Rule of Law for Conflict, Security, and Stabilization Programming: Some Key Issues for Consideration

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For more than 25 years, and through our work in more than 100 countries, the American Bar Association Rule of Law Initiative (ABA ROLI) and our partners have sought to strengthen legal institutions, support legal professionals, foster respect for human rights, and advance public understanding of the law and citizen rights.

In collaboration with our in-country partners – including government ministries, judges, lawyers, bar associations, law schools, court administrators, legislatures, and civil society organisations – we design programs that are responsive to local needs and that prioritize sustainable solutions to pressing rule of law challenges. We employ rigorous and innovative monitoring and evaluation approaches in assessing the quality and effectiveness of our programs.

ABA ROLI has roughly 500 professional staff working in the U.S. and abroad, including a cadre of long-term legal specialists, volunteers, interns, and third-party contributors, who in the fiscal year 2017 alone contributed $1.34 million in pro bono legal assistance.

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**Executive Summary**

International development practitioners tend to agree that justice and the rule of law are critical for stabilisation, security, and conflict mitigation and prevention. Evidence to guide practitioners in designing and implementing rule of law programming for those purposes is growing but incomplete. Drawing on external research as well as analysis from ABA ROLI’s recent experiences working in conflict-affected environments in North Africa, Eurasia, and the Sahel, this paper highlights several practical elements of justice and rule of law interventions that merit consideration when crafting and realising such programming for conflict, security, and stabilisation objectives. The paper also discusses three inherent tensions that implementers face in practice, as well as some tools and strategies to address them. Overall, the paper argues that:

- A citizen-centered, problem-driven, and politically smart approach to rule of law and stabilisation programming is needed. Such an approach entails constructively engaging legal pluralism when appropriate; using theories of change that reflect the challenges citizens face in meeting basic justice and security needs in environments with overlapping or contested sovereignties; and employing context-specific knowledge of the strengths and weaknesses that central state authorities bring to bear in stabilisation.

- ABA ROLI adopts these approaches in its programming in different ways.
  - In situations of *protracted conflict*, this may include: (a) maximising citizen involvement in constitutional reform processes; (b) using legal and community-based clout to justify including marginalised groups’ perspectives in transitional justice; and/or (c) supporting community-based and alternative dispute resolution, particularly when citizens lack trust in the state.
  - In *post-conflict settings* or in places subject to other forms of political violence, this may include: (a) promoting long-term legal empowerment and judicial accountability; and (b) countering violent extremism through research-informed programming that respects freedoms, civil liberties, and human rights.

- Rule of law implementers in violent and conflict-affected contexts face tensions in their everyday practice that complicate the use of good practices and the achievement of program goals and objectives. Some of the most notable challenges relate to:
  - balancing short-term and long-term goals
  - blending political and technical approaches
  - engaging with various state and non-state aspects of governance and legitimacy

- There are ways to address these tensions pragmatically. Practitioners should consider:
  - using existing, in-country professional networks to forge local partnerships;
  - making those partnerships egalitarian and empowering local knowledge holders;
  - engaging in interdisciplinary analytics of the context to inform programming;
  - investing in building the capacity of local civil society on a variety of axes;
  - building upon time-tested connections with government officials and institutions to encourage reforms likely to bolster or reinforce public trust in the state;
  - working with civil society to help citizens access a range of justice options.

- ABA ROLI has applied several of these strategies in Libya, the Balkans, and Mali, using in-house and external research tools to generate relevant analysis and recommendations.
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Introduction
Generally, international development practitioners agree that justice and the rule of law are critical for stabilisation, security, and conflict mitigation and prevention. Several donor governments have recently followed suit in their financial and policy investments. The UK Department for International Development (DFID) revitalised its emphasis on these issues in fragile states in 2012. In 2017-18, funding for “security and justice” constituted 149.8 million pounds, or nearly 23%, of spending for Her Majesty’s Government’s Conflict, Security, and Stability Fund (CSSF), with additional rule of law-related programming folded into the governance, conflict prevention, and peacebuilding initiatives pursued therein. Related guidance from the United Kingdom Stabilisation Unit articulates that the purpose of such stabilisation programming is to “reduce violence, ensure basic security, and facilitate peaceful deal-making, all of which should aim to provide a foundation for building long-term stability.”

Along similar lines, in the US Government’s 2018 Stabilization Assistance Review also raises rule of law and justice considerations in its calls for foreign assistance programs to integrate defence, diplomatic, and development efforts more seamlessly than ever before. This includes efforts to “carefully tailor all assistance and training programs in conflict-affected environments to ensure they mutually advance stability and do not inadvertently exacerbate conflict dynamics.”

