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WORKING DOCUMENT

on the respect for the Rule of Law and the Role of an Impartial and Independent Judiciary

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Introduction: the importance for the rule of law

'It is better for the law to rule than one of the citizens' - 'Even the guardian of the laws is obeying the laws' - 'Where law ends, tyranny begins'

These three statements reflect the spirit of the rule of law and its paramount importance to the promotion and consolidation of democracies. In ideal democratic states, respect for the rule of law is a crucial precondition for the respect of human rights and it is tightly linked to the promotion of good governance so essential to sustainable development.

Institutions such as the World Bank or the OECD identify a fair, impartial, and accessible justice system and a representative government as key elements of the rule of law: an independent, efficient, and accessible judicial and legal systems, with a government that applies fair and equitable laws equally, consistently, coherently, and prospectively to its entire people.

The legal system is also crucial for economic growth since it consists of predictable, enforceable and efficient rules required for a market economy to flourish. Therefore, the rule of law also has an impact on trade security, strengthening property rights, the settlement of civil disputes and is crucial for strengthening the economy and promoting all forms of investments.

After decades of work in this area there is a broad consensus on the principle that without governance based on the rule of law that promote political and social stability and legal certainty, there cannot be investment and assumption of risk that form the basis of market economy development, let alone sustainable development. Indeed, the strength of the rule of law is the best predictor of a country’s economic success.

Furthermore, deficiency in the rule of law encourages high rates of corruption, with further devastating consequences on the confidence of economic actors. This lack of investment, in turn, slows economic growth and consequently deprives the governments of resources to invest in education, social safety nets, and sound environmental management, all of which are critical for sustainable development.

Factors in the judiciary influencing the respect for the rule of law

The principle of separation of powers. Democracy can be considered as an unstable equilibrium between the three branches of government (judicial, executive, legislative branch). Legislative power, the most important and guarantor of democracy, is supposed to represent the expression of the people and is the key to come to effective democratic law making. Such a separation, it has been argued, limits the possibility of arbitrary excesses by government, since the sanction of all three branches is required for the making, executing, and administering of laws. Such a division helps to prevent abuses of power and is essential to a healthy democracy.

However, in the domain of the judiciary the main reason that provokes the imbalance between powers is corruption. Its causes are numerous, the most important one being the influence of the executive and legislative branches. Sometimes, they have the power to decide on the nomination of the judicial personnel (including magistrates), which forces the latter to take unfair decisions in order to keep their position.
In order to ensure a **good quality of the Judiciary** and coherence between primary and secondary law, it is crucial to dispose of and keep **qualified human resources**. Therefore judges and prosecutors should be well trained, well paid and well supported in terms of IT and administration. Capacity building should also focus on the organisation of courts and on secure and efficient archiving systems. In addition, courtrooms but also judges, prosecutors and lawyers should be granted physical protection, when appropriate.

**The role of international organizations.** Recognizing the importance of rule of law and good governance, many donor agencies are actively supporting legal and judicial reforms, including judicial training, development of new laws and legal institutions, and capacity-building. However careful consideration must be paid to the particular rule of law and justice needs in the specific context of each country, including the condition and nature of the country’s rule of law system (both formal and traditional) and the culture, traditions and institutions that underlie that system.

In this context, the **ACP-EU Partnership Agreement** has an influential role to play as set out in its Article 9, where human rights, democratic principles of the rule of law, and good governance are defined. In case of a failure to comply with this article, the political dialogue of Article 8 can be used to discuss and find solutions to improve the situation. If the dialogue is not successful, the application of Article 96 could be engaged.

**The media and civil society** also have a major role to play in influencing and even controlling and denounce the lack of respect for the rule of law. A strong media and civil society could appear as a sort of very independent 4th branch of the powers. Their role is to pressure the other branches in order to protect the interests of the people.

**Conclusions**

No rule of law programme can be successful in the long term if imposed from the outside. Promotion of rule of law requires in-depth understanding of the political context and be based on national assessments, needs and aspirations. Leadership and decision-making for its promotion must be in the hands of national stakeholders. Political will on the part of national authorities is essential. National ownership also involves public consultation based on the principles of inclusion, participation, transparency and accountability.

Experience indicates that the rule of law is strengthened if reform efforts are focused on assisting the State to apply its international legal obligations, and are credible and adhere to the principles of inclusion, participation and transparency, facilitating increased legitimacy and national ownership. Meaningful ownership requires the legal empowerment of all segments of society.

Finally, revising laws and building judicial institutions is important, but it is not enough. While a professional set-up of a legal framework requires education and training, it should not be forgotten that justice should also serve and empower the weakest segments of the population. The use of judicial instruments should not be a privilege for a limited number of people. That is why efforts should be made to make
access to justice (and make justice available to all) one of the priorities of ACP-EU cooperation.