

## Project title:

### *Sustaining peace through effective transitions in Rule of Law (RoL) engagement: Over-coming old obstacles, applying new lenses*

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## Research question(s):

Main question: What is preventing the UN from fully and effectively address long-standing and well-documented gaps in the way transitions are managed, as they relate to the Rule of Law?

Sub-question 2: Can these gaps be fully addressed without a reframing of what RoL engagement consists of, and consequently of transition itself?

### *Note on paper's origins and approach*

In April 2020, as part of the Knowledge Management Platform for Security and Rule of Law, the UN System Staff College was awarded a grant through the Knowledge Management Fund (KMF) to conduct a research on the determinants of success in the UN's engagement on rule of law through transition processes.

The following paper is based on multiple documented reviews of specific transition processes from both internal UN and external sources (see full list in Annex I), bilateral consultations with UN actors, including small focus groups undertaken virtually in July and November<sup>1</sup> and the design of a short questionnaire carried out in June 2020<sup>2</sup>.

## 1. Introduction

UN peacekeeping operations and special political missions are going through an accelerated period of reconfiguration and drawdown (e.g. the withdrawal of UNAMID and the establishment of UNITAMS, the transition of MINUJUSTH to BINUH, the reconfiguration of MONUSCO). The challenges that UN faces during these moments of 'transition' have been well documented<sup>3</sup>. In reviewing previous studies

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<sup>1</sup> Meeting with Global Focal Point (Giorgia Tortora, Jerome Mellon, Yagiz Oztztepe) 08/07/2020, Meeting with Global Focal Point (Andrea Ernudd) 17/11/2020, Meeting with UNITAMS Transition Team (Steve Sequiera, Charlotte Labouisson, Dmitry Shlapachenko, Margherita Zuin) 17/11/2020.

<sup>2</sup> See Annex I.

<sup>3</sup> Novosseloff A., *Lessons Learned from the UN's Transition in Cote d'Ivoire*, IPI, 2018; The International Security Advisory Team - the Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Lessons Identified from the United Nations Mission in Liberia in support to the Rule of Law in Liberia*, March 2018;

and literature concerning transitions, one is struck in fact by the repetition over time and over transition contexts of many similar recommendations, notably: the need to plan the transition early and collectively on the basis of a shared vision of transition outcomes, the need to align UN plans with those of national authorities; the importance of genuine engagement with civil society and the inclusion of local actors; the need to anticipate capacity and funding needs of national institutions and the UNCT.

There seems to be very little disagreement on these recommendations. Yet, their recurrence indicates on-going difficulties in implementing them. As these studies show, consensus on what should be done differently does not always translate into change in practices and attitudes.

There are many reasons why these recommendations are not always fully implemented. On the one end, we may point to external factors that are beyond strictly UN control. Several studies have showed how host government consent is crucial for the success of a UN presence in a country, and for successful transitions in particular. The absence of a host government consent or “consent delivered in the wrong place and at the wrong time<sup>4</sup>” can prevent the UN from achieving its mandate, by obstructing movements and activities - especially when the government’ stated interests conflict with those of the United Nations<sup>5</sup>, which undermines effective transitions.

Security Council mandates often compromise transitions by offering at times a linear understanding of progressive handling of responsibilities to the national authorities<sup>6</sup>. And a lack of adequate international donor support has often hampered any coherent transition planning from the UN in support of national ownership<sup>7</sup>.

This paper is based on a dual hypothesis: in addition to these external constraints, there are still obstacles within the UN that prevent the organization from adhering more consistently to established good practice – and the paper begins with an examination of these obstacles. In essence however, overcoming them, while necessary, will never fully get to the core of the challenges the UN faces in transition.

Indeed, this paper suggests a deeper, more fundamental challenge to transitions, one that relates to assumptions, concepts and metrics of success. This interrogation is done through the prism of the UN’s engagement in Rule of Law (RoL), and what “transition” means, or should mean for RoL.

The reason for honing in on RoL is manifold: because RoL is core UN mission mandate, it relates to fundamental issues of legitimacy and conflict resolution that are foundational to peace and security, but also because it is disputed as a concept and challenged in practice; and finally, because it brings together, sometimes in harmony, and sometimes in cacophony, a range of UN departments, agencies, funds and programmes; as such, how the UN manages RoL transitions is highly instructive for other mandate areas, and for transitions more generally.

