Rule of Law and Sustaining Peace:

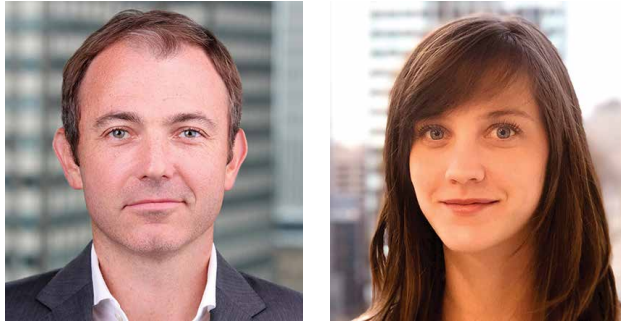## TOWARDS MORE IMPACTFUL, EFFECTIVE CONFLICT PREVENTION

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Executive Summary

In 2016, the UN Security Council and General Assembly came together to express a unified commitment to the concept of "sustaining peace" based on a common understanding that conflict prevention should be undertaken by all pillars of the UN and should address the root causes of conflict.[1] Inclusion is central to this understanding of prevention: societies that have highly unequal access to rights and services, or that concentrate wealth and power in a small elite to the detriment of marginalized populations, are far more likely to lapse into violent conflict.[2] In this context, the UN's rule of law work has been increasingly understood as crucial to conflict prevention: working towards effective, transparent, inclusive rule of law institutions can reduce the risks of violent conflict, helping to address structural and root causes of social and political inequalities and unrest by building more resilient and just societies, while also bolstering the more immediate capacities of States to address conflict risks. Indeed, Sustainable Development Goal 16 captures this link between inclusive rule of law institutions and longer-term stability, demanding that UN programming help to bolster equitable access to justice and institutional capacities for all.[3]

Following the Sustaining Peace resolutions and the Secretary-General's subsequent report on peacebuilding, the UN has increasingly mainstreamed its rule of law work, from its role in peace operations to the broad array of programmatic support by offices, agencies, funds and programmes. Coherence across programmes has been fostered by the Global Focal Point for the Rule of Law arrangement,[4] and the broader call by the Secretary-General to pursue unified, cross-pillar approaches to prevention. Rather than being considered a set of predominantly technical forms of support in conflict settings, the UN's rule of law work has been reconceptualized as fundamentally a political endeavour with a broader array of engagements that can take place in any setting, working in support of Sustaining Peace. Recently, a group of sixteen Member States asked the Secretary-General to take practical steps to make the UN fit for purpose and develop a more unified voice, as he reviews the UN's rule of law strategy, stating that the rule of law requires a "new approach."[5]

Five years on from the Sustaining Peace resolutions, the Executive Office of the Secretary-General of the United Nations, with the support of the Global Focal Point for the Rule of Law (GFP), commissioned United Nations University Centre for Policy Research (UNU-CPR) to conduct a series of case studies on the UN's rule of law work. Specifically, this project asks how the UN's rule of law work has contributed to the goals of conflict prevention by reducing the risk of escalation into violent conflict, helping to build more resilient, inclusive institutions, and contributing to the kind of structural transformations that many fragile and conflict-affected settings require to achieve long-term stability and sustainable development. In line with the broad concept of sustaining peace, the study considers how the UN's rule of law work may have contributed to prevention in a range of ways, including by supporting political processes, building inclusive national capacities, restoring the basic functioning of justice institutions in the aftermath of conflict, contributing to the fight against impunity for crimes fuelling conflicts, addressing humanitarian and development priorities, and helping the Organization respond to other crises.

The present report is based upon eight in-depth case studies conducted by UNU-CPR, in close consultation with relevant UN peace operations, agencies and field offices. The cases were selected to cover a range of settings, from countries hosting UN peacekeeping operations (Central African Republic [CAR], Democratic Republic of the Congo [DRC] and Mali) or special political missions (Colombia, Afghanistan and Lebanon),[6] to non-mission settings (Bangladesh, Bosnia and Herzegovina) and reflect the breadth of the UN's

rule of law work. While not comprehensive, the cases offer insights into both the types of rule of law interventions and the ways in which country contexts may enable or inhibit the UN's ability to have a strong impact on conflict prevention.

The report not only offers consolidated lessons from the eight case studies, but is also designed to provide an actionable framework for rule of law policymakers and practitioners across the UN system. As such, it is divided into the following chapters: (1) the logic of rule of law, describing the theory of change behind the UN's interventions and some concepts to understand how the UN contributes to impact on the ground; (2) common challenges arising in the UN's rule of law work across a range of settings; (3) lessons from the eight cases; and (4) a framework outlining key considerations for rethinking UN approach to rule of law assistance and strategies in the future.

To position the UN's rule of law work conceptually at the centre of the UN's broader conflict prevention and sustaining peace priority, the authors draw on the eight case studies to evaluate the extent to which the UN's rule of law engagements may have helped reduce the risks of violent conflict. This analysis provides lessons and guidance to policymakers and practitioners on how to design and implement effective rule of law strategies in a range of settings. The framework proposes that, in order to build an effective rule of law strategy that is likely to impact the risks of violent conflict, rule of law programmes should be based on the following steps:

1. **Understand the problem** – base rule of law programming on a thorough analysis of the issue and a mapping of the sources of power in a given system.

2. **Develop end state(s)** – rule of law should articulate overall "end states" at which point the UN can shift to a new constellation of actors and programmes.

3. **Identify comparative strengths and priorities** – the UN should conduct a comparative analysis of the value added of the full range of actors, clearly identifying how the UN complements others.

4. **Develop theories of change for rule of law** – the UN should articulate how a set of activities will contribute to conflict prevention/sustaining peace, moving beyond the typical results based budget or log frame approach.

5. **Incorporate rule of law into a broader political strategy** – rule of law work should not be siloed as a set of purely technical activities, but should be part of a broader political strategy of the UN in-country.

6. **Create flexible, adaptive, iterative programming** – the UN should develop programmes that can shift more easily, in response to early feedback/results from initial phases.

7. **Identify financial partnerships** – the bridge between short- and long-term prevention is at least partially built on structural financing, the kind of interventions that are typically led by the World Bank, regional economic banks, and commissions.

8. **Make inclusion a goal in itself** – one of the most important lessons of recent years has been that participatory and inclusive forms of governance are an indispensable aspect of sustaining peace and should be central to rule of law programming.

9. **Gather information on impact** – across all of the UN's rule of law work, and particularly in the fight against impunity, far more needs to be done to demonstrate its impact on conflict prevention and sustaining peace. This report offers some recommendations on methodologies and approaches to evaluate impact.

1

The logic of rule of law

Within the UN system, the rule of law has been laid out as a principle of governance in which all persons and institutions – including the State itself – are accountable to laws that are publicly available, equally enforced, and independently adjudicated in line with international human rights norms and standards.[7] Such application requires fairness in the application of the law, separation of powers as amongst executive, legislative, and judicial branches, legal transparency, and institutions that garner public confidence and legitimacy, with equal access to justice for all. Meaningful rule of law engagement not only provides individuals and society with effective institutions to address day-to-day security concerns, resolve a wide range of justice problems and promote accountability, but also helps to address longstanding grievances, such as past crimes, social injustices, gender inequality and the legacies of previous forms of rule. As such, rule of law is a necessary but not sufficient condition for prevention and sustaining peace. It is also work that stretches across the State/non-State divide, often involving a range of civil, local, traditional, and private actors as much as State institutions.

Importantly, there is a clear recognition within the UN system that rule of law is not a discrete set of separate goals and practices, but rather an integral and coherent process that falls within the mutually reinforcing imperatives of justice, peace, democracy and human rights.[8] The justice sector exists in interdependence with other institutions, including those designed to foster economic and social progress, ensure transparent forms or rule, restrain abuses of power, and guarantee basic human rights. As such, the UN's rule of law work is deeply interlinked with the 2030 Agenda and the Sustainable Development Goals (SDGs), especially Goal 16's call for inclusive and accountable institutions, and the wide range of activities pursued by the peace and security, development and human rights pillars of the UN. It is also reflected in the UN's women, peace and security (WPS) and youth, peace and security (YPS) agendas, and its response to emerging trends,

such as efforts to combat hate speech, prevent radicalization and help to improve resource governance in the face of climate change.

The breadth of activities captured in this description of rule of law complicates any study of the impact of the UN's work in this area. Indeed, this study does not attempt a single definition of rule of law but is instead guided by the experts interviewed in the eight case studies, allowing practitioners to define what they saw as the most impactful rule of law work in their respective countries. If rule of law assistance can mean a broad range of engagements – including advisory support, technical capacity-building, direct programming, or even administration of justice – it can be difficult to develop a theory of change to describe the UN's impact. Moreover, the UN is often a relatively small player in a wider field of international assistance, national, and local actors, often contributing fairly modestly to overall rule of law programming and policies. In other settings, the UN is a fairly dominant player, but must still act in a well-coordinated fashion with other actors if it is to deliver impact. Indeed, in many instances, the impact of the UN may be largely invisible, expressed more as the work of others or gradually changing mindsets than an easily tracked set of outcomes. In such complex settings, how can we measure the UN's impact in terms of reducing the risks of violent conflict?

Rather than attempt to isolate the UN's work or identify a precise causal impact, this study acknowledges the range of important players in the rule of law space and looks instead to situate their respective contributions to conflict prevention. The UN's contribution may differ significantly based on the mandate, context and approach of the entities involved. For example, in the Colombia case study, we identify the important role the UN played in developing a more inclusive peace process by ensuring that women and victims were able to participate in the talks in Havana, Cuba. Here, the theory of change was that a more inclusive peace agreement that reflected women's and victims' perspectives (and indeed had women peacebuilders involved) was much more likely to lead to a viable transitional justice arrangement and consequently a more sustainable peace process. In the DRC case study, we note that the decision to make the UN's justice support conditional on the Congolese Government taking on a higher caseload of

FIGURE 1: UN Interventions and Risk Reduction
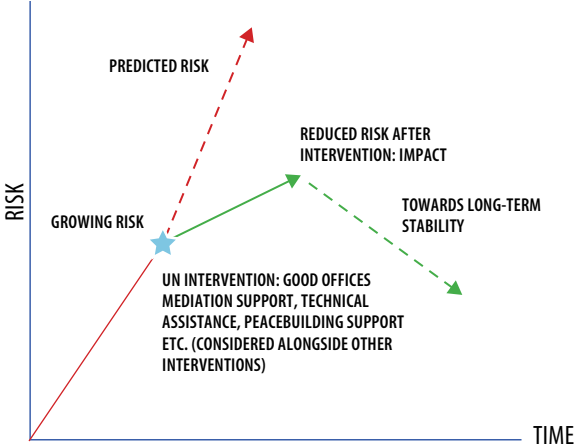
Source: UN Department of Political and Peacebuilding Affairs, "Strategic Plan 2020-2022".

sexual violence cases, resulting in significantly more trials of sexual and gender-based violence (SGBV) than previously and greater awareness of the need to prioritize these cases. Ultimately, this should drive behavioural changes, longer-term reductions in the rates of SGBV, breaking the cycle of violence, and improved capacities to protect the rights of women and girls and other vulnerable groups, though these impacts could not easily be captured in the studies. Our approach recognizes that there is no single pathway to impactful prevention work: each intervention requires a bespoke theory of change that can be tested over time. But broadly, the study adopts an approach used by the UN Department of Political and Peacebuilding Affairs, asking whether and how the UN's rule of law interventions helped to reduce the risks of escalation into widespread violent conflict, both in the immediate and longer term (see diagram). [9]

This, however, raises an important shortcoming within the UN system: there are very few tools or approaches that meaningfully evaluate risks, especially around conflict prevention. As this report outlines, a more serious approach to evaluating impact would require significant investments in the UN's capacities to conduct strategic foresight, evaluate trends and rising risks on the basis of empirical information (analysis and data), and feed that information into programming.

2

Common challenges

While the eight case studies explore widely different dynamics, the UN's rule of law work encountered similar challenges in nearly every setting. These constraints often combined to create an extraordinarily difficult context for the UN to advance its rule of law goals and understand impact, though at times they also prompted innovative approaches (discussed in the following section).

Scope and duration

Across the cases, the rule of law challenges were typically described in broad, systemic terms, often requiring the kind of national transformations that might take many decades to achieve. In the DRC, for example, endemic shortfalls in governance capacities meant that the UN had grappled with similar issues around lack of respect of human rights, weak justice institutions, corruption, and poor State engagement for more than 20 years, serving to at least shore-up the situation and prevent a further worsening, but with arguably little transformational change. Within some of the recipient national rule of law institutions or communities, there was limited progress to show in many key rule of law areas over the timespans considered. Similarly, in cases like Bosnia and Herzegovina, the legacy of past crimes combined with growing nationalistic and polarizing politics meant that meaningful progress towards more independent, effective justice institutions was very unlikely in the short term. In settings like Afghanistan and Lebanon, trends pointed to worsening governance indicators, a decline in the relationship between the State and its people, and perhaps an even longer horizon for the kind of transformational rule of law work considered necessary for sustained stability.

Despite these long timeframes for change, UN rule of law programmes are typically conceived of in two to four year periods, with indicators of progress often expected in a matter of months. In peacekeeping settings, this may be understandable given the crisis response type nature of some rule of law mandate delivery. However, it is also seen within the context of UN development programming, where there may be shorter timeframes and there is sometimes an assumption that change will occur in a linear fashion, with rule of law capacities increasing as a result of capacity-building, advisory support, and direct programming in support of the justice sector. The reality is far more complex, with many countries experiencing periodic setbacks and apparent worsening trends before any improvements. As Rachel Kleinfeld has pointed out, programming in these contexts is more like sailing a boat than directing a train; linear programming that requires indicators of progress on a monthly or annual basis is frustrated by the reality of long-term non-linear change.[10]

Limited will and capacity

Many of the cases illustrate countries emerging from decades of weak governance and conflict in which the institutions of State were eroded, destroyed or never allowed to develop (e.g. DRC, CAR and Mali). In such settings, the challenge is less about improving rule of law capacities and often more about building them up from close to scratch. The lack of effective institutions and largely underskilled cadre of national bureaucrats in such settings can mean that the UN's work focuses more on establishing the basic infrastructure than the ambitious goals of good governance or effective rule of law. "There was literally nothing when we got here," one UN official said when speaking of the UN's rule of law work in northern Mali in the early years of the UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA). "We spent the first years just trying to get the buildings in place." While these statements point to weak institutional capacities, it should be noted that Mali has a rich history of various forms of governance, many of which

are not rooted in State institutions or the kinds of capacities that are described by traditional UN rule of law intervenors. A focus on "getting buildings in place" could well elide such forms of governance. As described below, identifying non-State forms of rule of law capacities may be a fruitful way to approach some of these types of settings, rather than considering countries a kind of tabula rasa for intervention.

