

BRIEFING NOTE No. 154

# **Rethinking EU support to the rule of law: Taking a stand for sustainable development**

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## **Summary**

This briefing note summarises key findings, conclusions and recommendations of the external evaluation of the European Union's support to the rule of law and anti-corruption in partner countries from 2010 to 2021.

The rule of law requires that public power acts within the constraints of the law, in accordance with democratic values and fundamental rights, and is under the control of independent and impartial courts. Inextricably linked to the rule of law is the fight against corruption. Most rule of law support actions are unlikely to be sustainable without it.

The EU's support to the rule of law and anti-corruption, both at home and in its external action, faces a myriad of challenges. Although the

EU support has achieved incremental progress and added value in the justice and security sectors, a large amount of focus was placed on the 'thin' definition of the rule of law, meaning support for formal justice reforms, including access to justice. However, the EU has not focused enough on its 'thick' definition, one that promotes social and economic justice.

Additionally, the EU has not clarified and internalised its anti-corruption policy in a way that reflects the strong link between corruption and the rule of law. The evaluation, therefore, calls for increased efforts to systematically apply a rule of law and anti-corruption perspective in practical and concrete issues experienced by citizens in their daily lives.

## Introduction

The rule of law is one of the foundational values of the European Union (EU), enshrined in Article 2 of the Treaty of the European Union. It has also become one of the principles to guide the Union's actions on the international scene, as expressed in Article 21 of the Treaty. The inextricable link between the rule of law and anti-corruption was highlighted by the EU in its first Rule of Law report of 2020, where it declared the four pillars of rule of law to be: the justice system, the anti-corruption framework, media pluralism and other institutional checks and balances (emphasis added).

The rule of law has been recognised as a top priority in core EU policy documents, including its [2011 Agenda for Change](#) and [2017 Consensus for Development](#), where the Union emphasised its commitment to promote the rule of law both within the Union and its

external policy. This concern for the rule of law (and by extension anti-corruption) in EU policy documents is bound to be reflected in its external action as well as its internal affairs. However, in the recent global climate of creeping authoritarianism, a shrinking space for civic action and the rise of populism, the task of promoting rule of law and anti-corruption agendas is becoming increasingly challenging. Despite – or perhaps because of – these developments, the EU declared in its [2016 Global Strategy for the EU's Foreign and Security Policy](#) that 'principled pragmatism' will guide its external action in the coming years, thereby recognising the imperative to balance its idealistic aspirations with realistic assessments of the prevailing international environment.

This raises the question of whether the EU has been successful in this stated aim of promoting rule of law and anti-corruption agendas abroad. This and other considerations were examined in its commissioned external [evaluation of its support to the rule of law and anti-corruption in partner countries](#), covering the period of 2010 to 2021. The evaluation was designed to be broad in scope, not only looking at support provided to core state institutions and civil society organisations but also analysing the application and promotion of rule of law principles and standards beyond matters relating to formal justice and anti-corruption.

The analysis involved examining how rule of law and anti-corruption standards were used to foster respect for human rights (including gender equality) and democratic principles, as well as the EU objectives related to peace, resilience, security, trade, private sector development and natural resources management. Consequently, the evaluation of the EU's programming touched upon several interlocking agendas of the EU related to i) other governance

concerns (human rights, democracy, civil society development); ii) security and crisis management challenges (including the fight against terrorism); and iii) development issues at large (for example access to public services, economic inclusion, resilience, peace and security). The evaluation looked at key lessons on 'what has worked and what has not'.

## **Mapping the EU's spending on the rule of law**

The evaluation identified two overarching categories of support to gain a clearer understanding of the many ways in which the EU supports rule of law and anti-corruption interventions.

The first category consists of EU interventions that had the clear objective of strengthening justice systems and anti-corruption frameworks. The second category includes a wide variety of interventions to strengthen the wider political and institutional context for rule of law and anti-corruption, including human rights, democratic standards, the governance systems at national and local levels, the security sector, and public finance management, among others.

Within the context of support clearly aimed at supporting justice systems and anti-corruption frameworks, the EU spent around €3.5 billion in the period from 2010 to 2021. Support to the wider rule of law institutional and political context averaged around €5 billion in the same period.

One trend which may be observed here is that the EU placed a heavy emphasis on support for formal justice reforms, including access to

justice (otherwise known as the ‘thin’ definition of the rule of law), with much less emphasis on the instrumental value of rule of law and anti-corruption standards to promote social and economic justice (also known as the ‘thick’ definition of the rule of law). In this respect, the justice sector received the greatest proportion of the funding overall, with around 61% of the funding allocated to it. Conversely, anti-corruption was one of the least funded fields, receiving around 3% of the funding.

