

Promoting the rule of law in Darfur

by Sarah Maguire and Maarten G Barends

Rule of law programmes usually take place after conflicts have ended. However, UNDP is pioneering a major initiative amidst ongoing conflict in Darfur.

In recent decades, strengthening the rule of law has become one of the central objectives – and prerequisites – of international development assistance. UN agencies (most notably UNDP), the development banks and some bilateral donors are conducting rule of law programmes in an increasing number of countries. These are often described as ‘access to justice’ or ‘justice and security sector reform’ and have a range of objectives.

Launched in September 2004, the UNDP Rule of Law Programme in Darfur marks an important step towards mainstreaming rule of law programming in all situations of armed conflict. Implemented jointly by UNDP, the International Rescue Committee (IRC) and a variety of Sudanese civil society and academic institutions – and funded by the UK and the Netherlands – it consists of five sets of activities:

- rule of law and human rights training for government officials and community members
- support to paralegal groups composed of internally displaced and other war-affected persons
- establishment of a local legal aid network
- establishment of legal information centres
- public symposia on rule of law related issues.

UNDP has completed rule of law and human rights training for over 10,000 law-enforcement officials, prison wardens, judges, security officials, soldiers, traditional authorities, tribal leaders, lawyers, civil society representatives, IDPs and host communities. This training aims to change attitudes and perceptions about rule of law and human rights, and to instil again in Darfurian society a sense of doing what is right, based on shared

cultural values, universal ethics and international standards.

Considering that Darfur – like the rest of Sudan – has no tradition of paralegals, the experiment is working well. Operating out of UNDP Justice and Confidence Centres the paralegals are trained to support and respond to the legal needs of communities, foster reconciliation and confidence building between IDPs, host communities and local authorities and engage the authorities in pro-active protection. Paralegals help members of their communities to explain their problems and to decide whether to seek assistance from camp police, lawyers, international organisations or traditional leaders who facilitate community-based mediation. In order to remove any suggestion of confrontation with the authorities, in some instances the paralegals are referred to as ‘community mobilisers’. They are clearly trusted by their own communities and have managed to develop positive relationships with local police and government authorities. For instance, a woman paralegal from Abu Shuk camp was selected by her peers to represent the IDP communities at recent peace negotiations between the government and the Darfurian rebel groups in the Nigerian capital, Abuja.

The paralegals create role models for others in their communities. They are proof that IDPs are neither passive nor ‘victims’ but can take control, become knowledgeable, have access to authorities and win trust from government officials, community leaders and international organisations.

“I was just outside [the camp] when I saw a person having an argument with some police officers. It looked like he was being harassed by the police. I recognised the per-

son from [the camp]. I knew from my training as a paralegal that this was a restriction on his [freedom of] movement. I approached the police officers and told them that I was a [paralegal] in [the camp], that I knew the person they were talking to and that they should let him go as he was doing no harm. The police said that they knew we had had human rights training and they let the person go with me.”

“Two people were abducted... When we heard about it, we knew what to do because of our training. We went ...and talked to the Humanitarian Aid Commissioner. The people were released after eight days.”

“A sheikh came to us because he was worried about what was going on in a particular household in the camp. We found that a 14-year-old girl had been held prisoner by her father for months. Her hands and feet were bound so tightly that she later had to have an amputation. We went to the police who released her and charged the father. Before we started work here, there was no way the sheikh would have gone to the police.”

Access to justice is further enhanced by the establishment of the UNDP Legal Aid Network, a network of Darfurian lawyers who take on cases referred to them by, among others, the paralegals. Despite the ongoing conflict and although severely compromised, the justice system has not completely collapsed. Lawyers are currently dealing with over 70 cases representing marginalised persons (usually IDPs) in a variety of civil and criminal cases. Rights of representation have been secured in North Darfur’s Special (Public Order) courts. Social workers are available to give evidence in cases of rape to prevent the women being accused of adultery later.

The network not only supports individuals in need of legal assistance but also challenges the system to ensure it starts living

up to basic legal standards. In close collaboration with Darfuri academic institutions, UNDP has organised Rule of Law seminars each of which has attracted an average of 200 lawyers, local authorities, students and IDPs. Discussions are increasingly open and frank. Topics covered include Sudanese domestic law and international human rights, customary mechanisms of peaceful conflict resolution and the relevance of the Comprehensive Peace Agreement¹ to the Darfur conflict. Furthermore, UNDP has organised a number of political debates, inviting local representatives of Sudanese political parties to present their views on political solutions to the Darfuri conflict. Through these seminars UNDP aims not only to raise awareness of rule of law and human rights principles (notably freedom of speech and assembly) but also to build confidence and foster reconciliation.

In Sudan, law students are taught by professors with little access to information, study from books that are out of date and have no access to legal libraries. Establishment of Legal Information Centres in the capitals of the three states in the Darfur region will provide much needed information to government authorities, legal

practitioners, students, academics and the general public. The centres should increase awareness of international and national law, and enhance capacity among paralegals, lawyers, judges and prosecutors to translate these principles into reality.

It is equally important for communities to be aware of their rights as it is for government officials and other duty-bearers to be conscious of their responsibilities. Targeting only one group does not produce sustainable effects and can increase tensions or cause harm.