In other settings, such as Bosnia and Herzegovina and Lebanon, deeply polarized political dynamics have resulted in biased or untrustworthy State institutions, viewed more as sinecures for the political elite than meaningful representations of the population. Indeed, the Bosnia and Herzegovina case study suggests that the largest impediment to improved rule of law, human rights and transitional justice is the politicians themselves, many of whom reject the international consensus on war crimes and refuse to support efforts to build accountability. Even in countries with sophisticated and well-established rule of law institutions – e.g. Colombia – national actors often see UN programming as intrusive and unwelcome, potentially internationalizing a domestic agenda.

This combination of weak capacity and lack of political will, which is inherent to most conflict-affected zones, has underscored the crucial importance of the UN's engagement in the rule of law area, but also inhibited the UN's rule of law work across many of the case studies. It has also complicated the UN's concept of "national ownership," given that in many cases the UN is compensating for the lack of State capacities because the political will and resources available do not allow for than meaningfully bolstering them in the long term. However, in many of the interviews conducted for this report, UN actors had few ideas for how to address the problem of political will. "If the government doesn't want to do something, we're stuck, we have nothing we can really do," one expert noted. This does not mean a lack of political will on the part of the government signifies a dead end for the UN, and some of the case studies in this project have identified a range of ways the UN has engaged beyond the government with real results.

Limited mandates and resources

A recurrent issue across the case studies was the limitation that various mandates placed on the UN's rule of law work. Even in peacekeeping settings with relatively robust rule of law mandates (e.g. CAR, DRC and Mali), UN staff frequently highlighted that rule of law had been marginalized as a mandate priority, stripped of resources when missions had to prioritize, and at times reduced to a set of technical activities that are only marginally aligned with the central political objectives of the missions. In other settings like Bangladesh, Bosnia and Herzegovina, and Lebanon, the UN's rule of law work was a relatively small part of the broader country programming, at times considered peripheral to the central goals identified in national-level plans.

According to UN experts, these limitations on mandates or lack of prioritization for mandate delivery have contributed to funding shortfalls for some of the most important rule of law work across different settings. "It's a combination of telling us that rule of law is the most important part of the UN's work, but then stripping us of our core resources," one expert noted. This was not a uniform opinion, and some UN offices noted that resourcing for rule of law in general had increased significantly over time.

Limited information on impact

This project confronted a challenge present across much of the UN's work in conflict settings: there is very little data gathered on the impact of interventions, and especially little reflecting the views of the population themselves. The overwhelming bulk of data collected in rule of law programming concerns activities – e.g. the number of activities conducted, the expenditure of programmatic funds, the number of recipients of trainings – but very little has been done to assess the relationship between these activities and meaningful changes on the ground.[11] There is often little consensus on the methodology to be applied to determine impact and what impact could be realistically measured. This results in confusion about what type of data should actually be collected. Moreover, given the already scarce resources for substantive work, there is often a

major capacity deficit of personnel with the skills or expertise to design and gather meaningful data and attempts to do so often draw important resources away from substantive delivery. This became abundantly clear when we asked our core question for this study: How has the UN's rule of law work contributed to a reduced risk of violent conflict? Generally, responses went in two directions: (1) ignoring the question and focusing again on the UN's activities, or (2) suggesting that any causal link between the UN's activities and changes on the ground was impossible to identify. "We can't ever know if our work helps to prevent conflict, because you can't hear the dog that doesn't bark," one UN official suggested.

This challenge is not confined to the UN's rule of law work; establishing causal links between UN activities and changes on the ground is a complex and difficult process that has frustrated many scholars.[12] It points in part to the need to gather more data relevant to the question of impact,[13] but also to the importance of putting in place clear theories of change for the UN's work that is grounded in meeting specific standards and

equipped with a process to measure results. "We spend most of our time with our heads down implementing our mandates, but we almost never look up to ask, 'How is this contributing to lasting change in-country?'" one UN expert noted. The problem is made more acute by the design of results-based budgets and pro-docs, both of which are overwhelmingly activity-driven. Tools have been developed to assess progress and impact. For example, the UN Rule of Law Indicators Implementation Guide and Tool (published by then-Department of Peacekeeping Operations (DPKO) and Office of the High Commissioner for Human Rights (OHCHR) in 2011), was designed to measure the transformation of national rule of law institutions over time. This tool was implemented by the UN in Haiti, Liberia, South Sudan and Afghanistan.[14] However, implementing this sophisticated tool has proven to be a complex, resource and labour-intensive endeavour and, to be useful, needs to be repeated periodically to measure progress, which may be why such tools have not been used systematically.

3

Lessons from the case studies

Drawing from the eight case studies and from consultations within the UN, this section offers cross-cutting lessons that can help to guide future rule of law interventions in a range of settings.

Towards a reconceptualization of rule of law – a renewed social contract approach

Across the case studies, the UN's rule of law work is increasingly seen as an essential contribution to a revitalized social contract, between State and populations but also across communities and social groups.[15] In the joint letter mentioned previously, Member States emphasized that strengthening the rule of law is a fundamental part of building trust in the social contract and that transforming justice, by putting people at the centre, is key to reviving the bonds that hold our societies together and also to re-establishing trust between people and communities, and governments.[16] Particularly around access to justice, but also more broadly across the breadth of rule of law engagements, there is an emerging view that the UN can help to strengthen the social contract underlying governance systems by conceptually and operationally linking the rule of law to better protection of human rights. In fact, the most impactful rule of law interventions were frequently aimed at addressing underlying inequalities, helping to provide a more equitable distribution of access to power and socioeconomic resources (even if that was not the stated goal of such programming in many cases). This points to the need to reconceptualize the UN's rule of law work as a central aspect of the Organization's efforts to rebuild trust in governments and State institutions, in part by improving their capacity to deliver, but also by helping them to address deep social, political, and economic inequalities. As such, the rule of law can be seen as the foundation of the 2020 Common Agenda process launched in the General Assembly, necessary for achieving the full range of commitments by the Member States laid out in the Declaration.[17]

Realistic expectations, tailored mandates

Particularly in the peacekeeping settings, but also across all the cases, the ambitions of rule of law mandates to transform governance systems tended to dramatically outstrip the ability of the UN to deliver. There often exist tensions between ambitious mandates outlining important rule of law objectives, insufficient resources or political buy-in and the expectations to demonstrate impact in the short term. In some cases, UN operations had maintained transformational rule of law mandates for decades without seeing meaningful change in how governance systems functioned or how the population saw rule of law institutions in their countries, despite hundreds of millions of dollars of investment. This does not mean the UN has had no impact, only that the UN's capacity to fundamentally transform systems of governance is far more limited than some mandates imply, requiring a serious examination of the broad expectations of the international community.

A related challenge has been that rule of law mandates and tasks are often fairly generic, referring broadly to improving State capacity, extending State authority, and helping institutions become more effective and accountable. While these can be useful markers for progress, they often fail to account for the specificity of different contexts: improvements in institutional capacity in CAR look very different from those in Afghanistan or the DRC, though the language used in Security Council mandates is often quite similar.

Future rule of law interventions would benefit from steps to address both of these shortcomings, setting more realistic expectations via tailored mandates and with specific definitions of the improvements that are sought. In this context, rule of law mandates should be based on an in-depth, field-based analysis of the scope for meaningful change, taking into account the main drivers of conflict, existing institutional capacities, the will of the main parties to enact national reforms, the linkages with other UN action in

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related areas, the resources needed to achieve specific objectives, and the timeframes that might be required for change to take hold. Given that changes are not linear, a proactive and constant analysis and steering of interventions is required to cease windows of opportunities and manage potential harm. In some cases, it may be helpful to conduct such analysis with external actors to avoid a tendency towards overly optimistic assessments of what the UN might accomplish. Additionally, the UN should explore multi-year timelines for its work, possibly aligning rule of law programming more with national reporting on SDG 16 and other development goals.[18]

Seeing beyond the State

While much work has been done to promote "people-centred" approaches across the UN system, the bulk of the UN's rule of law work remains largely focused on State institutions, without the key shift of thinking of institutions as working for the people. On one hand, this is a logical approach: issues like justice reform, police, and prisons are State-run activities that

require national political oversight and buy-in by the State. However, the case studies demonstrate that many populations see the State as only one of many forums for administering justice and rule of law. Indeed, in settings like the DRC and Afghanistan, non-State forms of governance are dominant in many regions, while State institutions are viewed with strong suspicion. And in Bosnia and Herzegovina and Lebanon, State institutions are deeply distrusted, in part because of the polarized politics that have undermined the independence of the judiciary in particular, but also due to longstanding corruption across government. In other settings such as rural Mali or CAR, the near total lack of State capacity has meant that communities turn to alternative forms of justice and conflict resolution.[19]

In such contexts, some of the most successful UN-supported efforts have been achieved through direct engagement with local State actors and civil society. In CAR, for example, partnership with local civil society organizations significantly improved the impact of rule of law programming. In Afghanistan, the UN has recognized the central importance of traditional

justice mechanisms and has begun to look for ways to align its support to formal and informal sources of justice. Partnerships with national human rights institutions on the implementation of enhancing transparency and accountability, such as in Afghanistan, has helped in enhancing public trust.

There is growing acceptance that merely reinforcing existing power holders often does not result in lasting change. The UN needs to increase its focus on the drivers of conflict – including the disenfranchisement of host country populations, the disempowerment of women, lack of opportunities for youth, rifts between ethnic groups, excesses of the political elite, the culture of impunity, endemic corruption, natural resource exploitation and transhumance issues. This would entail a greater investment in rule of law efforts that incorporate or work alongside and complement WPS, YPS, people-centred and community approaches (such as intercommunity trust-building, engaging women in addressing the drivers of conflict, working with youth to become forces for positive change rather than spoilers, community violence reduction and local conflict mediation).

Centre-periphery dynamics and inclusive institutions

Much of the UN's rule of law work takes place in settings with deep divides between the centre and the periphery. In Mali, DRC and CAR, for example, the UN's extension of State authority mandate reflects the reality that rural areas are often neglected in terms of State governance capacities. Much of MINUSMA's mandate from 2012-2015 concerned building up State capacity in parts of northern Mali that had been destroyed by the war, while the UN Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO)'s stabilization mandate in eastern Congo is similarly focused on extending State authority into areas that have never developed rule of law institutions. At the same time, these missions also have ambitious national reform agendas, supporting large-scale transformations of the central governing institutions of the State,

police and judicial reform, shifts in the legislative framework, and even at times new constitutional processes.

However, extending State authority – especially in settings with deep tensions between the State and opposition groups – does not necessarily address underlying inequalities between the centre and periphery. Indeed, a separate United Nations University study has demonstrated that large portions of UN support to institutional capacities are easily co-opted by central authorities, at times even contributing to authoritarian tendencies in many settings.[20] "We need to more seriously engage with the issue of inclusion," one UN expert noted. "This means mapping the power structures, understanding how influence works in a country, and then deciding how to intervene."

Confronting corruption, increasing impartiality

Often described as the "elephant in the room," corruption was one of the most important inhibiting factors across the cases. However, it was also one of the least directly targeted aspects of rule of law programming, often relegated to fairly tangential aspects of in-country programming or referred to more as an external influence than a direct cause of instability. In some cases, UN staff claimed they felt uncomfortable raising corruption with government interlocutors (especially where State institutions were complicit), and in several settings there was no clear lead from the UN on addressing corruption. In places like Lebanon and Bosnia and Herzegovina, corruption was referred to as "baked in" to the political arena, inextricably part of the way governance was conducted, and very unlikely to change via any kind of concerted international effort to combat it. In other settings like Mali and CAR, corruption was often described as a second-order issue, something that could be addressed after the more immediate issues of security were taken care of. Overall, the case studies clearly point to the need to place corruption more centrally into the mandated work of the UN, not only in peacekeeping contexts but also in areas where development programming is the main UN activity. This may require recasting anti-corruption in less

confrontational ways – perhaps focusing on transparency in the delivery of programming, or on good management of budgets – without deprioritizing it.

The case studies also underscore that corruption often manifests as a popular perception of partiality or lack of independence in key State institutions, especially the judiciary. In one case, one UN official noted that "judges are almost uniformly seen as corrupt … which means the population doesn't trust the courts or the bigger rule of law system." This sentiment was echoed across many of the cases, where issues of corruption were often related to a lack of public confidence in rule of law institutions. While the UN may find it difficult to tackle some of the financial aspects of corruption (i.e. UN agencies do not have sophisticated financial tracking mechanisms or the ability to penetrate State institutional budgets), greater work on issues of judicial independence could have a significant impact going forward.[21]

A focus on behaviour

Much of the UN's rule of law work revolves around standards of good governance and fairly abstract notions of institutional capacities and/or national reform. However, as the DRC case study highlights, a focus on specific forms of behaviour can have a far greater impact than much of the other activities falling under rule of law. In the DRC, the UN was confronted with chronic abuses by the Congolese security services, particularly during crowd control of mass protests. By documenting human rights violations and offering tailored support to improve its training on crowd control, the UN was able to quite quickly improve the behaviour of the security services, resulting in a dramatic drop in casualties during protests and a longer-term improvement in how the Congolese authorities respond to civil unrest.

Rather than prioritize some of the longer-term (and often unlikely to succeed) national reform processes, the UN could learn from the Congolese experience and increase its focus on targeted behavioural changes in the security and rule of law authorities, acting more as an influencer of norms than an implementer of programmes. Put another way, and to quote a senior UN official

in the DRC, "the UN needs to focus on *better* capacity, *better* behaviour, not just *more* capacity, that's what will reduce tensions and give the population confidence in the State." This does not mean ignoring the longer-term issues, but rather identifying behavioural shifts that might improve human rights compliance and reduce the risks of violence. Additionally, MONUSCO's support to the military justice authorities to investigate serious crimes perpetrated by armed groups and State security forces led to a reduction in the use of confessions as evidence in trials, many of which were forced or extracted through torture or ill-treatment of suspects. This enhanced the expertise of the military authorities to conduct more comprehensive investigations based on victim and witness testimony and gathering of other evidence.