## **Observed successes**

The EU has notably been successful in establishing clear and coherent policy and strategic frameworks for its rule of law agenda. In both restrictive contexts and conflict-affected states or settings, there have been demonstrated advances (albeit to a limited extent) in refining policies and strategies, investing more in context analyses, responding to windows of opportunity, and providing flexibility in programming, including towards potential backlash.

Support programmes in this regard have been bolstered by the unambiguous political mandate given to support the rule of law both as a core EU value and an essential element of its external action. As a result, the EU’s rule of law agenda has been implemented in ways that align with and promote its other values, such as human rights, gender equality, inclusion, independent civil society and non-discrimination.

Some noteworthy achievements of the EU in rule of law include its longstanding partnership in rule of law matters (mostly justice and

security sector reforms) in Nigeria, Jamaica and Vietnam. In [Nigeria](#), rule of law principles were applied to support human rights trainings for the police and in improving human rights practices in counter terrorism units and prison systems. These trainings may have contributed to a move away from confession-based prosecutions and convictions in the justice system. Also, the EU maintained rule of law agendas over time in conflict affected/fragile countries such the Democratic Republic of Congo, where it funded a number of actions through EIDHR related to victims of human rights abuses and the fight against torture and impunity.

It is of interest that, while the express label of the rule of law has been used in some programming documents, such as those in [Nigeria](#), in others, rule of law is subsumed within the wider – and slightly out-of-fashion – concept of “good governance”. In the words of a respondent during the evaluation: *Rule of law is not a subject or project on its own but is often integrated in several programmes or in budget support.*

In truth, the EU has had some profound impact in its support to national justice systems, and it has made significant contributions in limiting serious human rights violations. This has remained so even in challenging contexts; for instance, in the face of the reversal of earlier gains by authoritarian regimes in Guatemala, the EU ensured consistent support to access to justice for the most vulnerable and marginalised.

Despite these advances, the evaluation identified two notable challenges in the kind of support granted: firstly, the EU generally considers rule of law as a separate field of development, rather than a concept connected to values that are cross-cutting such as

human rights, gender equality and non-discrimination. Additionally, the EU has so far taken a more careful approach to anti-corruption, more often than not subsuming this theme within others or even avoiding the language of the fight against corruption altogether. As a result, the various initiatives failed to contribute to the development of a rule of law and anti-corruption culture.

## **A siloed approach to the rule of law**

The EU has so far treated its rule of law programming as a specific, often separate, theme in its external action. Interventions on justice and security sector reforms sit at the forefront of the EU's rule of law support, alongside - and not integrated into - the promotion of EU values such as human rights, gender equality and non-discrimination. A possible reason for this approach is the complexity of rule of law itself as a concept that is infused with values that are not necessarily shared outside of the EU; add to that the increasingly contested nature of rule of law globally, including the growing resistance to the perceived European social model. These factors have influenced the EU's choice of a more pragmatic approach that focuses on incremental progress in selected fields with a greater likelihood of success.

Nevertheless, this siloed approach to the rule of law meant that there was little to no mainstreaming across sectors, even where direct linkages to rule of law could evidently be made. Consequently, limited attempts were made to establish rule of law agendas in traditional development sectors such as private sector development, trade and natural resource management, even where poor rule of law and corruption were the main issue.

Additionally, limiting rule of law to justice and security sector support places excessive focus on one aspect of rule of law, without acknowledging that few citizens ever get to these institutions. In fact, the EU has missed several opportunities to bring rule of law and anti-corruption issues closer to the citizens through relating these standards to development interventions on public service delivery (such as health or education) or with regard to household financial issues (such as access to land, equitable taxation systems and women's economic empowerment). Doing so has indirectly served to reinforce existing grievances against governments and institutions. Thus, while the EU's efforts to foster access to justice for women in Kenya provides a clear example of progress, its record on mainstreaming gender equality including regarding women's economic empowerment had a mixed record.

Saying that there was little mainstreaming of rule of law in private sector development does not mean that the EU contributed little to private sector development, just that rule of law, and by extension anti-corruption, did not figure greatly in such programmes (and vice versa). In a number of countries, the EU missed the opportunity to link the rule of law and anti-corruption to business, trade, and investment, even when sustainable market-based economic development was the stated objective of all EU cooperation.

## **A timid approach to anti-corruption**

Compared to its support to rule of law, the EU has been much less visible in fighting corruption, mostly due to a lack of clear policies, guidance, capacities, expertise and incentives that address what is admittedly a sensitive issue in a vast majority of the countries in which it operates. As a result, its engagement strategies have been much less clear and comprehensive.

