



**ROLE UK**  
Rule of Law Expertise

# Reflections on ROLE UK's approach:

Learning from reviews of justice and security programming

Lisa Denney  
Pilar Domingo

September 2016



# Reflections on ROLE UK's approach

---

## Contents

Foreword .....	3
Introduction .....	4
ROLE UK's approach .....	4
Reflections.....	5
Overall approach.....	5
Rule of law and development .....	6
Capacity building's deficit lens .....	7
Capacity building's modalities of assistance.....	9
Focusing on people as the ultimate beneficiaries .....	10
Privileging of the formal justice system .....	10
From best practice to best fit.....	11
Demand-driven.....	12
Sourcing expertise.....	13
Problem-focused .....	14
Contextually aware .....	15
Flexible and adaptive .....	16
Learning focused.....	17
Value for money .....	18
Conclusion.....	19
Bibliography.....	20

# Reflections on ROLE UK's approach

---

## Foreword

The skills, expertise and resources within the UK legal and judicial sector represent an important opportunity for supporting effective and accountable rule of law policies and practices in developing countries.

ROLE UK seeks to strengthen the contribution of UK government and pro bono legal and judicial experts through direct financial and technical support to assignments. It also does so by adopting a critical approach to questions of how the relevance, sustainability and impact of international pro bono work can be maximised. This approach, which prioritises the generation and sharing of learning and evidence, is important given the challenges and complexities involved. These include the political nature of rule of law and the parameters of pro bono work in which deployed experts participate.

ROLE collates and analyses evidence from the assignments that it supports. We also seek to ensure that we are building on - and learning from - existing evidence of what works (and what doesn't) generated over many years of rule of law and development programming. This paper provides evidence-based reflections on the ROLE UK approach and its findings are shaping our ongoing work and feeding into our collaboration with others in the pro bono and rule of law sectors.

To find out more about ROLE UK please visit our website [www.roleuk.org.uk](http://www.roleuk.org.uk) or get in touch at [info@roleuk.org.uk](mailto:info@roleuk.org.uk)

Catherine Flew  
Rule of Law Adviser – Monitoring, Evaluation and Learning  
ROLE UK

# Reflections on ROLE UK's approach

---

## Introduction

This short paper has been commissioned by the Rule of Law Expertise (ROLE) UK Programme as part of its ongoing learning and monitoring efforts. It reflects on the ROLE UK approach in light of evidence emerging from a range of reviews of justice and security programming. These include, but are not limited to, the Independent Commission for Aid Impact's 2015 review of UK security and justice programming (ICAI 2015), a 2015 DFID evidence synthesis on the relationship between security sector reform (including justice reform) and capacity building (Denney and Valters 2015), a 2016 OECD report on improving security and justice programmes in fragile situations (van Veen 2016), and ongoing work bringing justice and security researchers, policymakers and practitioners together at ODI (see for instance Denney and Domingo 2014; Denney and Domingo 2015).

These reflections were prepared based on a review of ROLE UK programme documentation, as well as a phone interview conducted with ROLE's Monitoring, Evaluation and Learning Adviser. They are intended to prompt ROLE UK to reflect on its overall approach, as well as the elements that constitute it, in light of wider evidence of what works (and what does not) in justice reforms. They also propose some potential changes that may be made to programming in order to better reflect what is known about effective capacity support.

## ROLE UK's approach

Funded by the Department for International Development (DFID), ROLE UK aims to improve the rule of law in DFID priority countries<sup>1</sup> by facilitating access to specialist government and pro bono UK legal and judicial expertise. ROLE supports the deployment of experts to undertake assignments that contribute to positive changes in policies, procedures and practices of legal reform, implementation of law and judicial systems.

The rule of law is seen as the foundation that underpins open and fair societies and economies, where both citizens and businesses can prosper on the basis of equality before the law, which is publicly known and understood. In order to meet DFID's poverty reduction

---

<sup>1</sup> DFID's 27 priority countries are: Afghanistan, Bangladesh, Burma, Democratic Republic of Congo, Ethiopia, Ghana, Kenya, Kyrgyzstan, Liberia, Malawi, Mozambique, Nepal, Nigeria, Occupied Palestinian Territories, Pakistan, Rwanda, Sierra Leone, Somalia, South Africa, Sudan, South Sudan, Tajikistan, Tanzania, Uganda, Yemen, Zambia and Zimbabwe.

# Reflections on ROLE UK's approach

---

mandate, assignments supported by ROLE must contribute to one of the following pathways to reducing poverty:

- growth and investment
- peace and security
- accountability and democracy
- equality and social justice

ROLE's support is understood as filling a gap in existing justice support provided by the UK – namely high quality legal and judicial expertise that is often unaffordable or unavailable through bilateral and multilateral programmes. Support is demand-led, with applications made by counterparts who have identified a justice problem for which they require legal or judicial expertise. ROLE then sources short-term expertise to assist in addressing the problem.

ROLE also aims to be learning focused, helping to test and build evidence for how short-term capacity building efforts can strengthen the rule of law. To this end, the programme produces papers and holds events aimed at disseminating knowledge amongst the UK pro bono and development communities.

