

Make It Matter: Ten Rules for Institutional Development that Works

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The preceding chapters show how illicit actors function as primary roadblocks in the path to peace. Illicit power structures emerge and are energized in the vacuum left by the chaos of war, civil upheaval, subregional disorder, and the attendant destabilization. First to go during conflict are the legitimate power bases that arise from the legal framework of the state. Constitutions, laws, and codes of criminal procedure, even vehicular codes, fall by the wayside as the channels of power disbursement are upended and the relevant, legally appointed leaders abandon their posts. Courts are looted, and judicial officers withdraw in fear as tribally and self-appointed power grabbers dictate the law. Police institutions are taken over by militias that impersonate the actual police, usurping the legitimate power of the state to enrich themselves and their criminal organizations. Prisons become the locus for illegal detention at best, and torture and extrajudicial executions at worst.

Interim “leaders” exploit the chaos and uncertainty of transition to further their own illegitimate financial objectives. These leaders see prisons as a lucrative franchise for holding captives for ransom by family and friends. Few, if any, of these inmates are actually charged with a substantive offense under the law. And meanwhile, the truly culpable enjoy the impunity brought about by power deals amid the chaos. These are the illicit networks that institutional development can best address.

Peace Agreements: Where Institutional Reform Begins

The typical postconflict path to peace often includes agreements sometimes referred to as “comprehensive peace accords.” These are hammered out by high-level negotiators, diplomats, or emissaries whose main focus is to find common ground between warring parties, stop the killing, and establish a “peace to keep.” In some instances, there may be language that refers obliquely to reforming or restructuring the police. But unfortunately, peace accords, treaties, and other agreements rarely contain language specifically addressing institutional development through reconstituted justice systems, including courts, police, and prisons. The result is that the path to peace is distracted or derailed by the illicit actors that a carefully designed rule of law institutional development plan should have addressed.

But regardless of where the efforts begin, ample historical evidence has shown that launching or rebuilding the institutions that make up the justice and rule of law sectors is the principal way to invade the vacuum, overtake and overpower the illicit structures, and pave the road to peace. Without this enormous effort, the political landscape is abandoned to a modern tragedy that consigns the lives of ordinary citizens to a sad and sorry state.

The foremost positive examples of this process are seen when the leaders of power networks operating outside the law (and often in concert with the military, malicious leaders, or interim or ad hoc political leaders) give way to a legitimate return to the rule of law. This can enable an acceleration of the peace process. And it creates a window

during which peacekeepers and transitional or nascent governments can address further national enhancements such as education, industry, investment, and, most significantly, amelioration of the lives of ordinary citizens. The whole constitutes a sea change in the political ecosystem and brings a reversal to the otherwise downward spiral of lawlessness, conflict, and chaos.

When Institutional Reform Works, and Why

Bosnia and Herzegovina: Ensuring Equitable Representation and Preventing Illicit Capture of State Institutions

It is always useful to start with a look at what works, before criticizing what does not. One realistic and relatively successful example emerges from postwar Bosnia and Herzegovina. In 1995, the Dayton Peace Accords and other agreements included reforming, restructuring, certifying, and rebuilding police agencies of the two political entities: the Federation of Bosnia-Herzegovina and the Republika Srpska. Developing a Federation-based police academy at Suhodol, with young recruits including Muslims, Serbs, and Croats, was a major struggle and was aggressively opposed by powerful leaders who profited from the chaos of Bosnia's civil war. This was a war that had claimed the lives of more than 200,000 citizens and laid waste the functioning societies, along with their legal systems and structures. And during the reconstruction that followed, factional leaders from the conflict mounted considerable opposition to opening the police academy.

With much fanfare, the academy opened, but when it did, these factional leaders insisted on a segregated approach to housing. In practice, this would have required that the police recruits from each faction be housed on separate floors, thus defeating the purpose behind having a unified national police institution. So factional opposition was rejected, and the academy was launched, with three beds to a dormitory room, assigned by alphabetical order of last name. The only segregation was male/female. This provided random integration, often resulting in a dorm room occupied by a Serb, a Croat, and a Muslim recruit. Proving naysayers wrong, the recruits got along peacefully and amiably. Desegregation sent a powerful signal that police agencies were to be formed along professional lines that included ethnic, religious, and geographic diversity.