In fact, the EU rarely directly engages on anti-corruption (a notable exception being in [Nigeria](#)). It is more commonly the case that anti-corruption initiatives are subsumed under different, less confrontational labels. For instance, in Kenya, the [PLEAD programme](#) on justice reform also promotes public accountability (including the use of available budgets), which clearly links to anti-corruption. Another alternative label frequently used is public finance management. These approaches end up limiting anti-corruption to being implicit and assumed rather than an explicit and articulated programming goal. Although the EU has initiated a number of valuable initiatives (including in support of specialised civil society organisations), these do not add up to a comprehensive and integrated strategy to address corruption directly and over a longer period of time.

There are a number of reasons for this hesitance in developing a strategic and coherent approach to fighting corruption (and by extension mainstreaming it in EU interventions), including the refusal of power holders to allow actions in the area (for instance, a planned EU support to Transparency International was blocked in Vietnam); political economy analyses determining this to be a 'no go area'; the risk of intimidation or closure of implementing agencies; and institutional constraints within the EU delegations themselves. Institutional constraints within the EU include siloed approaches

(limiting the issue to already overstretched governance units) capacity constraints, a lack of useful guidance from the headquarters, as well as limited availability of expertise.

Moreover, an even more prominent and foundational cause for this timid approach is the apparent difficulty in finding a clear policy framework on anti-corruption as compared to access to justice, for instance. There is indeed the tendency to view it as a separate issue from, and not a sub-set of rule of law.

## **What is necessary moving forward?**

It is evident that the EU needs to define a comprehensive anti-corruption framework that clearly links it to rule of law and not address it as a separate issue. In truth, the EU has made only limited attempts to mainstream rule of law and anti-corruption agendas in traditional development programming. To do so will require it to clearly highlight the interlinkages between anti-corruption, rule of law, governance and the various development sectors. This will, of course, require a balance between its ambitions and limitations in this respect. To fulfil this mission, it may be necessary to take a number of steps highlighted below.

As a first step, the EU should elaborate a unified and comprehensive framework that inextricably links anti-corruption to rule of law strategies and interventions. Such a framework should, among other things, clearly outline the links between the fight against corruption and rule of law. In essence, the EU should cease considering rule of

law and anti-corruption as separate issues, because corruption and impunity for corruption are ultimately failures of rule of law.

Additionally, the EU should recognise rule of law and anti-corruption as a foundation of its external action (and not merely one aspect of it). By doing so, rule of law and anti-corruption standards may serve as a reference point to foster respect of human rights, gender equality and democratic principles. Rule of law and anti-corruption standards are also relevant for core EU objectives including peace, resilience, security, trade, private sector development and natural resource management.

Furthermore, the EU should develop core rule of law and anti-corruption principles beyond matters related to formal justice and anti-corruption systems. This will also involve the clarification of red lines that clearly delimit its boundaries of acceptability. By doing so the EU will work to engender a culture of rule and law and anti-corruption which, among other things, will require citizens knowing their rights. This is a basic requirement for effective programming which goes beyond supply-driven support by also activating the demand side of reforms. This contributes to giving a voice to citizens and creating demand for greater transparency and accountability. An example of such a bottom-up approach was taken in Kenya, where a wide range of projects were geared towards strengthening the legitimacy of the rule of law, in the absence of government commitment to reform. Such an approach could also foster a real culture of rule of law and anti-corruption in a powerful way over time, by showing its practical value to citizens across all aspects of governance including human and property rights, as well as women empowerment and allocation of public goods and services.

Finally, the EU needs to take a more forward-looking approach that takes into account past successes as well as evidence of what has not worked. Over the past decade, the EU has gained valuable experience, good practices have emerged (albeit poorly documented), and there is now a stronger institutional foundation to engage on rule of law and also anti-corruption matters. This institutional memory could be drawn upon to develop a rule of law and anti-corruption lens or perspective that forms a critical engagement principle across sectors.

## **Conclusion**

The challenges to the EU as a normative power – and by extension its promotion of value norms – are unlikely to go away anytime soon. Indeed, the challenge of addressing rule of law and anti-corruption issues both at home and abroad remain acute. However, its vast experience, as well as the lessons learned from frontline staff working on rule of law and anti-corruption may help the EU to reassess its values agenda while clarifying the goals to advancing rule of law and anti-corruption in partner countries/regions.

Therefore, what is needed is a move away from a “thin” definition of the rule of law – focused on institutional reforms and access to justice – to a “thick” definition of the rule of law – which takes into account other crucial dimensions such as accountability, just law (in terms of access to public goods and services), open government, the fight against corruption in all sectors or in terms of fiscal equity and domestic resource mobilisation. The EU will then be able to develop more sophisticated response strategies and ultimately enhance the

coherence and complementarity between its efforts to protect rule of law and anti-corruption within Europe and in its external action.