## Reflections

Below, we set out our reflections on a number of the central components of the ROLE UK approach and model, drawing on wider evidence from recent justice reviews.

### Overall approach

We start by interrogating some of the assumptions (explicit and implicit) in ROLE UK's approach that bear deeper consideration in light of learning about justice sector development.

# Reflections on ROLE UK's approach

---

## Rule of law and development

Literature on the links between the rule of law and poverty reduction and development is undergoing a resurgence.<sup>2</sup> It builds on a growing body of critical analysis on two related issues. First, the complex interconnections between rule of law, politics and development – a rich scholarship around which affirms the need for nuanced and politically grounded understanding of the role of law in politics and development. There is nothing automatic about rule of law being pro-poor. Rule of law is a politically contested outcome that reflects an agreement around the rules of the game regarding social, political and economic interaction. Its rules have a binding character, are publicly known and are expected to be implemented impartially. Moreover, rule of law suggests equality before the law, the observance of due process and rights protection. The rule of law is also related to holding to account rulers, state officials and society. But the rules themselves may be more or less equity enhancing or redistributive. The *content* of law is not politically neutral. It may be more oriented, for instance, to poverty reduction, addressing inequality, or to affirming patterns of inequality, and importantly is the result of political processes, which may be more or less inclusive, representative or participatory.

The second issue that rule of law and development literature draws on relates to the role of international actors in supporting what have tended to be top-down overly technical and legalistic approaches to rule of law development.<sup>3</sup> Here, the growing emphasis has been on the need to: move from supply-driven to demand led processes; facilitate bottom-up engagement with the law and justice mechanisms that enable legal empowerment; work with the constraints and opportunities afforded by the political economy of context *and* of the justice problem at hand; understand the nature of legal pluralism; and to ensure locally led readings of justice needs in the knowledge that these themselves will be politically contested. The latter point is important. Efforts to ensure the implementation, for instance, of women's rights to gender-equal inheritance law are likely to encounter resistance not only in the form of social norms but also in the conduct of law enforcement and adjudicating bodies.

---

<sup>2</sup> See, for instance, essays in Trubek and Santos 2006; Perry-Kessaris (2011); Kleinfeld (2011); Porter *et al.* (2011); Brinks and Botero (2014).

<sup>3</sup> See for instance, essays in Tamanaha *et al.* (2013) on customary justice and legal pluralism; Faundez (2013); Albrecht *et al.* (2011).

## Reflections on ROLE UK's approach

---

Some justice reforms have a clearer development logic than others. The focus of many Western donors on the development potential of commercial justice as a way to encourage investors that will provide jobs and growth is heavily normative and not in all cases borne out in practice.<sup>4</sup> It assumes that investment leads to growth that benefits all. Yet we know that, in practice, especially in contexts with high levels of patrimonialism, growth in fact tends to benefit elites with little trickle-down effect. By contrast, working to improve access to justice for the poor and marginalised, for instance, has a clearer connection to developmental goals.

The politically contested nature of how rule of law and justice mechanisms evolve in political and economic development does not diminish their importance in shaping development outcomes. It merely underlines the need to be very clear about the political consequence of different forms and pathways that this takes. It matters what the law says; it matters what adjudication looks like; it matters how justice providers (state or community level) are selected, appointed, or viewed by the wider population that they serve. For this reason, the (successful) efforts to get justice included in the Sustainable Development Goals (SDGs) have created opportunities for rule of law to shape development prospects and outcomes – but the way in which that will happen remains unclear.

For ROLE UK, the important takeaway is that the rule of law is not a politically neutral 'good' in itself but rather is shaped by politics. And that the relationship between the rule of law and development is thus not straightforward but dependent upon the trajectory that rule of law takes.

### Capacity building's deficit lens

ROLE UK has clearly positioned itself as a facilitator or broker of legal and judicial capacity. An inherent challenge is that – like all 'capacity building' efforts – this tends to adopt a 'deficit lens,' viewing problems in partner countries as the result of a lack of, or gap in, expertise (Kenny and Clarke 2010: 15). The solution to such problems is invariably the injection of externally-sourced expertise. Such approaches have been criticised for failing to recognise existing capacity; and overlooking how problems are sustained not merely by levels of capacity, but by a range of other factors (Barma *et al.* n.d.). This is especially pertinent in the justice sector, where a review of law and justice programmes supported by the Australian Aid Program indicated that problems are often the result of particular constellations of

---

<sup>4</sup> This is evident in the UK's 'golden thread,' for instance.

## Reflections on ROLE UK's approach

---

political interests and incentives (Cox et al. 2012). These tend not to be susceptible to change by way of capacity building – because the problems are not principally ones of capacity (Denney and Valters 2015). Rather, high levels of pre-trial detention might be to do with arrest quotas that have been legitimised by ‘tough on crime’ political rhetoric. Or, slow progress to pass legislation criminalising certain forms of violence against women might be to do with a government’s need to keep onside conservative elements of the electorate. As these examples demonstrate, if a problem is not principally one related to levels of capacity, then the ability of a programme like ROLE to facilitate genuine change is limited.

