

Helpdesk Research Report

Evidence on ‘rule of law’ aid initiatives

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Question

Does the rule of law boost development and reduce poverty? Provide evidence from successful aid initiatives.

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1. Overview

This report reviews the contribution of the rule of law to development and poverty reduction, with evidence from aid initiatives. The first section provides a brief overview of the evidence base on the links between rule of law and development and poverty reduction. The second looks at evidence from successful aid initiatives, focusing on how interventions have contributed to rule of law and why they have been successful. Policing interventions are highlighted as a specific sub-area of interest in the third section.

‘Rule of law’ is defined very broadly, encompassing police, the judiciary, legal systems, rights conventions, and business law, among others (Samuels, 2006). This report takes no specific definition, but reviews interventions which self-define as having some effect on rule of law.

The report takes an **evidence-based approach** and intends to draw out areas where there is strong evidence on positive outcomes. In many areas of rule of law this is not possible, as much of the literature does not review the impact of interventions but only presents results and internal project achievements. Thus the **evidence base is quite thin** in most areas of rule of law. However, it is possible to draw out some key findings:

Links between rule of law, development and poverty reduction:

- **Causal relationships between rule of law and development are not clear** (Expert comment). Many people have tried to establish whether the rule of law contributes to economic growth, but the most recent literature suggests this relationship is complex and unknown.
- Most literature suggests that it is **critical to engage with local processes and/or gain local buy-in**. In some cases this includes supporting **informal and customary institutions**.
- **Property rights and contract enforcement** are often cited as necessary for an enabling business environment.
- **A gender focus is imperative**, as women are often discriminated against in the legal system.

Aid initiatives contributing to rule of law:

- **Incremental, 'good-enough' approaches appear to work best**, especially where they build on local understandings of rule of law and existing institutions.
- **Legal empowerment and enabling poor people's access to law** is perhaps more important than strengthening the institutions themselves.
- **Successful interventions are often capacity-building**, both within the rule of law institutions and among citizens.
- Rural outreach and **access to justice** programmes have also been successful, particularly through mobile clinics and courts.

Policing:

- Within policing **capacity-building is the most successful approach**, but there is no clear evidence on how interventions to improve police forces affect development outcomes.
- **Crime, violence and the absence of security** are suggested as important constraints on economic growth and as drivers of poverty. It is unclear whether rule of law interventions addressing these have an impact on developmental outcomes.

2. Empirical uncertainties

The literature widely assumes that the rule of law is a good thing and will have positive developmental effects; this assumption is not often critically examined (Davis & Trebilcock, 2008, p.50). The rule of law is difficult to measure; it is often included with aggregated measures of quality of institutions, and disentangling the data shows that **correlations between the rule of law and development are not as strong as sometimes thought** (Roseveare, 2013, p.33). There are strong cases for investing in security and justice in specific times and places, but overall there are **few certainties about the causal links** between rule of law and development (Cox, 2008, p.47). There is 'considerable unresolved uncertainty' about how the rule of law plays a role in development (Roseveare, 2013, p.34).

Carter (2013) notes that there are **very few coherent and systematic evaluations** of rule of law reforms, and thus little knowledge about how the rule of law can be developed, beyond simplistically replicating 'successful' institutions. Samuels (2006) undertakes a comprehensive literature review on rule of law in fragile and post-conflict countries, and concludes that rule of law reforms here have shown very few lasting results on the desired social goals of rule of law; while results in non-conflict contexts have been somewhat better. However, the field as a whole lacks coherence and shared goals, and there is **no clear**

understanding of what is effective and why (Samuels, 2006). Rule of law is extremely complex and it is difficult to identify causal relationships, but even so, there is a surprising lack of empirical and comparative evidence (Samuels, 2006).

3. Rule of law, development and poverty reduction

Economic growth

Davis and Trebilcock (2008) present a comprehensive review of the literature on whether rule of law enhances economic growth, placing academics into either the 'optimist' or 'sceptic' camp. They summarise three important recent volumes of work on rule of law and development¹, supported by reviews of other research. They conclude that there are correlations between strong institutions and economic growth, but that there is a **lack of consensus about which institutions are important and in which configuration** (Roseveare, 2013, p.33). They note that a large part of the current debate is around how to implement legal reform, rather than discussing whether legal reform is in fact able to do any good (Davis & Trebilcock, 2008, p.28). There are many and varied critiques of legal reform, but these are generally rooted in theory and expectations rather than evidence. They suggest that current reforms should be treated as generating knowledge about the relationship between law and development rather than as implementing agreed best practice (p.30). In sum, the empirical evidence provides some support to the optimist camp, suggesting that **rule of law probably does have positive impacts on economic growth**, but that the evidence base is inconclusive on how this happens, which institutions are relevant and what works. The positive evidence in favour of this school of thought is as follows:

- Large cross-country statistical analyses show generally that measures of institutional quality show correlations with human development indicators (e.g. income, infant mortality, literacy). Some studies are rigorous.
- Quality of institutions may have more effect on development than trade and geography. This is debated in the wider literature, but is presented in this work as a key contributor to development.
- It is possible to shape institutions deliberately through interventions (as opposed to scepticism, which suggests that countries are set on an immutable path determined by their history).

