them may now be highlighted as follows:

Box 8

Human Rights	Advocacy, education, legislative reform protecting rights; Support for the creation of watch-dog bodies (e.g., Ombudsman, Human Rights Commission); Monitoring of courts and governments for compliance with human rights; Assistance ratifying appropriate international treaties and incorporating them into national legislation;

[254] For further reading on the role of NGOs, See, "Strengthening of the United Nations: An Agenda for further Change", UN Doc. A/57/387. NGOs and" The Human Rights Movement, The Advocate for Human Rights," www.stopvaw.org/ngos-and-the-human-rights-movement.

	Working with International Tribunals, reporting human rights violations and working to prevent future abuse; and Capacity-building with local governmental agencies and non-governmental organizations

The human rights movement is spread out around the world. The first human rights groups appeared only at the national level[255], and preceded the birth of internationally recognized organizations. Amnesty International was the first and the most prominent organization in the field, then the Lawyers Committee for Human Rights and Human Rights Watch, based in the United States, and ARTICLE 19 [256]and INTERIGHTS, based in the United Kingdom, as well as Helsinki Committees developed in various countries in Eastern Europe[257].

Before turning to the issue of participation of human rights NGOs in litigation proceedings, we will discuss other forms of involvement of human rights organizations in the work for promotion and protection of universal standards. Unquestionably, NGOs perform a variety of activities. It is increasingly recognized that NGOs working on the international, regional or national levels have been building up a system of international pressure on the development of human rights. They are the initiators of projects, they press national delegations to act, they influence intergovernmental staff who prepare documents and studies, they provide material and information about human rights problems and situations, and they give legal aid to victims of violations of human rights[258].

A clear advantage is that the majority of NGOs collect information and evidence continuously and over a long period of time, whereas the mandates of intergovernmental organizations' fact-finding missions often are of limited duration. Much of the information concerning human rights violations essential to experts and special rapporteurs (thematic and country-oriented) within the UN as well as other intergovernmental organizations comes from NGOs. For instance, several NGOs, among them Amnesty International and Human Rights Watch, have brought refugee issues to the attention of the Special Rapporteur on torture, the Working Group on arbitrary Detention and the Special Rapporteur on Violence against Women. Reports

[255] I.e. LIBERTY was founded in 1934.
[256] ARTICLE 19 is an international human rights organisation, which defends and promotes freedom of expression and freedom of information all over the world. ARTICLE 19 believes that freedom of expression and access to information is not a luxury but a fundamental human right. The full enjoyment of this right is the most potent force to pre-empt repression, conflict, war and genocide; it is central to achieving individual freedoms and developing democracy.
[257] Steiner, 'Diverse Partners. Non-Governmental Organisations in the Human Rights Movement', in The Report of a Retreat of Human Rights Activists (Harvard Law School Human Rights Program and Human Rights Internet, 1991).
[258] Ermacora, 'Non-Governmental Organisations as Promoters of Human Rights', in Matscher and Petzold (eds), Protecting Human Rights: The European Dimension (Koln: Carl Heymanns Verlag KG, 1988) at 180

and various documents disseminated by NGOs are important sources of information for the UN treaty bodies when evaluating reports submitted by the States Parties on the implementation of the various human rights conventions. One could even claim that most of the monitoring bodies are dependent upon first-hand information collected and furnished by NGOs, which often turns out to be the only readily accessible data[259] .

Information provided by NGOs enables the intergovernmental monitoring bodies to have meaningful dialogue with representatives of governments about the true human rights situation in their countries. NGO participation in the reporting process has become a significant factor in inducing states to comply with their obligations under the conventions in question.

A major development in the international human rights community in the last two decades has been greater focus on preventive work. Identification of critical issues and early-warning indicators are crucial for conflict prevention. NGOs may draw attention to situations within a country that threaten the security of its people. Thus, as early as March 1993, an International Commission of Inquiry comprising representatives of four respected NGOs issued a report suggesting that the then horrific human rights abuses against the Tutsis in Rwanda might qualify as genocide. In October 1993 the Security Council established the UN Assistance Mission for Rwanda. However, the international community failed to prevent the disaster of 1994. NGOs have a valuable role to play in conflict prevention based on their knowledge and experience of operating within regions of conflict. The Lawyers Committee for Human Rights, Amnesty International and the Jacob Blaustein Institute for Human Rights, i.a., have been very successful in their efforts to make human rights an integral part of conflict prevention. International Alert continues to develop and strengthen links with and among several NGOs in order to support practical projects in an area of actual or potential conflict[260].

Publicity has great impact on the implementation of human rights law. Amnesty International, Human Rights Watch and other NGOs produce annual reports on countries or themes, which give invaluable information about human rights violations. Human Rights Watch, for example, conducts regular, systematic investigations of human rights abuses in some seventy countries around the world.

Punishment of past human rights abuses has not been a high priority issue in the international community. This is reflected in the fact that only a few NGOs are involved in activities aimed at securing prosecution of perpetrators of human rights violations and grave breaches of humanitarian law. There is a lot to be done by NGOs in order to contravene the culture of impunity[261].

There are, however, some encouraging examples in this area. The Humanitarian Law Center initiated at its foundation a database on massive humanitarian law

[259] The UN Working Group on arbitrary Detention confirmed in 1995 that 75 percent of the cases considered were reported by international NGOs and another 23 percent were brought to its attention by national NGOs.
[260] Thomas, C. (2006). Promoting the Rule of Law Abroad: In Search of Knowledge . Carnegie Endowment for International Peace.
[261] Ibid 121

violations on the territory of the former Yugoslavia[262]. A part of its research has been published in Spotlight Reports since 1993. The Humanitarian Law Centre cooperates with the International Criminal Tribunal for the former Yugoslavia and has made available to it a large part of its documentation on humanitarian law violations in Bosnia and Herzegovina and Croatia. In this regard we may also mention the impressive work carried out by Helsinki Watch during its missions to Bosnia and Herzegovina, Croatia, Slovenia and Yugoslavia, resulting in a two-volume report on war crimes containing invaluable material. Resulting from materials gathered by Human Rights Watch and seven other NGOs, legal action against the Chadian dictator Hissène Habré was initiated in February 2000 by a prosecutor in Senegal.

It has also been repeatedly highlighted that these organizations function as 'unofficial ombudsmen' safeguarding human rights against governmental infringement by such techniques as diplomatic initiatives, reports, public statements, efforts to influence the deliberations of human rights bodies established by intergovernmental organizations, campaigns to mobilize public opinion, education of the people regarding their rights, and attempts to affect the foreign policy of some countries with respect to their relations to States, which are regularly responsible for human rights violations[263]. NGOs have a key role in providing information and opinions. Information has an educative and preventive function. NGOs make an invaluable contribution to the raising of public awareness of existing legal norms, which is of crucial importance to prevent violations of human rights and promoting their implementation.

Some NGOs are committed to the teaching of existing human rights norms, of the possibilities of redress and the dissemination of information both to the public in general and to vulnerable groups the latter aware of their rights and freedoms . Others are committed to the education of practitioners such as judges, lawyers, law enforcement officials and others executing state power, raising awareness of their obligation to abstain from abuse of power and to secure the protection of the rights of others . The International Women's Rights action Watch asia-Pacific (IWRaW-aP) and the United Nations Development Fund for Women (UNIFEm) conducted, a training seminar one week prior to the CEDaW session in 1998 for a number of women from national NGOs, educating them about the Women's Convention and state obligations[264]. Furthermore, the International Planned Parenthood Federation (IPPF) has established training programs for women leaders through its projects in developing countries.

The significance of the existence of NGOs and their role at both international and regional levels has been recognized through various initiatives resulting in the adoption of documents which provided for a possibility of acquiring a consultative status with the United Nations Economic and Social Council (ECOSOC)[265] and the adoption of a

[262] Beatrice, P. (2003, January). UN Peace Operations:INGOs, NGOs and Promoting the Rule of Law . Journal of Human Rights , p. 373.
[263] Weissbrodt, 'The Contribution of International Non-Governmental Organizations to the Protection of Human Rights', in Meron (ed.), Human Rights in International Law: Legal and Policy Issues, Vol. II (Oxford: ClarendonPress, 1984) at 403-4.
[264] Ibid 121
[265] ECOSOC Resolution 1296 (XLIV), 23 May 1968, governs relations between NGOs and the United Nations. In

European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations, which was a regional effort to facilitate the work of European international NGOs by granting them some sort of international legal status.

As described earlier, the access of NGOs to promotion and protection of human rights under international law may take various forms. Martin Olz divides them into three groups. The first group is connected with the implementation of international agreements; the second is related to working relations with intergovernmental agencies; and the third concerns 'soft' control of the application of international human rights norms[266]. For our purposes the first group is of the greatest relevance.

Here the access to promotion and protection of human rights is related to the involvement of NGOs in State reporting procedures. But most importantly, it is connected also with monitoring the compliance with international human rights norms through complaints procedures: inter-State complaints and individual complaints. Individual communications are frequently brought under several human rights treaties at the universal and regional levels and under procedures based on the UN Charter[267].NGOs may be involved as individual complainants when a NGO itself is a victim of a human rights violation, or they file complaints on behalf of individuals whose rights have been violated, and NGOs can provide legal assistance and expertise to individual claimants.

Another form of NGO participation in international human rights proceedings is the submission of amicus curiae briefs[268].The above-mentioned role of human rights NGOs in implementation of international agreements through individual complaints procedures raises the issue of the increasingly crucial role of NGOs in international litigation, which consequently can contribute to the development of international law. Human rights NGOs may institute cases or intervene as parties, serve as court- or party-appointed experts for fact finding or legal analysis, testify as witnesses, or participate

order to gain consultative status, an organization must be 'of representative character and of recognized international standing; it shall represent a substantial proportion, and express the views of major sections of the population or of the organized persons within the particular field of competence, covering, where possible, a substantial number of countries in different regions of the world'. National organizations are permitted only 'after consultations with the Member State concerned in order to help achieve a balanced and effective representation of non-governmental organizations reflecting major interests of all regions and areas of the world, or where they have special experience upon which the Council may wish to draw'. NGOs awarded consultative status are placed in one of three categories: Category I, Category II or the Roster.

[266] ' Olz, 'Non-Governmental Organisations in Regional Human Rights Systems', (1997) 28 Columbia Human Rights Law Review 308 at 320. As to the third field of access, international standards are used as a tool to fight human rights abuses. Relying on the Universal Declaration of Human Rights and other instruments, such as regional human rights conventions, NGOs are able to remind States of their obligations and to hold them responsible by publicly disclosing human rights violations. Raising public awareness, fact-finding missions, reporting, human rights education and publication, lobbying decision makers on the domestic and international level, legal assistance, and domestic human rights litigation, are only a few examples of activities falling in this category.

[267] These are: European Court of Human Rights, Inter-American Commission on Human Rights who can submit the complaint to the Inter-American Court of Human Rights, African Commission on Human Rights and African Court Of Human And Peoples' Rights (ACHPR), UN Human Rights Committee, the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination Against Women (CEDAW Committee), and the Committee against Torture (CAT).

[268] The Latin phrase amicus curiae means 'friend of the court'. According to Black's Law Dictionary, it means a person who is not a party to a lawsuit but who petitions the court or is requested by the court to file a brief in the action because that person has a strong interest in the subject matter. Garner (ed.), Black's Law Dictionary, 8th Edition, (St. Paul, MN: Thomson West 2004) at 93. The amicus is a bystander who, without direct interest in the litigation, intervenes on his own initiative 'to make a suggestion to the court on matters of fact and law within his own knowledge'. Amici provide information, at the court's discretion, in areas of law in which the courts had no expertise or information.

in proceedings as amici curiae. The latter aspect of NGO participation in the litigation seems to be used in the most extensive way before regional tribunals particularly.

i. The role of Ngo in the Universal Level

-Treaty Monitoring bodies

International human rights standards are developed in a number of international treaties adopted under the auspices of the UN. The vast majority of these treaties established special bodies for the purpose of monitoring the implementation of the treaty's provision by its states party. The international human rights treaties which established bodies for oversight of their implementation are as follows:

-the Committee against Torture (CAT),

-the Committee on the Elimination of Discrimination against Women (CEDAW),

-the Committee on the Elimination of Racial Discrimination (CERD),
-the Committee on the Rights of the Child (CRC), the Committee on -Economic, Social and Cultural Rights (CESCR),
-the Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families (CMW), the Human Rights Committee (HRC)
-the Committee on the Rights of Persons with Disabilities (CRPD) and
-the Committee on Enforced Disappearances (CED).

Apart from receiving and considering periodic reports[269] by the state parties on implementation of threaty's provision , some monitoring bodies also provide for receiving complaints from individuals whose human rights have been violated[270].

[269] The reports that states parties are obliged to submit periodically every 2, 4 or 5 years provide information about legislative and practical measures taken to implement the treaty. As a first step in the review of the state report all treaty bodies, with the exception of CERD, hold pre-sessional meetings, during which they adopt a so-called "list of issues". Such meetings are usually held in private. The list of issues, which are usually requests for further information or clarification on some areas of implementation of the relevant treaty, are sent to the government concerned in advance of the public dialogue. The list of issues together with any additional written information provided by the government in response will inform the actual consideration of the state report. The consideration takes place through a public dialogue between representatives of the government concerned and members of the treaty body. The treaty body then formulates its concluding observations to the government as a collective assessment of the report, listing positive aspects as well as factors and difficulties impeding the application of the treaty, principal subjects of concern and recommendations. States parties are obliged to implement these recommendations and to report on measures they have taken in this respect - either in the course of a follow up procedure, which some treaty bodies have put in place, or in their next periodic report.

[270] Most treaty bodies are also able to consider individual complaints, where a state party has recognized the competence of the committee to do so. The Optional Protocol to the Covenant on Economic, Social and Cultural Rights, which provides for this, will shortly enter into force. In June 2009, the Human Rights Council established an open-ended working group to consider the possibilities for an individual communications procedure under the Convention on the Rights of the Child.
The process by which a treaty body considers an individual complaint is confidential until the treaty body has taken a decision on the admissibility and merits of a case. Decisions are then available from the secretary to the treaty body concerned, in the annual report of the treaty body and on the website of the High Commissioner for Human Rights.In addition, three treaty bodies currently are able to carry out confidential inquiries into allegations of widespread or systematic violations of the treaty (CAT, CEDAW and CPWD). The CERD has a specific early warning/urgent procedure.
The Human Rights Committee has also developed a mechanism for the urgent consideration of situations of serious difficulties in the implementation of the Covenant, which it has invoked in a few rare situations. Furthermore, the treaty bodies also elaborate international human rights law through the development of general comments/recommendations.

Civil society, including non-governmental organizations (NGOs), parliamentarians and national human rights institutions, have an important role to play in the treaty monitoring process. When a treaty body is preparing to consider the report of states parties, the experts depend on alternative information that NGOs provide in the form of written and oral briefings. National and international NGOs are often a main source of alternative information to a state party's report. As the treaty bodies' consideration of state reports culminates in the adoption of recommendations which the state party is obliged to implement, it is important that the treaty bodies are in possession of a range of information which accurately reflects the situation in a country. NGOs can assist in achieving this aim by: Preparing a written submission to the treaty body members[271], attending the session to brief the members[272] and following up on the governments' implementation of treaty body recommendations[273].