Related to the above is a risk that capacity support provided to fill deficits identified is overly technical, ignoring the political dimensions of a problem. Where capacity is understood as the problem, it is overwhelmingly technical skills that are deemed the necessarily solution. While technical skills are, of course, centrally important, if a problem is in fact rooted in a range of wider factors, technical skills are, on their own, insufficient to solve it (Denney and Valters 2015). In the same way, it cannot be assumed that the remedies or solutions to an identified capability gap are politically neutral either. Addressing capability gaps requires engaging with the particularities of the legal-political system. For instance, there is no one approach to improving judicial independence. Rather, there is debate over how independence can be advanced (through different types of appointment mechanisms with varying levels of political involvement, professional merit, and so on). The degree of independence that is most appropriate is a matter of political choice, given the potentially far reaching political consequences of judicial rulings (Shapiro 1981). Thus, the solutions to identified capability gaps are themselves not purely technical or neutral. Avoiding treating political problems as technical ones requires an understanding of the local political economy – who holds power and how decisions are really made in a given context – as well as the soft skills necessary to build relationships and bring different stakeholders together around a problem.

At the same time, engaging in justice sector support through addressing capability gaps can be a strategically useful entry point to working under the radar on issues that are politically or socio-culturally sensitive. This is all the more so in contexts where there is limited political space on rights issues.



## Reflections on ROLE UK's approach

---

### Capacity building's modalities of assistance

More broadly, even where a problem of capacity has been identified, there remains a considerable lack of knowledge and evidence on whether and how capacity development activities can be helpful (Barma *et al.* n.d.; Denney and Valters 2015; ICAI 2015). Most capacity building programmes default to training, which is thought to be sustainable because it is about leaving behind capacity that can solve future problems without external assistance. Yet the literature on training as a modality of capacity building is especially damning. It is often short-term, poorly tailored to learning needs, has no demonstration of practical application, no follow-up to reinforce learning, is provided by those with limited local knowledge and with little consideration given to learning methodologies (Denney and Valters 2015: 21; 27). The learning methodologies point is important – just because someone is a good lawyer, for instance, does not mean they are an effective *teacher* of legal issues. Yet training often simplifies complex issues to the mechanical transfer of information.

There is no ideal length for training – the literature also notes that long-term trainings can be a drain on the busy schedules of counterparts (Denney and Valters 2015: 27). But trainings are seen to be substantially more effective where they are ongoing (given in instalments over time), incorporate practical learning (for instance through study visits) and have some kind of support mechanism (where those who are meant to be applying learning to practice can have a contact point for ongoing support) (Denney and Valters 2015: 28, drawing on an example of effective judicial training set out by Chemin 2009).

In a similar vein, short-term technical assistance often falls into the trap of substituting capacity, rather than building it. While this might help to solve the immediate problem at hand, it does little to support the development of local capacities that remove the need for external support in future. Longer periods of technical assistance, in contrast, allow for ongoing mentoring. While ROLE UK struggle to achieve this in their model given that experts drawn on are operating pro bono from their usual work, models such as partnerships between UK-based firms or chambers and particular government departments or civil society organisations may help to build more of an ongoing mentoring relationship that can offset some of the limitations of short-term technical assistance. Similarly, rather than providing one-off trainings, requests for training on particular issues could be leveraged into training courses that draw on a number of experts from a UK organisation to provide staggered classes over a certain period of time to reinforce learning and ensure sustainability. This is especially important when attempting to support culture change – for instance around professional ethics and judicial independence. This is not something that

## Reflections on ROLE UK's approach

---

will be changed by a one-off training programme (ICAI 2015), and is more sensibly supported through ongoing support and mentorship that includes a range of modalities of assistance. Here, ROLE UK may wish to consider moving beyond just training and technical assistance as its levers for capacity building.

### **Focusing on people as the ultimate beneficiaries**

Changes in formal policies and procedures – often the focus of ROLE UK support – do not necessarily lead to changes in practices or behaviour. There has been much written, for instance, on how legislation on violence against women is poorly enforced due to weak political will, resource constraints and countervailing social norms (True 2012). Here, it is important, as ROLE's own Internal Review exercise notes (2016: 14), that a focus on institutions and legal reform does not become top-down and institution-focused. Similarly, the initial proposal to DFID (2014: 5) indicates that 'It is important that the project should not be too focused upon rules of law and reform of legal institutions but is also people focused.' There is a danger that formal institutions effectively become the beneficiaries of the programme, in place of people. One way to guard against this would be to add a criterion to the Application Form where applicants must demonstrate what the benefits of ROLE assistance would be to citizens. This should clearly be in the minds of those requesting *and* providing support, so that support has a developmental dividend. Without this, there is a risk that support contributes to 'isomorphic mimicry' – 'the adoption of the forms of other functional states and organizations which camouflages a persistent lack of function' (Pritchett *et al.* 2010).