In another seminal work on the subject, Cox (2008) highlights that the **direction of causation is unclear** between a healthy economy and high-quality legislation. It may work in one direction or the other, or they may not have a causal relationship at all. It is important not to make over-ambitious claims about the potential of rule of law to drive economic outcomes, as the relationship is not clear (Roseveare, 2013, p.34). He reviews the influential works on this relationship, and concludes that while there is evidence which suggests that increased rule of law results in increased economic growth, these findings are questionable due to their methodologies and nuances. It is **probably not possible to extrapolate universal rules** about what stimulates growth, as this is highly dependent on many country-specific factors. Cox suggests that there may be moments in the growth cycle in which investment in the justice system will reinforce growth. For this reason, he suggests that interventions to support the legal system

¹ Thomas Carothers (ed.) (2006). *Promoting the Rule of Law Abroad: In Search of Knowledge*; Kenneth Dam (2006). *The Law-Growth Nexus: The Rule of Law and Economic Development*; and David Trubek and Alvaro Santos (eds.) (2006). *The New Law and Economic Development: A Critical Appraisal*.

should be made when there is a clear local demand for them, and when they resonate with existing positive trends (Cox, 2008, p.49).

Enabling the private sector

Discussions on the relationship between rule of law and economic growth have often focused on property rights, which suggest that checks on government predation are a prerequisite for economic performance (Haggard & Tiede, 2011). The New Institutional Economics school posits that efficient markets require the protection of private property rights and the ability to enforce contracts; and that market interactions should be governed by stable legal rules (Cox, 2008, p.i). This hinges on the idea that businesses need this form of security in order to invest with confidence (Cox, 2008, p.i).

The World Bank believes that rule of law contributes to economic growth **through enabling individual entrepreneurial activity** in the market (Krever, 2011, p.312). Property rights, contract enforcement and a credible judiciary are key to this conception that rule of law enables the private sector to function by providing a stable investment environment (p.312). This conception is labelled an orthodoxy by Krever, who suggests that the Bank's influence over development discourse has established this market-facilitation as a new norm for rule of law interventions. This is problematic because its assumed outcomes are not based on empirical evidence but rather on neoliberal principles, which have not always succeeded in promoting growth (p.318).

There are several studies which show **strong evidence that formalising property rights reduces poverty** by: 1) relieving vulnerability through the prospect of dispossession; and 2) encouraging growth through increased access to credit, leveraging against property (Cox, 2008, p.iv). There are some nuances in the evidence base, including that the formalisation of indigenous property rights does not necessarily lead to increased productivity; emergencies may force poor people into distress sales of property; and land titling may drive up land costs (p.iv). It is highly important to note that, as the literature focuses heavily on property rights, that **'women own less than 10 per cent of the world's property'** (p.vi).

Basic law and order

Haggard and Tiede (2011) question what is meant by rule of law and assumptions around how it contributes to economic growth. They empirically consider the relationship between four types of rule of law and economic growth, with data from 74 developing and transition economies: provision of security of person; security of property and enforcement of contract; checks on government; and checks on corruption and private capture. They find that the latter three are much less tightly correlated with economic growth than often thought, and that basic law and order, specifically **violence and corruption, is a stronger determining factor in economic growth** than the 'rule of law' indicators. In particular, the evidence on corruption suggests that checks on private power are as important as checks on government, in order to enable economic growth (Haggard & Tiede, 2011). Violence and the absence of law and order, moving towards state failure, is suggested in this paper as the most fundamental constraint on economic growth, rather than weak rule of law.

Cox (2008) suggests that there is strong evidence that crime and violence have a detrimental impact on poverty (Roseveare, 2013, p.34), and that **reducing crime and insecurity increases positive development outcomes**. The evidence for this comes from quantifying the costs of crime and econometric tests looking at whether reductions in crime would increase growth. There is a knowledge gap on how effective criminal justice programmes are on crime rates, but the literature does suggest that reductions in crime

will have positive effects on development. Crime and violence against women have additional repercussions such as reduced school attendance by children of victims, and reduced earnings of victims (Cox, 2008, p.vi). As above, Cox (2008) suggests that different interventions will be appropriate in different contexts, but that security and justice interventions do have the possibility of helping to alleviate poverty.