-Amnesty International and the treaty monitoring bodies

Since its beginnings, when no major international human rights treaty had even been adopted let alone entered into force, Amnesty International has been in contact with various human rights offices within the United Nations .Consultative status with the UN's Economic and Social Council was granted to Amnesty International in 1964.In various degrees Amnesty International carries out all crucial tasks of Ngos in relation to the treaty bodies identified by Michael O' Flacherty[274].

- The channeling of independent information to members of treaty bodies
- The promotion of knowledge and understanding of the reporting system
- The unofficial oversight of the ongoing effectiveness of the reposting process following the examination of states parties reports by the treaty bodies.

One of the most significant aspect of Amnesty International's work with the treaty monitoring bodies is providing them with information on human rights violations in a particular country, especially after the country submits its periodic report and before it is considered. The organization submissions are usually presented as a survey of the organization concerns on a specific country, with individual cases as an illustration of patterns or trends.

[271] The purpose of providing a written submission is to enable treaty body members to gain a clear sense of the actual human rights situation in the country that is under review. This helps the treaty body to: develop list of issues in the pre-sessional meeting put searching questions to the government delegation (during the public dialogue) and devise recommendations which are useful and relevant.

[272] Most of the treaty bodies, namely the Committee against Torture (CAT), Human Rights Committee (HRC) and the Committee on the Elimination of Discrimination against Women (CEDAW), Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on Migrant Workers (CMW) organize formal meetings prior to the public consideration of a state party report to receive oral briefings from NGOs.

[273] NGOs can play a role in disseminating the concluding observations to their partners and other NGOs. Even though states are requested to do this by the treaty bodies, they do not necessarily publicize either their report or the concluding observations. National media can play an important role throughout the process of consideration of a report by treaty bodies. NGOs can alert their media contacts to concluding observations from the treaty body meeting and encourage them to write an article/broadcast an item which reflects these, depending on how you think you can best raise awareness.

[274] M. O'Flacherty , Human Rights and the UN Practice before the Treaty Bodies(2nd Edit, Martinus Nijhoff Publishers , Leiden Boston , 2002)

Amnesty International also recognize the importance of a second task. The organization, through its national sections and coordinating structures endeavors to raise awareness among the general public and in particular among local Ngos community of the importance of the work of treaty monitoring bodies. Through its website the organization seek to inform national ngos of the various possibilities of their participation in the treaty monitoring bodies. The organization's national sections can either participate (with the coordination and approval of the International Secretariat)or encourage the preparation and publication of reports issued by local Ngos on the levels of compliance with and implementation of a particular treaty by their government , at the time when the state submits its own report to the treaty monitoring body. Conducting an oversight of implementation of recommendations issued by particular monitoring body to the state is a natural follow-up. Amnesty International both through the International Secretariat or through its national sections or both, oversees the implementation of the monitoring body recommendations and reminds governments of the do to do so if they ignore them.

- International Court of Justice

Locus Standi

Private parties cannot institute cases before the ICJ. Article 34 of the Court's Statute provides that: 'Only states may be parties before the Court.' The scope of entities entitled to request the ICJ to give an advisory opinion in accordance with Articles 65 and 96 of its Statute is wider, but non-state actors are excluded from this possibility as well[275].

Nevertheless, it can be observed that – in spite of the restrictive rules on locus standi before the ICJ – NGOs sometimes act behind the scenes. A famous example is the NGO campaign which led to the ICJ Nuclear Weapons Advisory Opinion[276]. The project was launched in 1992 by three NGOs, the International Physicians for the Prevention of Nuclear War, the International Peace Bureau and the International Association of Lawyers Against Nuclear Arms[277]. The World Court Project began to lobby the UN General Assembly in 1992. In spite of strong opposition from nuclear weapon states as well as other countries, the Assembly adopted a resolution in December 1994 requesting the ICJ 'urgently to render its advisory opinion on the following question: ''Is the threat or use of nuclear weapons in any circumstance permitted under international law?[278] .The World Court Project obtained the support of more than 700 groups of civil society. At the outset of the oral hearings at the ICJ in

[275] Apart from states, only the UN General Assembly, the Security Council and other organs of the United Nations and specialized agencies may request the Court to give an advisory opinion. Access to the PCIJ was likewise restricted to states, both in contentious cases and for advisory opinions. Article 35 of the PCIJ Statute reads: 'The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.'

[276] On the role of NGOs in bringing this issue before the Court, see, e.g., Judge Rosalyn Higgins, 'The Reformation in International Law', in Richard Rawlings (ed.), Law, Society and Economy: Centenary Essays for the London School of Economics and Political Science 1895–1995, Oxford: Clarendon Press, 1997, p. 215

[277] Ved P. Nanda and David Krieger, Nuclear Weapons and the World Court, New York: Transnational Publishers, 1998, p. 70.

[278] Nanda and Krieger, Nuclear Weapons and the World Court, pp. 82–83 and A/RES/49/75 K, Request for an Advisory Opinion, 15 December 1994

October 1995, more than 3.5 million Declarations of Public Conscience were presented to the Court. The material was not regarded as formal submissions to the Court but nevertheless made some impact on the proceedings.

Amicus Curiae

Ngos have a status of amicus curiae in the International Court of Justice. Article 66.2 of the Statute provides that, when a request for an advisory opinion is received, all States entitled to appear and "any international organization considered…likely to be able to furnish information on the question" shall be notified that "the Court will be prepared to receive…written statements" relating to the question. In relation to contentious proceedings. Additionally, article 34.2 of the Statute provides that the Court, *"...subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations*[279] *on their own initiative."*

Seemingly, the Court has never notified an NGO of the request for an advisory opinion, but NGOs have on their own initiative asked for permission to submit information as amici curiae. The International League for the Rights of Man[280] is one example. When the President of the Court had set the date for the receipt of written statements from states in the proceedings leading to the 1950 Advisory Opinion on the International Status of South-West Africa ,the same member of the League's board who had requested determination of the League's status wrote to the Registrar of the Court and asked permission for the League to participate by oral or written statement in the proceedings[281].The Registrar responded in a letter to the League that the Court was prepared to receive a written statement of information which was likely to assist the Court in its examination of legal questions. The League was instructed not to include any statement of facts which the Court had not been asked to appreciate. However, because of mistakes on the part of the League, notably the failure to submit its statement on time, the Court took no notice of the statement. But 20 years later, in the 1970-1971 advisory proceedings on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), the Court backed off from it previous stance because it refused to let the same NGO submit information. More recently, in the advisory proceedings on the Legality of the Use by a State of Nuclear Weapons in an Armed Conflict[282], the

[279] Article 69.4 of Rules of Court defines the term "public international organization" as "an international organization of States."
[280] The International League for Human Rights
[281] International Status of South-West Africa, 1950 ICJ Pleadings, II, p. 324. See also Roger S. Clark, 'The International League for Human Rights and South West Africa 1947–1957: The Human Rights NGO as Catalyst in the International Legal Process', 3 HRQ (1981), pp. 116–120
[282] Legality of the Use by a State on Nuclear Weapons in Armed Conflict, Advisory Opinion. Nevertheless, it can be observed that – in spite of the restrictive rules on locus standi before the ICJ – NGOs sometimes act behind the scenes.
A famous example is the NGO campaign which led to the ICJ Nuclear Weapons Advisory Opinion. The project was launched in 1992 by three NGOs, the International Physicians for the Prevention of Nuclear War, the International Peace Bureau and the International Association of Lawyers Against Nuclear Arms. The World Court Project sought to influence member states at the WHO and the UN General Assembly to sponsor a resolution requesting an advisory opinion on the legality of using or threatening to use nuclear weapons

Court refused, as a matter of discretion, a request to submit information made by International Physicians for the Prevention of Nuclear War.

ii. The role of Ngo in the Regional Level

NGOs are playing an increasingly important role in international litigation. NGOs may in other words initiate and join as amici curiae in litigation. An analysis of the constitutive or internal regulations of international judicial and quasi-judicial bodies shows that almost all of them allow access to entities other than states. However only five of them, the European Court of Human Rights, the Inter-American Court/Commission of Human Rights, and the African Court /Commission of Human Rights can be considered as granting legal standing to Ngos , although to varying degrees.

-European Court /Commission of Human Rights

The procedure

Until a few years ago, NGOs had only a limited procedural capacity within the monitoring system of the European Commission of Human Rights (the Commission). The ECHR could receive petitions from individuals, groups of individuals or NGOs which claimed to be the victim of a violation of the rights of the Convention. This individual complaints procedure was facultative; complaints were declared admissible only if the respondent state had recognized the competence of the Commission to receive such petitions[283].

The 9th Additional Protocol, which was adopted in 1990, gave Article 44 of the Convention a new wording, entitling individuals and NGOs who had filed a case with the Commission to refer the case to the Court. This right was, however, conditional[284].

With the coming into force of the 11th Additional Protocol in November 1998, a new monitoring system became operational. The former system where petitions were tried in the Commission and Court was replaced by the Single Court of Human Rights. The new Article 34 on the right to bring cases before the Court reads:

The Court may receive applications from any person, non-governmental organizations or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols

[283] According to Article 44 of the Convention, only the contracting states and the Commission had the right to bring cases before the Court. Private applicants were not considered to be parties before the Court if the Commission referred their case to it. Initially, individual petitioners could appear before the Court only for the sake of rendering 'assistance' to the delegates of the Commission, and it was not until 1982 that the Rules were amended so as to require that the applicant be invited to be individually represented.
[284] First, the Commission had to adopt a report on the case. Second, according to Article 5(2) of the Protocol, a case referred to the Court by a person, an NGO or a group of individuals should first be submitted to a screening panel of three judges, including the judge elected in respect of the state against which the complaint had been submitted. If the case did not raise any serious question affecting the interpretation or application of the Convention, and did not for any other reason warrant further consideration, the panel should decide that the case would not be considered by the Court.

thereto. The High Contracting Parties undertake not to hinder in anyway the effective exercise of this right.

In other words, NGOs, as well as individual applicants, now have locus standi as parties before the ECHR[285].Because of the victim requirement, cases instituted by NGOs concern alleged violations of the complaining organization's rights under the Convention. Most cases concern alleged violations of the right to freedom of association and assembly and the right to freedom of expression. In spite of the victim requirement, the cases often have general political implication.

Amicus curiae in the Commission

In line with the confidentiality of the Commission's procedure, its Rules included no provision for the submission of amicus briefs[286]. The applicant's lawyer could, however, incorporate NGO reports or opinions as part of the written submissions[287]. A few examples of cases where this was done are Gu¨ndem v. Turkey (in which the applicant submitted a report by Human Rights Watch/Helsinki and extracts from a report by the Kurdish Human Rights Project), Kilic v. Turkey (reports by Human Rights Watch/Helsinki and by Amnesty International), Aydin v. Turkey (report by Amnesty International), Nsangu v. Austria (report by Amnesty International), Bahaddar v. the Netherlands (letter and report by Amnesty International) and Paez v. Sweden (report by Human Rights Watch and report and letter by Amnesty International)[288]. In its reports on these cases, the Commission has often described in detail the material produced by NGOs, and in some cases attributed evidential value to it.

Amicus Curiae in the Court

Bearing in mind that before 1998 private applicants were not considered full parties before the European Court of Human Rights, it is perhaps not surprising that there were limited possibilities for amicus submissions[289].

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[285] The Convention does not allow for an actio popularis. An application will not be accepted if the applicant has not suffered personally from a violation of the convention, or if the complaint is brought about legislation in abstracto. The victim requirement is, naturally, equally valid for NGOs. Accordingly, an NGO can claim to be a victim only in the case of a violation against the organization itself, which means that the possibilities s for NGOs to institute cases in order to develop the Court's case-law are limited.

[286] Rules of Procedure of the European Commission of Human Rights (as in force at 28 June 1993), Strasbourg, 1993.

[287] A few examples of cases where this was done are Gu¨ndem v. Turkey (in which the applicant submitted a report by Human Rights Watch/Helsinki and extracts from a report by the Kurdish Human Rights Project), Kilic v. Turkey (reports by Human Rights Watch/Helsinki and by Amnesty International), Aydin v. Turkey (report by Amnesty International), Nsangu v. Austria (report by Amnesty International), Bahaddar v. the Netherlands (letter and report by Amnesty International) and Paez v. Sweden (report by Human Rights Watch and report and letter by Amnesty International)

[288] Reports of the Commission in the cases of Gu¨ndem v. Turkey (Application No. 22275/93), 3 September 1996, paras. 54, 147; Kilic v. Turkey (No. 22492/93), 23 October 1998, para. 52; Aydin v. Turkey (No. 23178/94), 7 March 1996, paras. 59, 183; Nsangu v. Austria (No. 25661/94), 22 May 1995, para. 51; Bahaddar v. the Netherlands (No. 25894/92), 13 September 1996, paras. 37, 51–55, 58–63; Paez v. Sweden (No. 29482/95), 6 December 1996, paras. 26, 40–45. The case of Aydin v. Turkey was also examined by the Court, see below. See also Harris, O'Boyle and Warbrick, Law of the European Convention on Human Rights, p. 589.

[289] The first time a permission to intervene was granted was in 1979, when the United Kingdom was allowed to submit written information to be presented before the Court by delegates of the Commission in the case of Winterwerp v. The Netherlands.

It is worth mentioning that before the entry into force of Protocol 11, the Court had developed the criteria (on the basis of Article 38(1), and then Article 37(2) of the Rules of Court)[290], according to which it permitted non-State participation in its proceedings[291]. First, just as it is under current regulations, the discretion whether to grant or refuse leave to intervene and also to specify the grounds of such intervention was left to discretion of the President. Second, the intervention had to be in the 'interests of justice' in the sense that it was most likely to assist the Court in carrying out its task. Therefore the Court has rejected amicus briefs when the connection between them and the case before the Court was too remote to meet the proper administration of justice test[292].The Court has accepted or rejected third party participation and the filing of briefs if there existed a clear precedent on the issue under review; and, as such, the Court has viewed such participation unnecessary.

When Protocol No. 11 entered into force in 1998, a new article on third-party intervention was incorporated into the Convention. According to Article 36(2): *The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.* Thus, amicus participation which was earlier regulated only in the Rules has now become a permanent arrangement explicitly recognized by the parties to the Convention[293].

The emergence of NGOs acting as amicus curiae is a good example of how the European human rights system improved and developed through the Court's dynamic interpretation of the Convention. Protocol 11 undoubtedly codified the practice and thrown the doors wide open for more NGO participation in human rights adjudication before the Court.

As we can observe on the basis of the cases, amici intervene most often in major cases involving rights of freedom of information, privacy, fair trial and arbitrary detention. It is also obvious that there are several repeat players among amici. INTERIGHTS[294] and ARTICLE 19, both international human rights law groups based

[290] With regard to the previous regulations on the 'third party intervention', see Shelton, 'The Participation of Non-Governmental Organizations in International Judicial Proceedings', (1994) 88 American Journal of International Law 611 at 611

[291] Mohamed, 'Individual and NGO Participation in Human Rights Litigation Before the African Court of Human and Peoples' Rights: Lessons from the European and Inter-American Courts of Human Rights', 1999 Michigan State University - DCL Journal of International Law 377 at 382-383.