### **Privileging of the formal justice system**

ROLE UK's support privileges the formal justice sector. While the programme is not necessarily limited to working just in the formal system, it draws expertise from judges and lawyers who work overwhelmingly in the formal system and thus far all assignments completed have focused on the formal justice sector. The challenge is that the formal justice sector is often of limited relevance to citizens in the partner countries, where the legal system is distinctly plural (Tamanaha *et al.* 2013). Indeed, it is widely estimated that approximately 80% of disputes are resolved through 'informal' or 'non-state' mechanisms (Albrecht *et al.* 2011: 3). Donor security and justice programmes have become increasingly alert to the reality of plural or hybrid legal orders and sought to engage across formal, state and 'informal', 'non-state' systems, in the recognition that these systems are often more accessible, used and trusted (Denney 2014; Faundez 2013).

## Reflections on ROLE UK's approach

---

ROLE UK may address this challenge in at least two ways. It might seek to broaden its areas of engagement to working with plural legal orders. This could involve, for instance, providing training to Chiefs in Sierra Leone and Ward and Village Tract Administrators in Myanmar on local dispute resolution processes; or assisting such local justice providers in documenting customary law in the same way that common law is documented to encourage greater consistency of application. Alternatively, ROLE UK may wish to use the recognition of legal pluralism and the lack of trust in the formal justice system as the very basis on which it seeks to engage with the formal justice system. This would focus on attempts to improve the quality and accessibility of the formal justice system to citizens in order precisely to make it a more used and trusted system.

### **From best practice to best fit**

ROLE UK documentation highlights as part of its role identifying and disseminating examples of international 'best practice' in terms of the design, delivery and monitoring of pro bono work. While this does not seek to transplant 'best practice' from other contexts, the shift in the literature on capacity building from 'best practice' approaches towards 'best fit' could be usefully drawn on here (Bakrania 2014: 16). This recognises that experiences of service delivery – be that of justice or anything else – in countries like the UK or Norway, are rarely the most relevant or useful for developing country contexts. Rather, examples from countries undergoing similar transitions are recognised as being more realistic in helping to achieve incremental progress (van Veen 2016: 22). Ball (2014: 42-43) notes how a Burundian Parliamentary study visit to Senegal offered practically useful learning that was relevant to the Burundi context. While ROLE UK's delivery mechanism is primarily through UK pro bono expertise, this 'best fit' approach could be integrated or emphasised through greater use of legal expertise with strong experience of developing country contexts (ROLE UK notes it can also draw on legal expertise with a connection to the UK). It would also be important to ensure that deployed experts understand what promotion of 'best practice' means for ROLE UK to avoid misunderstandings.

# Reflections on ROLE UK's approach

---

## Demand-driven

A key principle of ROLE UK is to be demand-driven. This is principally operationalised through institutions or organisations working on rule of law<sup>5</sup> in partner countries making applications to ROLE. This is in keeping with the Principles for Good International Engagement in Fragile States and Situations (2007), as well as the New Deal for Engagement in Fragile States (2011), which emphasise the importance of local priorities and locally-led change.

Given that the application process is the main way that the demand-driven approach is ensured, it is important to consider who is made aware of ROLE UK services in partner countries and how this can be expanded and democratised. If ROLE UK services are primarily advertised through DFID country offices, then the locally-led nature of the programme is diluted, as in practice it is led by those that the country office informs of its existence. Such concerns are noted by ROLE in its Internal Review (2016: 12-13) and in Paterson and Alegre's recent review (2016). In addition to who has knowledge of ROLE UK services, it is important to understand the political economy of which local partners have access to asking for ROLE UK support, as well as to be mindful of where a requesting organisation sits in the wider political economy. For instance, a supreme court that is politically captured will represent particular interests that ROLE needs to be aware of and factor into considerations about support from the outset.

What is demand-driven or locally led can look different depending on who ROLE UK is working with in a given location. There is no hegemonic 'local' view and government, the civil service and civil society can have competing ideas about what changes are necessary to improve the rule of law. For instance, government and the civil service can have little incentive to alter status quo power relations from which they tend to benefit. When working with such partners, the challenge is in being demand driven while still working towards change. Striking a balance between working with government and non-government partners, and ensuring a thorough understanding of the local context so as to be aware of these differing views, can help to address such concerns.

In addition, it can be taken for granted that local partners know what support to ask for to solve the problems they face. In practice, however, this is not always the case. The tendency can be to ask for support that acts as a quick fix – such as a one-off training programming or short term technical assistance to resolve an immediate issue. But this can leave the

---

<sup>5</sup> This includes national governments, UK Government offices, non-governmental and civil society organisations, educational institutes and professional bodies within the legal sector.

## Reflections on ROLE UK's approach

---

underlying problem unaddressed, only to resurface again. One way to get around this is to have applicants identify problems and then jointly work through with them what assistance might best assist, rather than defaulting to usual modalities (see the sub-section on Problem-focus).

