

Committee: Disarmament and International Security Committee

Issue: The rule of law of implementation in situations of fragility

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INTRODUCTION

It can be argued that the rule of law has become indispensable for maintaining peace and political stability leading to economic progress in society. Effective performance of government institutions, maintenance of peace, development of resources and administration of justice, human security and protection of liberty and equality of all citizens depend on the level of implementation of rule of law in society. Rule of law reduces administrative corruption, eliminates malpractices, and protects people from injustice by protecting them from various maladies including red-tapism and abuse of discretionary powers. It improves hierarchical structure, a delegation of powers and other principles of administration to execute public policy efficiently, economically, and expeditiously.

The law is supreme, and nobody is superior to the laws of the state. First, the rule of law means that no person can be punished until and unless he is proved guilty of violating the law. For instance, in the case of illegal detention, courts are empowered to examine the grounds of detention under writ jurisdiction. Secondly, rule of law means that nobody is above the law. Everyone, whatsoever his rank or position is subject to the ordinary law. Both government officials, as well as private individuals, are accountable under the law. Thirdly, the rule of law refers to judicial decisions that determine the rights of private persons, in particular cases brought before the courts. It is the duty of judges to safeguard the inviolable rights and liberties of people. This notion establishes the equality of all citizens before the courts of law and ensures the protection of human rights and property rights. It also rationalizes the fair and efficient process of implementation, administration and adjudication of law adopted for the dispensation of impartial, affordable, and accessible justice without delay. Further, it encourages the resolution of disputes on

the grounds of natural justice, equity, and fairness, in the cases of recognizable rights.

DEFINITION OF KEY TERMS

Rule of law

Rule of law, the mechanism, process, institution, practice, or norm that supports the equality of all citizens before the law, secures a nonarbitrary form of government, and more generally prevents the arbitrary use of power. Arbitrariness is typical of various forms of despotism, absolutism, authoritarianism, and totalitarianism. Despotic governments include even highly institutionalized forms of rule in which the entity at the apex of the power structure.

State Fragility

There is no single definition of state fragility, as what is considered to make a state fragile will always to some extent reflect what importance is given by a particular approach to different aspects of the state.

BACKGROUND INFORMATION

Rule of law

Ideas about the rule of law have been central to political and legal thought since at least the 4th century BCE, when Aristotle distinguished “the rule of law” from “that of any individual.” In the 18th century the French political philosopher Montesquieu elaborated a doctrine of the rule of law that contrasted the legitimate authority of monarchs with the caprice of despots. It has since profoundly influenced Western liberal thought.

In general, the rule of law implies that the creation of laws, their enforcement, and the relationships among legal rules are themselves legally regulated, so that no one—including the most highly placed official—is above the law. The legal constraint on rulers means that the government is subject to existing laws as much as its citizens are. Thus, a closely related

notion is the idea of equality before the law, which holds that no “legal” person shall enjoy privileges that are not extended to all and that no person shall be immune from legal sanctions. In addition, the application and adjudication of legal rules by various governing officials are to be impartial and consistent across equivalent cases, made blindly without taking into consideration the class, status, or relative power among disputants. In order for those ideas to have any real purchase, moreover, there should be in place some legal apparatus for compelling officials to submit to the law.

Not only does the rule of law entail such basic requirements about how the law should be enacted in society, it also implies certain qualities about the characteristics and content of the laws themselves. In particular, laws should be open and clear, general in form, universal in application, and knowable to all. Moreover, legal requirements must be such that people are able to be guided by them; they must not place undue cognitive or behavioral demands on people to follow. Thus, the law should be relatively stable and comprise determinate requirements that people can consult before acting, and legal obligations should not be retroactively established. Furthermore, the law should remain internally consistent and, failing that, should provide for legal ways to resolve contradictions that can be expected to arise.