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S/2017/604, *Report of the Secretary-General on the United Nations Stabilization Mission in Haiti*, 12 July 2017; S/2018/958, *Role of the United Nations Operations in Cote d’Ivoire*, 29 October 2018. S/2019/305, *African Union - United Nations Hybrid Operations in Darfur, Report of the Secretary-General*, 10 April 2019.

<sup>4</sup> Day A., *To build consent in Peace Operations, Turn Mandates Upside Down* Centre for Policy Research - United Nations University, January 2017.

<sup>5</sup> Sebastian S. and Gorur A. , *U.N. Peacekeeping & Host State Consent*, Smitson, March 2018.

<sup>6</sup> UNU, *UN Transitions: Improving Security Council Practice in Mission Settings*, 2019.

<sup>7</sup> The International Security Sector Advisory Team - the Geneva Centre for the Democratic Control of Armed Forces, *Lessons identified from the United Nations Mission in Liberia support to the Rule of Law in Liberia*.

## Defining transition

For the purpose of this analytical paper, the starting definition of transition should be construed as both the process and timing of major reconfigurations of UN peace operations (or of the wholesale exit of such a peace operation and the concomitant shift in responsibility to a UN Country Team) with a specific focus on those that are associated with the closure and withdrawal of the UN peace operation, to be followed either by a new peace operation of a significantly different nature (e.g. the recent transition in Haiti and Sudan) or a the termination of any Security Council mandate UN presence. However, as the paper ultimately argues, the reframing of RoL engagement necessitates a shift in how transitions are approached, and defined.

## Internal obstacles

One of the main recommendations for successful transition is for the UN system to work more closely together (on planning and programming), early on and throughout the life cycle of a mission. In this regards, several UN colleagues consulted for this paper acknowledge a gap between the formal commitments to “jointness” and the actual practice. Operational challenges, and barriers to interoperability across a range of very practical matters (e.g. absence of colocation and shared knowledge management platforms) - – as well as organizational culture barriers related to the role of the mission vis-a-vis its exiting role, lack of agreement with the UNCT on the transition framework, misconceptions regarding transition processes conceived as a “handover”, donor funding concentrating on certain thematic areas and driving the agenda, continue to make collaboration overly laborious and time consuming, despite the very helpful role played by the Transitions Project jointly run by DPPA, DPO, UNDP and DOCO, in overcoming those difficulties and strengthening proactive, integrated and forward-looking transition planning and management<sup>8</sup>.

Poor interoperability is just one barrier. Many colleagues highlight that beyond administrative challenges, failure to abide by transition directives and agreed transition practice reflects a corporate culture that has yet to fully embrace collective action, despite progress since the establishment of the Global Focal Point (GFP) for the Rule of Law<sup>9</sup> - which focuses mainly on justice and corrections and police but does not cover critical areas such as Disarmament Demobilization and Reintegration (DDR) and Security Sector Reform (SSR).

The GFP was created in 2012 by the Secretary-General to address precisely those needs for joint work to deliver on complementary responsibilities in conflict and crisis settings, by integrating RoL's political and developmental dimensions. It was created to act as the single UN entry point to respond more coherently to requests for assistance by bringing together DPKO's (now DPO) operational expertise and UNDP's programming and institution building skills, mobilizing and channeling more resources from donors for joint programming, increasing leveraging with national authority.<sup>10</sup>

Important gains and successes in terms of integration of Rule of Law functions have been produced, thanks to this mechanism – for example, in Central African Republic the joint program on impunity supported the re-establishment of functioning courts in Bangui and other cities, allowing the resumption of basic justice service. The Somalia joint programme built the capacity of Ministries of Justice in South Central States and the creation of a police model that received political buy in; in Haiti joint work made possible the continue training of police cadres, as well as the digitalization of

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<sup>8</sup> UN Transitions Project (DCO, DPPA, DPO and UNDP), *UN Transitions: Sustaining Peace and Development Beyond Mission Withdrawal, Thematic Paper*, prepared for submission to the 2020 Report of the Secretary-General on Peacebuilding and Sustaining Peace, 2020.

<sup>9</sup> Center on International Cooperation. Folke Bernadotte Academy and the Norwegian Institute of International Affairs, *Review of the Global Focal Point for Police, Justice, and Corrections*, 2018.