[292] Ibid

[293] Article 61(3) of the new Rules of Procedure, states that: In accordance with Article 36(2) of the Convention, the President of the Chamber may, in the interests of the proper administration of justice, invite or grant leave to any Contracting State which is not a party to the proceedings, or any person concerned who is not the applicant, to submit written comments or, in exceptional cases to take part in a hearing.

[294] The recent Nachova case concerned the allegedly racist killing of two Roma youth by state officials in Bulgaria. Third-party written submissions were filed by INTERIGHTS, the European Roma Rights Centre and the Open Society Justice Initiative. In July 2005 the Grand Chamber of the European Court of Human Rights affirmed in substantial part its first ever finding of racial discrimination in breach of Article 14 of the Convention. The Court's ruling makes clear that States Parties have an obligation to investigate possible racist motives behind acts of violence. In addition, the judgment also affirmed in part the earlier finding of racial discrimination in breach of Article 14. In doing so, it broke new ground in European human rights law. The Grand Chamber unanimously held that the prohibition of discrimination under Article 14 has a procedural component, which required the States Parties to investigate. Six judges dissented from the majority's finding of no substantive violation of Article 14, and that the government's conduct taken as a whole disclosed a breach of Article 14. The judgment of the Court summarized all the submissions made by human rights NGOs as interveners. The Court also mentioned that '[n]on-governmental organizations, such as Human

in the United Kingdom, have participated in many cases, not only involving the UK Government, but many other States. JUSTICE, LIBERTY and Amnesty International file amicus curiae briefs quite often[295].

Since the new Court became operational on 1 November 1998 until September 2004, NGOs have submitted amicus briefs in at least thirty one cases. As before 1998, some NGOs, such as the European Roma Human Rights Centre, Liberty and Interights[296], have acted as amici in several cases. Some NGOs also sometimes act as the victim's representative– for example, the Kurdish Human Rights Project, Lawyers for Human Rights, the AIRE Centre and Liberty.

-The Inter-American Court/Commission of Human Rights

a. The Inter-American Commission

Locus Standi

The Inter-American Commission, established in 1960, examines individual communications regarding human rights violations within the territory of the OAS member states under two parallel procedures[297].The right to file petitions with the Commission concerning violations of the human rights enumerated in the Convention is based on Article 44:

Any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.

It is clear from this provision, the possibilities for NGOs to act within the Inter-American system are in some respects more extensive than within the European human rights system, although NGOs and individuals do not have locus standi before the Inter-American Court. It is no condition for a complaint to be accepted that the petitioner has been subjected to a violation of the Convention, and the petitioner does not need to be legally empowered to act on behalf of the victim. While the Convention does not recognize actio popularis, or communications lodged in abstracto without the naming of a victim, it suffices that the alleged victim is only potentially affected by, for instance,

Rights Project and Amnesty International have reported in the last several years numerous incidents of alleged racial violence against Roma in Bulgaria, including by law enforcement agents'.

[295] Amici can be also submitted by individuals, professional organisations, like bar associations or consumer groups, labour unions and even governments (in the case Ruiz-Mateos v Spain A 26 (1993); (1993) 16 EHRR 505, two governments filed amici curiae briefs: Germany and Portugal submitted their observations on the applicability of Article 6(1) of the Convention to constitutional courts.

[296] In the MC v Bulgaria case INTERIGHTS filed a brief that reviewed the laws of eight States concerning the necessity of proof of use of physical force or the victim's resistance in establishing rape. MC complained that Bulgarian law and practice did not provide effective protection against rape and sexual abuse, as only cases where the victim resists actively are prosecuted. The Court found violations of Articles 3 and 8 of the Convention .

[297] First, the Commission was authorised through a re-formulation of its Statute in 1965 to examine individual complaints or petitions regarding specific cases of violations of human rights as expressed in the American Declaration of the Rights and Duties of Man of 1948.205 Secondly, when the American Convention on Human Rights was adopted in 1969, the individual complaints procedure was included in the Convention and thereby became operational towards all the contracting parties.

a legal provision[298] . Furthermore, the complaining NGO does not have to be legally recognized in the respondent state. It suffices that it is recognized by one of the OAS member states. In fact, the alleged victim need not even approve of the complaint. Article 23 of the Commission's Rules of Procedure states that petitions may be submitted by persons and non-governmental entities 'on their own behalf or on behalf of third persons, concerning alleged violations', and according to Article 28(e) of the Rules, a petition shall contain the name of the victim 'if possible[299].

The main strategy of NGOs acting before the Commission thus appears to be to bring cases to public attention rather than to promote a dynamic development of the case-law. One exception in this regard, however, is the organization Interights, which has worked with issues related to the death penalty over a number of years. Interights has submitted a petition to the Inter-American Commission in such a case and has advised lawyers in other cases[300]. Another exception is the case of Marı´a Eugenia Morales de Sierra v. Guatemala, which was submitted by the Center for Justice and International Law (CEJIL) together with the alleged victim as a method for questioning the Guatemalan Civil Code in abstracto, as the Code was considered to create discriminatory distinctions between men and women.

A few NGOs appear as petitioners in many cases. These include CEJIL, the Colombian Commission of Jurists, Asociacio´n Pro Derechos Humanos (APRODEH), Americas Watch (now Human Rights Watch) and Comisio´n Ecume´nica de Derechos Humanos (CEDHU).

According to an article by the Assistant Executive Secretary of the Commission, one of the explanations of the important role played by NGOs in the Inter-American human rights system is that they have created transnational networks. Thanks to these networks, victims can present a complaint regarding a human rights violation to an NGO in the victim's home country and, once the complaint has been investigated, the case may be argued before the Commission and eventually the Court by an international team of lawyers. NGOs also carry out important functions at other stages of the proceedings, as well as in the work of the Commission in general. For instance, NGOs participate in the investigation of cases, assist in the conduct of on-site visits, request provisional measures in serious and urgent cases and monitor compliance with the recommendations of the Commission and the decisions of the Court[301].

Through the 1970s, Amnesty International has not only brought specific cases and situations to the attention of the Inter-American Commission, but has also sought to provide the Commission with general information and background documentation

[298] American Convention on Human Rights, Article 44, Rules of Procedure of the Inter-American n Commission on Human Rights (as Approved by the Commission at its 109th Special Session, December 4–8, 2000); Article 28, Case of Metropolitan Nature Reserve, Report No. 88/03 in OEA/Ser.L/V/II.118, Annual Report of the Inter-American Commission 2003, December 29, 2003, paras. 29–32.
[299] Rules of Procedure of the Inter-American Commission on Human Rights, Approved by the Commission at its 109th Special Session, December 4–8, 2000, last amended on October 7–24, 2003.
[300] Interights, Annual Review 98–99, p. 48, and Annual Review 99–2000, p. 48.
[301] American Convention on Human Rights, Article 64.

pertinent to its work. The organization's annual report 1977 featured the following cases.

a.Argentina

Ten days after Josefa Martinez was arrested in November 1976, Amnesty International Cabled the Inter –American Commission requesting that it seek information on her whereabouts. After another 10 days, the Commission in turn, cabled the Argentinian government. Although the authorities had previously denied that she was in official custody, a week after the Commission's cable they replied that Josefa Martinez had been released after an investigation into her background.

b.Haiti

Following Amnesty's International May 1975 submission to the Inter-American Commission of a list of prisoners about whom little was known, the President of the Commission wrote to the Haitian government insisting that it send additional information regarding the case. The Commission eventually secured a reply from the Haitian government that a careful investigation had disclosed that one of Amnesty's International cases had been use to accuse the government of human rights violations.

In one case in the early 1990s, Amnesty International stood as a co-complainant before the Inter-American Court. It was the case of the Cayara[302] case in Peru, in which at least 31 people were killed by the army in the Cayara region in May 1988.In 1990, Amnesty International joined Americas Watch as a co-complainant in the case and has urged the Commission to submit the case to the Inter-American Court. The Commission formally submitted the case against Peru to the Inter-American Court in February 1992.Staff members from Amnesty International were appointed advisers to the Commission and attended the hearing in this capacity .The Court ruled that the Commission had filed the case after the time limit allowed by the American Convention had expired and ordered that the case be dismissed .As a result strong evidences of the government's responsibilities for the massacre couldn't be considered.

Amicus Curiae

The Commission occasionally[303] permits amicus interventions by NGOs and other private bodies, in spite of the fact that an explicit legal basis for such submissions is lacking in the American Convention on Human Rights, the Commission's Statute and its Rules of Procedure[304]. Although the Commission decided not to consider the

[302] Inter-American Court of Human Rights, the Cayara case, http://www1.umn.edu/humanrts/iachr/e!14caye.pdf, last visit 03-09-2014

[303] In 2002, the Commission addressed the question of amici curiae in its Annual Report. In the case of Mary and Carrie Dann v. United States, there were amicus submissions from a number of entities and persons, including several tribes. The Commission stated that: After having reviewed the requests for intervention set forth above and the related amici briefs, the Commission considered that they essentially reiterated arguments already presented by the Petitioners and accordingly did not require further processing in these proceedings.

[304] American Convention on Human Rights (1969), Statute of the Inter-American Commission on Human Rights, adopted in October 1979, Rules of Procedure of the Inter-American Commission On Human Rights, adopted in December 2000. This has also been confirmed by a staff attorney with the Commission.

amici briefs, it clearly confirmed its capacity to receive such briefs and to consider them, when it wishes to. Despite the fact that there are otherwise very few explicit references to amicus curiae interventions in the Annual Reports of the Commission, material prepared by NGOs has been submitted in other cases, by both the petitioner and by the NGOs.

The report on the case of Juan Carlos Abella v. Argentina describes an interesting discussion on the value of NGO material. The case concerned an attack that was carried out by forty-two armed persons against military barracks at La Tablada in the province of Buenos Aires in 1989. The attack precipitated a thirty-hour combat between the attackers and Argentine military personnel, resulting in the deaths of twenty-nine of the attackers and several state agents. Amnesty International undertook a detailed study of the events at La Tablada, the relevant parts of which were used in the Commission's case report. The NGO carried out interviews, analyzed autopsies with the help of forensic experts and gathered medical information on injuries on the detainees. The Commission based part of its considerations in the present case on the report of Amnesty International. It has thus been demonstrated that the Commission does accept amicus submissions from NGOs and that it seems to give weight to such materials.

b. The Inter-American Court

Locus Standi

The Court's mandate is described in Article 1 of its Statute as 'an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights'[305]. Although NGOs are unable to refer cases to the Court, it is an interesting question to what extent NGOs manage to influence the case-law of the Court through the cases lodged by them before the Commission and which are later referred to the Court. As of August 2004, the Inter-American Court had delivered judgments on the merits in forty-five contentious cases. At least fifteen of these originated in petitions filed by NGOs (alone or together with other entities or individuals) before the Inter-American Commission. The Blake case[306] and the case of Baena Ricardo et al. v. Panama[307] are an example of the above.

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[305] Statute of the Inter-American Court of Human Rights, October 1979.

[306] The Blake case was initiated by International Human Rights Law Group through a petition lodged against Guatemala. The petition concerned the alleged abduction and murder of a US citizen and journalist by agents of the Guatemalan state and his disappearance, which lasted over seven years. The Court declared that the state had violated the judicial guarantees set out in Article 8(1), the right to humane treatment enshrined in Article 5 and that it was obliged to use all means to investigate the acts denounced and punish those responsible. The Court delivered separate judgements on the questions of preliminary objections .The International Human Rights Law Group, which filed the petition, also acted as representative of the injured party at the reparations stage of the proceedings on a pro bono basis.

[307] The case of Baena Ricardo et al. v. Panama originated in a petition filed with the Commission by the Comite´ Panamen˜ o por los Derechos Humanos on behalf of 270 workers. The case concerned the adoption of a law which had the effect of arbitrarily dismissing workers who had participated in a demonstration concerning g labour-related issues. While the demonstration was held, a former head of the National Police Force and other members of the armed forces who had been detained, escaped from a prison and took the principal barracks of the National Police Force. The state related this act to the march organised by the trade union leaders and accused the workers who had participated in the demonstration of being accomplices of the military riot.

As has been shown, a large part of cases decided upon by the Inter- American Court originated in a petition filed by an NGO. In general, the overall importance of NGOs in proceedings before the Commission and the Court must be regarded as considerable, as they act in many different capacities. As has been discussed above, NGOs submit a large part of the petitions before the Commission, act as the representative of the victim and co-operate with the Commission in several ways.

Amicus Curiae

The Inter-American Court has an extensive amicus curiae practice. There is no explicit legal basis in the Convention or in the Statute of the Court for amicus curiae interventions in the Court's contentious proceedings. Nor did the old Rules of Procedure, which were still in force when the Court examined the cases discussed below, include any such provision. Article 34(1) of those Rules, however, gave a broad competence for the Court as regards evidence and information in contentious cases: The Court may, at the request of a party or the delegates of the Commission, or proprio motu, decide to hear as a witness, expert, or in any other capacity, and person whose testimony or statements seem likely to assist in carrying out its function.

Of the forty-four contentious cases in which judgments have been delivered on the merits (judgments on competence, preliminary objections, reparation, interpretation of previous judgments, etc. thus excluded), NGOs have submitted amicus curiae briefs in seventeen cases at the merits stage of the proceedings . In Ba´maca Vela´squez v. Guatemala case, the International Commission of Jurists presented an amicus curiae brief on the right to truth for the next of kin to victims of forced disappearances.[308]Additionally in the Baena Ricardo et al. v. Panama´ case , the NGOs Centro de Asesorı´a Laboral del Peru´ , Centro de Derechos Econo´micos y Sociales, Centro de Estudios Legales and the Colombian Commission of Jurists submitted a joint amicus brief.

-The African Commission on Human and Peoples Right and the African Court of on Human and Peoples Right.

a.The African Commission

Locus Standi of Ngos

In June 1981, the Assembly of Heads of States and Governments of the Organization of African Unity (OAU) adopted a human rights treaty, the African Charter on Human and Peoples' Rights, also known as the Banjul Charter. The Charter

[308] Inter-American Court of Human Rights, Series C: Decisions and Judgments, No 70.

entered into force in October 1986[309].The current African human rights system also operates under a dual commission/court structure, with the African Commission on Human and Peoples Right[310] and the African Court of on Human and Peoples Right[311].

It appears that any individual or entity, including an NGO, may submit an application[312] to the African Commission either on its own behalf or on behalf of someone else[313] (Article 55 of the Charter). There is no victim requirement for the author of a communication, and the Commission routinely registers communications submitted by NGOs on behalf of the victim, i.e. NGOs acting without formal authorization from the alleged victims. Further, the complainant is not required to be a citizen of a state member of the OAS, and a complaining NGO does not have to be registered in one of the member states. Several communications have been filed by international NGOs based outside Africa. A party submitting such an application may have legal representation, and there does not appear to be any restriction that would prevent an NGO from serving in that role[314]. Finally, it appears that NGOs may participate as amici curiae before the African Commission[315].The Commission's Activity Reports from 1997 to 2003 contain forty-eight case reports. In twenty-eight of the cases, the communications had been filed by one or several NGOs[316]. It is thus obvious that NGOs play a central role in the individual communications procedure. Some NGOs appear as petitioners in many cases[317].