Judicial independence

There is a reasonably strong body of evidence that judicial independence positively impacts economic growth (Rao, 2013). A 57 country sample in Feld and Voight (2003, cited in Rao, 2013), shows that *de facto* **judicial independence increases real GDP growth** per capita, while *de jure* does not have significant impacts. They argue that the key components for judicial independence are:

- The procedures and powers of the judiciary should be specified in the constitution instead of granting only legal independence.
- The actual use of discretionary power of the other branches of government should be reduced vis-à-vis the judiciary, and judges paid adequately.
- High degrees of *de facto* judicial independence in presidential systems can help restrict the abuse of power by presidents (Feld and Voigt, 2006, cited in Rao, 2013).

Sill (2010, cited in Rao, 2013), notes that judicial review (cases of conflict between government and citizens) has significant negative effects on economic growth in cases where there are no constitutional economic rights protections. Where these rights are strong enough, there can be a positive economic relationship.

Legal empowerment

Cox (2008) states that the evidence base is weak on determining whether rule of law affects poverty alleviation. In large part, it relies on small-scale donor sponsored civil society projects, which generally take the approach of improving poor people's access to justice. This '**legal empowerment**' **bottom-up approach** may work when combined with other development interventions, but the legal system's discrimination against the poor will limit its ability to alleviate poverty. The best strategy is not investing in the justice system per se, but improving poor people's ability to access and use it effectively (Cox, 2008, p.viii).

The largest legal empowerment project was the UNDP's Commission on the Legal Empowerment of the Poor (CLEP), which ran from 2005 to 2008 and aimed to extend rule of law through four pillars: access to justice and the rule of law; property rights, labour rights; and business rights (Roseveare, 2013, p.29). Two Asian Development Bank papers offer **rigorous evidence that CLEP had positive impacts** on agrarian reform; resident welfare; and prioritisation of key issues for local communities (p.29). Two criticisms of CLEP are that it has insufficient focus on political economy and labour rights, but it can be taken as **strong evidence that legal empowerment has poverty reducing potential**.

Women are particularly discriminated against in many areas, and as such, improvements in women's situations can be a good marker of development. The enactment of laws against gender inequality and/or violence against women can have strong **demonstrable effects on the reduction of domestic violence** (Roseveare, 2013, p.27). Day O'Connor and Azzarelli (2011) make a strong case that **appointing female judges can strengthen the rule of law** through more equitable societal representation, more balanced

judiciary and as leaders and role models who increase women's access to justice, particularly in combating violence against women. Women's empowerment is a known lever for poverty reduction.

International economic law

Davis and Trebilcock (2008, p.21) note that many policy-makers and scholars working in international development focus on international law rather than domestic. One line of analysis believes that reforms to international economic law will have positive effects on international trade and investment, which creates market opportunities at the local level; while another believes that the same reforms will have a positive effect on domestic legal institutions, potentially by opening up the economy.

Informal systems

A further note is that many parts of the developing world operate under customary or tribal law rather than formal state law; in these cases, community norms might undermine or supplant legal institutions (Davis & Trebilcock, 2008, p.45). Community and cultural factors may play a stronger role in influencing behaviour than formal law, which may suggest that a **'western' legal system is not a prerequisite for development** (p.46). For example, China does not have strong ratings on conventional rule of law indicators but has experienced an economic boom, suggesting that formal laws and legal institutions are not as important as the informal recognition of private property rights and performance of contracts (p.47). Informal norms play a strong role in development, and **outsiders may not be able to influence or reform domestic institutions** (p.60). The UN transitional administration processes in Cambodia and East Timor engaged with informal restorative justice and reconciliation, which appeared to embed justice processes more effectively than excluding them would have (Bull, 2007). Bull (2007) strongly suggests that state-based coercive mechanisms such as police and judiciaries may not be as effective for building rule of law as informal justice institutions.

4. Interventions contributing to rule of law

A number of rule of law programme evaluations were reviewed for this report, however many of them do not identify wider impacts on the status of rule of law or development in the country. Most evaluations report back on whether the programme adhered to its own plans, and detail some outputs. Many evaluations identify blockages and lack of clear outcomes. For example, a thorough independent evaluation of all recent rule of law programmes in Liberia concludes that the programmes have had limited impact on citizens' access to justice, and presents no positive impacts on rule of law, although programmes have been internally robust (Henderson, Jakosa, & Gibson, 2009).