<sup>10</sup> UNDP, *Fact Sheet, Global Focal Point for Police, Justice and Corrections*, June 2019, [https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access\\_to\\_justice-andruleoflaw/fact-sheet--global-focal-point-for-police--justice-and-correctio.html](https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justice-andruleoflaw/fact-sheet--global-focal-point-for-police--justice-and-correctio.html)

police systems<sup>11</sup>. Despite this progress, many challenges persist hampering integration and jointness of RoL - especially during transition processes. More strategic approaches that include bottom up considerations from the field need to be designed, silos approaches must be overcome to go beyond “stitched together” joint work and resource mobilization that are pushing entities apart<sup>12</sup> must be brought together.

### UN reform and their implications for transition

Several elements of UN reforms may over time positively impact transition practice. These include:

- The Peace and Security Pillar Reform and the establishment of joint regional divisions between DPPA and DPO to align political decision making more closely with the development and human rights pillar and under a regional umbrella, creating greater coherence and cross-pillar coordination, including in RoL areas;
- The Leadership framework and reform, with emphasis on co-creation and accountability, the role of the Resident Coordinator (and therefore DRSG/RC/HC), her/his strengthened RCO and the reinvigorated DCO in supporting joint planning and programming;
- SG Transition Directive<sup>13</sup>, which sets out the principles upon which such transitions must be conducted along with clear roles and responsibilities,
- The Management reform’s emphasis on accountability, especially through the Delegation of Authority framework, and the annual budget process that provides for more adaptability to changing circumstances that is particularly relevant in transition contexts;
- The UN Development system reform, which enables more cohesive UNCT engagement with peace operations, and its Funding Compact which promotes the gradual shift towards more long term, more flexible funding, that may enable agencies to better fund their engagement in transitions, including on RoL issues;
- On-going implementation of the Action for Peacekeeping (A4P) initiative and its emphasis on integrated planning across all mandate areas.
- The DPPA-DPO-UNDP-DCO Transitions Project, which offers policy and practical support to UN presences on the ground throughout transition processes
- The Executive Committee/Deputies Committee, which now provides sustained senior leadership oversight of transitions, and ensure adherence to agreed practices, including adherence to the SG Directive on Transition.

These may not solve all internal impediments. The reforms leave some important gaps, such as the failure to create a shared planning capacity between DPPA and DPO to lead transition efforts and provide more authority to the efforts made by the DPO-DPPA-UNDP-DCO transition project to promote greater adherence to good planning practice<sup>14</sup>. Issues are exacerbated by at times inadequate assessment of national and international capacities, including operational challenges, and overreliance of UNCT’s capacity to assume mandated tasks following the closure of peace operations. In many contexts, UNCT is unable to expand its operation due to funding constraints. The absence of meaningful Human Resource reform, with active mobility, means that ingrained, inward departmental or agency reflexes that undermine joint transition work are here to stay.

Furthermore, while both the peace and security reform and the management reform have introduced operational changes that result in efficiency benefits within the Secretariat, the problem persists between Secretariat entities and UN agencies, funds and programmes as both maintain very different operating systems. This is particularly problematic in the case of RoL where multiple Secretariat entities and UN agencies need to collaborate for effective transitions.

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<sup>11</sup>Center on International Cooperation. Folke Bernadotte Academy and the Norwegian Institute of International Affairs, *Review of the Global Focal Point for Police, Justice, and Corrections*.

<sup>12</sup>Ibidem

<sup>13</sup> *Secretary-General’s Planning Directive for the Development of Consistent and Coherent UN Transition Processes*, in line with the Executive Committee Decision 2018/38

<sup>14</sup> Ian Martin, <https://theglobalobservatory.org/2020/09/lessons-from-hippo-2015-review-for-future-peace-operations/>

Finally, the fragmentation of the UN's funding structure is a core barrier to "whole of UN" transition work. Different budget cycles make early and joint planning of transition difficult. Member States remain wary of a liberal use of programmatic funding, especially for special political missions that could further incentivize collaboration.