Amicus Curiae

Under Article 46 of the African Charter on Human and Peoples' Rights, the Commission may 'resort to any appropriate method of investigation', including to 'hear from the Secretary General of the Organization of African Unity or any other person capable of enlightening it[318]. Article 119 of the Commission's Rules of Procedure does

[309] According to the Banjul Charter, the Member states shall recognise a number of human and peoples' rights, both civil and political rights (such as equality before the law, the right of association and assembly and the right to receive information) and economic, social and cultural rights (such as the right to education and the right to work). Group rights enshrined by the Charter include, inter alia, the right to existence and self-determination and the right of peoples to freely dispose over their wealth and natural resources.

[310] The African Commission on Human and Peoples' Rights (the "African Commission") began operations in 1987 under the auspices of Article 30 of the African Charter on Human and Peoples' Rights (the "African Charter").

[311] The Protocol to the African Charter (the "Protocol"), which entered into force in 2004, created the African Court on Human and Peoples' Rights.

[312] An application relating to the rights referred to in the African Charter will be considered by the African Commission if certain thresholds requirements are met, including the exhaustion of local remedies (unless it is obvious that local procedures are unduly prolonged) and approval by a majority of the African Commission's members. The African Court on Human and Peoples' Rights, AFR. INT'L COURTS & TRIBUNALS, Article 55(2) http://www.aict-ctia.org/courts conti/achpr/achpr home.html (last visited 02-09-2014)

[313] Guidelines for Submission of Communications, AFR. COMM'N HUM. & PEOPLES' RTS., http://www.achpr.org/english/info/guidelines-communicationsen.html(last visited 02-09-2014) ("Anybody, either on his or her own behalf or on behalf of someone else, can submit a communication to the commission denouncing a violation of human rights. Ordinary citizens, a group of individuals, NGOs, and states Parties to the Charter can all put in claims. The complainant or author of the communication need not be related to the victim of the abuse in any way, but the victim must be mentioned.")

[314] Afr. Comm'n Guidelines, supra note

[315] supra note

[316] Eleventh Annual Activity Report of the African Commission on Human and Peoples' Rights,1997–1998, Twelfth Annual Activity Report, 1998–1999, Thirteenth Annual Activity Report

[317] Examples of NGOs which have lodged several communications include the Nigerian organizations Constitutional Rights Project and Civil Liberties Organization (CLO) and the British organization Interights. Other non-African NGOs that have instituted cases before the African Commission include International Pen, Amnesty International, and Rights International. The locus standi of these NGOs was not questioned by the Commission.

[318] African Charter on Human and Peoples' Rights, adopted on 27 June 1981.

not mention amicus participation, but refers solely to the submissions of the petitioner and the state party concerned. The author of a communication is informed of the Commission's decision on admissibility and provided with the statements submitted by the state party and can therefore request assistance from an NGO which has previously not been involved in the case. It thus seems that NGOs may act as amici, even if that particular designation is not used. The Commission has also in recent years allowed individual victims to be represented by NGOs acting as counsel or co-counsel. This was first done in October 1995, when Interights represented John Modise before the Commission.

b. The African Court

Locus Standi of Ngos

According to Article 5(1) of the Protocol, only the Commission, state parties and 'African Intergovernmental Organizations' have direct access to the Court. Nevertheless, Article 5(3) provides that the Court[319] may entitle 'relevant Non-Governmental Organizations (NGOs) with observer status before the Commission, and individuals, to institute cases directly before it'. The possibility for individuals and NGOs to file petitions under this provision is conditional. According to Article 34(6), the Court may not receive a petition involving a state party which has not made a declaration accepting the competence of the Court to receive cases under Article 5(3). The state parties to the Protocol undertake, according to Article 30, to comply with the judgments of the Court[320].

The African Commission and the ACHPR can refer cases to each other and NGOs that have been granted "observer" status by the African Commission may bring cases to the ACHPR under Article 5 of the Protocol[321]. The African Commission has in fact granted such status to almost 400 NGOs[322], and the application requirements for obtaining such status appear to be relatively minimal[323]. The Protocol also requires, however, that the member state involved make a declaration accepting the competence

[319] The idea of an African Court was raised during the initial discussions on the African Charter. An additional Protocol to the African Charter establishing g an African Court on Human and Peoples' Rights was adopted by the OAU Council of Ministers in June 1998. The Protocol entered into force in January 2004, but the Court is not yet (as of November 2004) in operation.
[320] For further information on the Court and NGO access to it, see Nsongurua J. Udombana, 'Toward the African Court on Human and Peoples' Rights: Better Late Than Never', 3 Yale Human Rights & Development Law Journal (2000), pp. 45–111
[321] Protocol to the Afr. Charter on Hum. & Peoples' Rts. on the Establishment of an
Afr. Ct. on Hum. & Peoples' Rts., art. 1, June 9, 1998, OAU DOC OAU/LEGIEXP/AFCHPR/PROT (III) [hereinafter African Charter Protocol]; History,AFR. CT. HUM. & PEOPLES' RTs., http://www.african-court.org/en/court/history/ (LAST VISITED 02-09-2014)
[322] See Afr. Comm'n Hum. & Peoples' Rts. [ACHPR], Activity Rep. of the Afr.Comm'n on Hum. & Peoples' Rts., Submitted in Conformity with Article 54 of the Afr. Charter on Hum. & Peoples' Rts. 7 (2008) (reporting that as of 2008, the African Commission mission had granted observer status to 380 NGOs)
[323] See Afr. Comm'n Hum. & Peoples' Rts. [ACHPR], Resolution on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organizations Working in the Field of Human Rights with the African Commission Human and Peoples' Rights,
ACHPR /Res.33(XXV)99 (May 5, 1999)

of the ACHPR to receive cases brought by such NGOs; absent such a declaration, the ACHPR is not able to receive a petition from even an NGO with observer status[324].

Article 10 of the Protocol also grants any party to a case before the ACHPR the right "to be represented by a legal representative of the party's choice," which presumably would include NGOs[325]. As with the Inter- American system, neither the Commission nor the ACHPR appear to have a system of legal aid to help alleged victims hire a representative. Finally, Rule 45 of the ACHPR's Interim Rules of Procedure permits the ACHPR to ask any person or institution for information relevant to a case, although it is not clear what the mechanism would be for an NGO to submit a request to receive such an invitation[326]. NGOs therefore appear to have the ability to participate in cases before the ACHPR as representatives of a party or by invitation.

As far as the status of amicus curiae is concerned, according to Article 34 of the Protocol on Establishment, the African Court shall draw up its rules and determine its own procedure. But the Court had, as of November 2004, not yet become operational.

An important aspect of NGO activities is their involvement in the law-making process. Even though NGOs are not included in the formal process of creating international law, they may influence it by initiating discussion on topics within the scope of their interests, proposing and drafting conventions/declarations, lobbying and providing expertise to governments. Several NGOs, among them the International Council of Women, played a considerable role in the drafting of certain articles of the Universal Declaration of Human Rights (UDHR) and their corresponding provisions in the 1966 Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR).

On several occasions thereafter NGOs have identified new areas that require norm-setting. They have, for example, contributed to the development of human rights norms concerning the prohibition of torture. Amnesty International's campaign for the abolition of torture has had great impact in this regard. The Swiss Committee against Torture, now the Association for the Prevention of Torture (APT), and the International Commission of Jurists were the initiators of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Another issue where NGOs have initiated the law-making process concerns the rights of indigenous peoples. ICRC has played a crucial role in the development of humanitarian law.

NGOs have also done much to initiate the drafting of the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. Likewise, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which entered into force on 22 December 2000 was an NGO initiative. NGOs, moreover,

[324] African Charter Protocol, supra note 54, art. 34(6); see also Ibrahim Ali Badawi El-Sheikh, Draft Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 9 AFR. J. INT'L & COMP. L. 943, 946-47 (1997) (describing the history of this provision).
[325] African Charter Protocol, supra note
[326] Interim Rules of Court, AFR. CT. HuM. & PEOPLES' RTs. 45(2) (2008).

contribute to the introduction of domestic laws and the creation of legal systems for the protection of human rights. As a result of the efforts of several NGOs, including the Association of African Women in Research and Development, female genital mutilation was outlawed in Togo, Côte d'Ivoire and Senegal.

d.Other Examples of Ngos regarding the protection and promotion of human rights

i) 50/50 Group/Sierra Leone[327]

Violence against women is a pervasive problem in Sierra Leone. Despite three landmark acts designed to expand women's rights, most women remained ignorant of their new ability to obtain a divorce, inherit property, and seek justice for domestic violence. The situation was further compounded by societal pressure to protect the family unit at the cost of women's health and wellbeing, and the reliance on traditional justice mechanisms, which are often biased against women seeking redress for their grievances.

To increase awareness of women's legal rights, the 50/50 Group translated the three gender acts –The Registration of Customary Marriage and Divorce Act, the Domestic Violence Act and the Devolution of Property Act, – into Sierra Leone's four main languages. Using the translations, the group held workshops and extensive discussions with tribal and religious leaders, long considered to be important strategic allies in the war against domestic violence. Tribal and faith leaders were then asked to read the acts aloud, and the recordings of these sessions were played on the radio and broadcast throughout Sierra Leone[328].

As a result of the 50/50 Group's efforts, thousands of women, many of whom were illiterate, are now more aware of the rights afforded to them by three gender-specific acts. Radio proved to be an effective tool for disseminating simplified versions of these acts in Sierra Leone's main languages. Tribal and religious leaders were sensitized to the plight of physically abused women, and were made aware of their key provisions under the law.

[327] The 50/50 Group was set up, in 1997, because even though peace had been achieved in Sierra Leone, women were relegated to the back seat in the new post-war government and continue to be seriously under-represented in political life in Sierra Leone. Despite making up over half the population, in 2002, only 8% of Sierra Leone MPs were women.

[328] Anna-Karin Lindblom, Non-Governmental Organisations in International Law, Cambridge University Press, 2005.

ii. International Humans Right Law Group [329]

-Yemen/Women's' Right

While Yemen has ratified the Convention on the Elimination on All Forms of Discrimination Against Women and the Convention on the Political Rights of Women, Yemeni women continue to face institutionalized discrimination. Women are granted relative equity under Yemen's constitution, yet interpretations of Shari'a and social custom result in ongoing violations of women's human rights, including the failure to enforce laws pertaining to violence against women and the heightening of women's vulnerability to accusations of "moral crimes" (which can include being in public without a male escort)[330].

In October 2000, IHRLG developed an advocacy capacity-building program for Yemeni women's rights activists to create a civil society platform for addressing women's human rights and raise international awareness of the status of women in Yemen. They also formed a partnership with the Sisters Arabic Forum (SAF), a Yemeni women's group, and with them created an inter-disciplinary Advisory Working Group to promote women's equal access to justice and the protection of the human rights of women in prison. Recent examples of IHRLG's women's rights advocacy work in Yemen include

- Supporting SAF in their investigation on violations of women's rights at the Taiz prison, and their subsequent report to the Yemeni government's Supreme National Committee for Human Rights. SAF has also called upon all Yemeni governmental institutions concerned, and on the head the Human Rights Minister, to conduct swift and fair investigation and present those responsible for violations of women's rights to court.

- Conducting a workshop, in partnership with SAF, on effective advocacy strategies for promoting women's human rights that address the discriminatory policies and practices that Yemeni women face in the name of culture and religion and the legal and social obstacles to the fair and humane treatment of women in prison. The workshop convened women's rights and prisoners' rights experts from Egypt, Jordan, Malaysia, Pakistan, Tunisia, the United States and Yemen and was attended by officers from Sana'a prison and government officials. Following the workshop, the office of the President of Yemen appointed a task force to review the situation of women in prisons and work with NGOs in developing plans to improve their situation.

[329] The International Human Rights Law Group is a non-profit organization engaged in advocacy, strategic human rights lawyering and training around the world. Their mission is to empower local advocates to expand the scope of human rights protections and to promote broad participation in building human rights standards and procedures at the national, regional and international levels.
[330] Women's rights are also not well protected within Yemen's criminal justice system. In addition to having to endure poor prison conditions, women held in detention are sometimes subject to violent interrogation or forced confession, and gender-based violations including sexual harassment, for which security forces are rarely held accountable. According to custom, children and babies born in prison generally remain with their mothers. As Yemeni practices require male members of the families of female prisoners to arrange their release, many women choose to remain in prison for fear of abuse by family members and rejection by their communities. Women prisoners also frequently remain in prison past the expiration of their sentences, because their male relatives refuse to take custody of released prisoners due to the shame associated with their alleged behavior. Until recently, the Yemeni government had had no plans in place for accommodating these abandoned women.

- Sierra Leone /Building the Capacity of Human Rights NGOs and Strengthening Legal Services

Years of a brutal conflict interrupted associational activity in Sierra Leone, leaving the more than 50 human rights NGOs that are committed to affecting their country's post-conflict transition without the requisite skills, institutional stability and outreach capacity to do so. Another casualty of conflict in Sierra Leone is the country's justice sector.

Soon after launching the Sierra Leone program, IHRLG began training local human rights NGOs in applying specific human rights skills, such as documenting abuses, interviewing witnesses, producing reports, disseminating information and developing media strategies. The capacity building strategy also includes an advocacy component that emphasizes the development of strategies to address documented human rights abuses through information campaigns, human rights litigation, legislative initiatives and well-placed appeals to international human rights mechanisms.Recent IHRLG activities to build the capacity of human rights NGOs and strengthen legal services include:

- Training and partnering with the National Forum for Human Rights (NFHR) (a coalition of 27 local civil society organizations) to hone members' documentation and advocacy skills, strengthen the workings of the coalition and increase the NFHR's visibility as a critical actor in Sierra Leone's achievement of peace, implementation of post-conflict justice and transition to democracy.

- Inviting representatives from the NFHR and the Child Rights Monitoring Network (a consortium working within the Council of Churches) and to participate in IHRLG's 2001 annual international advocacy training program (Advocacy Bridge) conducted in our Washington office and at the United Nations Commission on Human Rights in Geneva.

- Providing crucial support for a major Rule of Law Conference conducted in partnership with the Sierra Leone Bar Association, United Nations Mission in Sierra Leone and a local NGO. The Conference provided an essential first opportunity for Sierra Leoneans to discuss the multi-faceted challenges of rebuilding Sierra Leone's justice system and to identify priorities for economic assistance relating to rule of law programs.

-Cambodia/Protecting Human Rights

In 1993, after years of war and the reign of the Khmer Rouge, United Nations-administered elections led to a new coalition government and a new constitution for Cambodia. But peace and stability proved elusive, as warfare among opposing

political forces, including the Khmer Rouge, continued. In 1997, the fragile coalition government was destroyed by a coup d'etat. While elections followed in 1998, Cambodians are still struggling to strengthen respect for human rights, equal justice and democracy.

In 1996, IHRLG began the complicated process of helping this devastated society rebuild itself. To strengthen local civil society groups throughout Cambodia, IHRLG created the Cambodian Human Rights Task Force to give activists the necessary skills to monitor violations of human rights and to disseminate their reports throughout Cambodia and to international bodies, such as the United Nations Commission for Human Rights. The Task Force has been locally managed since 1997. Between 1998 and 2000, IHRLG implemented a Civil Society Project to train and partner with seven Cambodian NGOs, three of which focus on the rights of ethnic minorities and others that focus on women's human rights. One our most notable achievements is the Cambodian Defenders Project (CDP), the first and largest legal service organization in Cambodia, staffed by Cambodian lay people whom we trained as legal human rights defenders who have since become lawyers.