In light of these promising investments, evidence to guide practitioners in designing and implementing appropriate rule of law programming to advance stability is growing but incomplete. The long-term changes that various donor governments hope to foster in other countries through foreign assistance – from sustainable peace to political and economic stability – depend in significant part on the rule of law, which at its best consists of institutions with checks and balances, consistent application of laws and policies, equal protections of freedoms and liberties, and access to fair and affordable justice. Yet there is still much that scholars and practitioners do not know about when and how to infuse rule of law and justice approaches into conflict and stabilisation endeavours to good effect. There are no silver bullets for (re-)establishing mechanisms of equitable and accessible justice and a culture of the rule of law in conflict-affected contexts, particularly under highly fluid conditions that are subject to many political and sociocultural contingencies.

Despite these challenges, there is also knowledge to build upon. Rule of law assistance has been criticised for focusing on largely technical reforms in the justice sector focused on laws and formal institutions. At times, this approach has come at the expense of treating rule of law as a broader social and political outcome, one that requires assistance that carefully addresses checks and balances in political power structures, citizens’ trust in state and non-state actors to resolve disputes, and social norms that influence the use and functioning of laws and institutions themselves. The debates inspired by these critiques have generated sector-wide learning: to the extent that programming involves top-down, formal justice sector strengthening, it must also address the social and political practices that shape citizens’ knowledge, attitudes, and behaviours related to various forms of dispute resolution available to them.
The wide range of sensitive legal and political issues that tend to be at stake in conflict-affected settings – from how to combat corruption in the justice system to what forms of transitional justice to pursue – makes this advice especially apt for ensuring the ongoing appropriateness of rule of law programming in a stabilisation context. In particular, a citizen-centered, problem-driven, and politically smart approach is needed, namely one that:

- when appropriate and prudent, constructively engages legal pluralism and the multiple sources of legitimate dispute resolution and problem solving in communities, leveraging existing levels of trust in formal and informal justice forums;

- is based on theories of change that reflect the realities of limited statehood, including the everyday challenges citizens face when seeking to ensure their basic justice and security needs in environments with overlapping or contested sovereignties;

- and pursues pragmatic assistance that is based on context-specific knowledge of the strengths and weaknesses that central state authorities bring to the conflict, stabilisation, and security process.

Achieving such an approach in practice is inherently difficult, even for the most well-intentioned of donors and implementers. The remainder of this briefer analyses several ongoing challenges of doing rule of law-related work in conflict and stabilization contexts. It draws on both existing academic and practitioner literature and the institutional knowledge and experience that the American Bar Association Rule of Law Initiative (ABA ROLI) has acquired from its work in conflict- and violence-affected environments in North Africa, Eurasia, and the Sahel.

Section 2 describes several varieties of rule of law and justice interventions and highlights some of their practical elements that merit consideration when pursuing such programming for conflict, security, and stabilisation objectives. Section 3 discusses three kinds of inherent tensions that implementers face in their everyday practice, and Section 4 touches upon some tools and strategies that can be used to address them.

2 - Varieties of Interventions and Key Characteristics

Over the decades that it has provided assistance in conflict-affected contexts, ABA ROLI has pursued multiple types of rule of law interventions that apply in different stages of conflict, security, and stabilisation processes. Sometimes, rule of law programming has focused on strengthening core capacities of national jurisdictions during and after periods of conflict or repression, or promoting citizen participation in constitutional reform and transitional justice. Other initiatives have sought to strengthen legal institutions and frameworks in support of electoral processes, facilitate election-related dispute resolution, or help government and community actors generate early warning and early responses to violence. Expanding access to justice for groups experiencing social or economic exclusion, building civil society capacity to counter violent extremism, and assisting victims of human rights abuses have also been core components of rule of law work on conflict and stabilization.
These interventions have various characteristics that merit consideration in learning-oriented discussions about the conflict, security, and stabilisation field. Some characteristics are based on principles that relate to rule of law programming in any setting, regardless of its conflict dynamics. For instance, research on rule of law programming inside and outside of post-conflict contexts asserts that long-term changes flow from comprehensive approaches that blend “top-down” judicial strengthening and accountability efforts with “bottom-up” legal empowerment and civil society capacity building approaches. However, there are also certain elements of ABA ROLI’s rule of law programming that merit consideration more specifically for addressing cases of protracted conflict, cases of post-conflict reconciliation, and cases of political violence that are not directly related to civil war.

