

Rule of law in Sudan's Three Areas

by Sebastien Gouraud

The establishment of rule of law is crucial to sustaining peace-building efforts in post-conflict Sudan. In March 2005, UNDP embarked on a major rule of law programme in the isolated and war-torn Three Areas region in order to facilitate people's access to justice.

Abyei, Blue Nile State and Southern Kordofan/Nuba Mountains – an area with a population of around four million – are collectively known as the Transitional or Three Areas. The Comprehensive Peace Agreement (CPA) signed in January 2005 by the Government of Sudan and the Sudan People's Liberation Movement (SPLM) did not resolve whether the region was to be part of Southern Sudan or remain under the control of Khartoum. Protocols agreed between the Government of Sudan and the SPLM in May 2004 recognise the special status of the Three Areas but leave many questions unresolved. Two years after signing of the protocols, the Three Areas – which were at the frontline of the North-South civil war – are now confronted by a large influx of returnees as well as continuous conflict over land, property and natural resources. It is estimated that 300,000 displaced persons and refugees will return to the Three Areas in 2006, the majority to Southern Kordofan and Blue Nile. These large-scale returns, coupled with the lack of absorption capacity in areas of return, pose a clear and distinct threat to human security and sustainable reintegration.

Given the current increase in crime and in land and property claims, plus the general lack of trust in state institutions, it is critical to provide returnees and receiving communities with effective mechanisms to provide protection, resolve disputes and redress grievances. Establishing rule of law in Sudan will require a combination of community-based approaches and capacity building of rule-of-law institutions. They must be reinforced by good governance and political action at the national

and international level. The absence of effective action at community, state, national or international level could undermine the entire North-South peace-building process. It is against this background that UNDP has established its Strengthening Access to Justice and Human Security programme in the Three Areas.

Conflict and violence

It is anticipated that, despite the CPA, violence will continue to plague certain areas of the Three Areas, especially where tensions are high due to the presence of militia, oil interests and the ongoing return process. Many communities are militarised, small arms are readily available and competition over scarce resources is fierce. Expansion of the towns and their surroundings during the period of return and reintegration is bound to aggravate matters and lead to increased levels of criminal activity.

Land rights are traditionally derived from ancestors and often collectively owned by the community or tribe. For the most part, a formal registration or documented ownership scheme is absent. However, in urban areas land and property are increasingly viewed as a legal right based on individual claims and documentation. Many foresee potential problems in the towns, where the authorities have allocated or leased plots to traders, prominent individuals or others who can afford to lease land and property. There are reports of pending or unsatisfactorily resolved cases of ownership in towns like Abyei. In most instances the legitimate owners of property have to go

through lengthy and time-consuming processes to establish their rights, only to be compensated with unattractive plots in the countryside. These initial cases indicate the need to establish a fair judicial resolution mechanism and formal registration of urban property ownership.

With only a few exceptions, women do not enjoy the right to own property under customary law and may face acute problems in reclaiming land or property belonging to the husband or other male family members. Women often bear the sole burden of providing for themselves and their families, and have been thrust into the public sphere in a highly militarised male-dominated environment. Traditional family and community arrangements that provided physical and material security for women and children in the past now afford little protection from criminal elements. Engendering customary and statutory rule of law institutions and mechanisms in the Three Areas remains one of the most formidable challenges to administration of justice reform. Men and women are regarded as very different legal subjects in both the formal and informal realms and women tend to be excluded from leadership or significant public decision-making fora.

UNDP's Access to Justice Initiative

To try to respond to these issues, UNDP – in coordination with the International Rescue Committee – has established five Justice & Confidence Centres (JCC) in Abyei, Kadugli, Dilling, Lagawa and Damazin. Through these UNDP aims to improve access to justice, foster the reconciliation and confidence process between returnees, local communities and the authorities and engage the authorities in proactive civilian protection.



The human rights outreach activities of the JCC encourage stakeholders to accept their responsibilities in the process of confidence building and to support a culture that respects the rule of law. This entails building the knowledge, capacity and confidence of vulnerable groups to enable them to work towards their own development. Empowerment activities include educating the poor and other vulnerable groups, especially women and IDPs, about legal and human rights, and helping them take legal action. In contrast to conventional human rights training, JCC awareness-raising activities draw on traditional and indigenous conflict resolution, cultural and religious values.

Legal awareness raising helps people understand they are entitled to claim remedies against infringements of their rights. UNDP is supporting the

provision of legal aid, representing clients (communities and individuals) before the authorities and, at the same time, empowering the latter to become more effective and responsive. This involves expanding provision of free legal services to poor, marginalised and indigent groups or communities. Such assistance is relevant for both civil and criminal cases and involves representation in formal court proceedings as well as providing advice and assistance concerning administrative matters that can be determined in quasi-judicial tribunals.

There are currently very few legal professionals in the Three Areas. One of the objectives of the Justice and Confidence Centres is to identify individuals – possibly those with a legal background – to train them as paralegals. The role of the paralegal is to help people solve their legal problems by

liaising between the client and the police, prosecutors and judges.

In addition, UNDP is also supporting public interest litigation to try to change existing patterns of power and privilege. This kind of litigation involves lawyers taking up cases on behalf of interest groups or communities who are largely vulnerable and powerless, such as prisoners, women, the poor and IDPs.

Through their Legal Information & Resource Centres, the JCCs make available legal information and materials – law texts and other regional and international human rights documents and publications – not only to the public but also to judges, lawyers, prosecutors and human rights activists.

Conclusion

The Access to Justice Initiative, which is at the heart of the UNDP Rule of Law programme in the Three Areas, includes capacity building of judicial and law-enforcement institutions as well as support for traditional dispute resolution mechanisms. The return and repatriation of displaced persons to the Three Areas presents a unique array of human security problems which have a direct bearing on the protection of individuals and communities and on access to justice. UNDP's Access to Justice Initiative targets this early recovery phase in order to address immediate protection needs while at the same time bridging the gap between relief and development in an effective and realistic way.

Sebastien Gouraud is a Programme Officer in charge of the UNDP Rule of Law Programme in the Three Areas (Abyei, Blue Nile State and South Kordofan State). Email: sebastien.gouraud@undp.org For more information about the UNDP Rule of Law Programme in Sudan, contact Yasmine Sherif, Head of Unit & Senior Adviser on Rule of Law. Email: yasmine.sherif@undp.org

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