Since its launch in 1994, CDP has handled more than 6,000 civil and criminal cases. CDP's major victories include:

- Obtaining Cambodia's first acquittal in a case based solely on a confession obtained under torture;
- Successfully filing and receiving the first-ever restraining order to prevent a battering husband from selling his wife's property; and
- Successfully representing more than 300 families in an illegal land seizure case.

CDP also created a Women's Resource Center in 1998 -the first entity in Cambodia to provide legal counseling to victims of domestic violence. In 1999, CDP became one of the first NGOs to be formally invited by the new government to comment on draft legislation. Today, judges from all over the country regularly request that CDP lawyers represent parties before them. In 2000, CDP launched a Center Against Trafficking to strategically combine legal representation for victims of trafficking with legislative advocacy and increasing legal literacy among local and civil authority and NGOs, while also building public awareness of the incidence, causes and consequences of trafficking and traffickers' recruitment methods.

3.5 CSOs' contribution to security and public order

3.5.1 Introduction

Although their involvement is less common in this sector and they are more rarely in the lead, CSOs can play a role in enhancing security. Groups and organizations may patrol neighborhoods in the absence of a functioning police force. CSOs may put in place alternative mechanisms that promote security, in particular crime prevention and victim support systems, in partnership with the police.[331]

CSOs often are involved in security reform processes (in particular the reform of the police and prison systems), helping enhance results orientation and the transparency of reforms. Broad participation also minimizes the risk of setbacks. As such, civil society constitutes an important actor for security reform.

It may be argued that NGOs have three main functions in regard to the security sector. The first is to act as a public watchdog, monitoring the actions of the government and security developments more broadly. This is likely to be either from a security perspective – analyzing whether government actions in a specific field (e.g. defense procurement, military strategy, or gun control policies) are effectively improving national and human security – or from a human rights and rule of law perspective, highlighting cases in which security sector institutions or individuals have violated commitments to national or international law. Secondly, NGOs can act as a pool of resources and expertise which both the government and the public can draw upon. Thirdly, NGOs also provide an alternative source of skilled civilian professionals which the state may be able to draw upon.

Non-governmental organizations (NGOs) have greatly proliferated since the early 1990s and they have acquired a variety of skills that help them with various aspects of post-conflict reconstruction efforts. Their roles in security sector reform, as watchdogs and providers of information, are crucial. They can examine, monitor and evaluate the post-conflict reconstruction development to see, for example, if basic human rights are protected. They can help donor communities with the planning of progress reports and they can make suggestions for policy changes. Such reports can be presented to local governments and parliamentarians for future security sector reform planning. NGOs can also help narrow the gap between armed forces and the local population that had been exacerbated due to the past conflicts. In many post-conflict environments, local populations are fearful of abuses, NGOs can provide opportunities for forums and dialogues that can help build confidence between these two entities. NGOs, whose main activities are focused on providing aid, play an important function in consolidating the local and regional security in post-conflict states.

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[331] Department for International Development (DFID), Safety, Security and Accessible Justice: Putting Policy into Practice (London: DFID, 2002)

There are two phases to consider in relation to post-conflict human security and law and order: the first is the immediate need to regain some degree of law and order in the state—this crisis management phase often involves peacekeeping troops, UN police, and sometimes foreign judges. The development phase, which is practically concurrent with the crisis phase, aims to set up a more long term sustainable environment of law and order in the state, and represents an even more difficult challenge.

The development phase, which must be planned from the start and must be integrated into the crisis management phase, involves the need to re-establish a sustainable law and order environment in the country. It requires a more long term strategy to address criminal behavior and assist in conflict resolution. Typically this has been conceived as requiring the restoration of a formal criminal justice system, which will include the police structures, the judicial system and prosecutors, and the penal system. In addition, it may include DDR, reforming the armed forces and amending criminal codes[332] . It may also involve strategies to target the public perceptions of the armed forces and of the criminal justice system, as the effectiveness of a criminal legal system largely turns on the degree to which is it perceived as legitimate and fair by the population.

3.5.2 The role of Ngos in the security field

The role of the ngos in the field of security, especially in the development phase , can be divided into six categories :Police reform, prison update, improvement of the judicial capacity, criminal law reform, formal and informal system, and finally legal education[333].The table below can illustrate in details the above mentioned.

Box 9

1.Police	Police reforming, restructuring, training and strengthening Training in community policing;

[332] For example, the UNDP ROLS program in Somalia covers 5 components: Judiciary; Law Enforcement; Human Rights and Gender; Disarmament, Demobilization and Reintegration and Small Arms and Light Weapons Control; Mine Action.

[333] Kirsti Samuels , Rule of Law Reform in Post-Conflict Countries , Operational Initiatives and Lessons Learnt.Social Development Papers, Paper No.37/Octob. 2006.Available at http://siteresources.worldbank.org/INTCPR/Resources/WP37_web.pdf . Last visited at 24/07/2014.

	Monitoring local police services to ensure observance of the principles of democratic policing;
2.Judicial capacity	Recruiting judges and magistrates; Training of judges or magistrates in judicial responsibilities, ethics, human rights, local law relevant to their jurisdiction, legal procedures; and Training in lawyering techniques, e.g., how to run a courtroom, move cases along, keep track of files, write opinions and manage heavy caseloads efficiently
3.Prisons	Upgrading prison infrastructure and corrections operational capacity; Assisting in the preparation of laws on prisons, prison policies and regulations; Assisting in the preparation and adoption of human rights policies and guidelines for prison officials and in the implementation of relevant human rights instruments; Selecting, vetting and training local corrections personnel; Human rights training for police and penal system officials, provision of personnel for positions where local capacity is lacking;
4.Criminal law reform	Advice on codification or bringing criminal law provisions in line with IHR Standards; Cooperation with ICC
5.Traditional and customary law	Vetting for compliance with IHR standards, possible codification

6.Legal education	Infrastructure and capacity building for law schools, professional legal training organizations, judicial training centers and bar associations; And reintegration of former combatant and child soldiers

Depending on the circumstances on the ground, one or more of the following activities have been undertaken in post-conflict countries. It is useful to keep in mind that the institutional starting point in these cases is generally substantially lower than in non-conflict countries, as the police and judicial structures have often been completely destroyed.

a. Police and Ngos

International human rights standards refer to the relationship between policing and human rights as a means of assisting in the maintenance of order. The maintenance of public order is achieved when the social contract, public consent and the balancing of rights are achieved. Article 28 of the Universal Declaration of Human Rights states. 'Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized. 'It is the role of the police to assist in the maintenance of this order. The order maintained by the police is one that shall be compatible with respect for individual freedom, human rights and the rule of law. But it is true that in a post conflict environment most of the time, the police is no longer able to maintain the order.

Ngos in a post –conflict environment can assist the police by restructuring, training and strengthening the police sector. To ensure more effective investigation, prosecution and adjudication of gender-based violence, ngos can contribute by training police officials. For example the American Bar Association has conducted in the Democratic Republic of Congo, trainings for police officers in charge of investigating rape cases[334]. The trainings mainly focused on investigation techniques, evidence collection, ethics and cooperation between the police and the prosecutor's office.

Ngos play a crucial role in building relationships between the police and the community, and they succeed by incorporating into the society the community policing. Community Policing emphasizes the establishment of police-community partnerships and problem solving, transparent, client-centered approach to policing. It is essentially a bottom-up approach to security needs, with local communities involved in setting

[334] Stone Christopher, M. J. (2005). Supporting Security, Justice and Development: Lessons for a New Era. New York : Vera Institute of Justice.

community policing priorities and partnering with the police in the developing programs for crime prevention.

In Indonesia and Bangladesh, the Asia Foundation promoted community-oriented policing (COP). This method of policing reshapes traditional police management and operational strategies by facilitating collaborative working relations between citizens and police, based on a problem-solving approach that is both responsive to the needs of the community and sensitive to the challenges that police face in performing their duties. An improvement in police services nurtures public trust and respect between police and members of the communities they serve; promotes improved communication and collaboration; and contributes to increased public satisfaction with police services—all of which translate into safer communities. The COP program establishes local community police forums[335] (CPFs) as focal points for dialogue.

The impact of COP has been a decline in crime, resulting from collaboration between citizens and police (especially with regard to drugs, gambling, harassment, and other issues of common concern); a high level of community participation by senior local police officers, who have acted on the concerns of the community and listened to their views; a readiness of police to give their time to form CPFs; and a willingness of political parties to set aside their political differences and work together on CPFs.

A variety of steps can be taken to build relationships between police and the community at the local level and to consequently increase legal empowerment and the rule of law more generally. Police posts and stations can be opened up to greater engagement with civil society. Police officers can be encouraged to get out into the community to discuss local concerns and begin the process of working in partnership with the community.

Such initiatives pave the way for broader community policing reforms, which are gaining momentum in many countries. Similarly, victim support units need not be the sole preserve of police officers: paramedics from the local community have a role to play, as well as respected figures within the community. The "space" that the police occupy within the community needs to be enlarged early on if the notion of the police as a service rather than a force is to become a reality. Just as police need to "get out" more, civil society needs to be invited "in."

[335] A typical CPF includes 20–25 members drawn from police, civil society organizations, and the ranks of local leaders (school principals, teachers, businesspeople, clerics, farmers, and so forth). They meet once a month and focus in these meetings on the local public security environment. CPF activities include school programmes to raise student awareness and address issues of concern to students.

b. Ngos and Judicial Capacity

Beside the training of the police, ngos can provide training of judges or magistrates in judicial responsibilities, ethics, human rights, local law relevant to their jurisdiction, and of course train them ,regarding the legal procedures and lawyering techniques, e.g., how to run a courtroom, move cases along, keep track of files, write opinions and manage heavy caseloads efficiently.

In many nations, and particularly those with newer democracies, NGOs can play an important role in educating legislators and staff on their responsibilities as members of a democratic government. Building the capacity of members of the legislature or parliament to scrutinize proposed laws, interact with civil society, and exercise oversight of the executive branch is critically important. The Civil Society Legislative Advocacy Center in Nigeria focuses on these types of training activities, with a specific focus on how legislation impacts the Millennium Development Goals[336]. Trainings conducted by CISLAC have focused on the importance of legislative aids, power relations between government bodies, constituent relations, constitutional provisions of legislative committees, providing ways to make room for civil society intervention in budget policy, improving the level of productivity of National Assembly members including the planning of pro-poor policies, the role of committees in lawmaking, oversight, constituency relations, and good governance practices[337].

The ABA ROLI, in Moldova, in cooperation with the Moldovan Bar Association, trained recently licensed attorneys on the applicability of the European Convention on Human Rights (ECHR) in their practice. The training focused on articles three—prohibition of torture—and five—right to liberty and safety. ABA ROLI has also developed a handbook on Moldovan and European standards for defendants' fair trial rights from the start of an investigation through an ECHR appeal. Designed to improve understanding of fair trial rights among judges, prosecutors, lawyers, law enforcement and educators, the handbook discusses key ECHR decisions against Moldova. It identifies a criminal defendant's rights set forth in the ECHR, breaks each right down into its constituent parts and provides citations to the applicable ECHR and Moldovan legal provisions, ECHR case law, as well as additional explanatory materials. It also includes the full text of the ECHR and a research guide providing links to useful websites.

In Kosovo, ABA ROLI held the first mixed-race practical legal skills workshop attended by 23 Serbian and Kosovar Albanians. The workshop allowed Serb and Kosovar Albanian students to interact with one another, while building their lawyering skills. The students learned how to identify legal issues and develop factual arguments,

[336] Thomas, C. (2006). Promoting the Rule of Law Abroad: In Search of Knowledge . Carnegie Endowment for International Peace.
[337] Civil Society Legislative Advocacy Centre (CISLAC), 2006, is a non-governmental, non-profit, advocacy, information sharing, research, and capacity building organisation. Its mission is to strengthen the link between civil society and the legislature through advocacy and capacity building for civil society groups and policy makers on legislative processes and governance issues.

conduct direct and cross examinations, and act in various roles—those of a judge, prosecutor, victim and witness.

Ngos can also contribute to law school curriculum reform . In partnership with the faculty at Kosovo's University of Pristina Law School, the ABA ROLI worked to develop and introduce three courses on legal methodology, legal ethics and professional responsibility, and legal research and writing. The courses are designed to provide students with foundational legal skills, such as critical thinking, legal analysis, practical representation and advocacy.

Example of a regional ngo working for the improvement of the judicial capacity is IDLO, the International Development Law Organization[338] (IDLO), that has been working as a leading partner of the Afghan government in justice and legal reform. In December 2006, IDLO assisted two graduates from its Defense Lawyers Training to found the Legal Aid Organization of Afghanistan (LAOA). This Afghan NGO's mission is to promote access to justice and legal awareness and provide legal aid services to the poor. Since 2007, IDLO has provided LAOA with training, technical assistance, monitoring and financial support. Since its opening, in 2001, LAOA has handled over 4,000 criminal and civil cases. Maybe the most important action of IDLO is the creation of the Justice Training Transition Program (JTTP). The project, which launched in March 2013, is providing nationwide criminal justice training and mentoring for prosecutors, judges, defense attorneys and criminal investigators. It will transfer operations and management to the Afghan government in a sustainable manner by the end of the intervention in 2015.

Ngos can also help develop legal resources, to be used by other ngos or academics, judges, prosecutors and ect. Sharing knowledge and raising questions with those working in other post-conflict states should be a continuous task. Many in the rule of law community talk about the need to "not re-invent the broken wheel." In recent years, networks of rule of law professionals have been established specifically to share knowledge and advisors are encouraged to join these networks and learn about legal empowerment approaches being pursued in other countries. The International Network to Promote the Rule of Law (INPROL) is an example of a dynamic online community of 1,300 practitioners from 90 countries. Established in 2007, INPROL is run by the United States Institute of Peace, in collaboration with facilitating organizations. INPROL has also developed training materials and tools, including a judicial bench book and legal textbooks, and a law library at the University of Kabul. These legal resources have enabled thousands of judges, prosecutors, and defense lawyers, members of parliament, civil servants and academics to receive professional training.

[338] IDLO(1988) is the only intergovernmental organization with an exclusive mandate to promote the rule of law.For more information go to http://www.idlo.int/about-idlo/mission-and-history

c. Legal education

Civil society and more specifically ngos play an important role regarding the legal education of vulnerable groups. For example they can initiate and facilitate meetings at the local level on a monthly basis to review the rule of law in the local area and provide a forum for exploring local solutions to local problems. These forums engender the participation of the State, the local population and local civil society groups. These regular meetings at the local level can be formalized to create a specific mechanism focused on the criminal justice system. They go by many different names. In Uganda, they are called "case management committees;" in Kenya, "access to justice committees;" in Malawi, "court user committees;" in Pakistan, "tri-partite committees;" and in Bangladesh, "case coordination committees." Despite their variety of names, their purpose is the same: to bring people together to discuss the criminal justice situation and agree joint actions.