**Cases of Protracted Conflict**

ABA ROLI’s rule of law programming has focused on three key elements in countries that are currently experiencing protracted conflict or violence, despite the signing of peace agreements. They are: (a) maximising citizen involvement in informal discussions and formal consultative processes related to constitutional reform; (b) using legal and community-based clout to justify the inclusion of marginalised groups’ perspectives in transitional justice; and (c) supporting community-based and alternative dispute resolution, particularly in periods when citizens are awaiting the institutional reforms needed to foster public trust in the state courts as part of a more predictable legal order.

**In Libya**, ABA ROLI has supported programming on the constitutional drafting process since 2014. This has involved working with key elites to draft and propose inputs to the Constitutional Drafting Assembly (CDA), while also conducting 196 community dialogue sessions attended by the CDA and local actors including mayors, youth activists, female local council members, and members of minority groups.

**In Central African Republic**, ABA ROLI trained civil society organisations to collect rural community perspectives on the national peace and constitutional reform processes culminating in early 2015, and subsequently raised citizen awareness of the content of the constitution and the referendum held later in 2015.

First, ABA ROLI seeks to maximize citizen involvement in informal discussions and formal consultative processes related to constitutional reform. This approach is supported by research showing that citizen-oriented outreach and consultation about the constitution has the potential to contribute to building more legitimate state-society relations, and that citizen involvement in deliberative constitutional processes before drafting and referenda are more likely to foster democracy. Citizen involvement in the constitutional process is often subject to political constraints. Elite political actors do not always have incentives to support the underlying political settlement that constitution-making would reinforce; moreover, constitutional processes require more gradual work in environments where peace agreements are brokered and quickly broken or do not “stick.” ABA ROLI works practically within such constraints to facilitate the inclusion of citizens in constitution-related processes within a country’s existing timelines and institutional structures.

Second, wherever it is politically possible, ABA ROLI uses its legal and community-based clout to justify the inclusion of marginalised groups’ perspectives in transitional justice. Some recent research finds that rates of recurrence can be effectively reduced through domestic criminal prosecutions – particularly of middle and low-level perpetrators of human rights violations. The “individual criminal accountability model” of justice for human rights violations has become increasingly salient. Historically, however, “many attempts to prosecute and punish those
responsible for severe abuses under a prior regime have seen little success,” particularly when high-level officials are the targets of such prosecutions. At the same time, there are fewer firm findings about how much other components of transitional justice beyond prosecutions have on long-term stabilisation; indeed, “local actors will be involved in framing the [transitional justice] issue as part of political bargaining dynamics” and “there are no blueprints for what works” in all cases. In some cases, “spoilers” to the peace process may seek to evade retributive justice measures, even when public opinion is in favour of them as opposed to restorative justice approaches. In other cases, public opinion (and political possibilities) might tend in the opposite direction.

In light of these complexities, ABA ROLI focuses on shaping local incentives for designing inclusive transitional justice processes, regardless of the different retributive or restorative forms that the political and legal conditions allow those processes to take in various contexts. Depending on where a country stands in terms of its institutional commitments to transitional justice, as well as patterns of elite and public opinion about specific forms that transitional justice might take, incentive-shaping to facilitate inclusivity can have different levels of subtlety.

Third, in countries where such approaches are locally relevant, ABA ROLI’s work strives to support community-based and alternative dispute resolution consistently, but particularly in periods when citizens are awaiting the institutional reforms needed to foster public trust in the state courts as part of a more predictable legal order. In some contexts, the formal institutional strengthening and reform involved in stabilisation takes considerable time. In the interim, citizens have a range of violent and peaceful forms of recourse available to them to resolve disputes and address problems. For some but not all types of issues, and in some countries more so than others, those forms may have greater local legitimacy than those offered by state institutions. This is particularly liable to be the case when state institutions are weakened by protracted conflict, or are perceived as implicated in the conflict itself. In such contexts, research shows that non-state forms of dispute resolution can provide timely services that help to reduce the risk that local disputes intensify or reignite conflict. ABA ROLI has used training, community dialogue, and paralegal approaches to support community-based and alternative dispute resolution as part of broader, hybrid legal orders in various contexts of limited statehood.

In Mali in 2017, ABA ROLI trained youth civil society organisations on alternative dispute resolution tactics to apply in their communities, located in northern regions that were then most affected by ongoing conflict and instability. ABA ROLI then held a conference convening the government, TJRC, and youth civil society leaders for the latter to present lessons learned about local justice needs from applying dispute resolution methods at home.