This report presents the small selection of evaluations which have identified positive outcomes, and include some assessment of how the programme has impacted on broader rule of law and governance.

USAID has produced many rule of law programmes and evaluations can be found on its Development Experience Clearinghouse website². Blue and Fishman (2004) review USAID's long-term assistance to the Russian Federation in developing the judicial system. They assert that the programme has delivered improved outputs such as legal clinics and better legal training, and improved outcomes such as increased commitment to the judicial system, personal attitudinal and behavioural change and more

² <https://dec.usaid.gov/dec/home/Default.aspx>

effective use of resources. The report attributes success to the project's **long-term engagement** (15 years), **holistic view of promoting change**, and **high levels of commitment from senior professionals**.

Another USAID Rule of Law programme in Georgia has been particularly successful. Begun in 2001, the four-year programme aimed to increase citizen awareness of laws, strengthen legal services organisations, and increase government transparency and legislation (University of Maryland, 2006). This programme was implemented by the University of Maryland, and evaluated internally in 2006 (University of Maryland, 2006). The report is not a rigorous evaluation, but it does describe how and why the project was successful. In large part, success was due to the **ground-level engagement with citizens**, educating and informing them of their legal rights. This was achieved through **film showings, public service announcements, and school curricula**. The report shows that the mean legal knowledge score of survey participants rose from 2002 to 2004. A major achievement was the implementation of the Public Attorney Service, the first state-funded free legal aid in Georgia. Other parts of the project entailed helping NGOs and government offices ensure they complied with the law; legislative drafting; and commenting on new legal developments in the media and through conferences. **Developing the skills of Georgian individuals proved highly successful**, as many have moved into senior positions in government. Overall, when asked 'Do you think that the law and legal system in Georgia function very effectively, somewhat effectively, somewhat ineffectively, or very ineffectively?' survey participants answering somewhat or very effectively showed a rise from 28 per cent in 2003 to 66 per cent in 2004.

Bull (2007) reviews UN transitional administrations in Kosovo (1999-date), East Timor (1999-2002) and Cambodia (1992-3). She concludes that attempts to establish the **rule of law through state-based enforcement mechanisms have had limited success**; these do not adequately include informal and traditional justice systems, or account for indigenous power struggles, nor does it acknowledge that **adherence to law relies on voluntary consent rather than state sanction**. The administrations struggled to build local commitment to new justice systems, through scepticism about community benefit and disconnects between western and local conceptions of justice. Where the approach consciously made efforts to build ownership, it was more successful. **New indigenous police forces appeared to be a visible symbol of change** and worked well as bridges with communities. Despite the limited success of these UN missions, there is some evidence that the transitional government acted as a 'circuit breaker' which restored 'good-enough' security and removed destabilising influences enough to create space for rule of law to emerge. Adherence to rule of law appears to depend primarily on voluntary agreement to the value system, and therefore it will work best where it is perceived as **compatible with existing social values**.

Sida commissioned a comprehensive review of their programmes in human rights and democratic governance, aggregating results from a sample of 24 projects from 1998 to 2007 (Dahl-Østergaard, Schulz, & Svedberg, 2008). Four of these are rule of law projects³. The South African Police Force project (see policing section below) and the Access to Justice in Nicaragua project were both awarded high achievement of results, standing out in the review as having more impact than some of the other areas of human rights and democratic governance. The Nicaragua project also had unintended impacts on

³ A review of the Development Cooperation Programme between the South African Police Service and the Swedish National Police Board; an independent evaluation of the impact of Local Court Houses in an access to justice programme in Nicaragua; a review of the effects of Vietnamese-Swedish development cooperation on democracy and human rights in Vietnam; and a Mid-Term Review of the Governance, Justice, Law and Order Sector Reform Programme in Kenya.

women, in making the career as a judge an attractive option for women. The project built 120 new courthouses in remote areas, improving the physical access to justice, and by including good quality living quarters within the courthouse, has encouraged judges to take up remote rural posts. There was no further information assessing why these projects were successful.

A 2012 review of the Australian government's package of law and justice assistance identifies several examples of good practice and success (Cox, Duituturaga, & Scheye, 2012). A core component of Australia's assistance is organisational capacity-building, in which the following were identified as promising strategies (p.ix):

- Taking an **incremental rather than comprehensive** approach to improving existing capacities and functions.
- Seeking a **flexible, localised, 'good enough' solutions**, rather than relying on institutional templates.
- Focusing on issues for which there were **local constituencies for change**, who could be mobilised and supported.
- Working directly at the point of **interaction between law and justice institutions and citizens** (so that the causal link between the intervention and benefits for citizens was short and direct and the impacts could be captured easily through monitoring and evaluation systems).