Another way civil society can contribute is through awareness campaigns. For little cost, advisors may include local residents in a range of initiatives to increase public awareness of and stimulate debate on the justice process, rights, and fundamental freedoms. Pamphlets in the vernacular, accompanied by strong visual aids, enable people to navigate the justice process at the local level. Interviews, stories, and soap operas on the local radio; plays staged in villages on related themes, followed by public discussion; and video shows, followed by discussion—all serve to clarify issues, provoke debate, and encourage local participation and engagement. By establishing a variety of innovative processes and organizations, the advisor can enhance legal empowerment, help ordinary people resolve their disputes lawfully, and, more generally, enable the criminal justice system to function more effectively.

CSOs and NGOs play also an important role in providing opportunities to former combatants to demobilize after war, but their participation in other dimensions of disarmament, demobilization, reinsertion and reintegration (DDR) programs can be as important for the success and sustainability of these aims[339]. Among the few DDR and small arms control success stories are experiences that have aimed to introduce normative compliance through local, informal "peace agreements" that include voluntary disarmament and reintegration clauses (such as the peace agreement in Papua New Guinea and, to a certain extent, the Community Arms Collection and Destruction Program in Sierra Leone). They also might include declarations of weapons-free areas where civilian as well as combatant weapons are collected (as in South Africa and the Solomon Islands). These initiatives rely on the strong involvement of community-based organizations and the authorities.

Additionally, NGOs can help child soldiers by providing a basic living standard, opportunities for formal education and specialized counselling[340]. NGOs can also help with ex-combatant's re-insertion into non-combat economic activities (e.g.

[339] Rights, E. P. (2004). Police and NGOs: Why and How Human Rights NGOs and Police services can and Should Work Together . European Platform for Policing and Human Rights.
[340] Supra note

construction, agriculture etc) which can play a crucial role in reducing the potential threat of ex-combatants taking up arms again. Example of a NGO working in this field is the American Bar Association and its Rule of Law Unit in Burundi. In the wake of the country's civil war, the government of Burundi initiated a major disarmament and reintegration program for child soldiers. This program has made significant progress in reducing the number of child soldiers; but unfortunately, many more are still not fully reintegrated in society. ABA ROLI trained judges, prosecutors and the police to better prepare them for the unique issues that arise in dealing with former child soldiers, and so enhance the legal system's capacity to better address the situation. ABA ROLI also helped train and fund legal professionals to defend former child soldiers who are awaiting trial on criminal charges stemming from their actions during the civil war. Furthermore, ABA ROLI worked to provide former child soldiers with social, educational, vocational, psychological, medical and physical rehabilitation services.

d. Working with prisons

Prisons may have corrections advisors in place to help develop capacity among the newly recruited prison officers. Prisons may already be open to the presence of outsiders in the form of representatives of the International Committee of the Red Cross, who will be providing health care, assisting with sanitation and hygiene, and supplying food for prisoners. Other agencies and organizations, such as Médecins Sans Frontières, may also have a presence. Despite this assistance, there will inevitably be huge issues with prison overcrowding and delays in proceedings. Many of those kept in prison will be awaiting trial[341] .Lawyers will be in short supply, if not non-existent. Paralegals, however, can be rapidly trained to operate under an agreed-upon code of conduct to help the prison authorities and prisoners push their cases along.

Paralegals can screen the caseload and, by working with the prosecuting authorities and courts, identify those who face serious charges and those who do not. In the case of a detainee who is not facing serious charges, a paralegal may assist in organizing his or her release on bail or ask the court to discontinue a case where the detainee has served a longer time in pre-trial detention than he or she would have served if convicted. Example of their work is the Paralegal Advisory Service (PAS) that was developed in Malawi with the assistance of Penal Reform International, which linked four NGOs working in the four regions of the country on a common objective: providing advice and assistance to people on the front line of the criminal justice system. The program has been replicated in Darfur, Kosovo, Benin, Kenya, Uganda, Niger and Bangladesh. Paralegals have been credited by the justice agencies with reducing the remand population in the prisons.

Two informal case studies illustrate the impact of a team of two paralegals in Kenya and Malawi. In Langata women's prison in Kenya, in a six week period, the paralegals reduced the remand population from 80% of the total to 20%.33These were

[341] In Liberia the percentage of prisoners in detention who have not yet faced trials is 97 per cent , in Haiti 87 per cent.

either women who had overstayed awaiting a trial and whose sentence on a finding of guilt would anyway not have exceeded the time they had served in prison, or women charged with bail able offences or otherwise held unlawfully. Many of these women were also mothers and/or single parent householders; all were poor and unable to afford the services of one of the 4,000 lawyers in practice in the country.[342].

In Zomba prison, in October 2003,a team of two paralegals conducted a paralegal clinic on murder/manslaughter. Following the clinic, 33 accused approached the team and indicated that they were willing to enter a plea to manslaughter[343]. The cases were duly referred to (i) the legal aid department so that a lawyer could interview the group and advise them on the consequences of entering a plea, (ii) the Director of Public Prosecutions to determine whether a plea to the lesser charge was acceptable and (iii) the criminal registry for the cases to be listed. Subsequently 29 people entered pleas, were convicted of manslaughter and sentenced.This resulted in savings to the judiciary of some £18,000 on the basis of the average cost of convening a court to try the matter.

Avocat Sans Frontiere, is also an international ngo that works in this field. In four Burundian prisons, lawyers, advised and assisted those who are being held in illegal preventive detention. Between August 2011 and February 2012, 472 prisoners were assisted in Bururi, Muramvya, and Mwaro jurisdiction prisons, of whom 156 were freed, and 316 of whom had their imprisonment confirmed.

e. Working with formal and informal systems of justice

In those post-conflict States whose formal courts are operational, paralegals can inform the members of the public about the court system: where to go, what to do, and what to expect when dealing with a court. They can help people who are accused, who are witnesses, or who are victims by offering general advice and assistance.

Ngos have a very important role regarding the education and the training of the police and paralegals in post conflict states and thus improve the police and criminal sector. Timap for Justice in Sierra Leone is a ngo, supported by the Open Society Justice Initiative, to train and equip an association of paralegals to provide community legal services to poor Sierra Leoneans. With only 100 lawyers in the country (90 per cent of whom are in the capital, Freetown), and a high degree of local trust in and reliance on customary law, Timap for Justice in Sierra Leone focused its efforts on justice at the chiefdom level. Thirteen paralegals were recruited to work in five pilot sites. They received a two-week intensive training in law and were closely supervised through on-the-job training. These paralegals employ diverse working methods as they seek to

[342] Adam Stapleton "Empowering the Poor to Access Criminal Justice: A Grassroots Perspective," in Legal Empowerment : Practitioners Perspectives, ed. Steven Golub (Rome: International Law and Development Organization, 2010), 41.

[343] Police routinely charge murder where the facts may disclose manslaughter. However, neither state prosecutors nor legal aid lawyers review the files until they are listed for trial. Properly advised, many accused will enter a plea of guilty to the appropriate offence. By helping prisoners to understand the law, paralegals enable them to enter an informed plea to any charge

improve the handling of justice problems such as domestic violence, child abandonment, forced marriage, corruption, police abuse, economic exploitation, abuse of traditional authority, and denial of the right to education and health care.

Another legal empowerment initiative related to the customary justice system that has enjoyed success is the establishment of mediation models that serve as an alternative dispute resolution mechanism to the customary justice system. The Madaripur Legal Aid Association in Bangladesh, described below, provides a good example of alternative mediation. In Bangladesh, the Madaripur Legal Aid Association (MLAA) took a different approach to that adopted by Timap for Justice, one that was just as empowering. In the wake of the devastation wrought by Bangladesh's war of independence with Pakistan, the MLAA developed the Madaripur mediation model [344](MMM), which has been widely replicated in Bangladesh and is being introduced in Malawi and Sierra Leone.

f. Criminal law

i. The role of Ngos in the creation of tribunals

The establishment of international criminal tribunals marked a revolutionary change in the pursuit of international criminal justice. The success of these tribunals, however would not have occurred without the support of Non-governmental organizations. Ngos have long played a multidimensional and indispensable role in advocating that the individuals responsible for gross violations of international law be brought to justice[345].

-International Criminal Tribunal for the Former Yugoslavia

Outraged by reports of massive killing, ethnic cleansing and systematic rape in the Former Yugoslavia, the international community prompted the UN Security Council to establish the first international war crime tribunal since Nuremberg. History will record however that Ngos were the crucial key to persuade the Security Council to

[344] The MMM has six phases. First, MLAA identifies local contact persons to whom to disseminate information on mediation as a viable alternative to the court system in the project area. Second, MLAA establishes community-based organizations (CBOs) and trains all the members in human rights, the law, and mediation processes. Third, MLAA appoints a mediation worker to each CBO to provide dedicated support. The mediation worker's tasks are to receive applications for mediation, send letters to the parties concerned, arrange mediation sessions, supervise mediation sessions, follow up on and monitor the solution agreed upon, and report to the head office. Fourth, the mediation worker at the village level reports to a mediation supervisor, who is responsible for supporting and supervising all mediation workers in his or her area. Fifth, the supervisor, in turn, is overseen and supported by a district coordinator, who works with the central office coordinator to ensure consistency in mediation support. And sixth, a MLAA monitoring, evaluation, and research group maintains updated information on mediation procedures and data on sessions and outcomes.

[345] These organizations have lobbied, documented, advised, coordinated, criticized , and influenced public opinion in of support of war crimes tribunals. They have provided resources and expertise to less developed countries, and political support for developed states pursuing these accountability mechanisms.

act. The work of Human Rights Watch (HRW) is a prime example of the important advocacy role undertaken by Ngos in support of the ICTY.

In response to the widespread atrocities in the Former Yugoslavia ,HRW, was one of the first international Ngos to call for the creation of an international criminal tribunal for the region[346].HRW had placed a permanent representative in the Former Yugoslavia during the conflict and sent several missions to the region to gather information and conduct investigations in support of creating a tribunal .Its work led to the invaluable documentation of widespread and systematic religious and ethnically motivated violence. The report was a key in urging the UN Security Council to establish the tribunal .In fact the HRW report was published prior to the Security Council Resolution 771, and call to members and organizations to submit any information of the ongoing conflict to the Council. Moreover the report contributed to the UN Commission of Experts finding violations of international law in the region[347].

Human Right Watch continued to document detailed, first-hand accounts on crimes which were subsequently used by the ICTY .This included the publication of an HRW report entitled *Prosecute Now*, that meticulously outlined eight cases that were immediately ready for prosecution[348].

It is important to note that Ngos like HRW were not solely concerned with the creation of the tribunal; they also saw the Tribunal as powerful instrument to end impunity for gross violations. Even though the ICTY was established in 1993, genocide was still occurring in the country as late as 1995. Consequently, in 1995 a coalition of 27 Ngos took the unusual step to of calling upon the United States and Western allies for a multilateral military action to end the genocide. In addition to advocating military action, the joint statement called for the Serbs to leaders to be tried before the ICTY, and for sanctions to be imposed on Serbia unless it cooperated with the tribunal[349].Among the signatories were the American Jewish Committee, the American Nurses Association, Human Rights Watch, World Vision, and Physician for Human Rights.

The Ngo community also saw the ICTY as a counter to Serbia's failed domestic legal system. The reluctance of Serbia, Croatia and Bosnia-Herzegovina, to prosecute their war crimes underscored the importance of establishing a non-political and unbiased international forum as the Tribunal. Their continuing failure to apprehend those who were indicted by the ICTY was also weakening the legitimacy of the newly created Tribunal. The President of the Tribunal, Antonia Cassese, echoed those concerns of the state not complying with their obligations to adopt domestic legislation to apprehend war criminals pursuant to Security Council Resolution 827[350].This led

[346] Human Rights Watch , www.hrw.org/whoweare.htlm .
[347] M. Cherif Bassiouni, The Commission of Experts Established Pursuant to Security Council Resolution 780, Investigating Violations of International Law in the Former Yugoslavia .5 Crim. LF 279(1994).
[348] See Human Rights Watch , Prosecute Now, Helsinki Watch Release Eight Cases for War Crimes Tribunals on Former Yugoslavia (1993), available at www.hrw.org/reports/1993/yugoslavia .
[349] It is interesting to note that international sanctions were imposed to Serbia after failing to cooperate with the Tribunal.Research Handbook on International Criminal Law. Edit by Bartram Brown.Published by Edward Elgar Publishing 2004.
[350] Security Council Resolution 827 , 25 May 1993, UN DOC S/RES/827 (All states shall take any necessary measures under their domestic law to implement the provisions of the present resolution and the Statute).

Amnesty International to issue a detailed policy paper describing how the states could fulfill their obligations to cooperate with the ICTY[351]. The ICTY didn't turn a blind eye to the important role Ngos could play in advocating state compliance. The Tribunal actively sought direct assistance from Ngos to apply pressure on states to coordinate with the Tribunal. For example the HRW issued reports that urged NATO and the Western leaders to arrest indicted criminals in their respective jurisdiction[352].

-International Criminal Court

The establishment of the ICC serves as an undisputable example of Ngo influence on the creation of war crimes tribunals. The unique role of Ngos in relation to the ICC first emerged during early efforts to establish the Court. When the UN General Assembly decided to establish an ad hoc committee to debate the draft statute, instead of going straight to a treaty conference, Ngos reacted. They formed the Coalition for International Criminal Court (CICC).The CICC, with over 2,500 Ngos members including Amnesty International, HRW, The International Commission of Jurists, were involved at the early stages of the ICC creation. The purpose of the CICC was to advocate for the establishment of an effective and just international criminal court[353].To this end the CICC participated in every major phase[354].For instance it played an active role in those UN Preparatory Committee sessions responsible for preparing a widely accepted consolidated draft of the ICC Statute. Additionally the CICC incorporated a variety of methods to educate the public on efforts to create an effective court in the form of regional and international conferences. Amnesty International for example, circulated information about the negotiations to its members via demonstrations. Furthermore the CICC was able to keep track of and publish countries vote on crucial issues. Finally the CICC helped to bring legitimacy to the participation of less developed countries during the Conference by providing to the government crucial legal expertise. For example the NPWJ (No Peace without Justice) provided valuable judicial assistance to the developing countries of Bosnia-Herzegovina and Sierra Leone during the ICC negotiations[355].

-Ngo Role in ensuring statute Ratification and National Implementation

The successful adoption of the ICC Statute didn't lessen Ngo involvement. Many Ngos continued working to ensure that the Statute was ratified by states-parties. Key international Ngos were the CICC, Parliaments for Global Action (PGA), the NPWJ, the International Bar Association. The PGA, an Ngo comprised of international

[351] See Amnesty International, International Criminal Tribunals:HandBook for Government Cooperation (1996) , available at https://web.amnesty.org /library/index/engior400071996 .
[352] See Human Rights Watch, Bosnia Herzegovina:A Failure in the Making(1996) available at http://www.hrw.org/sites/default/files/reports/bosnia1095web.pdf
[353] Willian Pace and Mark Thieroff, Participation of the Non-Governmental Organozations in the International Criminal Court:The Making of the Rome Statute(Roy S. Lee Edit. 1999).
[354] Marlie Glasius , How activists shaped the Court:Crimes of World Project(2003), available at www.crimesofwar.org/icc_magazine /icc-glasius.html.
[355] Supra nota .

legislators, was uniquely qualified to promote and support the ratification and national implementation of the ICC Statute. For example, in collaboration with the government of the Kingdom of Lesotho, the PGA, organized a conference to discuss the provisions of the ICC Statute and the challenges to implement the provisions. It even seconded a legal expert to Lesotho to assist with drafting implementing legislation. Later, NPWJ provided similar assistance to the government of Sierra Leone and the Mission of Timor-Leste[356].