In Central African Republic, ABA ROLI trained community paralegals to raise citizen awareness about justice options through state courts and mediation, providing support and accompaniment throughout any processes that clients initiate. ABA ROLI provides support through this legal aid clinic network in tandem with targeted institutional reform efforts aimed at improving case management and court efficiency, as well as special police response to victims of sexual and gender-based violence.
Cases of Post-Conflict Development and Political Violence outside of Civil War

Justice and rule of law initiatives can also serve a prevention function in countries that have largely put an end to widespread, protracted conflict or are subject to other forms of political violence and security risks. In both of these contexts, conflict prevention measures are desirable. In the Balkans and Sahel regions, ABA ROLI pursues several different approaches aimed at deterring returns to violence and facilitating sustainable, peaceful social orders. They include: (a) citizen-centered approaches that promote legal empowerment and judicial accountability over long periods of time; and (b) countering violent extremism programming that is informed by rigorous research and respectful of fundamental freedoms, civil liberties, and human rights.

Citizen-centered approaches promoting legal empowerment and judicial accountability over several years if not a decade have been useful for ABA ROLI when the grievances of certain victims marginalised during a past conflict remain unaddressed, or when the legacies of interstate conflict pose challenges to cross-border collaboration and coordination on justice issues. Although “greed”-based factors related to structural opportunities for rebellion are often seen as the principal drivers of civil war onset, grievances related to substantive political, social, and economic conditions (like social and economic exclusion) have significant influences as well. In several post-conflict settings, empowering civil society actors to address grievances through legal recourse and reform have yielded concrete achievements.

Furthermore, in settings where violent extremism and terrorism are prominent security concerns, ABA ROLI works to design countering violent extremism programming that is informed by rigorouse research and respectful of fundamental freedoms, civil liberties, and human rights. For broadly informed design, practitioners need scientifically sound research about the legal, political, economic, and social issues that influence patterns of violent extremism, radicalisation, and resilience. Although the factors influencing these patterns are often context-specific, rule of law-related factors are generally some of the major drivers of terrorism and violent extremism, particularly state violations of fundamental freedoms or civil liberties, state collapse, and citizen perceptions of social injustice. Working with host governments, as well as local researchers,
can help to ensure that rule of law approaches to CVE properly navigate the contextual nuances and sensitivities that arise.

### 3- Tensions in Rule of Law Assistance for Conflict, Security, and Stabilisation

Ultimately, these experiences highlight several aspects of rule of law interventions in conflict, security, and stabilisation contexts that merit further consideration in sector-wide learning and reflection. As a whole, ABA ROLI’s work suggests that rule of law assistance provided for stabilisation, security, and conflict-related work should be designed through problem-driven approaches that take citizen-centered perspectives. Top-down and bottom-up initiatives should complement each other, with institutional strengthening and judicial accountability initiatives from the top working to reinforce bottom-up work to convince citizens in conflict-affected settings to invest in peaceful modes of dispute resolution and look (at least in some part) to the state to provide justice services. Programs that focus largely on top down reforms should ensure that justice sector strengthening addresses the lawyers and advocates side of equation as seriously as it does the needs of investigators, prosecutors, and judges; at the same time, it should also ensure that it is not only elite justice sector actors who are included in fostering the changes that the program attempts to produce, especially if it seeks to support sustainable peacebuilding.

Work should also be politically informed about conflict drivers, political settlement dynamics, and citizen attitudes about peacebuilding and stabilisation. The nature of rule of law interventions in conflict-affected contexts ranges widely, partly because interventions must be tailored in an ongoing way to quickly changing political dynamics in specific contexts. This will help implementers to avoid exacerbating tensions and maximally tailor activities to meet citizens, civil society, and government actors where they are; ideally, this means that it is shaped by research that local actors have helped to complete.

However, rule of law implementers in violent and conflict-affected contexts face tensions in their work that complicate the use of good practices and the achievement of program goals and objectives. Some of the most notable challenges relate to balancing short-term and long-term goals, blending political and technical approaches, and engaging with the range of state and non-state aspects of governance and legitimacy in conflict-affected and insecure settings.

**Short-term vs. Long-term Goals.** The stabilisation literature is replete with warnings that the measures needed to achieve short-term and long-term goals are not always compatible. Diplomatic, defence, and development efforts to put an initial end to violence and conflict look different than those employed in service of building sustainable peace and citizen security. Furthermore, “the pursuit of certain policy goals – such as counterterrorism, counter-insurgency, peacebuilding, and statebuilding – may work at cross-purposes with stabilisation,” particularly when stabilisation is defined (in its least expansive form) as a short-term pacification of violence. As research has already identified, “significant tradeoffs may exist between pursuing stabilisation and more progressive peace.”