The DFID Annual Review (2015) highlights the importance of ROLE UK being able to accommodate requests for assistance in order to maintain its demand-led nature. This is a challenge for a programme with a small support unit catering to 27 countries. However, in addressing this challenge, we would not support the Annual Review's recommendation of narrowing the focus of support to thematic areas, as this diminishes the extent to which support is locally led. If UK programming only supports issues high on the UK political agenda, it is hard to see how this is demand driven. A better approach is to reduce the number of countries that ROLE UK works in. Decisions about how to reduce this number could be based on perceived need, gap filling (making ROLE support available in countries where the UK does not have existing justice programmes), strengthening existing support (making ROLE support available in countries where the UK does have existing justice programmes), or ROLE's existing networks and contacts. Limiting the number of countries ROLE works in could also allow for repeated assignments in one country – which evidence suggests is more effective than one-off support.

### Sourcing expertise

ROLE UK responds to requests from applicants by sourcing legal experts (or, facilitating the deployment of named experts where this is included in applications). While recruitment of experts can often seem a technical and bureaucratic process, the skills that are sought speak to the politics of such processes (Denney and Domingo 2014). If the criteria for selecting legal experts defaults to purely an assessment of technical skills, this undermines the centrality of context, politics and ways of working.

ROLE takes an active approach to its search for expertise, using a combination of a roster to which interested legal experts can sign up, and headhunting and outreach through the ROLE Unit's contacts. This combination is used to ensure that the best candidates are found for a given assignment. This is in keeping with wider literature on how best to recruit the best teams, which is generally not through standard advertisement and application procedures but through networks and individual approaches (Denney 2016a; Harris 2016).

## Reflections on ROLE UK's approach

---

The criteria used to identify an appropriate candidate are flexible. There are no set skills and competencies but in almost all cases legal experts have previous experience of overseas work. ROLE UK staff also note the importance of soft skills, known to be of critical importance in building relationships and brokering institutional reforms (Ibid.). Given the centrality of understanding of context and ability to 'think and work politically',<sup>6</sup> these skills should also be front and centre in the criteria on which applicants are judged. These are not skills that can be easily assessed on paper. They might also usefully be the topic of research papers or seminars targeting the pro bono community to ensure familiarity with latest thinking on the process, 'ways of working' dimensions of international development.

### Problem-focused

ROLE UK's support is described as being explicitly problem-focused. Applicants are required to set out the nature of the problem that they are seeking assistance in addressing and can discuss ideas with ROLE before submitting an application form. Framing requests for support through problem statements is a useful strategy and in keeping with the wider turn to problem-focused approaches to development problems (Fritz et al. 2009; Harris 2013; ICAI 2015; LASER 2015). However, ROLE's problem focus could be usefully strengthened.

Problem-focused political economy analysis emphasises the importance of diagnosing the correct problem. Often, what emerges as the apparent problem is not in fact the root problem, and a process to peel back the layers and interrogate the problem is important (Harris 2013). This is the difference, for instance, between attempting to solve a problem of high case backlogs, on the one hand, or attempting to solve the problem of high rates of pre-trial detention or other upstream drivers of the large volume of cases, on the other. The effectiveness of ROLE's assignments, particularly given that they are so short in duration, might be maximised by spending more time upfront diagnosing and building an understanding of the problem, before deciding what is best to do about it. Of course, there is also a need to ensure this process does not become too cumbersome given the small Unit supporting ROLE and the demands on them. But the initial application form could be the

---

<sup>6</sup> Thinking and working politically (TWP) and related initiatives, such as Doing Development Differently (DDD), emerge from a recognition that development problems are not only technical but also political. It is thus argued that international actors must support locally-led partners to influence power holders to ensure politics is a solution rather than the problem. TWP encourages active engagement with context and politics, as well as learning, given the former are not static. Such ways of working are heavily relationship-based (Leftwich 2011; Booth and Unsworth 2014).



## Reflections on ROLE UK's approach

---

basis for joint analysis between ROLE and the applicants (conducted by videoconferencing), with ROLE staff working through essentially a condensed political economy analysis to ensure that the solution proposed makes sense. A number of tools have been developed to assist programmes in such rapid analytical processes (see for instance Denney 2016b and Hudson *et al.* 2016). Such an approach avoids applicants defaulting to a request for technical assistance when that might not be useful, and leaves open the possibility that ROLE UK services might not be appropriate at all. This step may be especially important where applicants specify experts they wish to work with, as there is a danger that the applicant and specified expert already have in mind what they see to be the solution to the pre-determined problem. Without taking the time to analyse the problem, this could undermine the effectiveness of ROLE UK.

Incorporating some kind of light touch problem probing would strengthen the 'problem solving' approach envisioned for ROLE in the Business Case (2013: 3). It would also help to ensure that the problem is not understood in isolation from the wider context that shapes it. Moreover, once ROLE has worked with a small number of applicants to unpack problems in this way, the experience could form the basis of a publication or seminar with the pro bono and development communities to demonstrate how such analysis can lead to different – and ultimately more effective – solutions than defaulting to what was originally envisaged.

