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rule of law reform in fragile or post-conflict countries, and synthesize the key challenges and pitfalls facing rule of law reform that are highlighted in the policy literature. To allow for a more coherent understanding of the breadth and complexity of rule of law reform, and how.

It is based on the simple premise that no one should be above the law. The international community acknowledges the rule of law as a precursor to the successful promotion of development and democracy, and respect and adherence to it is recognised by Commonwealth governments as a fundamental Commonwealth value. A well-functioning democracy is not possible without the rule of law. This is because the basic elements of democracy, such as free and fair electoral systems, respect for human rights, and a vibrant and participative civil society, are all underpinned by the rule of law. In post-conflict societies, rebuilding and reconciliation often begin with the restoration of the rule of law to enable the fragile political process to begin.

Development and the rule of law An environment premised on a strong respect for the rule of law will, in turn, promote and foster economic and human development. This is because the institutions of governance based on the rule of law will help to promote social stability and legal certainty. Legal certainty means that investors, particularly foreign investors, can feel safe and confident to enter the market and can assume risk that forms the basis of a market economy development. Lack of investment will slow economic growth and deny government the revenue to invest in education and social safety nets that are critical for sustainable development. In recent years, the international community has intensified its support for an all-inclusive interpretation of development. This is rightly so because it is clear that the objective of any society seeking political or social advancement and economic progress is human development. The interdependency of these elements of development is therefore not in doubt. This makes it imperative to develop a comprehensive process to achieving broad-based development. Developing sound legal frameworks will necessarily form part of this process as these are prerequisites for economic growth and social advancement. A comprehensive legal and judicial reform agenda can make an important contribution to the overall process of development. Consistent and effective laws and reliable legal tools must exist in order to address social injustice or economic imbalances. Also important is a stable and predictable legal system which promotes confidence in parties to enable protection of property rights and effective enforcement of contractual rights. The LCAD plays a supportive and facilitating role to Commonwealth member countries in upholding the rule of law. It primarily undertakes legal, judicial and constitutional reform to protect and promote the rule of law. Specific areas of focus and priority have been driven by specific concerns of Commonwealth ministers and Heads of Government. These include intellectual property law, which arose from the need to assist countries to fulfil their obligations under multilateral trade agreements such as the World Trade Organization WTO agreements. Examples of counterfeit goods include baby foods, toys, cooking oil and pharmaceuticals. Examples of pirate goods are illegally reproduced and often substandard CDs and DVDs and the free download of copyrighted music and movies; the growth of these pirate goods has seen a corresponding significant decline in the once-vibrant entertainment industry in some countries. Moreover, fake goods are produced with substandard and sometimes dangerous materials that represent a danger to public health and safety; and because they are sold cheaply, they kill the market for bona fide goods, whose production ultimately ceases. Fake and pirate goods are also smuggled into countries, depriving governments of much needed revenue. Further, the resulting profits are used to fund organised crime and this can impact on public order. These are some of the concerns influencing the Commonwealth initiative on IPR enforcement. The Rule of Law Programme has enabled the Secretariat to assist countries in developing stronger enforcement mechanisms, which among others has seen IP offences criminalised. Under these mechanisms, those manufacturing and distributing fake goods can be prosecuted. Also, profits made from these activities as well as other assets acquired from trading in fake goods can be traced, seized and confiscated. The mechanisms developed seek to protect creators so that they are able to reap the benefits of their work. The case studies provided cover a variety of areas and illustrate the impact of the abuse of IPR on society. Its involvement arose from the concern that the debts of developing countries,