### 3. Reframing the terms

In the previous section we have focused on internal structural issues that might be hampering the UN support to transitions. The paper now explores the second part of the hypothesis: even if the reforms, and other changes were to allow the UN to overcome the challenges it faces in transition (and in meeting the recommendations so often found in transition reviews), the UN's impact (in terms of sustaining peace during and following the presence of the mission) would remain limited, because fundamental weaknesses in approaches remain.

In our initial framing of "transitions", we defined this term as the process and timing of major reconfiguration of UN peace operations and Special Political Missions, implying a specific set of actions to be undertaken at one point in time to go from one state to another. Yet, if we look at most recent recommendations found in transition studies<sup>15</sup> (e.g. early and inclusive planning based on a shared vision of transition outcomes, alignment of UN plans with those of national authorities; genuine engagement with civil society, etc.) and most significantly at Security Council mandates<sup>16</sup>, there seems to be an increasing understanding that these are not quick interventions that can be supported or realized within a 1-2 year drawdown period but a longer term process that accompanies a country transition out of conflict conditions. The process of creating stability is linked to concepts of legitimacy, and homegrown acceptance of political arrangements (and agreements), both of which emerge more local and long-term changes that what current transition approaches allow for. We may need to look at the issue from a different perspective, moving away from transition as a series of mission related deliverables and understanding them through broader prisms. The logic of this redirection is illustrated by the RoL mandates. The argument is that the reframing of transition necessitates first a reframing of UN engagement in RoL.

#### Re-Situating RoL

RoL in the UN is defined as "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency<sup>17</sup>."

The UN's support to RoL is almost always a key feature of UN peace operation mandates from the beginning of their deployment in country through their exit. Yet, a brief exploration of how the UN has approached its RoL responsibilities issues over time might shed some light on the reasons it has been challenging to fulfill some of the recommendations and force us to challenge the assumptions underpinning our efforts on the grounds.

Starting from the 90's, in the wake of atrocities committed in Bosnia and Rwanda the "responsibility to protect" doctrine emerged in the international community to promote and justify positive action to safeguard peoples threatened by conflict and repression. This concept rapidly evolved in peacekeeping from promoting ceasefire and keep the peace to state building. Soon the concept encompassed notions of lasting peace through institution building, with the assumption that the international community could exit (in its UN mission form) a country only after the establishment of

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<sup>15</sup> See footnote n. 2

<sup>16</sup> UNSC Res 2524 (2020) establishing UNITAMS gives UNITAMS a strong mandate, nonetheless adequate resources to deliver tasks are needed.

<sup>17</sup> S/2004/616, *Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies*, August 2014.

institutions that provided for security and stability, with minimal or much reduced outside help, notably with regards to Rule of Law.

While many stabilization efforts since the 90s have been met with considerable success, with peacekeeping missions preventing the reemergence of conflicts (e.g. Bosnia, Kosovo, East Timor and El Salvador), international community efforts at state building have yielded mixed results, with many institutions often being little more than empty shells, collapsing as soon as pressures resurfaced (see institutions collapsing in CAR after 10 years of peacebuilding).

There has been an ongoing debate as to what constitute success in terms of institution building is<sup>18</sup>. On the one hand successful and self sustainable institutions have been identified as those that are the most inclusive<sup>19</sup>, on the other, questions have risen as to what contribution external actors and the international community can offer in promoting inclusive institutions. Some studies have pointed to the fact that if foreign models of institutions are applied to a country, they can produce what has been labeled as “isomorphic mimicry”<sup>20</sup>, imitate the structure of non autochthonous institutions but without their substance. Successful institutions and sustainable peace need to accord with local customs and traditions, they must include all elements of society - including civil society, in addition to the formal government authorities<sup>21</sup>.

For many UN missions, the focus has been on institution building rather than on the role of participatory governance. This may result in an approach whereby the UN acts in support of the formal dimensions of state building but focuses less on enabling local capacities to perform those functions<sup>22</sup>. Instead, we would like to argue that if we focus more on participatory governance approaches, transitions might play more significant accompanying role towards sustainable ownership and acceptance of political arrangements (including distribution of powers).