Fighting impunity of crimes fuelling conflicts

A 2017 study on Conflict Prevention and Guarantees on Non- Recurrence,[22] that fed into the UN and World Bank's *Pathways for Peace* project, highlighted that domestic criminal prosecutions for past human rights violations can have a significant impact on reducing the recurrence of conflict. *Pathways for Peace* also advances the notion that the justice system is the ultimate guarantor of the right to physical integrity and that if the State violates these rights or tolerates impunity for the violations of these rights, it can exacerbate grievances, particularly when these manifestations of injustice overlap with perceptions of exclusion, unfairness, or inequality. Supporting the fight against impunity, therefore, contributes to addressing grievances fuelling violence and conflicts.

Support to national capacities to investigate and prosecute international and other serious crimes that fuel conflicts is a central objective in several of the contexts examined in this study. The Security Council has increasingly mandated missions to do so and several UN agencies, funds and programmes are engaged to assist host authorities to investigate and prosecute such crimes, including conflict-related sexual violence, terrorism and transnational organized crime. By combating impunity, weakening

criminal networks, holding security forces accountable and deterring the reoccurrence of violence, addressing serious crimes that fuel conflict has proven an effective protection and prevention tool. Through transitional justice processes, and under certain conditions, they may enable national authorities to negotiate more comprehensive and victim-centred political agreements, thereby advancing lasting political solutions and strengthening the impact of UN efforts on sustaining peace. Currently, four missions are supporting national accountability processes for serious crimes and these initiatives are yielding measurable results. Where mandated or requested, the support to national authorities in investigating and prosecuting crimes fuelling conflicts is often a flagship initiative for UN partners and should continue to be reinforced in support of protection of civilian mandates, alongside the assistance to national mechanisms pursuing accountability for crimes committed against peacekeepers. UN partners should support the development of prosecution strategies to ensure transparency and objectivity in the selection and prioritization of cases. Missions should also advocate and agree on priority criminal cases with national authorities and provide support to national criminal accountability initiatives on that basis.

Strengthening prison support and limiting the recourse to incarceration is critical

The recently adopted UN Common Position on Incarceration underlines that while safe, secure and well-managed prisons are critical to the efforts of peace missions to sustain peace, support stabilization and protect civilians, prison reform tends to remain a low priority, despite their critical importance in support of efforts to re-establish or improve the functioning of the criminal justice chain. A more robust support from host countries, donors and the international community to enable the UN to adequately respond to the issue of overincarceration, including overcrowding in these settings, is

critical and a collective responsibility. This could involve the explicit mention of corrections in the mandates of peace missions and the allocation of sufficient resources. UN support in missions and other crisis settings should be strategically aimed at improving prison conditions and strengthening prison management, as well as rethinking the current overreliance on incarceration. This could be done through holistic reform efforts, such as shifting policies towards prevention and alternatives in order to reduce prison populations, and advance the rehabilitation and social reintegration of offenders as part of the mission's broader peace and security objectives, while also ensuring the secure imprisonment of those who have committed serious offenses and pose a risk to peace and security (e.g. strengthening national capacities to prevent security incidents and radicalization in prisons).

Land matters

The UN seldom has a direct mandate to assist communities in resolving land disputes, though across the cases issues of land ownership and access to resources were frequently seen as major conflict drivers. In Colombia, for example, one of the most important underlying issues to the peace process was land ownership affecting the relationship with the indigenous peoples, though at times the Colombian Government strongly preferred to focus on other issues in the negotiations. Similarly, land tenure and housing was cited as one of the most important conflict factors in the DRC, Mali, and (less directly) Bangladesh case studies.

Where the UN was able to support local conflict reconciliation related to land ownership and access, the impact was significant. For example, the UN's support to land mediation in over 100 cases in North Kivu, DRC, directly furthered the work of the peace tribunal and contributed to a reduction of tensions in many instances. And when the Secretary-General visited Colombia to witness the passage of the Land Restitution Law in 2011, this sent a strong signal that the UN was addressing elements of transitional justice that held meaning for the broader population. Across the cases, however, the UN's mandate to work on land issues was often vague, or indeed absent, meaning that UN actors had to develop

ad hoc approaches that seldom had strong budgetary support. More emphasis on land – and in particular on how rule of law institutions can play a constructive role in deconflicting land usage and tenure – would almost certainly help the UN increase its relevance and effectiveness in a range of settings.

Beyond land, there are a range of civil issues that are of critical importance to populations but are seldom addressed by the UN. Commercial disputes, tensions around labour, and a range of other domestic civil issues can drive escalation and require a robust rule of law system. Examining those on a country-by-country basis, and using that analysis to feed bespoke programming, could help advance a people-focused approach and make the UN's interventions more impactful.

The benefits of mobility

Especially in settings like Mali, CAR and DRC, where justice institutions are largely absent in many parts of the country, the UN's ability to develop mobile forms of support significantly increased their impact. In CAR, for example, the UN supported the establishment of mobile courts in 2016, which were seen as crucial not only for adjudicating serious crimes but also in building confidence amongst the local populations. Similarly, in DRC, the UN's support for mobile courts and local military courts was seen as crucial in increasing the Congolese caseload for serious crimes, including a dramatic increase in the number of SGBV cases tried in the past five years. Mobile courts are able to access conflict-affected areas that might otherwise be left without any institutional support for many years, and thus play a role in helping to reduce tensions, avoid recourse to armed groups or vigilante forms of justice, and build confidence in the justice system.

Access to justice for all

One of the most impactful areas of the UN's rule of law work was in access to justice, particularly in settings with deep structural inequalities or highly marginalized communities. In the Lebanon case, for example, the influx of more than one million Syrians, the bulk of whom lacked legal status within Lebanon, meant that this segment of the population was unable to access institutionalized forms of justice. Ramping up free legal aid and finding creative ways to provide refugees with access to justice support not only helped to address deep inequalities in Lebanon but also appeared to reduce the risks of groups taking justice into their own hands. In other settings, like the DRC and Mali, access required the establishment of new State institutions in marginalized and/or conflict-affected areas, with real impacts in both settings.

Supporting people-centred approaches, empowering communities and individuals to claim respect for their rights, including through legal aid, victim support, and awareness campaigns, has been proven to be an essential element of a functioning justice system that ensures fundamental fairness and public trust in the justice process. It can also be an effective means for addressing destabilizing factors such as excessive pre-trial detention and prison overcrowding, ensuring adequate redress for abuses committed by the security forces and avoiding miscarriages of justice.

A possible lesson from the case studies is that access to justice should be seen as more than a numerical increase in the caseload in a given setting, but also an important way to address the kinds of vertical inequalities that the *Pathways for Peace* project identified as drivers of conflict. Indeed, the UN could place greater emphasis and resources on the ways in which providing access to justice for all could form part of a broader political strategy focused on the realization of human rights and inclusive peace.[23] This would align with the 2020 findings of the Special Committee on Peacekeeping Operations, which suggested that a focus on access to justice and delivery of basic services to all populations should form a central part of the UN's rule of law work.[24]

An underexplored aspect of access to justice relates to strategic communications, which is often a crucial way to inform populations of their rights and set expectations. The role of strategic communications in rule of law approaches would benefit from dedicated attention going forward.

Gender matters

The case studies clearly underscore that rule of law is gendered in a number of important and interrelated ways: women experience conflict in very different ways than men and face gendered obstacles in access to justice and inclusion in broader peace processes; laws often discriminate against women and put them at an economic disadvantage compared to men.[25] There is a relationship between gender inequality in a society and resilience to and prevention of conflict.[26] Therefore, addressing the gender dimensions of conflict – including through inclusive, effective and gender-responsive rule of law institutions – is essential to building peaceful and inclusive societies, and advancing SDG 5 on gender equality and SDG 16 on peaceful, just and inclusive societies.[27] In its resolutions on WPS, the UN Security Council also recognized that gender-responsive rule of law institutions are integral to the maintenance of international peace and security.[28]

This study has found that UN programming and responses that were based on a gender analysis and which were centred on women's meaningful participation were more effective at protecting and promoting women's rights and gender equality *and* at advancing the rule of law in societies generally. For example, in Lebanon, following the 2020 explosion, the UN developed gender-sensitive assessments that informed rule of law programming, strengthening results and guiding the UN to tap into local women's civil society organizations in a more dynamic way than in other settings. Indeed, the clearest evidence identified in this study of the UN's contribution to sustaining peace is from Colombia, where the UN specifically focused its support to the peace process on gender sensitivity and women's meaningful participation. The study also shows that, even in extremely challenging contexts, UN programming can be effectively conditioned to support gender-sensitive outcomes with real impact: the Congolese justice system's SGBV cases rose significantly as a result of the UN's decision to condition its support on a 60 per cent SGBV caseload.

An important lesson from the cases is that 'gender' cannot easily be isolated into a single issue; namely, it cannot be boiled down to the conceptualization of "women as victims" – of conflict, violence and human rights violations. The role of women in the Colombian peace process exemplifies this: it was part of a broader recognition of the unique and crucial role of women as agents of change, as leaders and peacebuilders in the transition from war to peace. Likewise, in ongoing conflicts such as Mali, CAR and DRC, the tendency to focus overwhelmingly on sexual violence may usefully advance some aspects of gender justice, but it does not reflect the larger obstacles to gender equality, including deeply held patriarchal cultural norms, women's exclusion from decision-making, and the socioeconomic issues facing women in those settings.

The cases examined in this study lead to a number of recommendations to ensure that future UN interventions on rule of law are strengthened by the full integration of gender considerations and women's meaningful participation. In all cases, UN interventions and programming should be informed by a country-specific gender analysis, highlighting the rule of law issues where the UN contribution could help advance women's rights and gender equality as a basis for an adequate prioritization and gender-responsive programming. Based on this analysis, UN programming on rule of law should fully integrate gender considerations across all aspects, including budget and monitoring and evaluation framework, emphasizing the meaningful participation of diverse women[29] and women's civil society, including in leadership roles. And finally, to address the financing gap, UN entities should also step up efforts to fund gender equality-focused rule of law programming, in keeping with the 2010 commitment of the Secretary-General for the UN system to allocate "at least 15 per cent of UN managed funds in support of peacebuilding to projects whose principal objective, consistent with organizational mandates, is to address women's specific needs, advance gender equality or empower women."[30]

UN transitions

Rule of law is especially important in moments of transition between one UN configuration and another, including when a UN peace operation is phased out and a UN Country Team remains in place.[31] These moments of transition often present a "financial cliff" in which donor support for UN programming dips and where continued support for national actors may become less certain. Frequently, too, UN transition planning is overwhelmingly focused on operational issues, the downsizing of troop levels and the "handover" of tasks to the Country Team. In the rule of law area, this can result in a fairly technical approach where tasks that were mandated within a peace operation are identified as shifting hands to a UN agency (e.g. rule of law programming shifting from MONUSCO to the UN Development Programme (UNDP) in the mission transition envisaged there). This approach treats rule of law tasks as "residual" rather than central, something that can be compartmentalized and transferred instead of a core aspect of the overall UN's strategy in-country. Moreover, this approach assumes that UN Country Teams would maintain and expand their rule of law engagement in those countries for a sustained period of time.

While not the central aspect of the case studies, they broadly point to the need to consider transitional moments as opportunities to reconfigure the UN and its partners around common rule of law goals, rather than merely "hand over" rule of law tasks from one entity to another, including through joint programming. This includes the need to work together early during mission establishment and to fully take on board the recommendations of the recent study on integration.[32] In the case of MONUSCO, for example, the downsizing of the mission over the coming years is a chance to reimagine what rule of law approaches might be both feasible and effective in the current political context. Our case study suggests that ambitious national reforms may be difficult to achieve given the fragility of political dispensation, but there may be opportunities to advance issues of anti-impunity, improved approaches to accountability within the State security services, and to build upon some of the accomplishments of the mobile courts to improve access to justice.[33]

Working together

The context of this study was in part the efforts over the past several years to improve cohesion across the UN's rule of law work, including by implementing the Global Focal Point for the Rule of Law approach across the Organization.[34] It was clear across the peacekeeping cases in particular that the Global Focal Point had resulted in important ways of doing business in a more coordinated manner, including co-location, joint programming across UN agencies, and better information-sharing. This has resulted in greater efficiencies in many instances, such as an impactful set of joint programming on anti-impunity in CAR and on support to mobile and military justice in the DRC.[35] However, it was more difficult across the UN's rule of law work to identify whether and how collaboration was improving rule of law impact, in part because of the shortfalls in impact measurement (see above).

One clear lesson was the importance of building a common vision and set of joint goals across the UN family in-country. The Colombia case study offers a good illustration of this: from 2012 to 2015, the UN Resident Coordinator ensured that the entire Country Team align its programming in support of the Colombian peace process, specifically identifying how separate programme goals would advance different aspects of the ongoing talks. This helped the UN leverage three key comparative strengths: (1) its many field offices, especially in rural areas where populations were less aware of the peace process; (2) its significant resources, including large programming in the areas of development, land, gender equality and access to justice; and (3) the UN's global expertise on issues of conflict prevention, transitional justice, and peace processes.[36] "[The Resident Coordinator] took us from a bunch of agencies doing our own thing to a single UN more or less, prioritizing the peace process across the board," one UN official noted.[37]

The value of building partnerships and a joint approach is quite clear at the national level, and there may be scope to expand it to greater regional partnerships in settings where transnational dynamics strong impact stability.

Here, the 2018 reform of the UN and decision to develop regional strategies offers a useful entry point. Could the UN's rule of law work be more directly included in the regional strategies for West Africa and the Sahel, Central Africa, the Horn of Africa, and Western Asia? Would issues like transnational crime, corruption, and the role of armed groups in undermining rule of law be more effectively addressed via a combination of regional rule of law strategies and national ones?

