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United Nations Development Programme

DEMOCRATIC GOVERNANCE



GUIDANCE NOTE ON ASSESSING THE RULE OF LAW USING INSTITUTIONAL AND CONTEXT ANALYSIS

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ADR	Alternative dispute resolution
A2J	Access to justice
BCPR	Bureau for Conflict Prevention and Recovery
BDP	Bureau for Development Policy
CCA	Common country assessment
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CHT	Chittagong Hills Tract
CO	Country office
CSO	Civil society organization
DGTTF	Democratic Governance Thematic Trust Fund
DfID	UK Department for International Development
DRC	Democratic Republic of Congo
FLA	Free legal aid
GTG	Gender theme group
HRBA	Human rights based approach
ICA	Institutional and context analysis
ICA-GN	Institutional and context analysis guidance note
ICTs	Information and communication technologies
IJS	Informal justice system
MDG	Millennium Development Goal
M&E	Monitoring and evaluation
NGO	Non-governmental organization
OGC	Oslo Governance Centre
PAPEP	Political analysis and prospective analysis project
RoL	Rule of law
SGBV	Sexual and gender based violence
ToR	Terms of reference
UN	United Nations
UNCT	United Nations country team
UNDAF	United Nations Development Assistance Framework
UNDP	United Nations Development Programme

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PREFACE

UNDP began developing guidance on institutional and context analysis (ICA) because of the conviction that progress towards human development requires changes in power relations and deeper understanding of politics. Understanding who is powerful, who is not and, more importantly, why, requires a careful reading of the institutional, social and political interactions in a given development setting. With these insights, factors that are likely to promote or block development become clearer, as do the reasons why certain groups of people are marginalised and excluded. Too often development practitioners have over-prioritised technical solutions at the expense of a fuller appreciation of power and its uses and, as a result, many technically-sound development programmes have failed to make a difference. The ICA guidance note recognizes this and provides support for practitioners to undertake problem-driven analysis.

The ‘Guidance Note on Assessing the Rule of Law using Institutional and Context Analysis’ takes UNDP’s generic guidance on ICA and applies it to the rule of law. Perhaps no other development area is as defined by the use of power as the rule of law; we know that patterns of marginalisation and exclusion—including around gender—are reinforced by legal systems that reflect patterns of power in societies. Though the principles of rule of law, reflected in a framework of international norms and standards, set out that every person is subject to the law and that the laws in place in a country should be fair, non-discriminatory and respect human rights, the reality is very different. At the country level, strengthening the rule of law is really only effectively done when the diversity of national experiences and power relations is taken into consideration.

Against this backdrop, this guide will provide practitioners working on all aspects of the rule of law with valuable advice intended to improve the way UNDP works on these matters. By setting out a structured way for practitioners to address complex questions it will help to gauge what could make a project succeed or fail in a given environment. It will contribute to risk assessments and will help identify which development interventions are most likely to lead to positive change. Ultimately, this guide is a tool that will contribute to improving the effectiveness of rule of law programmes and strategies as well as support for national dialogue and policy development. Through doing so, the guide contributes to the achievement of UNDP’s Strategic Plan for 2014-17, which recognises the importance of the rule of law in accomplishing the goal of poverty alleviation and the reduction of inequalities and exclusion. We hope the guidance contained herein will contribute to bringing this goal one step closer.



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