Too often, in an effort to ensure host government support for UN deployments, UN mission configurations and capacities often reflect governments’ concerns for reinforcing security RoL institutions, with a greater concentration on technical rule of law support to a country’s institutions. Few sovereign governments want to invite the UN to meddle with their social compacts, which are often the source of great personal enrichment for ruling elites, and, as a result, the source of great social tensions. Nevertheless, as transition studies have shown, often times technical and security focused support risks fall well short of establishing stable and legitimate governance arrangements, with small attention to more long term participatory governance issues - such as the nature of the state and its inclusivity, its relationship with citizens, the distribution of power and how it is recognized and legitimized and how justice is dispensed, instead, they contribute to strengthening essentially illegitimate and unstable social compacts<sup>23</sup>.

This calls for a different approach from the UN vis-à-vis host governments and member states, putting governance and inclusivity issues at the center of a mission’s existence from the beginning and throughout its life-cycle. While we must acknowledge that the UN often time is faced with opposition by some Council Members on issues of participatory governance and social contracts, the UN could play a role in influencing discussions around UN capacities vis-à-vis a mandate that does not take into account long term sustainability of the RoL.

This evolution begs the question: what kind of ‘rule of law’ are peace operations expected to establish/extend and for what purpose? Is RoL the same as participatory governance – should RoL

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<sup>18</sup> Dobbins J. Et al., *The UN’s Role in Nation-Building: From the Congo to Iraq* (Santa Monica, CA: RAND Corp., 2005).

<sup>19</sup> Acemoglu D., Robinson J., *Why Nations Fail*, Crown Business, 2012.

<sup>20</sup> Pritchett, Woolcock, and Andrews, *Capability Traps? The mechanism of persistent implementation failure*, Working Paper 234, Centre for Global Development, December 2014.

<sup>21</sup> Autesserre S., *Peaceland: Conflict Resolution and the Everyday Politics of International Intervention*, Cambridge University Press, 2014; L. Gbeire, *A Dirty War in West Africa: the RUF and the Destruction of Sierra Leone*, Bloomington: Indiana University Press, 2005.

<sup>22</sup> DPO, OROLSI, *Extension of State Authorities in the Area of Justice and Corrections, A Lessons Learned Study on the Work of United Nations Peace Operations*, November 2019.

<sup>23</sup> Chayes S., *Thieves of State: Why Corruption Threatens Global Security*, W.W. Norton & Company, New York, 2015.

be central to participatory governance and extension of state authority? Do the key actors have the same understanding (within the UN and between UN and national counterparts)?

Evidently, such a reframing carries risks, especially for the UN. The terms 'localized' or 'tailor made' are often invoked to then ignore fundamental rights, notably with regards to gender equality and women empowerment, and for human rights more generally. The UN is mandated by its Member States to defend and promote these universal norms and values, for all around the world. There is therefore a balance to strike, but it is one that moves the UN away from increasingly disputed (and rejected) technocratic, and Western tinged, interpretations of RoL (some have called in 'rule of law in a box') towards more complex, historically and sociologically grounded models of participatory governance, whose (re)emergence the UN can contribute but whose realization will most likely outlive the mission's presence.

### Reframing Transition Success

Reframing Rule of Law support as a constituent of broader participatory governance approaches has important implications for how the UN engages in transition, and how transition success can be (re)-defined.

Under the influence of Security Council mandates, there has been an overall progressive shift in the understanding of transitions and what a successful transition means. We went notably from an understanding of the transition phase as one of UN mission handover of governmental functions to an understanding focusing more on the reconfiguration phases of the UN presence in a country<sup>24</sup>, whereby transitions are understood as the process resulting from the "drawdown or withdrawal of a multidimensional peace operation (...) or from a multidimensional peacekeeping operation to a smaller peacekeeping mission, special political mission or UN Country Team (UNCT) only presence<sup>25</sup>".

However, a participatory governance lens makes it clear that even such an approach risks remaining too inward-looking, placing organizational arrangements at the center of our considerations, instead of concentrating on what is happening in the host country, especially beyond the circles in which the UN operates. Just as RoL engagement must shift away from technical deliverables, so too must our understanding of transition shift from institutional processes. The two are linked. A focus on participatory governance and the legitimacy of power relations (as embodied, inter alia, in institutions and practices for the dispensation of justice) inevitably leads to different and more expansive frames for approaching transitions.