Institutionalizing this element provided momentum for the institution-building process and marginalized the loud-talking political leaders who profited from the postwar chaos. But the decision came not without cost. One sad outcome was that a car bombing subsequently took the life of a Croat minister of interior who had supported the police training development program. He had also fought local mafias representing the Croat subculture that formed during the war. Building institutional capacity by establishing a fully diversified national police academy had unsettled the power bases at the heart of the roadblocks to the peace process. And although the minister paid with his life, the institution survived.

Liberia: Restoring Control and Legitimacy within the Rule of Law

Another historical example can be found in Liberia, whose 14-year civil war had claimed some 240,000 lives. During that time, in the vacuum of institutional influence, illicit profiteers formed overlapping power zones. Liberia's constitution, penal code, and code of civil procedure were put on the shelf, and lawlessness prevailed. The result was that Liberia became a major transshipment hub for weapons, drugs, and persons, in a market operated by criminal networks that had profited from the chaos of war.

In late 2003, immediately after the signing of the Accra Peace Accords, none of Liberia's three principal civil war factions – Liberians United for Reconciliation and Democracy (LURD), the Movement for Democracy in Liberia, or the Government of Liberia – could claim legal legitimacy, since each operated clearly outside any law other than the orders issued by rapacious military despots. Actual power emanated from fighters who later emerged as self-proclaimed leaders and power brokers. These criminals carved up the spoils of war with unbridled violence.

The violence was exemplified prominently on Bushrod Island, just across from an infamous bridge that provided entry into Monrovia from the country's outer reaches. The bridge had been the scene of intense wartime fighting, with enormous loss of life. The Bushrod Island Police Station, at the heart of what had been the area's main commercial zone, had been looted, and in late 2003, both the bridge and the station stood in a state of severe infrastructural disarray. The station had also served as a strategic location for LURD's criminal activities. The group saw it as a profit center and occupied it with pseudo "police" – LURD fighters who had no legal authorization to perform police functions. Operating like a street gang, LURD fighters established a zone of fear on the densely populated island, taking into custody anyone they saw as able to fulfill a profit need. The pseudo police would hold the detainees until families or friends arrived and paid ransom money for their release. They performed gangland-style extortion or "protection" for a fee, using power and influence based on the wartime legacy of fear and violence, rather than abiding by Liberia's constitutional law.

At the urging of the UN Police Commissioner, the UN Mission in Liberia Police designated the Bushrod Island Police Station as a "Model Police Station Quick Impact Project." The UN Police very publicly kicked out the LURD fighters, rebuilt the station with a modest amount of UN Quick Impact Project funds, and equipped it for colocated UN Police who were operating alongside carefully selected legitimate Liberian leaders and officers from the Liberian National Police ranks. The illicit power structures that had been engaging in extrajudicial imprisonment, kidnapping for ransom, extortion, and torture were replaced through a focused demonstration of legitimate institution building. This sent a strong signal to the much relieved Bushrod Island communities that the police were going to be functioning once more and that they were there to serve the community, not ravage it.

Justice Reform

While these two examples illustrate police-related legitimacy, many similar examples pertain to courts and prisons. During the chaos of war and transition, all rule of law institutions tend to fall to illicit power, which disguises itself with institutional titles and trappings. Postwar or failed-state conditions exacerbate the problem through the state's inability to exercise legitimate government control, and increase the profit potential for criminal organizations that thrive on the resulting chaos.

One of the principal needs of human society is justice, and illicit actors know this and exploit it. Because of this, institutions that provide justice are strategic pivot points toward stabilization and make attractive targets for the illicit actors that dominate during chaos. To illustrate, we can look at the successful transitions that took place in Latin America in the 1980s and 1990s. Countries such as Colombia and Panama, for example, succeeded because peace was accompanied by wholesale transformation of the justice and security systems writ large, along with modifications to the legal framework that underpinned the transitions. Such examples show that in undertaking institutional reform, illicit power structures that dominate rule of law systems are high-value targets. And their successful dismantling produces the greatest results in a classic path to peace.