Australia's particular sectoral successes in rule of law assistance are in the efficiency of the administration of justice, reducing human rights violations within criminal justice systems, access to justice for specific groups (e.g. women heads of household in Indonesia), and the restoration and maintenance of law and order in conflict-affected societies such as the Solomon Islands (p.xi).

UNDP's work in Somalia has been particularly successful in the area of **access to justice**, and especially in extending judicial outreach to rural areas of Somaliland and Puntland, through **mobile courts and clinics** (UNDP Evaluation Office, 2010). Their success was facilitated by good cooperation with university faculties of law. The independent evaluation states that the UNDP programme has effectively contributed to development goals. In particular, they have been successful at **integrating human rights and gender considerations into police training**.

The EU array rule of law programmes in the Western Balkans are assessed to be quite successful (Imagos & Berenschot, 2012). In line with research, this independent evaluation identifies local ownership and buy-in as a challenge in this context, as there is not particularly strong political support for rule of law. The EU has, however been successful in capacity-building and institutional development of the judiciary and legal systems. Its successes are attributed to: its long-term commitment; local capacity development; large-scale, predictable and continuous funding; transparency of its political agenda; and its depth of policy development and breadth across sectors, actors and the region. The **predictability of funding and permanent presence** are particularly emphasised in this paper, and this has contributed significantly to the more complex projects. Short-termism and need for external collaboration have produced negative results. This report also suggests that the **EU accession process** – which includes the requirement to pass and maintain all EU standards of law – has been a key motivating factor in changing the legal system from a tool of state power to one of citizen support, which has shifted the nations into modern states based on separation of powers.

5. Policing

Police forces should be able to contribute to the rule of law and to development processes. A rigorous empirical study of citizens' (mostly aspiring middle-class) attitudes towards police corruption in urban Ghana shows that **anti-corruption measures increased levels of public confidence in police** trustworthiness and effectiveness and in procedural justice (Tankebe, 2010). The study shows that the positive outcomes are contingent on people's level of satisfaction of anti-corruption efforts, meaning that they **must see or experience actual change**, rather than just rhetoric of anti-corruption measures.

The Sida review of programme evaluations includes a project aimed at improving the South African Police Force. It was found to have had considerable impact in raising awareness of human rights among the police force and built organisational capacity in improving response times, higher-quality recruits, and greater ethnic diversity representation in the force (Dahl-Østergaard et al., 2008). This is partly attributed to the **high level of local ownership** of the project and feeding project results directly back into day-to-day work. Other contributing factors were recent South African government white papers and initiatives in line with the SIDA programme, which ensured the programme was **in line with local priorities** and trends. Local stakeholders were involved from the beginning in developing the programme, which gave strong local ownership and buy-in.

However, a UNDP report on supporting police in Somalia identifies that this has negatively affected the perception of the network (UNDP Evaluation Office, 2010). In this independent evaluation of UNDP's assistance to Somalia, the **payment of stipends to civilian police** is singled out as an initiative which particularly **damaged UNDP's image** as a neutral partner and its relations with other humanitarian actors. So far, this has not yet happened in Afghanistan, where UNDP also pays police salaries. In Afghanistan, UNDP's support to community policing has improved the public's perceptions of the police force: in a UN survey, 81 per cent of Afghans expressed respect for the country's law enforcement, a rise of 8 per cent on 2010; and 53 per cent supported and acceptance of female police in their communities (UNDP, 2011). In Somalia, the rest of the police component consists of training, rehabilitation of infrastructure, civilian oversight mechanisms of the police force, and recruitment of female officers, which have all been relatively successful (UNDP Evaluation Office, 2010).

A long report from The Stimson Center in 2012 reviews the impacts of the police, justice and corrections components in UN peace operations (Durch, England, & Mangan, 2012). The United Nations Police (UNPOL) has **most impact in building individual and institutional capacity**, and less so in its other desirable areas of individual and institutional integrity. The latter is its worst-performing area, although it consumes considerable resources and attention, and is the key component of long-term impact. The overall message is that, while UNPOL is quite successful in establishing short-term operations and in some areas of training, its mandate has ballooned and as a result its operatives are over-extended and under-resourced, and generally unable to establish effective programmes with substantial influence and impact.

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About this report

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