Towards a theory of change for rule of law

Some of the most innovative and impactful practices identified in the case studies concerned the UN conditioning its support on certain steps by their national counterparts. This included conditioning support to mobile courts on SGBV caseloads, innovative work within the Human Rights Due Diligence Policy Framework, and use of human rights reporting as leverage with national counterparts. In contrast, where funding or other forms of support were not tied to specific conditions, or where capacity-building was offered more generally to rule of law institutions, many of the case studies provided little evidence of impact.

This example points to the need for rule of law engagement to be more directly tailored to specific conditions and/or measurable outcomes, ideally within a well-defined theory of change, and to ensure political engagement of the most senior UN officials to open space and back up operation and technical support. Often, rule of law work is taken forward on the basis of a set of assumptions (e.g. that bigger caseloads will improve stability) without a clearly articulated theory of change or a way to identify whether the broader objectives of prevention and stability are being achieved (see point below on monitoring and evaluation). This could be improved by clearly stating across rule of law programmes how activities will generate change on the ground, with steps to engage politically through good offices and convening powers, and shift interventions if such changes are not achieved. For example, capacity-building of justice institutions could be couched as supporting an improvement in the relationship between the State and its people, a theory of change that could be tested regularly via human rights monitoring and reporting, perceptions polling, and other approaches to measuring impact. Or support to judicial processes could be articulated within a broader strategic goal of enhancing criminal accountability, reducing the capacities of armed groups and/or reducing conflict in a particular area. If those related goals were not met over a period of time, then programming could be redesigned or reprioritized elsewhere. Such an iterative approach to the rule of law work of the UN would allow for theories of change to be tested in real time, and for programming decisions to be linked more directly to specific, measurable outcomes.
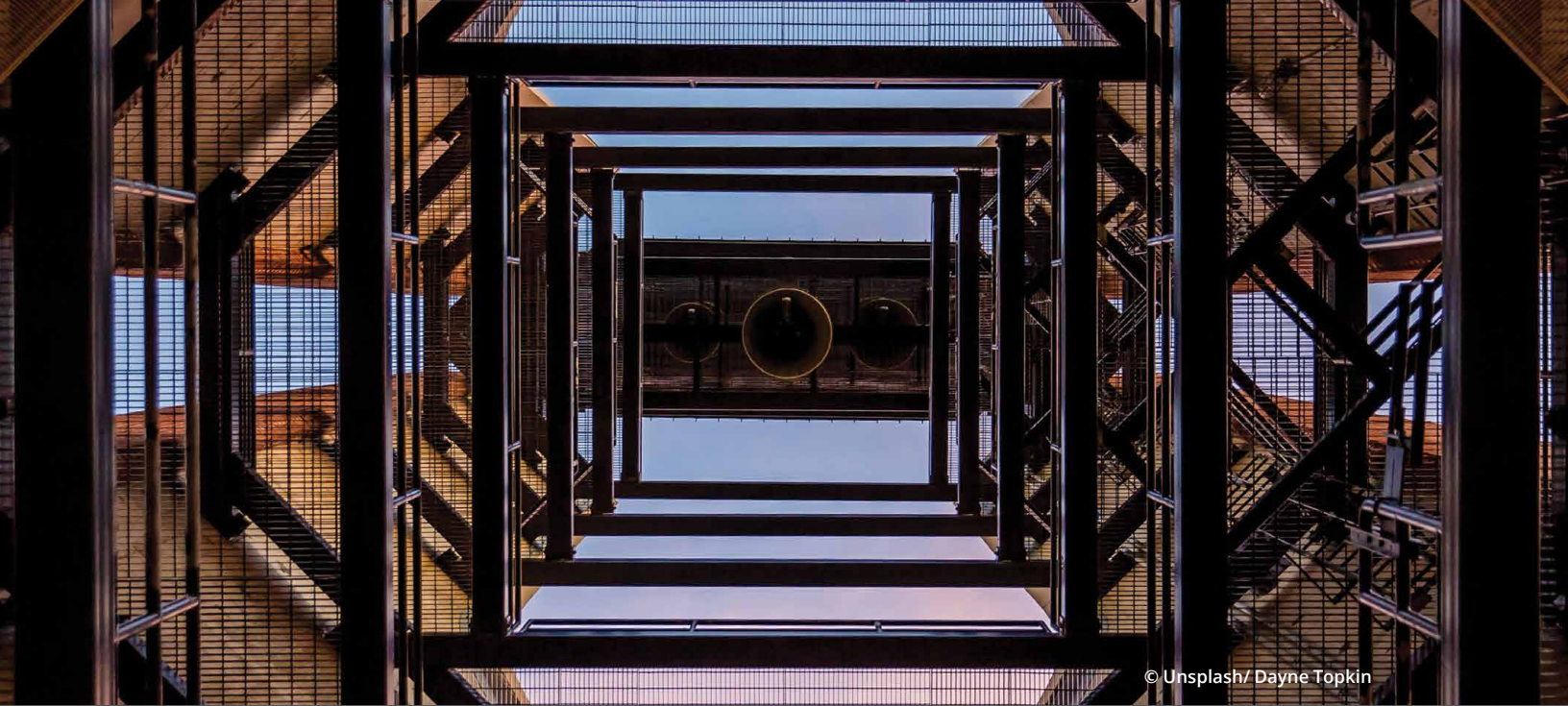
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A framework for rule of law strategies

The above lessons suggest that the UN's rule of law work can be reconceptualized and recalibrated to position it more centrally to the UN's broader conflict prevention and sustaining peace work, and to prioritize those activities most likely to produce impact on the ground. This section builds on the cross-cutting lessons to propose a framework for policymakers and practitioners to develop rule of law strategies going forward. It can be considered as a checklist of issues to be addressed at the early planning stage for rule of law programming and/or within the context of strategic plans like mission concepts, development cooperation frameworks, or support to national planning.

Understand the problem – a political economy approach

There is a tendency in the UN's rule of law approaches to date to focus specifically on capacity shortfalls and design programming around what the UN is able to deliver ("supply-side analysis"). In contrast, an effective rule of law strategy should be based on a thorough analysis of the challenges that people face in a given setting, who faces them and where, mapping out how power and resources are distributed

across different actors and communities, and understanding the deeper causes of instability (e.g. tensions over land, unequal distribution of political power, longstanding grievances between communities, gender inequality). The use of the periodic country assessments of the UN human rights mechanisms is a vital tool in this regard. Such a political economy analysis will allow the UN a realistic starting point for its rule of law work, also helping to identify the realm of likely and possible outcomes in the medium term. In a setting with deeply entrenched authoritarian leadership, for example, the centralization of political power may mean that national reforms are quite unlikely, requiring a more locally-oriented approach.

Develop end state(s)

Much of the UN's rule of law programming is defined as improving institutional capacities and access to justice in a given setting. This can result in decades of work aimed at incremental change without a clear sense of the overall objectives or the "end state" at which point the UN can consider its objectives achieved, or can significantly shift programming. Of course, an end state does not imply that a given country has resolved all of its rule of law challenges – indeed there are more process-oriented issues like inclusion that can be ends in themselves – but it does offer a useful framing for the UN to set its rule of law objectives alongside the broader goals for a country. An end state could be a narrative description, e.g. of the conditions under which a peace operation would transition to a Country Team-led presence. And it should certainly be linked to the SDGs, which provide a global set of recognized metrics for governance.

However, some settings may require more than one end state, following Rachel Kleinfeld's concept of first and second generation rule of law reform. A first generation end state might involve less ambitious goals, such as incremental increases in institutional capacity, extension of presence, and/or addressing immediate risks to stability. This should be complemented with a longer second-generation viewpoint, where deeper issues like social norms, values, and relations between State and people are the focus.

Identify comparative strengths and priorities

There is often an unwritten assumption that the UN is best positioned to deliver on rule of law needs, though in many cases the UN is a relatively small player in the broader landscape of rule of law actors. In some settings, the opposite conclusion is reached: the relatively minor contributions by the UN are cited as a reason to ignore ways the UN might achieve greater impact. As one UN expert succinctly noted, "We don't distinguish between baby and bathwater, it's all just rule of law, so we don't know what to prioritize." A related problem is a wrong perception and labeling rule of law as technical and activity-driven without appreciating the full spectrum of the rule of law as political, and the need for rule of law interventions to overcome political obstacles. This underscores the need for a comparative analysis of the value added of the full range of actors in a given setting. This would complement the above political economy analysis of the setting itself, asking instead what contribution each actor might provide in advancing rule of law objectives.

A comparative strength analysis would help the UN address a chronic problem across many of the cases: its rule of law work is expected to deliver everything, from national-level transformations of governance to highly localized capacity shortfalls. In some cases, the UN might be well-positioned to deliver clear impact, but without the initial analysis there is a strong tendency to treat all rule of law mandate areas equally.

Develop theories of change for rule of law

The overwhelming majority of rule of law initiatives considered in this study lacked a clear theory of change to describe how activities would contribute to specific measurable outcomes. At the very most, programmes had a results-based budget that articulated broad goals (e.g. improved stability or improved institutional capacity) alongside activities that might help achieve those goals (e.g. capacity-building,

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training, financial support). This, however, is not a theory of change; in fact, across many of the case studies, the authors had to generate their own theories to explain how a programme might contribute to change on the ground.

While the overarching goals are common, i.e. advancing justice and human rights for people on the ground, there is no single theory of change that can capture all of the UN's rule of law work, given that its contribution varies significantly across different settings. Instead, country strategies will require several theories of change to explain the many differing contributions of rule of law to sustaining peace. Some theories can be quite simple. For example, a project to improve prison conditions and security could help reduce the risks of armed conflict by: (a) reducing unlawful and arbitrary detention; b) improving conditions to meet the Mandela standards and rules; c) reducing the risks of prison breaks by armed group members, (d) reducing the chances that prisoners will become radicalized and join extremist groups, or (e) improve public confidence in State institutions and reduce the likelihood that they will take justice into their

own hands. The important element here is the link between an activity and a set of changes on the ground, requiring the UN to then evaluate whether the activity has contributed to the change.

These theories can aggregate into a country-wide theory of change to capture the broader contribution to sustaining peace. For example, a theory might be laid out as: "If the UN supports a more independent, effective judiciary and a police service that is seen as legitimate and safe by the population, then the conditions for a return to large-scale violence will not be met." Articulated in this way, the UN's work is linked to conflict prevention, and the groundwork is done to begin measuring impact (see below).

Place rule of law in a political strategy

Rule of law work should not be siloed as a set of purely technical activities, but should be part of a broader political strategy of the UN in-

country. This means elevating rule of law into the country-level planning, ensuring that the highest UN leadership in-country are responsible and accountable for rule of law outcomes. This means senior UN officials in the field and at Headquarters have an important role to play to ensure sustained political engagement on key rule of law issues while enabling 'whole of UN' interventions across development, human rights, and peace and security. To reinforce overall coordination of UN activities in the area of rule of law, it may be helpful to reaffirm that "[t]he Special Representatives or Executive Representatives of the Secretary-General or, in non-mission settings, Resident Coordinators - should be responsible and accountable for guiding and overseeing UN rule of law strategies, for resolving political obstacles and for coordinating UN country support on the rule of law, without prejudice to the specialized roles and specific mandates of UN entities in-country."[38] This should focus on providing a political space where rule of law reforms can be discussed, including constitution assistance.

Create flexible, adaptive, iterative programming

UN programming tends to be fairly static, often resulting in decades of similar programmes, despite a notable lack of progress in some areas. In the DRC, for example, the UN had pursued very similar security sector reform work for well over ten years, with very little evidence to show that it had generated meaningful change on the ground. Even in settings where programmes had evolved significantly over time, there was little indication that the programmes were feeding information back on themselves, adapting to new inputs. An increased flexibility of programmes would also allow to better align political engagement and technical and operational support to rule of law interventions. The political dialogue could not only mobilize senior national partners but should also inform the delivery of programme activities. For instance, some activities could be added or retailored to cease emerging political opportunities or reduced or stopped in case of political blockage or lack of commitment.

A flexible funding mechanism was attached to the State Liaison Functions (SLF), introduced as programmatic transition tool for the United Nations–African Union Mission in Darfur (UNAMID) and the UN Country Team in Sudan. During the SLF implementation period, the operational environment in Darfur changed frequently, including a regime change, the Declaration of State of Emergency and the COVID-19 pandemic. The tool, SLF, allowed senior managers (UNAMID Deputy Joint Special Representative and Resident Coordinator) to agree on changes to pre-defined SLF activities and therefore guaranteed their relevance throughout the implementation period and also a no-harm approach.

Other disciplines and fields have moved toward more adaptive, iterative forms of programming, providing a model for future rule of law work. One such approach would be to test a hypothesis: for example, "providing rubber bullets and training to Congolese security services will reduce casualties during crowd control." That hypothesis can be tested over a determined period (e.g. six months) at which point the UN can ask whether it has been proven. As the case study on DRC indicates, the use of rubber bullets and related training did, in fact, result in a dramatic reduction in casualties. This provides a solid basis to design future similar programming in DRC and elsewhere, allowing programming to be improved and refined over time with information from itself (a feedback loop).

Identify financial partnerships

The bridge between short- and long-term prevention is at least partially built on structural financing, the kind of interventions that are typically led by the World Bank, regional economic banks, and commissions. As the Lebanon case study illustrates, joint rule of law planning can be done effectively in partnership with actors like the World Bank, embedding those financial partnerships from the outset. This should build on the kind of analysis done by the *Pathways for Peace* project, helping to identify how long-term structural financing can help to address deeply rooted issues of exclusion, marginalization, discrimination, and unequal distributions of power.

Make inclusion a goal in itself

One of the most important lessons of recent years has been that participatory and inclusive forms of governance are an indispensable aspect of sustaining peace. As the *Pathways for Peace* report clearly articulates, the greatest risk of violent conflict emanates from settings of deep structural inequalities, where populations experience very different levels of access to power, resources, and justice. This reality creates an obligation on the UN's rule of law work to focus more on inequalities and structural imbalances, seeking to improve the social contract between State and citizenry. While inclusion is often framed as a means to an end – a way of doing things – it should also be defined as an end in itself, one of the overt objectives of rule of law programming.