### Contextually aware

It is widely understood that an understanding of context is central to development effectiveness (Unsworth 2010). ROLE UK documentation similarly underscores the importance of context. The Business Case and the Proposal to DFID both highlight the importance of awareness of context and suggest that experts receive pre-departure training on 'poverty reduction, politics, conflict, human rights and governance in the country they will be working' (DFID 2013: 18). In practice, however, the small size of and high demands on the ROLE UK Unit has meant that experts are not yet receiving such training. As noted in the Proposal to DFID (2014: 18), the danger is that a lack of strong contextual knowledge limits the impact of the project. ROLE's internal review (2016: 11; 14) indicates that political knowledge is not yet sufficiently integrated into the programme and the external review signals the resource challenges of ROLE being able to keep on top of the political economy conditions of all 27 country contexts (Paterson and Alegre 2016).

Reducing the number of countries ROLE UK focuses on is one way to enable the Unit to develop more informed knowledge of the contexts where it supports deployments. ROLE

## Reflections on ROLE UK's approach

---

could consider, as in the Business Case, that assignments are undertaken by teams that combine technical expertise with experience of developing country experience and soft skills (2013: 13). However, it is not clear that non-legal expertise could be sourced pro bono.

ROLE UK is currently developing processes to improve the contextual knowledge and understanding of its deployed experts, including political economy guidance. Providing experts with written briefings or meetings with DFID country offices and Embassies would seem like a relatively simple additional way for experts to be familiarised with the context and wider political processes that might affect their work. ROLE could also potentially build networks within the countries in question, amongst legal experts, academics and CSOs, and use them to provide briefings to experts on arrival in country.

A more formalised option that puts context front and centre might be to build a register of UK-based country experts that could act as advisers/mentors to deployed experts. Such a register could have a handful of 'advisers' per country and email requests to them when assignments come up in their country of expertise. The selected/available 'adviser' could then meet the legal expert prior to deployment and be on hand for calls/emails throughout the assignment (which, on average, is only ten days). In addition to providing deployed experts with improved contextual understanding, this would also help to build relationships between the UK pro bono community and development experts. It would also offer country and development experts the experience of being a part of practical reform efforts to which they lend their knowledge.

### Flexible and adaptive

Being flexible and adaptive is increasingly seen as important to effective development, recognising that change processes are rarely predictable or linear and therefore that programmes must be able to adapt based on a changing environment, as well as their own learning (Andrews 2013; Wild *et al.* 2015). ROLE is described as flexible, being able to offer tailor-made support. Yet there are some shortcomings that could also be addressed.

Being flexible and adaptive refers not just to having flexibility in the support provided, but also in the overarching logic of the programme (Wild *et al.* 2015). This requires feeding in learning from programming to refine the theory of change, or the strategies employed to reach the theory of change. Has ROLE learned from any support that was found to be less effective to refine and adapt its approach, for instance? Adaptation should be strategic,



## Reflections on ROLE UK's approach

---

based on learning about what works (and what does not) in using external expertise to strengthen the rule of law.

One example might be around the very short-term nature of ROLE assignments, with the average assignment time being ten days (DFID 2013: 21; ROLE UK 2016: 3). This problem is magnified with different experts selected for each assignment. This was foreseen in the Business Case, which notes that it is preferable that assignments are with 'subsequent remote support and follow up deployments' (2013: 11). There are clearly challenges of getting legal experts to do multiple pro bono trips. However, this could be addressed, for instance, by particular firms, chambers or departments in the UK committing to providing a number of experts over a certain timeframe that would allow for deeper relationship building and avoid some of the limitations of one-off, short term training of technical assistance, set out earlier. This is one way that learning from current practice could be used to adapt the programme. Feeding learning back into the programme should also help to build up an understanding of if and how short-term assignments can assist in strengthening the rule of law.

A challenge for ROLE UK is that long-term engagement – something often seen as necessary for flexible and adaptive programming – is not a feature of how it works. Flexible and adaptive engagement that learns from what works in country is often grounded in deep understanding of context built up over time, and an awareness of changing dynamics and emerging opportunities (Booth and Unsworth 2014; Denney and Valters 2015). This is especially true in fluid fragile and conflict affected contexts. The challenge for ROLE is thus to nurture relations with its potential partners to build deep and ongoing knowledge that can support flexible, adaptive and politically smart engagement (see also Alegre and Paterson 2016).

### Learning focused

ROLE UK promotes monitoring, evaluation and learning from its own work, in support of partners and to share learning with the development and legal sectors. It does so primarily by producing papers and convening 'lesson learning' events.

A key challenge for ROLE – as with many programmes seeking to work flexibly and adaptively – is how to document its ways of working in sufficient detail to tell a story and demonstrate results, while not becoming too heavy an administrative burden (Roche and Kelly 2012). Currently, experts and the partners they work with are required to fill out a feedback form

## Reflections on ROLE UK's approach

---

that captures a narrative of the work undertaken, the extent to which the purpose of the assignment was fulfilled, what factors might sustain or limit impact, any recommended follow up activities and lessons learned. Expertise provided and support from ROLE are also rated. ROLE are considering changing the way these forms are completed to be the basis of a conversation. Based on experience of other programmes seeking to build relationships and work in innovative ways, this seems a better approach. The conversation could be set up as a kind of exit interview to support lesson learning. While the form could be used to guide discussion, a conversation allows ROLE to probe deeper – and is also more likely to reveal more sensitive material that people are often not comfortable writing down but may share in an informal interview setting. The richer material obtained from these conversations can then feed into reports and seminars that capture and share lessons learned about capacity building in the justice sector with both the UK pro bono and development communities.