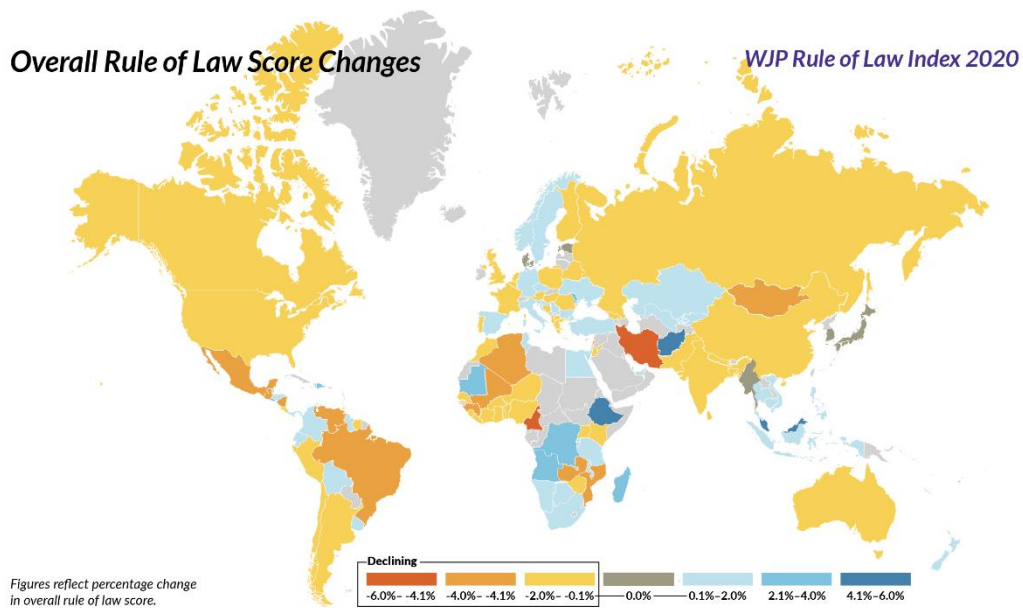
Despite those basic features, however, there has never been a generally accepted or even systematic formulation of the rule of law (but not for lack of attempts by jurists and political philosophers). The idea that the law should contribute to beneficial ways of channeling and constraining the exercise of public power can be interpreted in different ways; such differences are especially apparent over time and across different polities.

Institutions and legal culture

For such reasons, the rule of law is best seen not as a blueprint for institutional design but as a value, or cluster of values, that might inform such a design and that can therefore be pursued in a variety of ways. Nonetheless, several rather simple and generalizable institutional insights follow from the idea that those who judge the legality of exercises of power should not be the same as those who exercise it. For instance, a typical rule-of-law state will institutionalize some means of shielding legal officials from interference, political or otherwise, that threatens their independence. Accordingly, the institutional separation of

the judiciary from other branches of government is commonly thought to be an important feature of rule-of-law states. Other measures to ensure fair access to legal institutions may also be important for rule-of-law regimes. In addition, a binding written constitution is widely believed to aid the rule of law and has been adopted by most states of the world.

MAJOR COUNTRIES AND ORGANISATIONS INVOLVED



Norway

At 2nd place out of 139 countries and jurisdictions worldwide, Norway remained in the same position in global rank. Norway's score places it at 2 out of 31 countries in the European Union, European Free Trade Association, and North America region* and 2 out of 46 among high income** countries.

Finland

Finnish democracy is based on the rule of law, with the Constitution giving every individual strong protection for human dignity, personal integrity and other fundamental rights. Finland is committed to complying with international human rights treaties and EU provisions on fundamental rights.

Cambodia

Cambodia's overall rule of law score decreased 2.3% in this year's Index. At 138th place out of 139 countries and jurisdictions worldwide, Cambodia remained in the same position in global rank. Cambodia's score places it at 15 out of 15 countries in the East Asia and Pacific region and 35 out of 35 among lower-middle income countries.

Spain

At 21st place out of 139 countries and jurisdictions worldwide, Spain improved one position in global rank. Spain's score places it at 15 out of 31 countries in the European Union, European Free Trade Association, and North America region and 21 out of 46 among high income countries.

UK

The rule of law requires that every case which is alike should be treated the same. Each citizen has the right to be protected from unjust discrimination from the state: the state cannot say that one person is below or above another in law, regardless of their rank or status.