By far the most evolved approaches to inclusion within the UN's rule of law work are in the field of gender. Across the case studies, gradual increases in gender-sensitive analysis and programming have begun to yield results, including improved representation of women in peace processes (e.g. Colombia), more resources channelled towards accountability for sexual violence (e.g. DRC), and programming that helps improve access to justice and resources for women (e.g. Lebanon). The growing role of UN Women in many settings has created important momentum for this work, and also a growing

body of good practice that could help the UN system place inclusion at the forefront of its work. There is a need to extend this approach to other groups such as minorities, indigenous peoples, people with disabilities, youth, and those who are economically disadvantaged, as they play a key role in sustaining peace.

Gather information on impact

One of the most significant challenges in this project was the lack of information about the impact of rule of law interventions. Overwhelmingly, the UN appears focused on measuring its own activities and outputs, without the analysis of how they or the processes cause changes on the ground or affects the behaviour of people and institutions. This is particularly the case in the question of how the UN's rule of law work might reduce the risks of violent conflict or help to mitigate longer-term risks of instability. The case studies developed within this project are a first step to building an evidence base of the UN's rule of law impact, but deepening the Organization's knowledge of impact will require a shift towards a much more serious effort of measurement. In fact, the above steps – developing a cross-cutting analysis,

understanding the comparative value of the UN, articulating an end state, and creating a theory of change – are all essential elements in assessing the UN's impact.

One of the most important areas requiring more data on impact is the fight against impunity. Repeatedly, interviewees suggested that rule of law programming was designed to deter future violations, build confidence in institutional capacities to combat impunity, and hold major violators publicly accountable. However, almost no data was gathered concerning these important goals, leaving a gap in knowledge as to the impact of the UN's work in this crucial area.

Going forward, the UN should invest in a range of methodologies for assessing the impact of its work, from the behavioural sciences to big data, tapping into the wealth of expertise and information that already exists in other disciplines and also on the information and assessments produced by UN mechanisms, such as the human rights treaty bodies and the Universal Periodic Reviews. Linking the UN's rule of law strategy to the Secretary-General's data strategy, the work of the Digital Cooperation Panel and using the Organization's innovation infrastructure could immediately provide new approaches and resources.

5

Conclusion – A way forward for rule of law

This project was focused on evaluating the impact of rule of law interventions on the risks of violent conflict, but it also generated questions about a broader range of work of the UN. Drawing on an expert roundtable event that discussed an earlier draft of this report, we conclude with some issues and questions that would benefit from leadership-level discussions within the UN:

- How can the UN build a more rigorous set of capacities to evaluate risks and conduct foresight? How should the UN rethink evaluation methodologies, particularly for peace operations? This would be crucial for improving the UN's rule of law interventions, identifying which engagements have impact, and also for the broader prevention work of the multilateral system.

- How can the broader international financial system at a global level be engaged in this rule of law work? Are there ways to more concretely tie in with the World Bank, regional economic commissions, and others?

- How can the UN resist the strong pull of the State when it comes to rule of law work? What specifically can it do to meaningfully include marginalized actors and also reflect the fact that much of governance is delivered via a mixture of State and non-State actors? How does national ownership fit into this picture?

- How should the UN posit its rule of law assistance within the Common Agenda framework and leverage States' commitment to advancing the Common Agenda.

- How should the UN ensure that Member States support new approaches to UN rule of assistance?

References

1. United Nations Security Council, "Resolution 2282, adopted by the Security Council at its 7680th meeting," United Nations, 27 August 2016, S/RES/2282; United Nations General Assembly, "Review of the United Nations peacebuilding architecture," United Nations, 12 May 2016, A/RES/70/262.

2. See, United Nations and World Bank, *Pathways for Peace: Inclusive Approaches for Preventing Violent Conflict* (Washington DC: World Bank, 2018).

3. See, United Nations, "Goal 16: Promote just, peaceful and inclusive societies," last accessed 25 August 2021, https://www.un.org/sustainabledevelopment/peace-justice/.

4. The Global Focal Point is co-led by DPO and UNDP, and now includes UN Women, UNHCR, UNOPS, OHCHR, UNODC, UNICEF.

5. Pathfinders for Peaceful, Just and Inclusive Societies, "The Joint Letter to the Secretary-General of the United Nations: Reimagining social contract: A call to put people at the centre of justice," 14 April 2021, https://www.justice.sdg16.plus/ministerial.

6. NB: while Lebanon also maintains a peacekeeping operation, this was not the principal focus of the Lebanon case study.

7. United Nations, "What is the Rule of Law," last accessed 25 August 2021, https://www.un.org/ruleoflaw/what-is-the-rule-of-law/; United Nations Security Council, "The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General," United Nations, 23 August 2004, S/2004/616.

8. United Nations Security Council, "The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General," United Nations, 23 August 2004, S/2004/616.

9. United Nations Department of Political and Peacebuilding Affairs, *Three-Year Strategic Plan: 2020-2022* (New York: DPPA, 2020), https://dppa.un.org/sites/default/files/undppa_strategic_plan_2020-2022.pdf.

10. Rachel Kleinfeld, *Improving Development Aid Design and Evaluation: Plan for Sailboats, Not Trains* (Washington DC: Carnegie Endowment for International Peace, 2015).

11. The Center on International Cooperation has produced some data in this area. See, Peter Chapman, "Grasping the justice gap to enable people-centered justice," World Justice Project, 24 March 2021, https://worldjusticeproject.org/news/grasping-justice-gap-opportunities-and-challenges-people-centered-justice-data.

12. But see Virginia Page Fortna, "Peacekeeping and democratization," *From War to Democracy: Dilemmas of Peacebuilding* eds. Anna Jarstad and Timothy Sisk (Cambridge: Cambridge University Press, 2008); Lise Morjé Howard, *UN Peacekeeping in Civil Wars* (Cambridge University Press Cambridge, 2008).

13. See, Adam Day, "Can Data Save U.N. Peacekeeping?," *World Politics Review*, 21 February 2019, https://www.worldpoliticsreview.com/articles/27479/can-data-save-u-n-peacekeeping.

14. United Nations, *The United Nations Rule of Law Indicators, Implementation Guide and Project Tools* (New York: DPKO and OHCHR, 2011), https://www.un.org/ruleoflaw/blog/document/the-united-nations-rule-of-law-indicators-implementation-guide-and-project-tools/.

15. United Nations General Assembly, "Strengthening and coordinating United Nations rule of law activities: Report of the Secretary-General," United Nations, 26 July 2021, A/76/235.

16. Pathfinders for Peaceful, Just and Inclusive Societies, "The Joint Letter to the Secretary-General of the United Nations: Reimagining social contract: A call to put people at the centre of justice," 14 April 2021, https://www.justice.sdg16.plus/ministerial.

17. United Nations General Assembly, "Declaration on the commemoration of the seventy-fifth anniversary of the United Nations," United Nations, 28 September 2020, A/RES/75/1. The Declaration commemorating the seventy-fifth anniversary of the United Nations, Member States requested the Secretary-General to develop recommendations that would advance our common agenda and respond to current and future challenges.

18. Paige Arthur et al., *Review of the Global Focal Point for Police, Justice and Corrections* (New York: NYU Center on International Cooperation, 2018).

19. See, Ashley Jackson and Florian Weigand, "Rebel rule of law: Taliban courts in the west and north-west of Afghanistan," ODI, 11 May 2020, https://odi.org/en/publications/rebel-rule-of-law-taliban-courts-in-the-west-and-north-west-of-afghanistan/.

20. Adam Day et al., *Peacebuilding and Authoritarianism: The Unintended Consequences of UN Engagement in Post-Conflict Settings* (New York: United Nations University Centre for Policy Research, 2021).

21. This focus on independence is echoed in: United Nations Department of Peace Operations, *Extension of State Authority in the Areas of Justice and Corrections* (New York: United Nations, 2019). See also, Robert Pulver, "The future of peacekeeping," OROLSI (forthcoming).

22. Chris Mahony et al. "Conflict Prevention and Guarantees on Non- Recurrence," *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict Background Papers* (2018), http://dx.doi.org/10.2139/ssrn.3158012.

23. For some ideas in this arena, see: Marcus Manuel, Clare Manuel and Harsh Desai, "Universal access to basic justice: costing Sustainable Development Goal 16.3," *ODI Working Paper* 554 (2019), https://odi.org/en/publications/universal-access-to-basic-justice-costing-sustainable-development-goal-163/.

24. Special Committee on Peacekeeping Operations, "Draft report on the substantive session of 2020," United Nations, 4 March 2020, A/AC.121/2020/L.3.

25. International Bank for Reconstruction and Development / The World Bank, *Women, Business and the Law 2021* (Washington DC: World Bank, 2021), https://doi.org/10.1596/978-1-4648-1652-9.

26. United Nations Security Council, "Report of the Secretary-General on women and peace and security," United Nations, 9 October 2018, S/2018/900: para. 7.

27. Working Group on Transitional Justice and SDG16+, *On Solid Ground: Building Sustainable Peace and Development After Massive Human Rights Violations* (New York: ICTJ, 2019).

28. See, e.g. United Nations Security Council, "Resolution 2122, adopted by the Security Council at its 7044th meeting," United Nations, 18 October 2013, S/RES/2122: "[The Council s]tresses the need for continued efforts to address obstacles in women's access to justice in conflict and post-conflict settings, including through gender-responsive legal, judicial and security sector reform and other mechanisms".

29. This includes young women, women and girls with disabilities, indigenous women and girls, persons of diverse SOGIESC, and refugee, IDP and migrant women and girls.

30. United Nations Security Council, "Report of the Secretary-General on Women's Participation in Peacebuilding: 7 Point Action Plan," United Nations, 7 September 2010, S/2010/466, https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/seven_point_action_plan.pdf.

31. See, Adam Day, UN *Transitions: Improving Security Council Practice in Mission Settings* (New York: United Nations University Centre for Policy Research, 2019).

32. As previously noted in, United Nations General Assembly, "Implementation of the recommendations of the Special Committee on Peacekeeping Operations: Report of the Secretary-General," United Nations, 3 November 2020, A/75/563: refering to Jordan Ryan, *Review of UN Integration* [internal, on file with author]. United Nations, "Role of United Nations in Transition Processes Must Be Comprehensive, Coherent, Integrated, Secretary-General Stresses during Briefing to Security Council," United Nations, 18 July 2019, SG/SM/19671-SC/13889.

33. Though beyond the scope of this study, the State Liaison Functions in Darfur offer an interesting example.

34. Paige Arthur et al., *Review of the Global Focal Point for Police, Justice and Corrections* (New York: NYU Center on International Cooperation, 2018)

35. Ibid.

36. Cale Salih, "Colombia 2012-16," *What Works in UN Resident Coordinator-led Conflict Prevention: Lessons from the Field* ed. Sebastian von Einsiedel (Tokyo: United Nations University Centre for Policy Research, 2018), https://i.unu.edu/media/cpr.unu.edu/attachment/2849/RC-Project-Colombia.pdf.

37. Interview, January 2021.

38. United Nations, "Decision of the Secretary-General – 11 September meeting of the Policy Committee," United Nations, 11 September 2012.

RULE OF LAW

Support to Conflict Prevention and Sustaining Peace in Afghanistan

by Jessica Caus,
March 2021

1. Introduction

This case study was completed in March 2021. There have been substantial changes to the rule of law landscape of Afghanistan since that time. The following reflects analysis of the timeframe under review and the UN's during that period.

After four decades of protracted conflicts and extensive military interventions involving the US and others, Afghanistan remains one of the most conflict-stricken and fragile settings in the world. Large parts of the country remain under Taliban control, many others are contested, and dozens of violent extremist groups, including the Islamic State, are operating in the country.[1] Terrorist attacks are an almost daily reality, poverty is widespread, governance is weak and corruption endemic. Massive underdevelopment and continuously high levels of violence have left the country extremely dependent on foreign aid, with an estimated 80 per cent of the national budget coming from donors.[2] While the nature of international involvement in Afghanistan has been dominated by securitized responses of the US and NATO partners, the international community, including the UN, has underlined that the root causes of the conflict also need to be addressed via strong rule of law support. Strengthening national capacities to

build effective, accessible, and fair justice and law enforcement systems is key for a more stable Afghan future, especially in light of the troop withdrawal as part of the recent US-Taliban agreement.

This case study explores the UN's rule of law work and impact in Afghanistan, examining the activities of the special political mission the UN Assistance Mission in Afghanistan (UNAMA), UNDP, UN Office on Drugs and Crime (UNODC), UN Women, and others. Focusing on the period between 2017 and early 2021, the study asks: *How has the UN's rule of law support contributed to lowering the risks of violent conflict in Afghanistan?* The goal is to examine current rule of law approaches and identify specific evidence of impact, i.e. how these approaches have contributed to conflict prevention or a reduction in risks.

The paper is based on an extensive literature review and 17 expert interviews with researchers and UN officials both in New York and

Afghanistan. It is structured in five parts: (1) a background on the conflict and the challenges of the rule of law system in Afghanistan; (2) an overview of the UN's rule of law mandate and actors in Afghanistan; (3) an analysis of specific approaches and evidence of impact; (4) mediating factors that either enable or inhibit impact; and (5) lessons and recommendations.

A note on scope and methodology

Rule of law is defined by the UN 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."[3] Traditionally, this has resulted in a focus on police, justice, and corrections as the primary vehicles for the UN's rule of law engagement. However, we recognize that other areas of the UN's work may also contribute to the core goals of the UN's rule of law work, including efforts to combat impunity, build accountability, advance transitional justice, limit corruption, and address conflict-related sexual violence, amongst others. This project does not adopt a strict definition of rule of law but is instead largely guided by interviews with experts in a range of field settings, asking them what they consider to be the key rule of law interventions by the UN and its partners.

In terms of the scope of these studies, it is important to highlight that this is not a comprehensive assessment of the UN's work in a given setting. It does not try to capture every rule of law programme, but instead reflects the views of experts about the most impactful, relevant, and effective rule of law interventions in the given timeframe. This expert-driven approach to cases studies is to ensure that they feed meaningful cross-cutting policy recommendations, which is the core purpose of this project.