Sharing knowledge and lessons learned has been a key aim of ROLE UK but is probably still underdeveloped at this stage (ROLE UK 2016: 3). ROLE is in a strong position to act as a convenor of the UK pro bono and development community and could usefully play an active role in facilitating joint learning. This would help to leave a legacy of a pro bono sector better equipped to understand the role of justice and capacity building in development; and the development community to understand the unique inputs of the legal sector. At its core, this learning should speak directly to the core question of the relevance and impact of short-term, individual assignments to supporting the rule of law. As the fundamental assumption underlying ROLE UK's work, the programme should begin to share thinking about what their experience suggests – and not merely *if* such assignments are relevant and impactful, but *how*. Here, ROLE should be open to finding aspects of the model that are not appropriate and require refinement, or assignments that have been less positive from which ROLE can learn – demonstrative of an adaptive programme. The risks and limitations discussion in ROLE's Internal Review (2016: 14) are a good start but making sure that the programme builds on and shares these so that evidence is built about what effective capacity building looks like (and does not) is important to being a learning programme.

### Value for money

ROLE UK claims high value for money based on the cost savings afforded by legal expertise being pro bono. This approach has many positives – including that it takes the issue of money off the table early on and avoids partners drawing on ROLE UK to unsustainably cover

## Reflections on ROLE UK's approach

---

funding shortfalls or assume that money can solve the problem (Booth and Chambers 2014). This helps to start off by looking for more underlying causes of a problem, rather than a band aid to fix it. Moreover, ROLE UK is drawing on expertise that is not easily incorporated into the UK's existing bilateral and multilateral programmes.

However, it is important to note that value for money calculations are not just about showing cost savings but demonstrating that those savings are also delivering value. In this case, that pro bono legal services are in fact contributing to the strengthening of rule of law. This goes back to the need for ROLE UK to provide evidence – either in support of, or countering – its foundational assumption that external legal technical expertise can assist in strengthening the rule of law in developing country contexts.

### Conclusion

The reflections provided here are some initial thoughts triggered by a review of ROLE UK's approach to rule of law strengthening, based on the authors' wider knowledge of latest thinking and reviews of justice sector programming. This includes considering some of the implicit assumptions within ROLE's approach – such as the relationship between the rule of law and development, the deficit lens and prioritisation of the formal justice sector. It also considers how ROLE can be more demand driven, problem focused and contextually aware, including through the ways it sources expertise, adapts and monitors and learns. These reflections should be taken as the basis for a deeper conversation about ROLE's ways of working and how these can be improved to ensure the programme is delivering its maximum potential.

# Reflections on ROLE UK's approach

---

## Bibliography

Advocacy Training Council, Advocates for International Development, Bar Human Rights Committee, Bingham Centre for the Rule of Law, International Senior Lawyers Project-UK, i-Probono, PILnet and Slynn Foundation (2014) 'Proposal to DFID for ROLE UK,' internal document.

Albrecht, P., Kyed, H.M., Isser, D. and Harper, E. (eds.) (2011) *Perspectives on Involving Non-State and Customary Actors in Justice and Security Reform*, Copenhagen: DIIS and IDLO.

Andrews, M. (2013) *The Limits of Institutional Reform and Development: Changing rules for realistic solutions*, Cambridge: Cambridge University Press.

Bakrania, S. (2014) 'Security and justice: towards politically informed programming,' Birmingham: Developmental Leadership Program and University of Birmingham.

Ball, N. (2014) 'Putting governance at the heart of security sector reform: Lessons from the Burundi-Netherlands Security Sector Development Programme,' The Hague: The Clingendael Institute.

Barma, N. H., Huybens, E. and Vinuela, L. (n.d.) *Institutions taking root: building state capacity in challenging contexts*, Washington, DC: World Bank.

Booth, D. and Chambers, V. (2014) 'The SAVI Programme in Nigeria: Towards politically smart, locally led development,' Discussion Paper, London: Overseas Development Institute.

Booth, D. and Unsworth, S. (2014) 'Politically Smart and Locally Led Development,' London: Overseas Development Institute.

Brinks, D. and Botero, S. (2014) 'Inequality and the Rule of Law: Ineffective Rights in Latin American Democracies,' in Brinks, D., Mainwaring, S. and Leiras, M. (eds) *Reflections on Uneven Democracies: The Legacy of Guillermo O'Donnell*, Baltimore, MD: Johns Hopkins University Press.

Chemin, M. (2009) 'The Impact of the Judiciary on Entrepreneurship: Evaluation of Pakistan's "Access to Justice Programme",' *Journal of Public Economics* 93(1-2): 114-125.

Cox, M., Duituturaga, E and Scheye, E. (2012) 'Building on Local Strength: Evaluation of Australian Law and Justice Assistance,' *Evaluations and Reviews*, Canberra: AusAID and ODE.

## Reflections on ROLE UK's approach

---

Denney, L. (2014) *Justice and Security Reform: Development agencies and informal institutions in Sierra Leone*, London: Routledge.