The first one is conceptual. What matters is not so much the arrival and subsequent departure of a mission per se. Evidently, the presence of a Security Council mandated entity is an extremely significant moment in the life of a country, and should be seized as a limited time transformative opportunity, including on Rule of Law issues. But placing the UN as the locus of transition almost automatically distorts the lens, pushing all to focus on UN deliverables, tasks and capacities. Instead, a wide governance lens places the lifecycle of a mission as part of a larger, evolutionary engagement between the international community and the country, where the mission interacts, in time and substance, with other engagement modalities in complex ways. When some say, paraphrasing Buddhist lore, that a mission should be ready to depart the moment it is born, it is because its presence is a means to an end, amongst other means. Mission transitions take place in conjunction with engagement by a broader set of actors, over a longer period of time, with the mission's presence being but a step along a winding path.

The second implication is definitional, notably with regards to what is understood as success as a mission exits. The delivery of specific outputs by the mission, or with mission support, means by itself very little. As we have unfortunately seen in many places, including in recent past in Haiti, formal, technically driven achievements make for weak foundations of long-term stability<sup>26</sup>. A participatory governance led approach to RoL places success "beneath the surface", in the world of political

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<sup>24</sup>Day A., *UN Transitions Improving Security Council Practice in Mission Settings*, UNU 2019.

<sup>25</sup> Secretary General Planning Directory, see footnote 4.

<sup>26</sup>Di Razza Namie, *Mission in Transition: Planning for the End of UN Peacekeeping in Haiti*, IPI, December 2018.

economy and tied to concepts of national ownership, legitimacy, inclusivity and acceptance. Evidently here as well, UN missions should not be expected to “deliver” these, nor can they be hoped to stay until these long-term dynamics take shape and root. Yet it is those dynamics that should be front and center of any discussion on success.

## 4. Recommendations

In light of the above and in order to identify a viable way forward to the obstacles faced during transitions, we need to reframe our understanding of those functions by adopting new lenses, focusing on new long term metrics of successes and benchmarking.

### *Placing governance dialogue at the start, and the heart of mission engagement*

Even before any mission is deployed or as its first ‘mandated function’, and before technical support is provided, the UN must consider supporting a national government dialogue on governance (to include technical RoL metrics but from a broader perspective) which would then inform the kind of UN technical support needed, and the subsequent shape (and size) of a UN mission deployment. This was the intent in Yemen following the 2011 uprising, when the mission deployed not a full blown mission with all the standard units, but a smaller team focused on supporting a national dialogue whereby Yemenis themselves define and agree on the most appropriate governance arrangements, including in their justice and security dimensions.

During this dialogue process the UN must use all tools at its disposal to support the host government to define or strengthen a social contract with its population, defining rights, roles and responsibilities of citizens and institutions. This should form the first step of a UN’s governance strategy (and not just a narrow political one focused on the elites) incorporating RoL within a broader frame, which then determines if and how a more technical package of support is required. Evidently, and the experience in Yemen illustrates, articulating a social contract (or governance pact) on paper is but the first step. Failure to ensure local, national and international adherence to what a dialogue yields can further exacerbate grievances. Such adherence must be carefully and continuously nurtured, supported and monitored, notably through the benchmarking process.

### *Contextual Benchmarking*

In recent past, the Council and the UN have moved away from using mission outputs as benchmarks. This shift must continue, by supplementing “country outputs”, to which the mission contributes with broader markers of governance (in their dimensions of legitimacy in particular) and the extent to which institutions and practices have taken root are different from these formal outputs and milestones (e.g. elections). Given the long-term nature of these markers, benchmarks could be understood and set more as trends and dynamics than as formal, one off results. This renders the benchmarks exercise more complex, but more relevant.

Setting benchmarks on the basis of formal RoL deliverables requires little country knowledge. Defining and benchmarking transitions through a governance lens requires a set of expertise and processes that are in limited supply within the Council and across the UN. It means greater involvement of national actors, neighbors and experts in fields that are not typical UN mandate areas or skills set: anthropology, sociology, etc. It means opening up the process to these actors, including them in what so far tends to be rather closed Member States and UN discussions.