In terms of methodology, we note that the UN's rule of law work takes place alongside the interventions of a range of actors, including national leaders, bilateral donors, international non-governmental organization (INGOs), and local organizations. While it is our goal to identify evidence of the UN's impact, often the UN is a small player amongst these, supporting and coordinating rather than leading on programming. Given these limited supporting roles and the large number of other intervening factors, it can be difficult to isolate the UN's impact via its rule of law interventions. Rather than speak in direct causal terms about impact, we contextualize the UN's *contribution*, alongside the interventions of others, to the broader goals of risk reduction.[4] Where the precise impact is impossible to ascertain, or where the UN has not generated evidence that directly supports causal findings about impact, we rely on a broad set of expert consultations to help us identify good practice and lessons that could be applied beyond a single country context.[5]

2. The Afghan context

Since the Soviet-Afghan War in 1979, Afghanistan has not achieved sustained peace. Periods of civil war between armed groups and the Government, backed by different constellations of foreign powers, eventually led to the Taliban seizing power in 1996. They were expelled from power five years later, when the US invaded the country after 9/11 and at the time largely defeated the Taliban and their Al-Qaeda allies. Authorized by the UN Security Council, the International Security Assistance Force (ISAF), a coalition of 40 States under NATO leadership, was deployed to help extend the authority of the Afghan State. By 2004, however, the Taliban had again launched an insurgency, waging asymmetric warfare in the following years (including increasing violence against civilians) and regaining a foothold in many rural areas across the country.[6] ISAF responded with increased troop numbers and counter-insurgency operations, and began to gradually draw down its forces after the US killed Osama bin Laden in 2011. In 2015, ISAF was succeeded by the NATO-led Resolute Support Mission.

In February 2020, the US signed an Agreement for Bringing Peace to Afghanistan with the Taliban and a joint declaration with the Islamic Republic of Afghanistan. The documents specify interconnected, conditional steps for counter-terrorism guarantees, foreign troops withdrawal, intra-Afghan negotiations, and a ceasefire. The envisaged actions are to result in a "sovereign Afghanistan at peace with itself and neighbours" under an "Afghan Islamic government." After delays resulting from a contentious prisoner swap between the Taliban and the Afghan Government, the intra-Afghan peace negotiations started in September 2020 in Doha.[7]

Despite the start of the peace negotiations, violence levels in Afghanistan remain extraordinarily high to the day of writing, including not only violent attacks by the Taliban and other conflict parties, but also high numbers of suicide bombings by various armed groups. The Islamic State Khorasan (IS-K) has a presence in some districts in the East, while Al-Qaeda and around 20 foreign militant groups are also active in the country, some with ties to the Taliban.[8]

On the local level, a key driver of instability has been the issue of land rights. Competition over land has increased since the early 2000s, when conflict-driven displacement as well as population growth and urbanization caused massive shifts in settlement patterns. Land ownership is barely formalized in Afghanistan, and traditional conflict resolution mechanisms have been weakened in the decades of conflict, leading to increasing resort to violence to settle disputes.[9]

Decades of violent conflict on various levels and the discontinuity of regimes have left the country in dire humanitarian conditions and extreme underdevelopment. Since 2009 alone, over 100,000 civilians have been killed or injured and millions have been displaced.[10] The conflict, as well as natural disasters and the COVID-19 pandemic, have left over 18.4 million people in need of humanitarian assistance in 2021. As an extremely fragile State,

Afghanistan ranks near the bottom of established governance and development indicators, suffering from massive levels of poverty and unemployment.[11] Of a population of 38 million, more than half live below the poverty line (with numbers expected to deteriorate due to COVID-19), and just as many are illiterate.[12] Given Afghanistan's extremely high gender inequality, women and girls are particularly affected by the realities and socioeconomic consequences of the conflict, falling victim to high rates of sexual and gender-based violence and having very limited access to education and economic opportunities.[13]

Amidst the past and ongoing conflicts, Afghanistan's economy has been shaped by a massive narcotics trade and other illicit activities such as mineral and gemstone trafficking.[14] According to estimates, the opium-driven drug trade is equivalent to over ten per cent of Afghanistan's official GDP.[15] The country's illicit economy is a major driver of instability, financing the operations of the Taliban and other groups and contributing to the country's massive corruption problem (Afghanistan ranks 165th of 180 countries on Transparency International's *Corruption Perceptions Index 2020*).[16] Despite this bleak picture, the international community, including the UN, has achieved notable progress in many areas (e.g. literacy rates and anti-corruption), some of which will be explored in detail in section 4.

Still, deep-seated corruption represents one of the biggest challenges for a functioning State, in particular for the rule of law, as it has eroded the population's trust in the national Government and the justice system.[17] According to a recent survey of the World Justice Project, more than half of the population distrust the criminal courts, with experts citing high levels of corruption, a lack of judicial independence, and overall weak institutional capacities as the main challenges.[18] Further, the Taliban are competing against the State with their own justice delivery mechanisms, discrediting the national judiciary and further undermining public trust in the Government. The State's rule of law capacities have been eroded in the decades of violent conflict, and the discontinuity of political regimes led to a "patchwork of differing and overlapping laws."[19] While the legal framework has significantly improved in recent years (see section 4), implementation of reforms is still lagging. Broadly, Afghanistan is influenced by different legal systems: the formal justice system, local customary practices, and Sharia law (in Taliban-controlled areas, but also more broadly as referenced in the Constitution).[20] As the formal justice institutions are mostly inaccessible for large segments of society (especially in rural areas, and especially for women in Afghanistan's highly patriarchal society), traditional dispute resolution mechanisms play an important role in the country and are used by almost half of the population.[21] This comes with challenges for women and other vulnerable populations, whose needs are significantly undermined as parts of the informal systems and Islamic law clash with international human rights standards.[22]

A strong culture of impunity for (war) criminals plays a particularly important role in the country's susceptibility to conflict. A majority of perpetrators of human rights violations from all conflict parties have never been held accountable for their actions, eroding the population's trust in their State, emboldening perpetrators, protracting the conflict and undermining efforts to strengthen the rule of law.[23] Second, the justice system has so far failed to comprehensively address the conflict-ridden issue of land rights, especially given the limited reach, capacity, and reputation issues of formal institutions and because informal systems which historically used to mediate have not been systematically utilized.[24] Third, in recent years there has been a rise in violent attacks against public officials by the Taliban and Islamic State, such as the one early 2021 in Kabul during which two women judges assigned as researchers at the Supreme Court were assassinated on their way to work.[25] The targeting of rule of law actors, compounded by the failure to ensure a secure environment for justice personnel, has severely undermined the capacity of the system to act independently, impartially and effectively resulting in fear, demoralization and the disruption and destruction of files. Despite the huge challenges, there has been some progress over the past decade in terms of building the capacity of the justice sector, which will be discussed in section 4.

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Apart from the problems in the national judiciary, the police and corrections systems suffer from chronic shortfalls in capacity as well. The conflict led to a total collapse of public order, eroding the capacities of already weak national institutions. Police stations across the country are severely underequipped, while in some areas there is no police presence at all.[26] The Afghan National Police (ANP) tends to be actively engaged in combat rather than law enforcement functions; its heavy militarization has so far hindered efforts towards a comprehensive community policing approach.[27] In addition, the Ministry of Interior Affairs suffers from internal power struggles and a high turnover of staff. Lastly, prisons in Afghanistan are dramatically overcrowded and mismanaged with occupancy rates over three times higher than actual capacity, and notoriously inhumane conditions for inmates and pre-trial detainees, including torture and other human rights abuses.[28]

3. The UN's rule of law mandate and actors in Afghanistan

Drawing on the above context, this section lays out the structure of the UN's rule of law involvement and mandates. With regard to rule of law support, the UN is a relatively small player in Afghanistan due to the heavily donor-driven nature of rule of law and other recovery work, as well as the large presence of foreign troops in-country. Responsibilities in this area have come to lie predominantly with bilateral donors who used to serve as lead nations for certain sectors.[29] Despite comparatively limited international presence on the ground, the UN is providing multifaceted rule of law support to Afghanistan, including via its special political mission, the United Nations Assistance Mission in Afghanistan (UNAMA).

UNAMA

Established in 2002 by the Security Council to fulfil the UN's tasks in the Bonn Agreement (which details the arrangements to rebuild Afghanistan), UNAMA is a political mission mandated to: (a) lead and coordinate the international civilian efforts, in cooperation with the Government of Afghanistan; (b) provide outreach and good offices in support of an Afghan-led and owned peace process; (c) support Afghan authorities in their efforts to organize elections and strengthen the electoral system; (d) support regional cooperation; and (e) monitor and assist in the implementation of human rights. Headquartered in Kabul, the Mission's presence includes seven regional offices, eleven field offices, and two liaison offices in Pakistan and Iran. It employs over 1,200 staff, most of which are Afghan nationals.[30]

Rule of Law Team

The window of inquiry of this case study starts in 2017 – with the caveat that, in that year, the UNAMA's rule of law capacity was significantly curtailed after a strategic review led to the prioritization of support for the peace process.[31] UNAMA's Police Advisory Unit was phased out, and the Rule of Law Unit was downsized from 27 to six staff, its presence retracted from the field offices to Kabul only, and was henceforth tasked with providing normative advice on rule of law, e.g. through advising the Government on draft laws and strategies and working on codifying the relationship between the formal and the informal justice system.[32]

Having identified anti-corruption as one of the rule of law focus areas, UNAMA's Rule of Law Team, with support of the Government, has published annual reports since 2017, seeking to support Afghanistan in its fight against corruption by raising awareness of areas of progress and providing recommendations for the Government and the international community. The team also supported the establishment of the Anti-Corruption Justice Centre (ACJC) – a specialized court and dedicated team of prosecutors focusing on the most serious cases of corruption and the newly established Anti-Corruption Commission (see section 4 for a detailed analysis of this work and its impact).

The Rule of Law Team has for many years played a key coordination, convening and analysis role in the rule of law sector. In line with UNAMA's mandate to coordinate international support, the Rule of Law Team has worked closely with other international actors, in particular as chair of the Board of Donors, and regularly convenes stakeholder meetings.[33] The team has also been a key source of information, analysis and policy coherence in the justice sector on issues such as corruption, criminal justice, law reform, and land issues. On land issues, for example, through its series of reports, the Rule of Law Team highlighted the endemic nature of "land grabbing" as a driver of instability, advocating for the commitment of the authorities to criminalize land grabbing and illegal land distribution.

Human Rights Unit

A main pillar of UNAMA's work, and one that is relevant to the broader rule of law agenda, is the work on human rights. As an integrated mission, UNAMA's Human Rights Unit consists of OHCHR staff, with personnel working on five priority areas: protection of civilians in armed conflict; children and armed conflict; women's rights and the elimination of violence against women (EVAW); treatment of detainees; and support for transitional justice.[34] Similar to the

Rule of Law Team, the Human Rights Unit has a strong advocacy and reporting mandate, most notably via its quarterly reports on civilian casualties, where UNAMA/OHCHR is investigating human rights violations by all conflict parties and recommending corrective action. Further, UNAMA has been providing mentoring and technical advice for the Afghanistan Independent Human Rights Commission (AIHRC), the main lead on transitional justice.[35]

UNDP

UNDP's country office in Afghanistan is currently undergoing a significant restructuring, including the downsizing of its rule of law portfolio, following a strategic review and the current transition to a new country programme.[36] In this transitional period, the capacity dedicated to rule of law issues has been cut from over 20 to a very limited number of staff at the time of writing. Amidst these changes, UNDP's support to the police sector remains a core rule of law function, provided via a number of initiatives: the management of the police payroll as an element of the multi-partner trust fund LOTFA

(Law and Order Trust Fund for Afghanistan);[37] support for the Ministry of Interior in its COVID-19 response to protect police personnel;[38] and efforts to enhance community policing.[39] In the justice sector, UNDP has been working towards improving citizens' access to justice and legal aid services, as well as building the capacity of special anti-corruption institutions (see section 4). As the process of turning LOTFA into a multi-partner trust fund has not materialized, as of the time of writing, UNDP is without justice capacity and funding.[40]

UN Women

UN Women's work in Afghanistan is structured under various thematic pillars, one of which directly relates to rule of law support and risk reduction: the elimination of violence against women (EVAW).[41] Under this rubric, UN Women has been providing shelter and various services to survivors of sexual violence, including help with legal aid and referring cases to the courts. UN Women is also setting up programming on the prevention of violence against women via community-based approaches (see section 4).[42]

UNODC

Since 2015, UNODC has had a relatively small presence in Afghanistan and is mostly focused on counter-narcotics and anti-money laundering work. Entirely dependent on donors and their priorities, it has struggled to maintain robust funding for important rule of law work, most notably on the criminal justice and anti-corruption front, where engagement is currently limited to one international mentor supporting Afghanistan's Anti-Corruption Justice Centre (ACJC).[43]

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4. Rule of law impact

This section explores the guiding question of this case study: How is the UN's rule of law work contributing to conflict prevention? While assessing impact towards conflict prevention is a challenging endeavour in and of itself, the Afghanistan case comes with a particular set of caveats that is important to note at the outset. First, given the ongoing conflict and the continuously alarming violence levels in Afghanistan, the term 'conflict prevention' needs to be relativized. Instead, this assessment will focus more broadly on the UN's contribution to reducing risks where feasible in this challenging environment. Second, the window of inquiry of this case study starts in 2017, the same year that UNAMA's rule of law mandate in Afghanistan was significantly curtailed and reduced to providing normative advice. While some regard this shift as having empowered the remaining rule of law team and left the unit with a fairly high standing vis-à-vis the Government,[44] the limitations in capacity and work scope do affect the UN's impact considerably, leaving it a relatively small player in Afghanistan when considering human and financial resources. In line with the previous note about assessing *contribution* rather than causal impact, the UN is working alongside other, more influential players (e.g. the US through INL and USAID, the EU through EUPOL, or Germany through GIZ). Thirdly, the timing of the assessment is complicated by the recent peace process still in its infancy at the time of writing, with many aspects of future rule of law arrangements still unclear (e.g. to what extent will elements of the informal justice system be incorporated into the formal one?). To some degree, UN support and impact hinges on these outcomes, so that the following assessment provides a snapshot of rule of law impact under these 'interim' conditions.

Strengthening legal frameworks

Afghanistan's strong culture of impunity for human rights abusers counts as a main driver of the conflict and one of the biggest hindrances of progress in the rule of law area.[45] Together with rampant corruption levels, it continues to undermine Afghans' trust in their Government and stability for the country more broadly. As a basis for strengthened accountability, it is necessary to bolster legal and strategic frameworks in Afghanistan and ensure compliance with international standards, which the UN has been working towards for many years.