USA

Rule of law is a principle under which all persons, institutions, and entities are accountable to laws that are: publicly promulgated, equally enforced, independently adjudicated.

Ethiopia

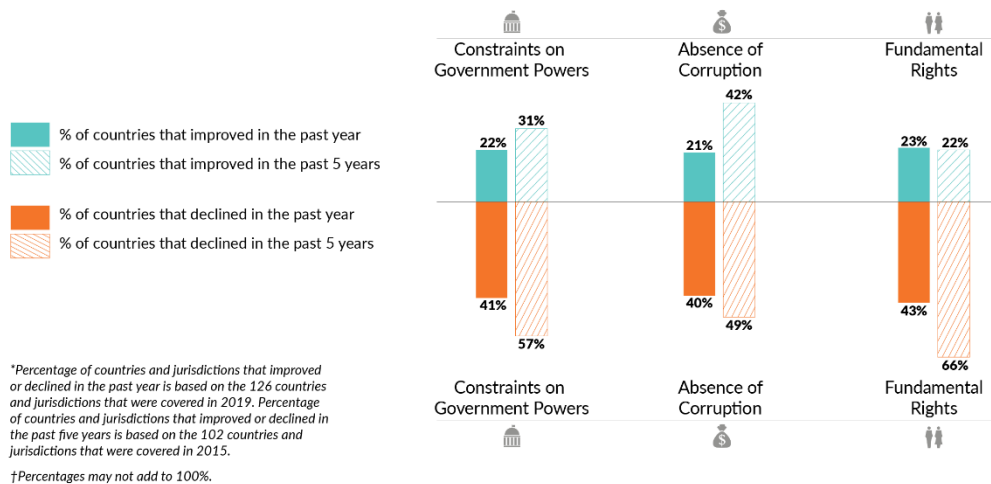
At 122nd place out of 139 countries and jurisdictions worldwide, Ethiopia improved two positions in global rank. Ethiopia's score places it at 27 out of 33 countries in the Sub-Saharan Africa region and 13 out of 18 among low income countries.

Cameroon

Cameroon’s overall rule of law score decreased 2.1% in this year’s Index. At 135th place out of 139 countries and jurisdictions worldwide, Cameroon remained in the same position in global rank. Cameroon’s score places it at 32 out of 33 countries in the Sub-Saharan Africa region and 33 out of 35 among lower-middle income countries.

Fundamental Rights, Constraints on Government Powers, and Absence of Corruption Show Greatest Decline

WJP Rule of Law Index 2020



TIMELINE OF EVENTS

Date	Description of Event
1750 BC	The Code of Hammurabi
399 BC	The Modern Understanding of Athens
1215	The Anglo-Saxon Tradition
20th century	The Rule of Law as Bulwark Against Government Tyranny
1748	The Separation of Powers
1948	Universality of Rule of Law

UN INVOLVEMENT: RELEVANT RESOLUTIONS, TREATIES AND EVENTS

UN involvement in this topic is not very prominent. However, in the past there have been measures taken by the European Parliament. For example, the European Parliament has ruled the following:

- Having regard to Articles 2, 3(1), 4(3), 6, 7, 13, 14(1), 16(1), 17(1), 17(3), 17(8), 19(1) second subparagraph and 49 of the Treaty on European Union (TEU), as well as Articles 265, 310, 317 and 319 of the Treaty on the Functioning of the European Union (TFEU).
- Having regard to the Charter of Fundamental Rights of the European Union.
- Having regard to Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (the Rule of Law Conditionality Regulation).
- Having regard to its resolution of 25 March 2021 on the application of Regulation (EU, Euratom) 2020/2092, the rule-of-law conditionality mechanism.
- Having regard to its resolution of 10 June 2021 on the rule of law situation in the European Union and the application of the Conditionality Regulation (EU, Euratom) 2020/2092.
- Having regard to its resolution of 8 July 2021 on the creation of guidelines for the application of the general regime of conditionality for the protection of the Union budget.
- Having regard to its action brought on 29 October 2021 for failure to act in case C-657/21, European Parliament v Commission, which is currently pending before the Court of Justice of the European Union (ECJ).