Three Ingredients for Success

To successfully deploy institutional development as a tool for disrupting illicit power, three principal elements are needed.

Early Architecture

First, there must be a governance framework that enables systemic, rule of law-based institutional reform. The governance architecture must be accounted for *during* the peace negotiations, not after. It should be included in the articles of peace accords, mirrored in and empowered by UN Security Council resolutions, and codified in memorandums of understanding. Language in these documents must include provisions that can authorize and guide necessary legislative reform as well as the reform of courts, prisons, and police institutions.

Too often, agreements simply refer to reforming and restructuring the police without providing any guidance on the form and structure that should result. The effect is that deliberate shaping of the critical institutions and human capital that operate in the post-war geopolitical environment occurs only much later, and often by default. When these vital aspects are addressed late, rather than in early planning, the golden hour is lost. The low-hanging fruit—reforms that are easier to implement while a strong international advisory and security presence is in place and in charge—becomes progressively harder to reach as a new or restored government consolidates its control. Angels, not devils, are in the details when these are drafted early on, with long-range goals in mind.

An excellent example of the degree of detail that can be included in guiding documents and agreements is seen in Plan Colombia.¹ This codification of both national policy and the peace agreement it furthered established a clear framework for reform of the entire Colombian security system. And it provided the road map for the peace process with the active insurgent groups, for Colombian development, and for the international assistance that supported both peace and development in the years ahead.

Similarly, the Bonn Agreement (Afghanistan), along with its accompanying compacts, agreements, and declarations, established a framework for interim governance and long-term development following the U.S.-led invasion of Afghanistan in 2002. Although imperfectly executed, the agreement did contain relatively precise guidelines for restoration of the institutions and functions necessary to restore and strengthen the rule of law. And it informed both domestic Afghan and international assistance during the decade that followed.²

Authentic Partnerships

Second, there must be a clear systemic pathway for forming partnerships between international donors and domestic actors within the host nation. These partnerships must be formed with a common vision, mission, goals, and strategic approach. Most importantly, the international community must be willing to accept unity of effort, together with a systemic ideology that the host nation itself sees as legitimate and culturally acceptable. International actors must form authentic partnerships with stakeholders and must be willing to subordinate their narrower preferences in the interest of a larger common objective. Nongovernmental organizations and local players are not exempt from this principle. Even though they may not have been party to the agreements that facilitated more formal, international intervention, they, too, must accept a common view if their work is to add value. They should work toward common goals based on internationally accepted rule of law ideals that include human rights considerations and accepted norms of police; courtroom; and prison doctrine, standards, policies, and procedures. Where gaps exist in domestic systems, international treaties and conventions should be assessed for their applicability. Particularly in the field of prison administration, which tends to be fraught with abuse, serious penal reform should be considered wherever the existing standards are unacceptable under international humanitarian and human rights law.

In the absence of a solid domestic legal framework, interveners can use model codes as a starting point for engagement. A good one is the Penal Law and Code of Criminal Procedure, reproduced through an enormous effort as the Model Codes for Post-conflict Criminal Justice Project.³ Development of the Model Codes was an initiative of the

¹ "Plan Colombia: Plan for Peace, Prosperity, and the Strengthening of the State," USIP Peace Agreements Digital Collection, May 15, 2000, www.usip.org/sites/default/files/file/resources/collections/peace_agreements/plan_colombia_101999.pdf.

² UN Security Council, "Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions," Dec. 5, 2001, http://peacemaker.un.org/sites/peacemaker.un.org/files/AF_011205_AgreementProvisionalArrangementsinAfghanistan%28en%29.pdf.

³ Colette Rausch and Vivienne O'Connor, eds., *Model Codes for Post-conflict Criminal Justice*, vol. 1 (Washington, DC: USIP Press, 2007).

United States Institute of Peace (USIP), the Irish Centre for Human Rights, The UN High Commissioner for Human Rights, and the UN Office for Drugs and Crime. The goal was not to create a prescriptive framework for all places at all times, but to provide something useful that could fill the gap during the postconflict stabilization and reconstruction period in those states that did not have a legitimate or acceptable basis of criminal law in place. The Model Codes could be used by interveners as an interim measure, and provide the starting point for legislative action by the host nation.