While Member States are responsible for setting mandates and defining benchmarks, the UN can play a role in influencing this process. In the context of participatory governance, for example, the Peacebuilding Support Office can play a crucial role in continuing supporting the framing of transitions as reconfiguration of the UN presence towards peace building in country<sup>27</sup> for more holistic transition planning, ensuring to have peace building goals at the centre of the process and for more participatory governance objectives to be taken into account in the benchmarking process

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<sup>27</sup> Day A., *UN Transitions Improving Security Council Practice in Mission Settings*, UNU 2019



## *Extension of State Authority - focus more on local ownership and local initiatives*

While extension of State Authority through the delivery of rule of law services is often at the centre of UN peace building activities<sup>28</sup>, greater emphasis must be put on the local ownership of state institutions. At times, there is a tendency of UN RoL intervention to address systemic issues at the central level and in connection with national government efforts- with less attention placed to local initiatives and inclusive, gender responsive and people centered approaches, including through the empowering of civil society<sup>29</sup>.

This relationship must be reversed by investing more in local governance processes. . An interesting experience comes from Somalia, where the UN's RoL support was embedded in a broader governance approach that combined elements of formal state authority with more informal locally grown methods of governance.

## *Greater inclusion of civil society through "adaptive peacebuilding"*

Participatory governance calls for a much more meaningful effort to engage with civil society. The 2015 High Level Independent Panel on Peace Operations (HiPPO) Report pointed to the importance of involving civil society for sustainable peace as well as to address emerging security threats and peace building challenges. Despite growing interest in the UN policy agenda, civil society inclusions in Mission lag in practice<sup>30</sup>. There is general a lack of consensus amongst UN, member states and practitioners on what civil society is, which has generated a confusion as to how and whom to engage. As a result the role of UN engagement with civil society in missions has often been ad hoc.

In some of the most recent transitions processes, characterized by a most polarized landscape, implementing strong local ownership - also through the fundamental support of civil society - it is necessary and yet challenging<sup>31</sup> to highlight the need for transitions to reverse a top-down approach with national ownership. This can be achieved through more inclusivity, by increasing efforts to consult communities and survey local population, while at the same time acknowledging potential frictions with the host government that such approach could create. It therefore requires careful analysis of civil society and its components as well as specific skillsets (including political acumen, language and cultural understanding) to be able to meaningfully engage with civil society.

## *Strengthening and adapting Strategic Planning*

Strategic planning of mission objectives, and those related to the Rule of Law mandate in particular, must be based on and supportive of a governance strategy agreed not only with the government but must involved the civil society too before the deployment of a mission or as mission begins deploying its support. Strategic and technical tools (UNSDCF, Conflict Analysis, etc.) must be used to support this process over time, monitoring progress through streamlined benchmarks. The UN Secretariat, funds and programs must be incentivized to undertake joint programming and planning. Planning processes must be based on early joint analysis of the context to avoid fragmentation of hardware and software RoL components and enable support to national benchmarks based on actual needs.

## *UN Structures, Roles and Staffing*

More appropriate structures must accompany these shifts in frame and strategies. This could entail a re-structuring of peace operations makeup and budgets based on substantive areas and not sections, where missions and UNCT are within the same structure, building on already existing mechanisms

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<sup>28</sup> Extension of State Authorities in the Area of Justice and Corrections, November 2019, DPO, OROLSI.

<sup>29</sup> Hate Aditi N., Moore L., Druet D., UNDPKO-DFS/DPET/PBS Civil Affairs Team, *Understanding and Improving Engagement with Civil Society in UN Peacekeeping: from Policy to Practice*, UN 2017.

<sup>30</sup> Ibidem.

<sup>31</sup> Jahn P., Kurtz G., Schumann P., *How the New UN Mission in Sudan can Succeed*, IPI Global Observatory, 25 August 2020.

and adjusting flexibly to a country context - as opposed to trying to fit UN metrics to the local situation. This will be challenging in the short term, unless Member States support is coupled by significant policy changes to allow for this radical shift.

It is also important that the geographical location of UN presence evolve to be closer to where legitimacy takes root and where it is disputed, that is across the country, in the communities.

This in turn speaks to UN roles and skills which need to focus first on dialogue and facilitation<sup>32</sup>, rather than immediately and exclusively on specific technical competencies, and then evolve according to the evolution of the governance arrangements especially during transitions. The UN development system reform, and its reconfiguration track in particular, could serve as interesting and useful model for such shifts in roles and skills.

Furthermore, to foster sustainable local ownership of RoL functions, the modalities through which national staff is hired, retained and trained need to evolve, to ensure a greater focus on building and augmenting reliance on local expertise as opposed to placing greater value on international technical expertise.