Denney, L. (2016a) 'Reforming Solid Waste Management in Phnom Penh,' Case Study 8, Thinking and Working Politically Series, London: Overseas Development Institute and The Asia Foundation.

Denney, L. (2016b) 'Using political economy analysis in conflict, security and justice programmes Guidance note,' London: ODI.

Denney, L. and Domingo, P. (2014) 'Security and Justice Reform: Overhauling and tinkering with current programming approaches,' Report, London: Overseas Development Institute.

Denney, L. and Valters, C. (2015) 'Evidence Synthesis: Security Sector Reform and Organisational Capacity Building,' London: Department for International Development.

DFID (Department for International Development) (2013) 'UK Legal and Judicial Expertise Programme Intervention summary,' Business Case, internal document.

DFID (Department for International Development) (2015) 'Annual Review of ROLE UK,' internal document.

Faundez, J. (2013) 'Legal Pluralism and International Development Agencies: State Building or Legal Reform,' in Tamanaha, B., Sage, C., Woolcock, M., (eds) *Legal Pluralism and Development: Scholars and Practitioners in Dialogue*, New York: Cambridge University Press.

Fritz, V., Kaiser, K., Levy, B. (2009) *Problem-Driven Governance and Political Economy Analysis: Good practice framework*, Washington, DC: The World Bank.

Harris, D. (2013) 'Applied Political Economy Analysis: A problem-driven framework,' Methods and Resources, London: Overseas Development Institute.

Harris, D. (2016) 'Leather Sector Reform in Bangladesh,' Case Study 7, Thinking and Working Politically Series, London: Overseas Development Institute and The Asia Foundation.

Hudson, D., Marquette, H. and Waldo, S. (2016) 'Everyday Political Analysis,' Birmingham: Developmental Leadership Program and University of Birmingham.

ICAI (Independent Commission for Aid Impact) (2015) *Review of UK Development Assistance for Security and Justice*, Report 42, London: ICAI.

## Reflections on ROLE UK's approach

---

Kenny, S. and Clarke, M. (2010) *Challenging Capacity Building: Comparative Perspectives*, New York: Palgrave Macmillan.

Kleinfeld, R. (2012) *Advancing the Rule of Law Abroad: Next Generation Reform*, Washington, DC: Carnegie Endowment for International Peace.

LASER (Legal Assistance for Economic Reform) (2015) 'Making the Most of International Pro Bono Assistance: A handbook for legal pro bono providers and their developing country clients,' November 2015, Available at: [<http://www.roleuk.org.uk/wp-content/uploads/2016/01/making-the-most-of-international-pb-assistance.pdf>].

Leftwich, A. (2011) 'Thinking and Working Politically: What does it mean? Why is it important? And how do you do it?,' Discussion Paper, Birmingham: Developmental Leadership Program and University of Birmingham.

OECD (2007) Principles for Good International Engagement in Fragile States and Situations, Available at: [<http://www.oecd.org/dac/governance-peace/conflictfragilityandresilience/principlesforgoodinternationalengagementinfragilestates.htm>].

Paterson, A. and Alegre, S. (2016) 'ROLE UK Independent Review and Learning Exercise Report,' internal document.

Perry-Kessaris, A. (ed.) (2011) *Law in the pursuit of development: Principles into practice?*, London: Routledge.

Porter, D., Isser, D. and Berg, L-A. (2013) 'The justice-security-development nexus: theory and practice in fragile and conflict-affected states,' *The Hague Journal on the Rule Law* 5(2): 310–28.

Pritchett, L., Woolcock, M. and Andrews, M. (2010) 'Capability Traps? The Mechanisms of Persistent Implementation Failure,' Working Paper 234, Washington, DC: Center for Global Development.

Roche, C. and Kelly, L. (2012) 'Monitoring & Evaluation when Politics Matters: Notes from program experience,' Background Paper 12, Birmingham: Developmental Leadership Program and University of Birmingham.

ROLE (Rule of Law Expertise) UK (2016) 'Internal review of lessons learned and recommendations for 2016,' internal document.

## Reflections on ROLE UK's approach

---

Shapiro, M. (1981) *Courts: A Comparative and Political Analysis*, Chicago, IL: Chicago University Press.

Tamanaha, B., Sage, C. and Woolcock, M. (eds) (2013) *Legal Pluralism and Development: Scholars and Practitioners in Dialogue*, New York: Cambridge University Press.

Trubek, D. and Santos, A. (eds) (2006) *The new law and economic development: A critical appraisal*, New York: Cambridge University Press.

True, J. (2012) *The Political Economy of Violence Against Women*, Oxford: Oxford University Press.

Unsworth, S. (2010) *An Upside Down View of Governance*, Brighton: Institute for Development Studies.

van Veen, E. (2016) 'Improving Security and Justice Programming in Fragile Situations: Better Political Engagement, More Change Management,' Paris: OECD.

Wild, L., Booth, D., Cummings, C., Foresti, M. and Wales, J. (2015) 'Adapting Development: Improving services for the poor,' London: Overseas Development Institute.