Much has also been said about respect for cultural differences, and the need for “local buy-in” for any institutional development effort. But although it is indeed essential that the international community be sensitive to culture, and although local ownership is key to sustainability, not all the criticism is valid. Illicit actors are particularly skilled at arguing why an international standard of accountability or inclusiveness, for example, should not be applied. The fact remains that at least some of the clamor supporting these so-called cultural mores, norms, and values is just a thinly veiled attempt to retain a corrupt status quo or shore up an illicit power base. This is often seen in the so-called cultural reluctance to adapt to international norms for civilian oversight, professional policing, judicial power, anticorruption, and refusal to protect the rights of minority and vulnerable populations.

These are important issues for effective institution building, and resistance needs to be carefully examined. History provides ample evidence that illicit actors will use every tool, including the guise of national norms and procedures and need for “buy-in,” to disrupt the building of institutions that ultimately threaten their selfish interest. Introducing internationally respected codes, such as those still available as legacy work of the international law and human rights partners, can go a long way to overcoming pseudo cultural resistance.

Accurate Measurement of Results

Third, results must be rigorously measured. Clearly, certain intangibles will never be measurable. But the significant measurements can be entrusted to established tools available to assess the forward motion, or lack of it, in institutional reform. The common navigational distress produced by countless news “events,” superficial accounts, shallow papers, and distorted anecdotes ginned up amid the abundance of hysteria and through social media all work together to form a distorted view of the state of play in the local environment. When reformers get too caught up in the news cycle, they tend to become reactive in their development activities, and any chance for consistency and sustained progress will be lost.

One excellent measurement tool that has been widely used in Liberia, Haiti, and South Sudan is the Rule of Law Indicators (ROLIC).⁴ A product of the UN Department of Peacekeeping Operations and the UN High Commissioner for Human Rights, ROLIC produces navigational coordinates of a national rule of law state of play. Using a template consisting of available administrative data, stakeholder surveys, and expert findings, ROLIC reports on the multiplicity of competences within each of the three

⁴ United Nations, “UN Rule of Law Indicators: Implementation Guide and Project Tools,” 2011, www.un.org/en/events/peacekeepersday/2011/publications/un_rule_of_law_indicators.pdf.

principal security-sector institutions that first come to mind when we think of the rule of law: courts, police, and prisons.

While not conclusive, the ROLIC produces indicators of progress, in an easy-to-digest, linear fashion. As multiyear reports become available over time, trends emerge and create opportunities to engage with development partners and to identify weaknesses in the system. ROLIC data and the framework itself help illuminate weaknesses in the security system and in accompanying institutional development programs, which are particularly vulnerable to illicit power. ROLIC is not infallible, but it can produce longitudinal measurement for players and facilitate greater transparency for development processes. It can also serve the most fragile communities very well. Weak points and corrupt institutions are more clearly visible, and salutary efforts are more effectively identified in a way that clarifies rather than obfuscates.

Other measurement tools can and should also be deployed to measure institutional growth, and there is a growing body of learning on metrics and on measures of effectiveness for quality assurance. Unfortunately, often the wrong things are measured (for example, the numbers of police in a police organization, the numbers of prisoners in the prison system, and the numbers of cases being disposed of in the judicial system). While these are fairly easy to measure, the measurements do not take into account the levels of competence, for example, among the police being graduated from accelerated police training programs designed to produce numbers. Similarly, the reason for prison overcrowding is often a direct failure of the country's court system rather than an increase in police effectiveness. Often, a prison system's effectiveness or capacity is paired with indicators intended to measure the courts' capacity to dispense justice fairly and equitably. While it is useful and essential to look at how justice functions as a system, the subsystems within it must be carefully examined within their own peculiar set of authorities and functions.

Recommendations for Effective Postconflict Institutional Development

While it may seem that any effort to build strength into broken systems—especially justice systems in fragile or postconflict states—would be welcome, the truth is that we in the international community often worsen rather than improve the situation. Funds are wasted, sincere host nation-generated reform initiatives are neutralized, and we contribute to the very dysfunction that is at the heart of corruption. When this occurs, illicit power structures are energized rather than dismantled.