A milestone in the UN's support to the formal justice system was the adoption of a new penal code in 2017, marking the first time that Afghanistan has a comprehensive criminal code. UNAMA, together with other agencies and international partners, helped draft the code, and since it came into force in 2018 has been training Afghan justice actors on its provisions.[46] The new code complies with international criminal justice and human rights standards, including the UN Convention against Corruption and the International Criminal Court (ICC)'s Rome Statute that covers war crimes, genocide, and crimes against humanity. For the first

time, war crimes are codified in Afghanistan, which provides a crucial legal basis for trying perpetrators from all sides of the conflict.[47] The code also addresses other key conflict drivers, in particular the issue of land rights by criminalizing land grabs.[48] Other key human rights violations were criminalized as well, including Bacha Bazi (a practice involving child sexual abuse) and torture.[49]

While the new framework and the codification of conflict-related crimes constitutes a major step towards fighting impunity, major challenges around human rights and accountability issues persist. The code, for instance, still includes the death penalty,[50] and is only applicable for crimes since 2018, neglecting decades of gross human rights violations by all conflict parties.[51] It does, therefore, not seem to lever out the deep-rooted culture of impunity that was solidified in 2008 with the passage of a near-blanket amnesty law. Also given that, so far, no war crime case has been prosecuted under the new criminal code, its actual accountability impact is not yet tangible.[52]

The UN has also advised the Afghan Government on other key legislation over the years, some of which will be discussed in later sections.[53] Before 2017, and therefore beyond the scope of this study, UNAMA's Rule of Law Team produced reports on different rule of law issues (including criminal justice, land reform, and water rights) to contribute to broader justice reform. According to experts interviewed for this study, a comprehensive justice sector reform strategy was never reached, and given the current peace negotiations, will now also depend on those outcomes.[54]

The biggest question concerning the current and future legal architecture revolves around the inclusion of the informal sector given its prevalence in Afghanistan (and the prevalence of distrust in the formal sector), and around the question of whether the Taliban will accept the current legal framework. In its advisory capacity, UNAMA helped draft legislation detailing how traditional dispute resolution mechanisms can be weaved into the formal justice system; at the time of this writing, the draft is pending in the legislative department of the Ministry of Justice.[55] Stakeholders working on these issues are faced with difficult questions on how to unify the formal and informal system in a way that maximizes peoples' trust and minimizes conflict risks, and how to ensure that the judiciary still reflects human rights standards (including women's rights), which can conflict with some customary practices and especially Sharia law in Taliban-administered areas.[56]

Amidst the peace process and the developments it may bring to the rule of law area in the future, the UN's support to the date of writing has contributed to a significant improvement and harmonization of the legislative framework. In its advisory function, the UN has helped set a crucial legal basis for the fight against impunity as a key conflict driver, first and foremost through the first ever codification of war crimes under the new penal code. Still, the implementation of reforms is lagging and the culture of impunity for human rights abusers in Afghanistan is strong and may get reinforced as reconciliation measures between the Taliban and the Government come with prisoner releases and amnesties.[57] The next sections explore further ways in which the UN seeks to strengthen the justice system to enhance the accountability of perpetrators.

Bolstering justice services and access to justice

Afghanistan's judiciary was dismantled during the decades-long conflict, leading to a severe shortfall in capacity that – together with endemic corruption – has undermined public trust in the system. Across all interviews conducted for this study, this lack of trust was cited as the number one problem of Afghanistan's rule of law and a major driver of instability, as the Taliban instrumentalize this weakness to increase their own appeal. And indeed, in some areas the

Taliban's justice system has a better reputation, being seen as less corrupt and more effective in processing cases.[58] Broadly, the deficiencies of the formal system make many Afghans turn to more affordable, more accessible customary practices, which carries its own risk given the often poor human rights protections in these systems – especially for women, who continue to suffer from high levels of violence and abuse.

The UN is trying to mitigate these risks by strengthening citizens' access to justice, both by helping extend justice services and by bolstering legal aid provision in Afghanistan. Throughout UNAMA's lifespan, the Mission has contributed to extending the reach of the judiciary (figures as of early 2021):[59]

- Since 2004, more than 250 provincial courts were operationalized, increasing the total number of operational courts to 384 (94 of which are operating remotely because of the conflict).

- Since 2004, the number of judges increased by over 1,000 to a total of 2,200, while the number of female judges has been raised to over 250.

- The Attorney-General's Office has a presence in 297 out of 387 districts, employing over 3,500 prosecutors, 15 per cent of which are women.

- Since 2019, UNAMA has helped strengthen the capacity of the International Crimes Prosecution Directorate within the Attorney-General's Office, which led to various cases being investigated. Half of the 20 specialized prosecutors are women.

- Since 2016, a special judicial infrastructure has been established to help eliminate violence against women (see next section).

- A number of lawyer organizations became operational, such as the Afghan Independent Bar Association or the Afghanistan Lawyers Union. There has also been a significant increase in the number of NGOs providing legal aid services, resulting in improved adherence to fair trial standards.

In terms of legal aid provision, with UN support the Legal Aid Department within the Ministry of Justice established offices in all provinces, staffed by 151 permanent legal aid officers.[60] Another key UN contribution, especially with regard to service provision for vulnerable populations, is its support for the Legal Aid Grant Facility, which UNDP helped establish in 2013. Each year and across eight of the 34 provinces, over 1,000 detainees, women, and children receive legal aid services through this facility, which covers cases that the lawyers from the national Legal Aid Department cannot take up.[61] In addition, UNDP has helped Afghan justice actors improve their monitoring and evaluation systems and case allocation mechanisms, and it produced mappings of access to justice and legal aid services.[62]

While blanket coverage is currently beyond reach given the security situation and the amount of territory under Taliban control, the UN contributed to a visible extension of formal justice services and legal aid, including in some remote areas. Even though a risk reduction impact is hard to identify with precision, these improvements facilitate an increased caseload and initiate a more systematic fight against impunity. In some of the UN's target areas (i.e. those accessible), a small but very important effect of the legal aid support has been a slight observed decrease in SGBV, as a former UN official in Afghanistan reported. 20 to 30 per cent of the annual legal aid cases have involved women and girls suffering from violence and abuse. Even though the number of reported and prosecuted cases are, of course, dwarfed by the number of actual incidents, the fact that SGBV went down slightly in some areas can count as a first success story.[63] The next section explores additional ways in which the UN is implementing its mandate on the elimination of violence against women.

Eliminating violence against women (EVAW)

Next to extending access to justice and raising legal awareness, part of the UN's approach to help eliminate violence against women has involved engagement with traditional leaders. In some eastern border regions of Afghanistan, for instance, UNDP has done advocacy work to curb harmful customary practices against women,

involving village elders and traditional justice leaders. According to an expert interviewed, these efforts have helped limit the custom of paying bride money, a practice considered highly influential in facilitating gender-based violence. "Our work really helped improve women's lives in some of these areas," the expert explained.[64]

The rampant levels of violence, including conflict-related violence, against women and girls prompted the UN and national authorities to establish specialized institutions on the investigation and adjudication of SGBV cases: EVAW courts. The UN helped draft the Standard Operating Procedures and other manuals for the courts and has since 2016 supported their operationalization.[65] After a first pilot project in Kabul, EVAW courts are now present in 28 provinces (and specialized prosecution units in all provinces). While SGBV in Afghanistan remains severely underreported, interviewees assessed the creation of the EVAW infrastructure – including the EVAW law from 2009, specialized prosecutors, courts, and police response units – as an impressive step in the fight against impunity of sex offenders. "Such a structure was unheard of just a few years ago," a UN official explained, "the basis for tackling this issue more systematically is there."[66] Through its reporting mandate, UNAMA's human rights unit is indirectly working towards increasing the caseload: eight field teams are monitoring cases of violence against women and girls and tracking their status in the justice system (roughly half of reported cases end up in court).[67] With its findings on incidents and case referrals, the unit is approaching local police stations and formal justice actors, advocating for increased case uptake and referral.[68]

Victims of SGBV are further supported by UN Women, which is providing a range of services to survivors by supporting CSO-run Family Guidance Centres and Women Protection Shelters.[69] At these institutions, victims receive medical, psychosocial, education, and legal services, including help with case referral to the EVAW courts.[70] Currently in development – and therefore precluding an impact assessment – is UN Women's programming on the *prevention* of violence against women. Through community-based approaches and involvement of various types of stakeholders as well as religious and political leaders, this programming aims at sustainable social norm change and will provide an important complement to previous work.[71]

Fighting corruption

In Afghanistan and other fragile settings, systemic corruption counts as a main driver of conflict. It exacerbates horizontal inequalities, deepens wealth gaps and social divisions, erodes people's trust in their State, and empowers armed groups who instrumentalize the public's estrangement from the Government to gain traction. At the same time, the nexus between corruption and organized crime means that groups like the Taliban, who fund their operations almost entirely via drug trafficking, profit from high corruption levels and complicit public officials. In short, corruption breeds public discontent, provides a hotbed for illicit activities and strengthens anti-government forces. Its destabilizing influence thus undermines recovery work and efforts to build sustainable peace – including in the rule of law area. Expanding justice and security institutions will be of little avail (or even counterproductive) when said institutions are still grappling with corruption. The UN's anti-corruption work in Afghanistan is therefore crucial to mitigate the risks that the systematic corruption poses for lasting stability.[72]

The UN supports the Afghan Government in its efforts to combat corruption from various angles, ranging from normative and legislative advice to building the capacity of relevant institutions and providing mentoring and technical assistance. UNAMA's Rule of Law Team has played a critical role in coordinating and convening international stakeholders, which has shaped policy and legislative coherence on both the anti-corruption and the broader justice file. UNAMA and other UN partners contributed to various developments on the anti-corruption front in Afghanistan, including:[73]

- The establishment of the Anti-Corruption Justice Centre (ACJC), a court dedicated to tackling high-profile corruption cases.
- The 2018 operationalization of the Deputy Attorney General's office for anti-corruption, which oversees the

prosecution of corruption cases by the Attorney General's Office across the country, and an Independent Ombudsman office (for administrative complaints).

- The adoption of relevant strategies and documents such as the national anti-corruption strategy of 2017,[74] as well as the mentioned revised Penal Code of 2017, which ensures compliance with international anti-corruption standards.

- The 2019 adoption of the law on access to information and the 2020 launch of an anti-corruption monitoring and evaluation database.

- The establishment, in 2020, of Afghanistan's independent Anti-Corruption Commission, which subsumed other corruption-related entities for a more streamlined anti-corruption architecture.

A new mandate raised UNAMA's anti-corruption profile in 2016, centring on reporting and advocacy work.[75] According to experts interviewed for this study, the Mission's annual anti-corruption reports have been instrumental in shaping a generally accepted narrative on the state of play of anti-corruption reforms and the way forward, and they have shaped the anti-corruption benchmarks of the international community (e.g. at the 2020 donor conference in Geneva). In collaboration with other international partners, the UN has also been supporting the specialized anti-corruption institutions with capacity-building and mentoring. UNDP, for instance, has been providing logistical support and trainings (on investigation techniques, monitoring and evaluation, gender issues, etc.) for the Anti-Corruption Justice Centre, and is planning to extend this support to the Attorney General's Office and the new Anti-Corruption Commission soon.[76] The ACJC is also supported by a mentor from UNODC.[77] UNAMA conducts a structured trial monitoring programme of all ACJC trials and shares analyses with stakeholders and international partners.

Across the interviews, the establishment of the ACJC in particular was seen as a crucial step in the fight against corruption in Afghanistan. According to internal assessment documents, the UN contributed to visible improvements in the courts' technical and operational capacities.[78] Since its operationalization in 2016, the court has tried 94 cases and convicted 294 defendants, including high-ranking Government officials, Generals, and deputy ministers. It also completed 78 appeals and recently convicted ten former election commissioners of election fraud, setting an important precedent for criminal accountability for corruption in the election processes.[79] Experts interviewed for this study see these developments as introducing a more systematic fight against corruption, convicting culprits and potentially disincentivizing others from similar crimes. Relatedly, UNODC-supported agencies such as the National Directorate of Security (NDS) have gained competence and expertise in their fight against money laundering, which has resulted in more and more cash and gold seizures in recent years, increasing investigations of financial crimes and convictions of culprits – developments that, according to a UN expert, were unheard of just two or three years ago.[80] UN training has also helped increase the intelligence capacities of the NDS, which was able to prevent a number of terrorist attacks, even though the preventive impact is hard to quantify: "We do have an impact, but we don't have enough quantitative indicators for it," the expert said.

Afghanistan's advancements on the anti-corruption front are important first steps to hamper funding opportunities for armed groups and increase the public's trust in their Government (something UNDP is also fostering through public awareness campaigns and other grassroots work).[81] Better institutional frameworks and capacities have improved the accountability of judges for corruption-related offenses, while Afghanistan's ranking on Transparency International's *Corruption Perceptions Index* has improved considerably: from 176th out of 180 countries in 2010, to 173rd in 2019, and then to 165th in 2020. Especially considering the small size of UNAMA's Rule of Law Team, these developments constitute notable improvements in mitigating the corruption problem in Afghanistan. The Rule of Law Team's focus on corruption has supported UNAMA's mandate implementation in the three focus areas: internal stability, peace and self-reliance.

The appreciation of UNAMA's rule of law work by national and international partners is mainly due to its successful anti-corruption work. It was viewed by many experts as exemplary of how a rule of law component can strongly contribute to mandate implementation in a political mission.

Nevertheless, the UN's mandate and resources do not match up to the dimension of the corruption problem in Afghanistan and its strong conflict-driving influence. More capacities are needed for a tangible conflict risk reduction impact.

Strengthening the police

Similar to the justice sector, the police sector in Afghanistan is suffering from significant shortfalls in capacity as well as problems with corruption (almost 40 per cent of Afghans think that most or all police officers are corrupt).[82] The police is heavily militarized and an active party to the conflict instead of a civilian force. UN internal infrastructure surveys further show that police stations are severely underequipped, while many areas have no police presence at all.[83] Interviewees suggested that the police has very limited capacity to investigate criminal cases, and is also struggling to keep up with currently over 3,000 outstanding arrest warrants.[84] The consequences for the rule of law and broader risk reduction are dire. If the police are unable to apprehend offenders and enforce formal justice decisions, efforts to fight impunity and stabilize the country are severely undermined. A functioning executive branch is integral for a functioning rule of law.