### Greater jointness and integration building on the Global Focal Point

New structures must translate into a culture shift through knowledge management, for integrated RoL where the work of the UN on RoL is not fragmented across UN entities but organized under one framework of enabling support to long-term governance national benchmarks. The Global Focal Point could serve as a useful starting point for this RoL integration and increased jointness, by increasing the focus on governance thematic issues, such as gender and human rights. Obstacles hampering its complete integration must be overcome through increased strategic approaches, jointness of the field operations as well as the HQ level and streamlined resource mobilization, colocation between RoL entities between themselves and with national counterparts<sup>33</sup>.

Incentives for “jointness” need to be adopted and thought through from the start-up phase of the mission when the mission concept is articulated. The UN in this case could adopt an advocacy role and promote the case for joint budgets and resource mobilization with Member States. This lack of jointness has been shown to go at the detriment of focusing on governance thematic issues - such as gender and human rights; with entities still working on different timelines.

### Enhanced partnerships with Regional and Sub-Regional organization

The role of regional organizations needs to be better integrated into transition practice, building on their comparative advantage in helping tackle structural causes of violence and instability, with greater regional understanding and potential for identifying local solutions. Regional institutions have the knowledge— and in some cases both the legitimacy and track record to propose/imagine context specific and appropriate models of governance and engage with local actors in their implementation. The UN must continue pursuing partnerships with such regional authorities (e.g. AU, ECOWAS, etc.) in order to further offer support to context specific, localized and legitimate governance arrangements.

### Enabling Factors: Budgets and Funding approaches

A reframing of RoL and transitions must be accompanied by a constructive dialogue with the Security Council, member states and donors. This dialogue must start even before the mission is deployed and needs to be focused around long-term context specific benchmarks and based on a governance dialogue with the host government that includes short and long-term RoL goals.

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<sup>32</sup>Brockmeier S. and Rotmann P., *Civil Affairs and Local Conflict Management in Peace Operations: Practical Challenges and Tools for the Field*, Global Public Policy Institute.

<sup>33</sup>Center on International Cooperation. Folke Bernadotte Academy and the Norwegian Institute of International Affairs, *Review of the Global Focal Point for Police, Justice, and Corrections*, 2018.

Budget approaches must allow for flexibility of funding and encourage operational structures for RoL to be organized around themes rather than units. At present, while the assessed budget mechanism provides some degree of predictability for peacekeeping missions ahead of and during transitions, there is no equivalent, reliable source of funding for Agency Funds and Programs and to some extent Special Political Missions. This generates and fuels juxtapositions that have not been scratched by the reforms because of the unwillingness of Member States to accept any changes to these different funding mechanisms.

## Conclusion

The Secretary-General's reforms offer an opportunity to overcome fragmented and short term operational modalities, structures and processes; a change which could significantly benefit the way in which RoL is approached throughout the life-cycle of the UN presence in a given country. The reforms call indeed for integrated approaches and a long term focus on sustaining peace, capitalizing on UN entities comparative advantages and streamlining efforts along a prevention thread. The reform of the peace and security pillar also offers an opportunity to incentivize more context specific responses, by encouraging the integration of local and regional analysis through the regional pillar structure.

When it comes to RoL, this opportunity for change must be seized and translated into a new modus operandi for overcoming institutional silos in favor of sustained governance approaches. It must start with common definitions and understanding of RoL, governance and the relationship between the two.

With the new wave of transitions processes that the UN is going to be addressing and given the current political environment, does the UN have the courage to place governance at the centre of a national strategy discourse for sustaining peace before discussing hardware security issues and deploying technical support to the host government ? And, is the UN equipped too this? The answer to this question will determine whether the UN will successfully accompany countries' transitions and drawdown when times are ripe or whether the organization will continue playing catch-up throughout the different phases of its presence in a given country.

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<sup>34</sup> Due to the current COVID situation it proved difficult to reach out to all the intended focal points for our consultations/survey. We attempted also at reaching out to local civil society organizations in countries such as Cote d'Ivoire and Liberia that experienced recent UN transition processes, but it proved hard to receive feedbacks. A similar problem was experienced in reaching out to colleagues from International Financial Institutions (IFIs).

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