No one would argue against the notion that weak systems constitute a fertile hotbed for the emergence of illicit power. What we rarely admit, however, is that we ourselves can and do make things worse. Below is a checklist of recommendations that should help accelerate institutional development in the justice and rule of law sectors.

1. *Seize the golden hour.* While delays are inevitable in the absence of agreements and other broad-based resolutions, be ever aware that the earliest interventions are usually the most effective.

2. Build the capacity of institutions by taking on entire justice and rule of law systems. Transformation of broken systems must be done not in parts but in the whole.
3. Measure the right things. There is a tendency to measure the most easily identified and visible aspects of institutional reform, such as recruitment numbers and demographics, graduation rates, arrest and conviction rates, and improvements in physical infrastructure, while overlooking the trickier ones and the intangibles that make for solid institutions. Issues such as improvements in institutional culture, the relationship between police and prosecutors, professionalism within the legal and law enforcement sectors, public awareness and understanding of rights and remedies, and judicial willingness to enforce them are all indicators of institutional development progress. These are difficult to quantify and can be measured accurately only over time, but they also represent sustainable progress toward overcoming the biggest hurdles to credible, capable, and enduring institutions and systems.
4. Do not let donors contribute to division or discord. The term “donor interference” has emerged as stark reminder that when donors are not coordinated in a commonly accepted architecture, the result is delay at best and dysfunction at worst. Coherence across the donor community should be considered a metric for programmatic performance.
5. Wrest ownership of postconflict justice institutions away from self-serving politicians. Bringing justice systems under oversight of legally constituted leaders is essential. But in fragile environments, there is a tendency toward extralegal grabbing of institutions. Police need to be focused on serving communities, courts need to be unfettered by political interference, and prisons need to be driven by international standards of human rights and the need to ensure that inmates serve only their lawfully prescribed sentences.
6. Avoid military oversight of the police, and if it is necessary in the near term, end it as quickly as possible. During and following internal and subregional conflicts, police become nothing more than tools of militias that have entirely different doctrines, procedures, and institutional cultures. After war, there is a tendency to conflate all types of security forces and, in particular, to merge former military combatants with the police. This, too, is a mistake. Community policing, for example – a powerful tool in the fight to control illicit power – is typically in direct conflict with military purpose and doctrine.
7. Never underestimate the importance of the prison system. There is probably no clearer indicator of postwar chaos than overcrowded prisons in a state of system disarray, with prisoners dubiously incarcerated in inhumane conditions and with no term end in sight. This prison dysfunction contributes to impunity of those few – especially those linked to illicit power – who have successfully bought their freedom.

8. *Remember that results are incremental, generational, and rarely immediate.* Those who look to nominally functioning justice systems or hastily stood-up police forces as an exit strategy need to look longer range, toward the strength of the institutions, not to numbers and individual personalities. Where institutions are being restructured from scratch, building an accountable, enduring institutional culture takes time, effort, and adaptation as challenges and opportunities emerge. Where institutions are being reconstituted following failure or co-optation, it is critical to recognize that often, the institutional damage occurred over a generation or more. The repair cannot be seen as requiring anything less.
9. *Demystify the language of our papers and memorandums.* The reluctance toward robust and swift transformational leadership often stems from misinterpretation of vague language in the papers, agreements, or mandates.
10. *Join hands instead of pointing fingers.* In postconflict environments, there is a tendency toward disparaging other players and stakeholders. Governmental and nongovernmental players, as well as contractors and local players, would do well to expend their energy in forming authentic partnerships based on common alignments, rather than in criticism.

Conclusion

Institutional development is a powerful tool in the fight against illicit power. Done right, it produces indigenous security forces that can protect the population within the framework of the law, protect and ensure the fair and equitable administration of justice, address grievances that were underlying drivers of conflict, and control and isolate those elements of the population who remain committed to conflict and undermine legitimate government. But if done hastily or incorrectly, institutional development enables illicit power brokers, political patronage networks, criminal enterprises, and other bad actors to consolidate power in the immediate postconflict chaos and disorganization. It leads to the capture of state resources and institutions for personal rather than public gain. And finally, it leads to a resurgence of the very grievances that led to instability and conflict in the first place. For these and many other reasons, it is essential that we get institutional development right.