Finally, Women's Initiatives for Gender Justice (WIGJ), has been actively involved in ensuring that gender rights are implemented through their Complementary Project and Gender Report Cart Initiatives[357]. Through the Complementary Project, the WIGJ, monitors, reviews and conducts regional and legal assessments on domestic implementing legislation from a gender-based perspective. It does so by assessing whether domestic or implementing legislation includes gender based crimes and whether those crimes are defined in accordance with the ICC Statute[358].

ii. The status of Ngos in the International Courts

-The status of Ngos in the International Criminal Court (ICC)

Human rights non-governmental organizations (NGOs) are often among the first to reach the scene of massive violations of human rights and humanitarian law. Traditionally, human rights NGOs documented violations, drew attention to them, and by doing so, helped to bring a halt to ongoing violations. But human rights NGOs are having to rethink their practices in light of the establishment of the International Criminal Court (ICC) and the prospect that the violations they are documenting could become the subject of a criminal prosecution before an international tribunal.

Human rights NGOs potentially have a vital role to play in relation to ICC investigations. They often have direct knowledge of violations and contacts with victim and witness communities. NGOs also may be able to document violations shortly after they occur and to compile information regarding patterns of violations. Indeed, NGOs may be the main sources of information drawing the attention of the ICC Prosecutor to situations where crimes have been committed.

At the international level, ngos cooperate closely with the International Criminal Court[359].Although they don't have a locus standi within the Court, with the

[356] No Peace Without Justice, Implementing Legislation for the Rome Statute of the International Criminal Court , available at http://www.npwj.org/ICC/NPWJ-strategy-international-criminal-justice.html .
[357] Gender Report Cart on the International Criminal Court 2013.Available at http://www.iccwomen.org/documents/Gender-Report-Card-on-the-ICC-2013.pdf .
[358] For example, while Serbia and Montenegro's draft Criminal Code includes rape and enforced prostitution as a war crime, it does not include other sexual violence.
[359] The establishment of the ICC means that crimes committed after July 1, 2002 that fall under the Rome Statute of the International Criminal Court's ("Rome Statute") definitions of war crimes, crimes against humanity, and genocide could become the subject of ICC investigations.

entry into force of the Rome Statute for the ICC[360], the NGOs were under the amicus curiae status[361] -a status where a State, an organization or a person may be invited, or authorized to present comments, oral or written, on any question coming up[362] .

Although The Statute of the International Criminal Court does not include a provision on the participation of amicus curiae in Court proceedings, however, Article 44(4) provides for a possibility for the Court to 'employ the expertise of gratis personnel offered by States Parties, intergovernmental organizations or non-governmental organizations to assist with the work of any of the organs of the Court'[363]. The Rules of Procedure, on the other hand, do provide a legal basis for NGOs or other bodies or persons to act as amici curiae. Rule 103(1) states that: *At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State or organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate*[364].

Ngo role have taken on two distinct directions in regard with the ICC: i) working towards further entrenching the Court and ii) monitoring human rights abuses to "trigger" prosecutions. NGOs such as Human Rights Watch are conducting ongoing ratification campaigns, in which they regularly travel to different parts of the world to meet with and offer technical assistance to parliamentarians, government members, senior officials and local groups to raise awareness of the ICC and to assist with the process of domestic ratification and implementation of the Rome Statute.

-The status of Ngos in the other International Criminal Tribunals (Yugoslavia-Rwanda)

The Statute of the ICTY includes a similar provision[365]with the ICC procedures. Although they don't have a status of locus standi in the Court, according to Article 18 on the Investigation and preparation of indictment, the Prosecutor 'shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from Governments United Nations organs, intergovernmental and non-governmental organizations. An identical provision applies to the Prosecutor of the ICTR[366]. NGOs are thus officially mentioned as an important source of information for all three international criminal courts.

[360] ICC, Rule 103 of the Rules of Procedure and Evidence of the ICC (Amicus Curiae and other forms of presenting observations)

[361] Amicus Curiae (friends of the court) are persons or groups of people who are not part of a dispute, and yet are allowed, under the judicial process, to bring information about their point of view of the factual elements, in order to provide explanations to the judges. Denis Mazeaud (cited by Soumya, 2005, p. 61) defines as an amicus curiae, a "personality whose moral authority, scientific or human, is universally recognized and is asked by the judge to provide adequate information to clarify the disputes brought before it."

[362] http://www.icc-cpi.int/NR/rdonlyres/F1E0AC1C-A3F3-4A3C-B9A7-B3E8B115E886/140164/Rules_of_procedure_and_Evidence_English.pdf

[363] A/CONF.183/9, Rome Statute of the International Criminal Court, as corrected by the proce` s-verbaux of 10 November 1998 and 12 July 1999

[364] PCNICC/2000/1/Add.1, Report of the Preparatory Commission for the International Criminal Court, 2 November 2000, p. 53.

[365] Statute of the International Criminal Tribunal for the Former Yugoslavia, 25 May 1993, as amended 30 November 2000.

[366] Statute of the International Criminal Tribunal for Rwanda, 8 November 1994, Article 17(1).

Regarding the status of amicus curiae of the ICTY and ICTR both admit amicus curiae interventions by NGOs. Rule 74 of the Rules of Procedure of the ICTY states that:

A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to appear before it and make submissions on any issue specified by the Chamber.

Rule 74 of the Rules of Procedure of the ICTR is identical, and the Rules of the Special Court for Sierra Leone include a similar provision[367].So far, judgments have been issued by the ICTY in thirty-three cases. NGOs have filed amicus briefs in at least four of these. In at least one case, the Court has denied an NGO leave to file an amicus brief[368].In the ICTR , as of September 2004, nine cases had been completed and eleven were on appeal.

One of the best example of this phenomenon is the amicus curiae brief filed in the Akayesu case. In the Akayesu case, the prosecutor had initially not charged for rape or other crimes of sexual violence, although rape is included in the Statute of the Tribunal as a crime against humanity and a war crime[369].During the trial, witnesses who were called in relation to other crimes testified that rapes had occurred in Akayesu's commune. However, NGOs received the information that the prosecutor was not planning to amend the indictment. The NGOs the Working Groups on Engendering the Rwanda Tribunal and the Center for Constitutional Rights prepared and circulated an amicus curiae brief which was signed by almost thirty NGOs before it was submitted to the Tribunal. The brief called upon the Prosecutor to ensure the inclusion of rape in charges of genocide, as well as war crimes and crimes against humanity[370]. A couple of weeks later, the Prosecutor changed the indictment to include charges of rape, allegedly not as a result of the amicus brief, but because of the witnesses' testimonies. The Akayesu judgment was the first international conviction for the crime of genocide and the first to recognize rape and sexual violence as constitutive acts of genocide. It resulted into two important landmarks in international criminal law; the acknowledgement that rape and sexual violence may be instruments of genocides, and secondly, the elaboration for the first time in international criminal law, of a definition of the crime of rape in comparison of the elements of torture.

iii. The role of Ngos in the International Tribunals.

Once international tribunals are established, Ngo continue their efforts in support. The tribunals have recognized the importance of Ngos and have actively welcomed their continued assistance. Ngos may thus contribute to the Tribunals work

[367] Article 74 of the Rules of Procedure of the Special Court for Sierra Leone reads: 'A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to any State, organization or person to make submissions on any issue specified by the Chamber.

[368] Prosecutor v. Stanislav Galic´, Judgement and Opinion of Trial Chamber I, 5 December 2003, para. 806. The Court simply stated in the judgement that 'the Trial Chamber did not find it necessary for the proper determination of the case to admit the brief and rejected the application for leave to submit it'.

[369] ICTR, Chamber I, The Prosecutor v. Jean-Paul Akayesu, 2 September 1998

[370] Copelon, 'Gender Crimes as War Crimes', p. 225 and Human Rights Watch Press Release, Montreal, 1 September 1998

by providing evidentiary support and technical legal assistance, supporting outreach progress, monitoring the tribunals work, assisting the prosecutor, and supporting victims and witness units.

Providing Evidentiary Support

An innovative aspect of NGO involvement in the ICC[371] is that they are able to bring issues of systematic human rights abuse to the attention of the prosecutor, as well as gather information and provide credible evidence[372]. They often have on-the-ground knowledge and direct contact with victims, and may have established relations of trust with victim communities and other civil society groups, including religious groups, unions and other institutions. Human rights NGOs may also be in a good position to provide a broad picture of the context in which violations take place and present a pattern of the events.

With the establishment of the Special Court for Sierra Leone, the No Peace Without Justice[373](NPWJ) initiated a Conflict Mapping Program to reconstruct the ten-year Sierra Leonean conflict and establish patterns of war crimes. The NPWJ used testimonial data gathered from the field, along with existing combat information, to assemble the sequence of events of the conflict. Establishing essentials facts created a big picture on the conflict and assisted in ascertaining individual accountability. Ultimately the NPWJ findings were published and made available both to the Office of Prosecutor and Defense of the Special Court.

Physicians for Human Rights has uniquely assisted the ad hoc tribunals in gathering and analyzing the war crime evidence necessary to establish the scale ant time frame of human rights violations. In particular PHR, was involved in exhuming and analyzing over 500 bodies from mass graves in the Srebrenica region of the Former Yugoslavia. That physical evidence was subsequently used during trials at the ICTY to prove that Bosnian Serb systematically massacred thousands of Muslim men and boys.

In Kosovo, too, evidence was gathered by Ngos, proving forced expulsion, arbitrary killings, torture and sexual assault of the Albanians. Physicians for Human Rights, conducted the first epidemiological human-rights oriented study, to establish widespread patterns of human rights violation by Serbs forces against Kosovar

[371] Example of Ngos activities regarding the ICC: •Map or document patterns of violations • Conduct forensic examinations • Publish reports and other information on violations• Submit information on violations to national courts or the ICC • Provide general legal memoranda and research assistance to national courts or the ICC • Explain the ICC, in particular the role of the OTP, to affected communities • Advise the OTP on communication with victims and witnesses in affected communities • Provide the ICC with information regarding displacement of people and flows of refugees • Provide support to victims or witnesses – such as psychological, medical and humanitarian support – after they have been interviewed by the OTP • Provide training to lawyers who might represent victims or suspects or accused • Act as amicus curiae in court proceedings

[372] Rome Statute, Article 15

[373] No Peace Without Justice is an international non-profit organization founded by Emma Bonino and born of a 1993 campaign of the Transnational Radical Party that works for the protection and promotion of human rights, democracy, the rule of law and international justice, and undertakes its work within three main thematic programs: International Criminal Justice; Female Genital Mutilation; Middle East and North Africa Democracy, including specific work on Iraq.

refugees. The Independent Law Commission asked the American Bar Association's Central European and Eurasia Initiative (ABA CEELI) to establish a team of experts to review this information. The ABA created for this purpose the Kosovo War Crimes Documentation Project to interview refugees and provide victim's statements to the ICTY. Additionally many other Ngos, local and international (HRW, PHR), collaborated in this project. The results of the projects were used by the ICTY Prosecutor in the trial of Slobodan Milosevic, to refute the argument that the killings were simply a consequence of battles between the Kosovo Liberation Army and Serbian forces. Instead the analysis proved that the Kosovo civilians were targets of an orchestrated campaign of ethnic cleansing.

Technical Legal Assistance

NGOs can also speak on behalf of victims who for various reasons cannot come forward. The ngo, Avocat Sans Frontieres, for example, can represent the victims both before local courts but also before the International Criminal Court. ASF provides legal support to victims up until the official designation of lawyers by the Court registrar, while also advocating with the Court to ensure the best possible protection for rights of victims and their optimal participation in trials. This ongoing role gives NGOs a key responsibility in the ICC, and allows the Court to utilize networks of NGOs and their expertise and contacts with personnel with working experience in the field to monitor emerging issues for the Court.

Assisting the Prosecutor

Ngos have played a vital role in assisting the prosecution in various international tribunals by providing vital evidences, gathering information and analyzing data. While their role is limited by the jurisdiction of the Office of the Prosecution, the prosecutor often seeks information from Ngos to assist in his/her investigations. Ngo assistance has been especially important when states have refused to cooperate with the tribunals. However Tribunal often oppose limits to upon investigatory Ngos. For example the ICTY's Office of the Prosecutor has cautioned Ngos not to conduct in-depth interviews with potential witnesses and have established a strict guidelines for collecting evidences.

Advocate for Investigations and Prosecutions

As Human Right Watch Helsinki pressed the ICTY to investigate and prosecute war criminals, other Ngos also urged international tribunals to initiate investigations and prosecute war crimes. The Coalition for Women's Human Right in Conflict Situations (CWHRCS), compiled evidence for rape and sexual violence from Ngos including Amnesty International, HRW, Initiative Congolaise pour la Justice et la Paix,

in order to demonstrate the prevalence of crimes of rape and sexual violence in the Democratic Republic of Congo[374].(DRC)

The first DRC crimes to be prosecuted by the ICC were triggered by detailed reports received from Ngos. The Prosecutor, Louis Moreno Ocampo, received two detailed reports regarding the situation in Ituri, which led him to identify that situation as the "most significant to be followed"[375].Amnesty International and HRW called for measures to stop the atrocities and appealed to the ICC and the international community to act.

In Kosovo, PHR called if the ICTY to amend the indictment of President Milosevic to focus on those military personnel who interfered with the provision of health services and who attacked health-care professionals treating the injured. The indictment was in fact amended according to those requests. The indictment was further amended when over 30 international women's group and individuals sent a letter to Prosecutor Carla Del Ponte calling for the inclusion of charges of sexual violence in the indictment of Slobodan Milosevic[376].

NGOs may have been able to document violations soon after their occurrence, perhaps before people scatter or evidence is lost. Indeed, NGOs are one of the main sources that draw the attention of the ICC Office of the Prosecutor (OTP) to situations where crimes under the Rome Statute may have been committed in the first place[377]. Amnesty International , Human Rights Watch, FIDH (France), and several EU-, European-, and NIF-funded NGOs have actively lobbied the ICC in support of the Palestinian Authority's effort to launch war crimes trials against Israel. These NGOs include Al Haq (funded by Ford Foundation, Christian Aid, Ireland, Norway, Open Society Institute) PCHR(EU, Denmark, Switzerland, Sweden, Netherlands, Norway, Ireland, Open Society Institute, Christian Aid, Oxfam Novib), Adalah (NIF and EU), and PCATI (EU, Sweden, Norway, Ireland, Finland, UK, NIF). This lobbying campaign included several meetings with the Office of the Prosecutor (OTP), and filing briefs with the ICC accusing Israel of "impunity" and denigrating the Israeli justice system.

Expert Advisers

Ngos have provided tribunals with expert personnel to fill the necessary positions, and have acted as expert advisers to the Tribunals. The International Commission of Jurists supplied the ICTY with 22 legal assistants. The Special Court for Sierra Leone(SCSL) has also received assistance from the International Consortium for

[374] Coalition for Women's Human Right in Conflict Situations, Public Records on Sexual violence, perpetrate, in Ituri, Kivus, oriental province,and in Maniema(DRC), since 1 July 2001.Available at www.womensrightscoalition.org

[375] Human Rights Watch , The International Criminal Court :How Non-Governmental Organisations Can Contribute to the Prosecution of War Criminals (September 2004), available at www.hrw.org/backgroud/africa.