especially those already classified as poor countries, had reached unmanageable proportions. The concerns resulted in calls for the forgiving of those debts as there was no obvious means of repayment by the debtor countries. Also, at a time when countries were committing to poverty reduction as part of the fulfilment of the MDGs, such states of affairs were incompatible with the objective of the MDGs – forgiveness of these debts was seen as a fundamental part of the fulfilment of the MDGs. Meanwhile, some hedge funds had developed an unpalatable practice by purchasing sovereign debt at significantly reduced rates and attempting to enforce their contractual rights in court for the full value of the debt with interest. On occasions, the resulting judgments crippled the economies of debtor countries. The objective of the related LCAD programme is to assist countries facing litigation or threat of litigation from private investors. In this regard, a Legal Referral Clinic was established to assist countries in the renegotiation of the debt owed to the private investors. Countries have also been encouraged to adopt laws on fiscal responsibility in order to avoid the accumulation of overwhelming debt. This promotes legal harmonisation, and makes legal co-operation easier and perhaps more cost effective between its members. The framework for Commonwealth legal co-operation is found in the Commonwealth Schemes on the administration of justice. The schemes represent reciprocal arrangements between Commonwealth countries to co-operate within the parameters of their national laws. Assistance can be given in criminal matters, extradition, the return of material cultural heritage and in allowing those convicted in foreign countries to serve their sentences in their home country. Where two or more countries have common peculiarities, the Secretariat can help them to develop a legal framework to cater for their specific needs. It is important to note that the schemes are informal and therefore non-binding arrangements but Commonwealth member countries are to be commended for having the will to enact binding national legislation giving effect to the provisions of the schemes which allows a genuinely mutual assistance. The Rule of Law Programme helps member countries to engage with the rest of the world. The Secretariat plays a key role in the facilitation of such engagement through its representation at various international forums such as the United Nations. It helps to negotiate international conventions on behalf of Commonwealth countries. When those conventions are adopted, countries are expected to ratify and implement them so they become part of their national laws. Some of the important international instruments the Secretariat is working on include the International Criminal Court ICC Statute, which deals with the crimes of genocide, crimes against humanity and war crimes. Another is the UN Convention on Anti-Corruption UNCAC designed to address the challenges faced by many countries in implementing strategies for achieving transparent and accountable governance. The Secretariat assists in many other ways – for example, by developing legal toolkits, advice and training tailored to the systems of member countries. Because countries are at different development stages, individual needs analysis and assistance are provided under the Commonwealth Fund for Technical Co-operation CFTC, one of the voluntary funds operated by the Secretariat. Such assistance complements the general and collective work undertaken for member countries. Platform for developing common legal policy The commonalities in legal systems means that Commonwealth countries can adopt a common position on many legal matters. The Secretariat provides the platform for developing Commonwealth legal policy by organising biennial meetings of senior officials from ministries of justice. This is followed by the triennial meetings of Ministers of Justice, which issue directives on the work to be done under the Rule of Law Programme. The opportunity created by the unique access to high-level officials such as law ministers has contributed to the success of the Rule of Law Programme. This helps to strengthen the political will in member countries to continue to pursue the legal and justice reform work under the programme. Some of the work under this programme has fallen within the primary responsibility of other ministries. Such deviation has not diminished the energy and focus of the Rule of Law Programme but is a further indication of the interdependence of the development issues in member countries and the need to co-ordinate, avoid compartmentalisation of the issues, and develop a comprehensive solution to achieving development as embodied by the MDGs. Legal reform for small states The majority of Commonwealth countries are small states and as small economies the challenges they face are vast, ranging from environmental disasters and diversifying their economies to terrorism – all of which make their economies, and sometimes their very existence, vulnerable. The Rule of Law Programme gives special attention to the legal issues relating to small

states. Legal reform tailored to the needs of small states is therefore an important part of the portfolio which takes into consideration their special needs. LCAD organises meetings every two years for ministers of justice from small Commonwealth countries. The meeting is immediately preceded by the meeting of Senior Officials of Law Ministries SOLM , thus making it convenient and cost effective for officials from small states to attend both meetings if they so desire. The meeting of law ministers of small states provides an important platform to determine matters of mutual interest and to develop a common legal policy based on their shared circumstances. The legal audience and work strategy In delivering its work under the Rule of Law Programme, the LCAD works with a variety of sectors, lawyers, judges, registrars, policymakers, investigators, prosecutors, the police and other law enforcement officials, academics, officials of international and regional organisations, and representatives of civil society. LCAD has adopted a creative and flexible approach to its work without compromising on quality and effectiveness. It has implemented some of its work online, notably the Commonwealth Law Bulletin, its flagship publication designed to bring awareness of emerging international legal developments. In collaboration with strategic partners, it has developed electronic legal resources available free to researchers and scholars. Other work has been delivered in the form of model laws, strategies, guidelines, action plans and other legal toolkits developed with the objective of supporting countries to fulfil their obligations and accede to international standards. LCAD has also facilitated mentoring, exchange of legal personnel, sponsorship, expert placement and internship, among others. Its work on legislative drafting has been delivered through curriculum development implemented by local educational institutions. It has helped to develop strong professional networks in various areas to strengthen co-operation in criminal justice matters and it encourages lawyers to contribute their time free for the benefit of their communities. Some focus areas It is impossible to cover all the work done under the Rule of Law Programme but some of the subject matters addressed in recent years and ongoing are:

Chapter 2 : The Rule of Law and Economic Reform in Russia by Jeffrey D. Sachs

The October Fourth Plenum of the 18th Central Committee "widely dubbed the "rule of law plenum" "declared the rule of law to be a guiding force in pursuing the Chinese Communist Party's major tasks, including economic development, political modernization, and realization of Xi's "China dream."