From a justice and rule of law perspective, part of achieving stabilisation in the short-term requires mobilizing local people, capital, and ideas to help beneficiaries of assistance find at least temporary ways to solve their everyday problems. In these situations, supporting certain non-
state forms of justice – especially customary justice fora – can be indispensable, even when the results they deliver are locally resonant but not up to international legal standards. However, achieving longer term stabilisation, conflict mitigation, and violence prevention through the rule of law requires politically controversial reforms. These might include reforms intended to ensure that state capacity gets built within a framework that respects human rights, minimises corruption, and facilitates both formal and informal institutions and practices that allow citizens to hold their governments accountable for providing essential justice and security services.

Thus, even when they are focused only on identifying the kinds of rule of law interventions that could be pursued to build sustainable peace, experts warn that “working toward fundamental goals such as establishing basic law and order, a government bound by law, equality before the law, and protection of basic human rights” are often not all achievable at once and at the same pace, and may even be at cross-purposes at particular moments of transition.23

**Political vs. Technical Approaches.** The problems that conflict, security, and stabilisation operations often seek to resolve are fundamentally political, economic, and social, as opposed to largely technical. “Politics matter” is one of the principal lessons that the CSSF learned through its first several years of operation.24 Similarly, the U.S. Government’s Stabilization Assistance Review asserts that “stabilization is an inherently political endeavor.”25 Rule of law-related assistance in this domain is also irreducible to the technical. Regardless of type, most rule of law reforms in fragile contexts serve goals that attempt to shape how power is distributed and wielded during and after transitions from violence to peace. When it requires significant reforms, building or restoring rule of law can thus be “a process inherently threatening to existing power holders,” with related programming depending not only on its technical quality, but also on the extent to which key parties to conflict and violence are constrained enough to accept the processes and outcomes that would foster legitimate forms of long-term stability. 26

Historically, however, rule of law assistance has tended to focus more on the technical side of effecting reforms, and in many cases on reforms of formal institutions within state justice systems. Over the last decade, this focus on the strictly technical has ebbed and the field has moved in the direction “smart” program design that more explicitly seeks to address political, economic, and sociocultural factors and their interplay in the desired reform processes.27 In countries experiencing protracted conflict, post-conflict transitions, and ongoing risks of political violence, where people have not yet located stable equilibria for peace or it has not fully consolidated, it is especially critical to tailor programming to work within the grain of relevant political dynamics.

For donors and practitioners to do this well, they need to produce, consult, and use applied research that explains the everyday challenges citizens face when seeking to ensure their basic justice and security needs in environments with overlapping or contested sovereignties. Political economy analysis may help to meet these needs, as long as it analyses not only powerful elite interests, but also the perspectives of more disparately organized citizens who are potential justice system users. Yet it is precisely in fragile political contexts where it is the least easy to produce such in-depth research in rapid timeframes and at minimal risk and cost.
State vs. Non-State Aspects of Legitimacy. Finally, legitimate and sustainable forms of stability look different across contexts, but are often likely to involve helping justice seekers navigate plural legal orders. Existing research highlights the importance of embracing legal hybridity in conflict-affected and post-conflict contexts and “accept[ing] that state law is not the only source of law or institutional arrangement that shapes and regulates social conduct.” Legal hybridity exists to some extent in all societies, for reasons related to “colonialism; the state’s need for legitimacy; the weakness or irrelevance of the state legal order; conflict and post-conflict reconstruction resolution; respect for diversity, multiculturalism, and identity politics; privatization or reduction of public expenditure in the justice sector; and, specific forms of intervention by donor and international development agencies.” In some cases, it is “a result of conflict or a legacy of post-conflict processes of reconstruction” and can be mobilized “in an attempt to prevent conflict by developing a new social contract, between the state and its citizens or between different groups of citizens.” Non-state legal orders that are involved therein might be customary, religious, local, or reflect the co-existence or amalgamation of multiple sources of authority in the everyday practice of dispute resolution. In addition, non-state armed groups may offer alternative justice and security systems to people. These arrangements are common in areas of limited statehood, where "a country's central authority (government) lacks the ability to implement and enforce rules and decisions and/or lacks the legitimate monopoly over the means of violence.”

Locally specific aspects of legal pluralism and limited statehood are critical to account for when designing conflict, security, and stabilisation programs. Acknowledging and responding to these dynamics affects how well such programs are likely to promote citizens’ agency in the peaceful resolution of disputes. However, there are immense local and national-level variations in conflict dynamics, the political and cultural factors shaping the administration of formal and informal justice, and the form and function of plural legal orders. As the UK Stabilisation Unit acknowledges, “while non-state institutions, particularly traditional justice mechanisms, may be quicker to deliver and hold great legitimacy, they also have weaknesses.” This gives rise to two challenges in designing relevant programming. First, gaining access to the degree and depth of information needed to design locally relevant, evidence-based programming based on these dynamics requires intensive human and financial resources, including strong connections to local experts who have accurate knowledge about the risks and benefits of doing stabilisation work in both formal and informal justice forums. Second, where appropriate, building considerations of legal pluralism and limited statehood into program design also means that the best-case scenario for sustainable peace and stability may also depart to some extent from certain universalist ideals set forth in international law (such as primacy of the state).