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

Rule of law as a basic value and a foundation of good governance: The rule of law is a basic value of the European Union and a requirement for OECD membership. It is also a

necessary underpinning for the achievement of many societal goals. There is evidence that investment in the rule of law, including access to justice and legal empowerment, can help tackle corruption and injustice, close the gap between formal and actual rights, and trigger legal and institutional change. Strengthening the understanding of the links between the rule of law, quality and people-centricity of justice systems, good governance and trust in institutions could help make the case and promote grassroots discussions on the rule of law across the countries.

Rule of law and access to justice as core pillars of people's well-being: Rule of law, including access to justice, is at the centre of inclusive growth strategies that improve policy outcomes for people and lead to better access to economic and other opportunities and public services. Laws and regulations shape and foster access to education, health and other social benefits. In contrast, the absence of the rule of law undermines people's ability to claim their rights in accessing these services. In fact, there are significant costs associated with the inability of people to claim their rights and resolve legal problems. By only looking at the costs related to the inability to access justice (and not at the broader implications related to the failure to exercise rights), a conservative estimate places the annual costs of health/employment impacts of legal problems for individuals in a range going from 0.5% to 3% of the GDP in most countries³

POSSIBLE SOLUTIONS

Build the case for investment in the rule of law

To further build the case for investment in the rule of law in order to raise awareness and to facilitate discussions among key actors on the related issues, the Commission could consider the following. Firstly, undertaking a series of joint EU-OECD studies to analyze the cost of gaps in the rule of law, ineffective justice systems and unmet legal needs for people and companies. This work could build on the OECD White Paper on Building the Business Case for Access to Justice and allow to deepen the analysis of the cost of inaction in making the rule of law and justice a reality for all. The studies can also include the analysis of the rule of law variables and their impacts on other governance outcomes, growth and people's well-being developing a comprehensive research and evaluation agenda to identify practices which "work" to close existing justice and rule of law gaps. This work would help enhance the quality of evidence on the impacts of different interventions, aiming to promote the

rule of law, accessibility and people-centricity of justice systems. The OECD report on Access to Justice for Inclusive Growth: Putting People at the Centre and the OECD White Paper on Building the Business Case for Access to Justice set out a range of elements which could help frame such an agenda.

Enhancing legal literacy, empowerment and awareness

Legal empowerment and literacy are important tools to promote the culture and effectiveness of the rule of law, social accountability, public sector integrity and inclusive growth. Legal empowerment advances more meaningful civic engagement in the promotion of the rule of law, by ensuring that people understand how the law allows them not only to confront the injustices in their lives, but also to participate in the law-making and implementation. Legal empowerment can also raise awareness and provide people with tools to protect their rights, push for legal and regulatory protection, shed light on breaches of the rule of law and allow for a more effective participation in open government and consultation initiatives.

The Commission actions

- Supporting a comparative measurement agenda on the state of legal literacy and empowerment across EU member states (e.g., through comparative surveys and case studies, e.g., similar to the OECD PISA approach). This work should be based on a robust analytical framework and a set of indicators (including outcomes and impacts of legal empowerment on the rule of law and social accountability, as well as enabling policies and institutions that promote and sustain legal literacy and empowerment).
- Documenting evidence-based good practices, and promoting regional and national policy dialogue in delivering legal literacy and empowerment programmes which could support the overall promotion of the rule of law and enhance legal empowerment initiatives across the countries.
- Undertaking a comparative analysis of capability of public agencies to engage citizens and respond to their feedback and to engage in dialogue with civil

society on legal empowerment and social accountability. Enhancing the role of public administration can thus promote open government and transparency, clarity of laws and regulations, and public consultation on the rule of law. OECD instruments, such as the OECD Recommendation of the Council on Open Government¹⁰ and the OECD Recommendation of the Council on Regulatory Performance and Governance¹¹ could provide useful support.

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