[376] Bartram S.Brown, Research Handbook on International Criminal Law, Edward Elgar Publishing, 1 January 2011.

[377] According to Article 15 of the Rome Statute and Rule 104 of the ICC Rules of Procedure and Evidence, the Prosecutor may receive and seek information from reliable sources he deems appropriate. Article 15 further provides that, if on the basis of such information the Prosecutor concludes there is a reasonable basis to proceed with an investigation, he shall request the Pre-Trial Chamber to authorize an investigation

Transitional Justice(ICTJ).The ICTJ experts have advised the SCSL on issues regarding its relationship with the Truth and Reconciliation Commission, rules of procedures and evidence, legacy and outreach, victims, and other legal matters.

In addition to helping tribunals with staff and advice, Ngos have greatly assisted states in working more effectively with tribunals. For example the NPWJ assisted the government of Sierra Leone with legal requests made by the SCSL. That Ngos often acted with dual responsibility. The NPWJ legal advisers were asked to give expert opinions on initial appearances and pre-trial hearings before the SCSL. At the same time it provided training to the Sierra Leonean State Counsel on procedural and substantive features of international trials.

Training

Ngos have also provided technical assistance to tribunals by helping to train tribunal judges, prosecutors, and defense attorney, in international humanitarian, human rights and criminal law. For example the ICTJ organized training seminars for judges on the SCSL and the IBA trained judges and lawyers in the Former Yugoslavia and Iraq on international humanitarian and human rights law[378].

Ngos have provided training to domestic lawyers on international criminal and human rights law and on methods of advocating before an international tribunal. For example the NPWJ established a Legal Profession Program in Sierra Leone to promote and train domestic lawyers in international human rights standards. It also conducted training seminars for the SCSL defense counsel and provided international experts to discuss their own roles and responsibilities in bringing cases before international tribunals. Finally the NPWJ established the International Humanitarian Law Library in Sierra Leone to provide legal materials for research on human rights and humanitarian law for lawyers, students and activists[379].

The ABA provided training to Sudanese lawyers on how to defend cases before the ICC regarding the atrocities in Darfur. The program provided the participants with the advocacy, interviewing and cross-examination skills specific to international war crimes. Similarly Redress and the Sudan Organization against Torture (SOAT) partnered to produce a handbook for Sudanese lawyers on national and international remedies for torture. This book provided the lawyers to a step-to-step guide on how to gain justice for torture survivors, using both national and international legal institutions.

Ngos have also played a major role in conducting gender-specific training. For example both Rights and Democracy, and CWHRCS provided training for the judges of SCSL, focusing on international justice, women's right, and witness protection. Women's Initiatives for Gender Justice provided gender training seminars and training handbook to ICC staff including the Registrar, Prosecutor and judges.

[378] Ibid 121
[379] Ropers, N. (2002). Civil-Society Peace Constituencies. NGO Involvement in Conflict Resolution Areas of Activity and Lessons Learned. Günther Bächler.

iv. The role of ngos in the promotion of criminal reform in the domestic level.

At the domestic level, ngo's can also contribute to the criminal/security reform. Their role can be seen firstly in the assessment of the criminal justice sector. Before any criminal justice reform project is undertaken, an assessment must be conducted. Assessment should be an ongoing process rather than a one-time event; continued assessments are crucial in refining the scope and direction of a project in order to ensure its effectiveness.

Criminal justice assessments are generally undertaken through both desk research and in country .Desk research may include reading UN country reports, reports of various UN bodies (e.g., the Human Rights Committee, the Committee on the Rights of the Child, and the Committee on the Elimination of Discrimination against Women) describing the extent to which the country is complying with international standards, NGO reports and newspaper articles. There is no standard methodology for an assessment of the criminal justice systems, although there have been a number of recent tools that try to do this in a more systematic way. For example, the United Nations Office on Drugs and Crime's Criminal Justice Assessment Toolkit is a standardized and cross-referenced set of tools designed to enable organizations and individuals engaged in criminal justice reform to conduct comprehensive assessments of criminal justice systems in line with international standards and best practices. This useful resource provides guidance on how to assess the police and intelligence agencies, courts, prosecution service, legal defense, legal aid, and the prison service. The Vera Institute of Justice's publication entitled Measuring Progress toward Safety and Justice: A Global Guide to the Design of Performance Indicators across the Justice Sector (2003) sets out some noteworthy general guidelines. According to the Institute the goals should be "SMART," that is, specific, measurable, achievable, realistic, and time-bound[380].

Ngos can also contribute to the project design of the criminal reform, with the proposition of actions and the implementation, monitoring and evaluation of the reforms. The ABA ROLI, for example continues to serve as an advisor to the Ecuadorian working group on the new criminal procedure code. During the working group's weekly meetings, which build local support for a national criminal justice forum, ABA ROLI staff provides technical assistance, materials and presentations for discussion. While the country has transitioned from an inquisitorial to an adversarial system, these meetings enhance the understanding of how an adversarial system operates and to alleviate issues in confidential investigations, rules of evidence, pretrial stipulations and changes in the roles of police, prosecutors, judges and defense lawyers.

[380] Vera Institute of Justice, ,Measuring Progress towards Safety and Justice: A Global Guide to the Design of the Performance Indicators Across the Justice Sector.(New York, Vera Institute of Justice, 2003)

Additionally, the International Center for Transitional Justice[381], which has worked in Uganda since 2005, has also contributed to the criminal reform of the country. The organization worked with the government's Justice Working Group to advise and build capacity on criminal justice measures. They worked to develop the specialist knowledge of national judges on war crimes and crimes against humanity in a series of expert-led workshops. In Kenya, the ICTJ, has continuously urged Kenyan authorities to establish a credible, transparent, and accountable domestic prosecution mechanism and it propose to create a credible International Crimes Division and is providing assistance to develop the idea. Additionally, the ICTJ has provided its expertise in many other parts of the world. In Argentina, it provided technical advice to state prosecutors and local NGOs working on criminal prosecutions, and in Bangladesh, it analyzed and provided input into the International Crimes Tribunal initiative to try widespread crimes that happened in 1971.Finally in Afghanistan, it assisted the Afghan Independent Human Rights Committee in documenting war crimes and crimes against humanity from 1978–2001.The Penal Reform International, is another example of an ngo working for the improvement of criminal justice. In Jordan, there is currently limited basis for support for alternative sanctions for juveniles or adults. However, the new draft law on juvenile justice contains an article on alternatives, with a focus on community service, which PRI played an important role in drafting.

It is undeniable that the security reform is a long-term process that requires building support among stakeholders and taking into account vested interests which run counter to reform. These programs often include, among other things, the following characteristics: court modernization, legal reform; an increase in alternative dispute resolution mechanisms; training for judges, court personnel, lawyers, students, and civil society; and improvement in access to justice. Judges and lawyers, due to their traditional culture, are often not accustomed to change and seldom initiate reform themselves.

The process of reform includes, therefore, different actors busy pushing for judicial reform. Only by collective action will the more difficult reforms take place. Coordination, in addition to respect for governance structures is important during any reform process, particularly when the actors include international and bilateral development organizations that are financing part of the reform process. If such structures are known for a lack of independence, there is greater concern that reforms will not be on solid ground.

[381] The International Center for Transitional Justice is an international non-profit organization, founded in 2001, specializing in the field of transitional justice. ICTJ works to help societies in transition address legacies of massive human rights violations and build civic trust in state institutions as protectors of human rights.

Conclusions

Ambivalent Assessments of NGO Roles and Activities

Many commentators regard increased levels of NGO engagement in conflict prevention, peacebuilding, and rule of law as a positive development. It is argued that NGOs contribute to a "global public sphere" and "increase the repertoire of international politics by cross-border activities such as protest campaigns, symbolic actions and civil resistance and last but not least [...] contribute to democratization of the UN-System"[382] .Furthermore, it is said that NGO cooperation with international organizations helps highlight formerly marginalized issues and makes decision-making processes more transparent. Some scholars even consider the expanding engagement of NGOs to be a result of an emerging "global civil society" that is guided by the values of solidarity, participation and empathy, which are orientated to supporting processes of civilization and nonviolent conflict resolution[383].

At the same time, however, others discuss the ambivalent roles that NGOs play in conflict settings. They argue that states, international organizations and companies remain the dominant political actors, and that – by cooperating with NGOs – they use their expertise and public acceptance to increase the legitimacy of their own political agendas[384].

Still others take a far more critical stance on NGOs. There are five central criticisms, which can be summarized as follows:

1. NGOs are not "independent" per se, but in fact often state-driven;

2. The performance of NGOs has changed because of the requirements of donor markets and mass media;

3. International NGOs of western origin are dominant in comparison to others, often exporting and imposing concepts that are inadequate in relation to social realities in other countries;

4. Some international NGOs that are driven by external state actors or non-state actors are seen as interfering with the internal affairs of sovereign states;

5. NGOs are not subject to any democratic control and thus lack legitimacy.

It is important to clarify some of the issues at stake in these criticisms .With respect to the first argument (lack of independence), it is documented that public financing of development NGOs has increased substantially .This suggests that NGOs can function as private branches of governments that practice outsourcing of services to these organizations. In both Europe and the US, for example, approximately 50 percent of NGO activities are financed by public funding. There is a clear danger, then, that NGOs are merely implementing state-driven policies. However, receiving public funding does not mean that NGOs automatically lose their ability to monitor and

[382] Klein, Ansgar 2002. Überschätzte Akteure? Die NGOs als Hoffnungsträger transnationaler Demokratisierung, in: Aus Politik und Zeitgeschichte, B 6-7/2002, 8 February 2002, 3-5
[383] Kaldor, Mary 2003. Global Civil Society: An Answer to War. Cambridge, UK: Polity Press.
[384] Id. 121

criticize state politics. At least in European democracies, for example, funding by state agencies and criticism of official state politics can happen simultaneously, which is borne out in the realities of state/non-state cooperation in the recent past and present.

The second argument (change of performance) relates to the observation that in western societies there has been such an explosion of NGOs that they now constitute a type of "third sector", a new labour market. This is something apart from, and additional to, civil society, which consists of traditional social movements, associations, etc. Such tendencies are also apparent in developing countries and post-war societies. In some cases, NGOs are merely commercial service providers. Since the late 1990s, there is ongoing lively scholarly and practical debate on this issue, including extended discussion of the bifurcation of NGOs into one of two categories: movement-orientated or service-providing[385]. The danger that NGOs respond to money rather than responding to social needs is serious, both for international and local NGOs .

The third argument (western dominance) points to uneven access to finances, media and qualified staff, etc., demonstrating that "international civil society" is riddled with structures of western privilege. In particular, this creates power imbalances and differential capacities, for example, in relation to putting issues and/or grievances on the agendas of both politics and the media. Western and northern NGOs, for instance, often focus on political human rights, whereas those from the global South tend to emphasize social human rights[386]. A further criticism suggests that in some cases, by engaging in inadequate behavior, NGO personnel contribute to establishing cultures of dominance and subordination, as well as disregarding local ownership .Western NGOs also tend to apply technocratic versions of conflict resolution. One argument is that they transfer western concepts of civil society to other contexts and impose these on other cultures. When applied in development and transformation countries, this can hamper efforts to strengthen state institutions.

The fourth argument (potential NGO influence and interference in the internal affairs of government) makes an important point, but also contains elements of ambiguity. This criticism asserts that the threats and risks of interference into the internal affairs of governments by international NGOs in particular must be taken seriously. Specifically, attention must be given to this potential problem because these NGOs mainly tend to operate in countries in transition, states in crisis, and/or developing countries in the global South. State agencies, non-state donors or lobby groups might, for example, fund private agencies and associations in order to manipulate or enhance changes to the political order in their zones of interest. Cases of political exploitation have been reported. It is necessary to acknowledge that individual and isolated cases of bad practice, political interference and abuse of resources do exist in the NGO world. But it is essential not to overstate the case. There are equally serious

[385] Duffield, Mark 1997. Evaluating Conflict Resolution – Context, Models and Methodology, in: Gunnar M. Sorbo et al. (eds.). NGOs in Conflict: An Evaluation of International Alert. Bergen:
Chr. Michelsen Institute, 79-112
[386] Lederach, John Paul 1997. Building Peace. Sustainable Reconciliation in Divided Societies. Washington, DC: United States Institute for Peace

mitigating factors at play. It should also be recognized, for example, that sometimes the argument of "illegitimate or unauthorized interference" is clearly being used by extremist parties to conflicts or by political leaders to criticize and/or prevent various types of peaceful intervention that are against their interests. They tend to criticize external assistance for peacebuilding efforts, along with civil society in general, as interventionist forces. Most weak states have a strong tendency to protect their sovereignty – and for good reasons, too. At the same time, however, this argument is often misused to limit "legitimate", serious and well-intended forms of engagement.

The fifth argument (lack of legitimacy, transparency and credibility) is an important but questionable one. Unlike governments and parliaments, non-state actors are of course unable to obtain legitimacy through public elections. But the conclusion that, therefore, NGOs in general are marked by a lack of legitimacy is unconvincing. As both scholars and practitioners from global NGO networks rightly argue, while NGOs are important players in the international arena, their power is quite limited in comparison to state administrations, parliaments and/or the business community. NGOs may function as powerful pressure groups but they do not make decisions that are obligatory or legally binding for entire societies. In short, NGOs do not have the legal, political or military power of states. Non-profit organizations also do not have huge reserves of financial power compared to private companies. Instead, many of them depend on funds from charitable foundations and private donors, and thus on the acceptance of public opinion. This is particularly true for those NGOs that engage in the fields of human rights protection and conflict transformation. For example, as Barnes[387] articulates, GPPAC members have only "the power to persuade, to propose solutions rooted in their analysis of the problems, and to influence by example and by the integrity of their moral voice". They should, therefore, be assessed and measured according to their performance and contribution to this "public competition on acceptance"[388].

NGOs engaged in development, human rights, peacebuilding and conflict transformation activities can acquire legitimacy and increased credibility mainly by demonstrating their efficiency. Many NGOs have developed very transparent systems of reporting about finances and funding, making this information publicly available in annual reports and on homepages. Many of them have also fostered practices of transparency in relation to their internal decision-making processes. In particular, some larger-scale peace-related NGO platforms and networks have started discussions about how to improve their monitoring and evaluation tools so as to better assess the impact of their activities and thereby improve their conflict transformation practices.

Last but not least it is undeniable that Non-governmental organizations play an increasing political role on the international scene. Non-governmental organizations have exerted a profound influence on the scope and dictates of international law. Ngos

[387] Barnes, Catherine 2005. Weaving the Web: Civil Society Roles in Working with Conflict and Building Peace, in: Paul van Tongeren et al. (eds.). People Building Peace 2, Successful Stories of Civil Society. London: Lynne Rienner, 7-24
[388] Id.121

have fostered treaties, promoted the creation of new international organizations, and lobbied in national capitals to gain consent to stronger international rule. A decade ago, Antonio Donini, writing about the United Nations, declared that the “temple of States would be a rather dull place without non-governmental organizations”.His observation was apt and is suggestive of a more general thesis: Had Ngos never existed, international law would had a less vital role in human progress.

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