4 - Strategies and Tools for Addressing Tensions
It is impossible to resolve these tensions fully, but there are ways to address them productively. Donors and implementers are already aiming for the politically smart design of programs that address practical targets of opportunity, including through methods like thinking and working politically. To enhance these pursuits in ways that pragmatically address natural tensions in the work, practitioners should consider the following strategies:
• Using existing, in-country professional networks to forge strong local partnerships;
• Clearly demonstrating commitment to making those partnerships egalitarian and to empowering the local knowledge holders whose input is essential to success;
• Engaging in interdisciplinary analytics of the context that combine legal and social science methods to inform program design, adaptation, learning, research, and evaluation;
• Investing in building the capacity of local civil society on a variety of axes (technical, political, program management, monitoring and evaluation, research, outreach);
• Building upon time-tested connections with government officials and institutions to persuade and constrain them in pursuing reforms likely to bolster or reinforce public trust in the state;
• Working with a broad range of civil society – from professional associations and media actors to paralegals and community-based CSOs – to provide citizens access to a range of dispute resolution tools and recourse.

ABA ROLI has applied several of these strategies in Libya, the Balkans, and Mali. Striving for their smooth implementation, we have used in-house and external research tools and trainings to generate the relevant knowledge, analysis, and recommendations.

Learning from Operations Research in Libya
In Libya, stakeholders have drafted a new constitution and are engaged in ongoing debates, judicial challenges, and political negotiations about its promulgation. Since 2014, ABA ROLI has sought to contribute to the reconstruction of the social contract in Libya by providing all citizens with opportunities to participate in building constitutional frameworks, effective national institutions, and social and economic security. To this end, bottom-up approaches involve engaging citizens in national dialogue in order to collect community perspectives and build consensus on issues relevant to the constitutional development process. Top-down approaches seek to engage in evidence-informed justice sector strengthening initiatives to improve the judiciary’s accountability to citizens.

In both its top-down and bottom-up approaches, ABA ROLI has adaptively structured the content of its work around knowledge produced through locally embedded and politically aware operations research. Practical learning has occurred through multiple processes and methodologies, which each hinge upon mobilising pre-existing local and national networks of researchers, professionals, and technical specialists. This has helped to shape stabilisation programming that is tailored and responsive to quickly changing political dynamics related to ongoing political violence, the extension of state authority, and the inclusiveness of the constitution-making process.

Using Legal and Civil Society Expert Analysis to Foster Advocacy in the Balkans
In the Balkans, ABA ROLI has used legal and policy research on criminal defense advocacy to pursue reform-oriented advocacy designed to build bridges across the political and ethnic differences that divide the region. Beginning in 2014, the Balkans Regional Rule of Law Network (BRRLN) has brought together the region’s bar associations and justice sector civil society organisations (CSOs) to share best practices, tools, and knowledge and to collectively engage in advocacy on common issues that they identify as undermining the rule of law.
An in-house, baseline comparative assessment of criminal defence advocacy in the Balkans informed the development of the Network, whose official members went on to include the bar associations of Albania, Bosnia and Herzegovina, Kosovo, and North Macedonia. The Bar Association of Serbia, although not officially a member of the Network, regularly sends participants to Network events who contribute to the Network’s activities in an individual capacity. Based on the negotiations informed by the substantive findings of the comparative assessment, all five bar associations signed a memorandum of understanding in 2015 to outline their cooperation with BRRLN and with each other to work together to address regionally relevant challenges in criminal defence advocacy. Beginning in 2019, the Network has also begun incorporating the Bar Association of Montenegro into Network events and activities in an effort to broaden the reach of the Network’s regional criminal justice initiatives.