In , pushed very hard by the reformist leader Qiao Shi, "rule of law" was formally written into the party congress document at the 15th Party Congress. However, there is a big gap between ideal and reality. Less than one year after the party invoked the building of the "rule of law," human rights lawyers, activists and their family members in China were reportedly detained and investigated in what has been dubbed the " crackdown " by the media in the West. Since July , and several attorneys have been formally arrested on suspicion of subverting state power in January The move to clamp down on NGOs raised concerns as charity workers fear their work being intensely curtailed in China. There is a big gap between ideal and reality. As many as 38 lawyers and activists from the Fengrui law firm in Beijing have been detained in the " crackdown. Zhou once handled the controversial " Three Deer " poisoned milk powder case and represented the Hong Kong protestor Zhang Miao. Wang was involved in several high profile cases. She represented ethnic Uighur dissident Ilham Tohti and worked on religious, land rights, forced eviction and petition cases. Some observers in the West thus regard the CCP as adopting the Maoist political approaches and viewed its leader Xi Jinping as the " authoritarian reformer ," who tries to utilize multiple means, including reform, to amass an enormous amount of power in his own hands. The emperor was regarded as the "Son of Heaven" and rules "all under heaven. Furthermore, courts were simply another division of the state bureaucracy and there was no separation between the judiciary and the state. China never developed an independent judiciary as did its counterparts in the West. The Chinese Communist Party today inherits the legacy of the past and acts like an "organizational emperor. There are different "technologies of power" by which the CCP exercises in relation to the state and society such as coercion, bargaining and reciprocity. In order to maintain the legitimacy that enables it to remain in power the party responsively adapts to social demands from cleaning up the environment to cracking down on corruption. In this sense, its hegemony is "inclusive. While contradictions within the party are acceptable, any actions or mobilization that challenge the narrative of party rule will be deemed as subversive and unforgivable, which leads to coercion. During the Cultural Revolution , the legal system was severely impaired and abandoned. Law schools were shut down and the legal profession came to a near obliteration during the s. Efforts to rebuild the judiciary and legal profession were resumed after Deng Xiaoping came to power in the late s and early s, but the leadership faced a big problem in recruiting human capital and establishing legal professions. The adversarial relationship between judges, who represent the party, and legal professions, who represent the people and fight for individual right, leads to conflicting interests and results in collision. There were no requirements to be a judge except that one had to be a cadre. In the s and s, a large number of demobilized army soldiers with little formal legal background entered into courts. Party cadres from government institutions, usually public security, or party organs, such as the Political-Legal Committee , have also been recruited as judges. While judges tend to develop a close connection with the party, the CCP exerts deep influence in the areas of ideology, decision-making and personnel matters. In contrast to judges, lawyers and attorneys undertake a duty to represent his her individual clients. In the s, professional services were in high demand to facilitate economic reform. Legal expertise was much in demand in this period. Trained professionals were equipped with critical reasoning and analytical skills to practice law through better and formal legal training and education. Following the promulgation of Lawyer Law in , not only legal education has improved; lawyers and legal expertise have gained greater independence and autonomy and were redefined in a " less politically charged way. Having received formal education in the legal system and equipped with Western legal philosophies and ideas, the legal community was instilled with zealous passion and consciousness on liberal democracy. Often, because of undue party interference on the judiciary system, judges who wear two hats resort to political means to deal with legal practitioners. Lawyers who are incapacitated in court thus often resort to championing social mobilization as

an effective method to win appeals and litigation. However, when legal practitioners leave the court and go onto the street, resorting to politically sensitive activities, they step on the bottom line of the party and could be charged in suspicion of "subversion of state power" as exemplified in the recent "crackdown. Once legal practitioners leave the court and go on street, they are doomed to be the losers since, at this point, they have transformed a legal battle into a political one. However, the relationship between NGOs and the state has yet to be institutionalized. In order to operate, some NGOs solicit financial support from overseas. Beijing, however, has become increasingly concerned with so-called "foreign donations," fearing that NGOs could be a subversive tool of external parties to topple the Chinese government. Despite all these difficulties, the party leadership is determined to build a system of "rule of law. First, Beijing is set to establish "circuit courts" and "cross-regional judicial bodies" to sever the connection between judges and local political interests. This is to weaken what in China is called "legal localism. Judges are appointed and paid for by local governments and thus subject to local interference. These new measures are expected to "free" judges from local government. Second, and more importantly, political interventions in legal affairs by party cadres and government officials at different levels will be recorded and all consequences deriving from their intervention will be borne by them during their lifetime. Third, professionalism will be promoted in the judicial system. All judges must be either law graduates or law professionals who start their career from basic-level courts before working their way up based on performance and ability. But the country is still on the cusp of cultural, political and personnel dilemmas. This might be an inevitable transitional phenomenon as China is experiencing huge transformations and reforms. Indeed, the current reforms are widely expected to introduce radical improvements in the judicial system. The party leadership is fully aware that if it fails to establish a system of rule of law as planned, it will be incapacitated in governing an increasingly complicated society. It took the West a few centuries to build its system of rule of law, it will take China even longer time to finish its long march to "rule of law.

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