Challenging the critics

The UNDP Rule of Law Programme has not waited for a peace agreement or even a ceasefire. Some may ask whether it is appropriate and relevant to be conducting a rule of law programme when humanitarian needs are still great, massive violations continue to be committed and recovery is not even on the horizon. The partners in the programme argue that:

- Human rights are universal: all people have the same rights, whatever their current situation or origins. People do not cease to need and deserve access to justice once they become vic-

tims of war. The fact that local authorities are often incapable or unwilling to protect war-affected populations makes the need to address the rule of law vacuum all the more urgent.

- It is likely that the Darfur crisis will eventually be resolved and people will make a fresh start in or near their original communities. If the foundations of the rule of law have not been established this cannot happen.
- The impact of the empowerment of paralegals will be long-lasting: wherever they subsequently go they will take their skills and knowledge with them and promote a culture of human rights.
- Actions to address even small grievances are important. Issues of widespread, systematic discrimination can affect the lives of a community just as much as torture or arbitrary detention.

The international community has saved lives in Darfur but humanitarian agencies are all too aware that living on humanitarian assistance can be disempowering and create passivity and dependence. Income generation projects, skills and literacy programmes and participative approaches all endeavour to address this. The Darfur



programme has demonstrated that, with support and necessary protection, people can and do take action to protect themselves and their communities.

It is now conventional wisdom that armed conflict is not linear and that opportunities for conflict resolution and prevention of escalation and further outbreaks exist at every stage and that they are not restricted to the parties to the armed conflict. The rule of law may be described as a direct alternative to the rule of force. It is self-evident that equipping a community with the information and tools with which to negotiate along the lines of entitlement and responsibility – rather than by physical force – and to bring them together along lines of common interest can only promote peace building and conflict transformation.

Lessons learned

The UNDP Rule of Law Programme in Darfur has needed to evolve in response to a fast-changing context. It has sought to be imaginative and creative while maintaining the highest standards possible. A self-evaluatory and self-critical approach at all stages of the programme cycle ensures that the programme continually strives for greater impact and sustainability.

All aspects of the programme have considered issues of gender equality and prioritised combat-

rights do not disappear even where they are not realised

ing discrimination against women. Training has addressed the multiple threats faced by women, there are female members of paralegal groups and women are urged to attend seminars and to speak out. Establishing a programme ‘from the ground up’ – trusting the views and experience of the affected community and ensuring that women have the space and opportunity to contribute fully – is crucial. It means that a Rule of Law programme can identify appropriate entry points, develop innovative strategies for overcoming obstacles and work towards gender equality, both as an end in

itself and as a pre-requisite for the realisation of all human rights.

Reducing the rate of sexual and gender-based violence is a crucial indicator of the value of a programme such as this. The presence of international lawyers has opened up space for Darfurians to discuss a range of hitherto ‘sensitive’ topics. When women and men are increasingly prepared to address issues of domestic violence, for instance, it indicates that taboos are giving way to a culture of human rights and recognition that no issue is too controversial or sensitive to be addressed.

The programme has needed to strike a careful balance between being risk aware and risk averse. The programme entered the arena of the protection crisis in Darfur in a timely way, building up slowly but resolutely and closely involving government partners, civil society organisations (including Darfuri academic institutions) and the wider international community. Relationships are being forged with Islamic religious leaders with a view to conducting training in basic human rights principles, working through Sufi values and ethics.

The strategies and mechanisms developed by the lawyers and the paralegals are creative and imaginative. Working against enormous obstacles – Sudan’s non-ratification of some key international human rights instruments,² an under-resourced justice system and a lack of separation of powers between the judiciary and the executive – the lawyers, nevertheless, continue to find ways to influence the justice system.

Programmes such as this must not raise unnecessary expectations, particularly amongst displaced people. The rule of law and human rights training contains a central message: that rights do not disappear even where they are not realised. The people of Darfur have suffered greatly. They know that what has happened to them is wrong, and explaining the wrongs within the framework of international law shows them that the international community agrees with them.

The international community is increasingly cognisant of the universal relevance and importance of the rule of law. The UNDP Rule of Law Programme in Darfur demonstrates that rule of law activities can and should be an important component of humanitarian assistance and conflict transformation and prevention. It is to be hoped that the programme will pave the way for the full mainstreaming of rule of law activities amidst armed conflict and in the early stages of recovery.

Lawyers working with the programme have been arrested and detained on numerous occasions but have been released after clarifying their association with UNDP. Increased visibility of UNDP and its ‘back donors’ provides some degree of protection. However, continued explicit high-level support from the UN mission and the diplomatic community is essential.

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This article is written in a personal capacity and does not necessarily represent the views of the UN or any other organisation.

For more information about the training provided by the programme, see J Aguetant, *Towards a culture of human rights in Darfur*, FMR24 www.fmreview.org/FMRpdfs/FMR24/FMR2423.pdf

1. The agreement between the Government of Sudan and the Sudan People’s Liberation Movement which ended Sudan’s North-South conflict and paved the way for creation of the Government of National Unity in September 2005. See FMR24, www.fmreview.org/FMRpdfs/FMR24/FMR24contents.pdf

2. Sudan is not a State Party to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention Against Torture and Inhuman and Degrading Treatment amongst others.