The remainder of the program leveraged the inputs of two different types of local knowledge-holders to shape regionally coherent advocacy for criminal law reform. First, with logistical and technical support from ABA ROLI, the five initial BRRLN bar associations worked together to identify critical defence rights violations in Criminal Procedure Codes across the region. Based on data gathered from legal analysis, a region-wide survey of 177 defence attorneys, and interactive workshops with 265 attorneys from Belgrade, Pristina, Sarajevo, Skopje, and Tirana, BBRLN partners produced a Criminal Law Reform Assessment Report that provided country-specific recommendations to inform advocacy efforts for criminal law reforms to reinforce due process and protect the rights of defendants. Second, rule of law-focused CSOs in the five BRRLN countries to conducted assessments of problems with criminal court-appointed attorney programs in their respective countries. With ABA ROLI support, these CSOs worked with lawyers and bar associations to share the results of the assessments. The CSOs discussed their research-based concerns about the lack of transparency in appointment systems for advocates, low levels of internal monitoring and sanctioning of lawyers when warranted, and inadequate payment systems. Thereafter, all actors in the exchange worked together to develop recommendations for improving the protection of the rights of the accused that bar associations themselves endorsed.

Each of these elements of the research and advocacy strategy ensured that the first-ever criminal reform initiative by the region’s bars was locally owned, collectively crafted, and built upon evidence about each member country’s de jure frameworks, de facto defence advocacy practices, and the relationship of each to regional and international standards. The efforts were particularly important for ensuring stability in the region at the time, as various countries continued to undergo transitions from inquisitorial to adversarial justice systems. All countries involved have been “Candidate” or “Potential Candidate” countries for European Union (EU) accession, so the programming also created opportunities for participants to explore possibilities for promoting criminal law and ex officio defence in ways that not only fostered cross-regional collaboration, but also helped to solidify shared EU values inherent in criminal defence rights. The locally-driven research products gained notice and traction in the region. The advocacy that bar associations conducted based on the Criminal Law Reform Assessment recommendations led to several relevant legislative reforms in Kosovo and North Macedonia. In addition, the Helsinki Committee for Human Rights in Republika Srpska disseminated the ex officio report and recommendations related to the effectiveness of the legal protection systems of the accused in the various host countries.
Furthermore, the BRRLN program’s regional network-building strategy that these tools supported facilitated several diplomatically relevant knowledge exchange activities between bar associations. For instance, in 2015, the Kosovo Bar Association (KBA) hosted the Serbian Bar president and board members for a first-ever visit in Pristina. The KBA sought Serbian bar members’ advice on responding to changes in a pending notary law that would affect the division of competencies for lawyers and notaries. Similarly, in 2016, the KBA made its first-ever visit to Bosnia and Herzegovina, when it visited the War Crimes Defense Department within the Bosnia and Herzegovina Ministry of Justice. The Ministry provided technical assistance to the KBA on effective war crimes defence as Kosovo established its own War Crimes courts.

**Local Problem-Solving through Capacity Building in Mali**

In 2017, as part of a broader package of transitional justice programming, ABA ROLI sought to build the capacity of youth-oriented civil society organisations to combat marginalization in northern Mali, a politically fragile region of the country with sparse central government presence. Initial research on local dynamics of violent extremism suggested that youth groups were relevant stakeholders to engage in addressing core drivers of radicalisation. To this end, ABA ROLI pursued a phased approach, providing youth-led CSOs with opportunities to analyse the local drivers of violent extremism, then retaining Malian attorneys to train them on alternative dispute resolution (ADR) methods, and ultimately funding several projects that youth stakeholders designed to prevent and counter violent extremism in their communities, which reached over 1,000 people.

Through this model of local training, research, and engagement, youth CSOs in different northern hubs pursued varied forms of programming to combat radicalisation and violent conflict. Nevertheless, each youth CSO gained levels of community access and attention from local and national government actors that would have been difficult for international development organisations to obtain on their own. In Mopti, partners held workshops and community dialogue sessions about community cohesion and the dangers of violence and radicalisation. They received supporting documentation from the Governor of Mopti and were able to travel to every district of the region, even areas where the Malian national government itself had not recently been able to reach. In Gao, youth leaders held community awareness-raising sessions about the dangers of radicalisation and religious justifications for it. Local imams agreed to host the awareness-raising sessions in mosques, a privilege that they tend to grant conservatively for discussions of issues that are not related to the regular sermon. Partners in Timbuktu trained additional youth leaders on conflict prevention, conflict management, and CVE techniques. During the conceptualization of that project, the mayor of Timbuktu also engaged the youth CSO in that region to help negotiate an end to religiously justified local violence that he had been unable to resolve on his own.

In the final leg of the program, ABA ROLI used its long-standing linkages to national government officials to connect the youth stakeholders to ministerial and transitional justice authorities. At a learning-oriented conference in Bamako, youth CSO leaders engaged with national-level officials about their experiences implementing dispute resolution-related initiatives. In particular, youth CSO staff were given the opportunity to generate recommendations about preventing and countering violent extremism based on their projects and
Combining locally-driven research and program design with national-level dialogue and exchange about critical security and stabilisation issues in northern Mali, ABA ROLI was able to facilitate rule of law programming that was both tailored to the local level and relevant to ongoing justice-related discussions in elite circles on the national level.

5 - Conclusion
As the above examples suggest, rule of law programs can provide an opportunity to empower local and national actors to explore creative ways to engineer solutions to everyday problems, even in places where the legitimacy of central government authorities is contested. These programs can temporarily assist in filling gaps in service provision that existing actors are unable or unwilling to address. They can also build bridges between such short-term measures and longer view efforts to achieve security and stability, namely by exploring possibilities with governments to build local support for national-level peacebuilding or conflict resolution activities, and vice versa.

Even in places that are not conflict-affected but face significant security risks, rule of law programs can empower people to identify, understand, and use the justice forums of their preference to peacefully resolve disputes and pursue their everyday governance-related needs. This, along with top-down institutional reforms to state institutions when they are relevant and feasible, can help to address issues related to human rights, social exclusion, and economic or political opportunity that might otherwise exacerbate risks of violence.

However, building that bridge between short-term and long-term efforts requires navigating a multiplicity of political sensitivities related to peacebuilding, institutional reforms, and public trust in state and non-state authorities. To do so more effectively, donors and implementers of conflict, security, and stabilization programming must invest wisely in further research that is localised and applied, as well as evaluation that is outcome-oriented and complexity-aware. There is growing cause to build partnerships for applied research and institutional capacity-building with faculties of law and social science in various countries, private research firms with complex sampling capabilities for interdisciplinary studies, and local civil society organisations whose members have the on-the-ground knowledge and credibility to access the communities that need to be included in applied research to inform the development of effective and resonant stabilisation programming.38


Although incomplete indicators of rule of law, these characteristics roughly map onto various elements in the World Justice Project’s robust definition, which identifies accountability, just laws, open government, and accessible and impartial dispute resolution as the “four universal principles of the rule of law.” See World Justice Project Rule of Law Index 2019, World Justice Project, 2019, p. 9, https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2019-Single%20Page%20View-Reduced_0.pdf


United Kingdom Stabilisation Unit, op. cit., p. 75.


The research on the politics of transitional justice and stabilization shows that “significant tradeoffs may exist between pursuing stabilisation and more progressive peace.” See Patrick Meehan, “What are the key factors that affect securing and sustaining of an initial deal to reduce levels of armed conflict? Literature Review,” Her Majesty’s Government Stabilisation Unit, August 2018, p. 27. The sometimes competing goals between short-term stabilisation and progressive peace can affect whether amnesty is granted to previous perpetrators of crimes during conflict, what kinds of transitional justice processes are pursued if any, and how legitimate they are to victims, other citizens, and political elites with differing interests. See also Snyder & Vinjamuru 2003/4, op.cit; Julie E. Taylor, “Establishing Favorable Political Conditions,” and Stephen Watts, “Political Dilemmas of Stabilization and Reconstruction,” in Paul K. Davis, ed. Dilemmas of Intervention. Social Science for Stabilization and Reconstruction, RAND Corporation, 2011.


Paul Collier & Anke Hoeffler, “Greed and Grievance in Civil War,” Oxford Economic Papers 56, 2004, 563-595; Lars-Erik Cederman, Krisian Skrede Gleditsch & Halvard Buhaug, Inequality, Grievances, and Civil War, Cambridge University Press, 2013. The latter find that “ethnic groups that are excluded from governmental influence are more likely to experience conflict than those that enjoy secure access to executive power. Recent loss of power or outright discrimination...tends to increase the risk of conflict even further,” p. 4.


Extensive discussion of key questions and tradeoffs in stabilisation are covered in Paul K. Davis, ed., op. cit. Specific reference to the above-mentioned tradeoffs appears first in Davis’s introduction, p. 7 and subsequent chapters analyse them in further detail.

Meehan, op.cit., p. 27.

Stromseth, op.cit., p. 1456.

CSSF Annual Report, op.cit.

Stabilization Assistance Review, op.cit., p. 1. Similarly, certain transitional justice experts have asserted that “transitional justice is ultimately politics in the guise of legalism” and that “the problems of postconflict and posttransition societies are essentially political ones.” See Duncan McCargo, “Transitional Justice and its Discontents,” Journal of Democracy 26:2, April 2015, p. 18.


32 Domingo, op.cit., p. 10

33 United Kingdom Stabilisation Unit, op. cit., p. 67.


37 Tintor, op.cit., p. 16.

38 To this end, ABA ROLI has developed a concept note, “Complementary Capacity-Building Initiative for Applied Research with African Universities,” that is adaptable to the applied research needs for CSSF programs.