As UNAMA's Police Advisory Unit was phased out in 2018, UNDP is currently the primary UN actor supporting the Afghan police. A substantial part of this support has involved the management of the police payroll as one part of the LOTFA fund mentioned earlier.[85] At an annual budget of approximately USD 350 million, the payroll management represents a sizable responsibility and does not come without challenges, given the deep-rooted corruption within the police force.[86] Yet, UNDP helped roll out an electronic payroll system so that salaries are paid on time in all 34 provinces, and has built technical and human resource capacity at the Ministry of Interior Affairs (MOIA) to prepare for a future handover of the payroll management function.[87] Together with other international partners, UNDP has also helped recruit and train new police

officers (150,000 in the last 15 years), including professionalization campaigns and vetting in line with the UN Human Rights Due Diligence Policy (HRDDP).[88] Further, there have been efforts to increase gender equality in the police force (UNDP helped train 3,000 new female officers),[89] but female enrolment remains limited. Under LOTFA, comprehensive police reforms have so far been lagging. To turn the police from a counter-insurgency force into a civilian one, UNDP introduced a project in early 2020 to bolster community policing approaches in Kabul and provincial headquarters.[90]

It is too early in the lifespan of the community-policing project to make definite claims about its risk reduction impact, but interviewees attested a high potential, as it aims to shift police priorities from paramilitary operations to providing security services for communities and rebuilding trust in the population. "It's the security institutions themselves that have generated much of the conflict," one expert said, "so it's crucial to refocus them to their actual purpose: serving the people."[91] Equally challenging to assess is the impact of UNDP's payroll and police professionalization work. Human rights trainings and vetting helped increase, to some extent, the accountability of the security sector (even though HRDDP compliance needs to be improved), while the salary management ensures a minimal functioning of the police – where it is present and operational. These are certainly first steps in strengthening the security sector, but the continuously high violence levels across Afghanistan show that there is still a long way to go.

Promoting human rights and transitional justice

Typically, UN support to corrections systems is as crucial for strengthening the rule of law as support to the justice and police sectors. Given UNAMA's mandate restrictions after 2017, the Mission's prison-related work now primarily focuses on human rights monitoring: via bi-annual reports, UNAMA/OHCHR document cases of detainee mistreatment and torture and advocate for improved detention conditions that comply with human rights norms – also intending to minimize cases of arbitrary detention, which is seen as partly fuelling the conflict.[92] Further, overcrowded prisons are seen as hotbeds for radicalization, a risk that the Government and UN partners tried to mitigate through the new penal code mentioned earlier, which introduced alternatives to prison sentences for smaller crimes, attempting to reduce prison populations (certain types of prisoners were also released as a COVID-19 response measure).[93]

Broadly, UNAMA's human rights monitoring work feeds into the larger rule of law agenda, as it aims to hold conflict parties accountable to their international humanitarian/human rights law obligations and lay the groundwork for the fight against impunity. UNAMA's civilian casualties reporting is a good example: In quarterly reports, the Mission publishes data on civilians killed or hurt in the conflict, differentiating between conflict parties responsible and by types of attacks. The Mission then used its findings for advocacy work with the Government, the Taliban, and international military, including tailored messaging on the local and national level to get conflict parties to refrain from certain tactics or weapons that are frequent causes of civilian harm, e.g. mortars. While effects of risk reduction or conflict prevention depend on many other factors (e.g. developments in the peace process), experts credited the Mission with important influence on parties to seize certain practices. For instance, after tailored advocacy efforts to limit parties' use of pressure plate improvised explosive devices (PPIEDs), in 2016-18, the Mission observed a decrease of attacks involving these landmines – an important contribution to the protection of civilians.[94]

UNAMA's civilian casualties reporting counts as the most systematic and credible source on civilian casualties in Afghanistan – and could potentially become important documentation for future transitional justice efforts.[95] UNAMA is mandated to support transitional justice in Afghanistan, including through mentoring and building capacity of the AIHRC, the main lead on human rights and transitional justice issues in the country. In this area, UN impact towards risk reduction is the hardest to assess, also because progress on transitional justice has faced a number of hurdles. First, an amnesty law in 2008 reinforced the climate of impunity for war criminals and silenced the discourse on transitional justice in Afghanistan for a number of years.[96] Second, the recent peace progress brought the issue back to the agenda, but at the same time is undermining it. Government concessions to the Taliban as reconciliation measures (e.g. releasing prisoners and granting immunity for human rights abusers) hamper accountability efforts and the fight against impunity.[97] And third, there are credible reports that all parties to the conflict – from non-State armed groups, to the Government, to international forces – have been involved or complicit in violations of international humanitarian and human rights law, which erases political will to meaningfully promote accountability.[98] An expert interviewed for this study found clear words for this dilemma: "When the people in power are amongst the most threatened by transitional justice measures, transitional justice is not going to happen."[99] The future impact of UN support will depend on whether these hurdles can be overcome and on the transitional justice-related outcomes of the peace process.

5. Enabling and inhibiting factors

The previous section analysed a number of rule of law programmes and approaches of the UN over the past years, focusing on their risk reduction impact. This section explores what factors might have enabled, impeded, or otherwise influenced such impact, ranging from the contextual conditions in Afghanistan to factors more in the UN's control.

Insecurity and access

Across all interviews, the ongoing conflict and extremely volatile security situation were cited as the number one factor impeding the UN's work and impact. According to reports at the time of writing, the Taliban control a fifth of Afghanistan's territory – more than at any time since their 2001 fall from power – and half of the country is fiercely contested.[100] This means that over two-thirds of Afghanistan are not accessible for UN rule of law support, so very large segments of the population are cut off from such services, especially in rural areas.[101] UNDP and others have tried to mitigate this challenge by working more closely with community-based NGOs or local volunteer groups, but this has not solved the core problem:

Afghanistan's security situation severely restricts the UN's reach and the capacity of the rule of law system at large, given the increasing number of attacks on rule of law officials. This significantly impedes sustained and nationwide progress to strengthen Afghan justice, security, and corrections systems. UNAMA's influence in terms of security provision is limited, so to a large extent its work hinges on factors outside of its control. More broadly, the dire security situation has led to mandating structures that prioritize UN support to the peace process as opposed to a longer-term rule of law agenda.

Political will

Another factor that makes or breaks progress of rule of law efforts is the willingness of domestic actors. In Afghanistan, experts suggested that this willingness is generally given depending on the issue area. On the anti-corruption front, for example, the Government is said to be quite open for cooperation (also incentivized by the recent donor conference in Geneva in 2020, where partners made parts of future funding conditional on anti-corruption progress). UNAMA's annual corruption reports are well received by Government actors, and recommendations have been taken up in the reform process. In the human rights area, both the Taliban and the Government tend to show themselves cooperative, even if at times reluctantly, in the UN's efforts to elucidate cases of civilian casualties, trying to avoid reputational costs. On other issues such as transitional justice, however, a lack of political will has so far precluded meaningful action, which reinforces the culture of impunity that pervades Afghanistan's conflict history.[102]

UN mandates and resources

A main conclusion of this study is that the UN's mandates and available resources to strengthen the rule of law in Afghanistan do not match up with the scale of the problem – the decades of conflict and extreme shortfalls in rule of law capacities. Many experts attested that UNAMA's rule of law unit is delivering impressive work considering its small size and scope. But the dimensions of the impunity problem and the deficiencies across the justice, security, and corrections sectors necessitate a bigger response. A concrete criticism by some experts interviewed was that the 2017 strategic review that led to cuts in UNAMA's rule of law mandate and unit did not account for the lack of capacity of the broader Country Team to take over some of those responsibilities, nor the politically sensitive nature of much of UNAMA's rule of law work that would not readily be assumed by the UN Country Team. A big part of the rule of law portfolio, therefore, was simply 'lost'.[103] Further, budget cuts across the UN have meant that agencies like UNODC, which is entirely dependent on donors, struggle to maintain funding for important projects.

National ownership

While the UN and other international players have tried to put more emphasis on national ownership of rule of law processes in recent years, it remains questionable whether Afghan capacities will be able to fully absorb and sustain certain initiatives as foreign aid decreases. Afghanistan is 80 per cent reliant on donors and there are substantive concerns that the exit of international partners will cause shocks across all rule of law sectors as funding and support phases out.[104] If national institutions are not capable of withstanding such shocks, this could deal a near-fatal blow to past and present progress on risk reduction efforts.

UN reputation and Government relations

On local levels and at various levels of government, experts suggested that the UN as an institution generally has a good reputation in Afghanistan.[105] "People are willing to listen to the UN," one interviewee reported, "there really is potential to leverage that influence." Closely related to the remarks on political will, the impact of rule of law support hinges on good and open relations with domestic actors, which the UN can rely on in certain issue areas (e.g. in its work on eliminating violence against women and promoting gender equality, which is

met with broad goodwill in relevant ministries). However, in higher levels of government, the stance towards the UN is not always favourable, and a high staff turnover in ministries makes it hard for the UN to sustain momentum on certain rule of law initiatives.[106]

Given the limited capacities of UNAMA's rule of law unit, in particular, it is important to note that the Mission's ability to generate impact derives, to a large extent, from its coordination, convening and analysis role in the rule of law sector, and from steering the dialogue of donors with the Afghan Government. This role is based not only on an appreciation of UNAMA's legitimacy and credibility with the Afghan authorities and its character as an "impartial" non-implementing actor but also as a result of the unit's good access and relations with key Afghan counterparts.

Joint work

When asked about levels of cooperation within the UN, interviewees generally highlighted room for improvement. UNAMA is mandated to coordinate international support on the ground and in certain issue areas such as the fight against corruption, the Mission, UNDP, and UNODC are seen as 'delivering as one', also because the Government pushed for a more coherent approach. In addition, in 2021, UNAMA and UNDP agreed to implement a joint project with Afghanistan's Supreme Court, under the umbrella of the Global Focal Point for the Rule of Law, to promote safer justice delivery and access through the use of technology – remote court hearings – to prevent and respond to threats to security and safety in Afghanistan. While these are important developments, experts generally described the UN's rule of law engagement as 'piecemeal' and lacking a more comprehensive and joint perspective.

COVID-19

As in many other settings, the coronavirus pandemic is significantly impeding the implementation of various projects in the rule of law area and beyond. The UN has reacted with several initiatives to mitigate the risks the virus poses, including UNAMA advice on the use of remote courts, UNDP support to the Ministry of Interior Affairs to contain and respond to COVID-19 in the police force as well as training civil society organizations to monitor and enforce a fair and transparent delivery of medical equipment to 1,500 health centres across the country, to counteract COVID-related corruption and embezzlement.[107] However, the pandemic continues to decelerate and impede UN support, including in the rule of law area, especially as many staff currently have to work from outside of Afghanistan.

6. Lessons and recommendations

This study has shown that the UN has contributed to progress on the rule of law across various areas, even though the scale of the problem in Afghanistan significantly exceeds UN capacities and resources and the ongoing conflict at the time of writing makes it difficult to identify a palpable risk reduction impact with precision. Progress can be recorded in the areas of legislative reform, criminal justice, the establishment of an independent bar, the expansion of legal aid and the development of professional training for judicial officials and the combating of corruption. Access by women and disadvantaged members of society to formal justice has increased, as has geographic access. The physical infrastructure has been significantly built up while the number of practising defence lawyers has also increased substantially. The Supreme Court has increased internal oversight and accountability through the removal of some corrupt judges. Deriving from this analysis and the expert interviews conducted, the following lessons can inform UN actors and other stakeholders in similar settings who seek to improve their rule of law interventions.

- **Ramp up anti-corruption work.** Corruption is a key driver of fragility and conflict in Afghanistan and beyond. It undermines public trust in the Government and emboldens insurgents who thrive on the illicit economy and the populations' discontentment with their State. Given this big influence, experts criticized that the fight against corruption is still not sufficiently mainstreamed into the UN's peacebuilding work.[108] If corruption is not addressed via stronger mandates and better resources, this can risk undermining the UN's whole rule of law agenda. Strengthening justice and security institutions will be of little avail (or even counterproductive) when said institutions are still grappling with corruption. Rule of law programming needs to explicitly tackle corruption issues and enhance transparency and accountability of the institutions it seeks to strengthen.[109]

- **Bolster legal aid.** The Afghanistan case has shown how a number of donor-funded legal aid initiatives have contributed to the development and the expansion of legal aid provision and how a culture of criminal defence advocacy has gradually been instilled into the legal community throughout the country.[110] For other settings, too, legal aid is an essential element of a functioning justice system that ensures fundamental fairness and public trust in the justice process. The most effective means of reducing pre-trial detention, ensuring adequate redress for abuses committed by the security forces and avoiding miscarriages of justice is to provide persons with access to competent lawyers at the earliest possible stage of the criminal justice process.

- **Review the UN's rule of law capacity.** As mentioned, the 2017 strategic review curtailed UNAMA's rule of law mandate and led to a significant downsizing of its Rule of Law Unit and the closure of the police unit. According to experts, this significantly affected the UN capacity to deliver rule of law support crucial to the long-term stabilization of the country. In addition, the lack of capacity in the UN Country Team and the subsequent restructuring and downsizing of UNDP's rule of law team, has made it difficult to fill the void left by the cuts to UNAMA. This points to the need to review what core rule of law capacity might be required across the UN in-country, to help address the more politically sensitive rule of law issues. Such as review will also need to address how rule of law capacities might need to be shift across UNAMA and the UN Country Team as the UN's presence in Afghanistan might be reconfigured in coming years.

- **Involve the informal justice sector.** In Afghanistan and other settings, vast parts of the population rely on the informal justice sector for settling disputes. In Afghanistan, the UN has begun to think about ways to align the informal and formal systems, while seeking to uphold international human rights standards. Given the importance of customary practices in numerous other settings, the UN should expand its approaches to work with informal systems, also in the spirit of better adaptation of rule of law programming to local realities and needs.

- **Ramp up the work on land rights.** Land disputes are a major driver of instability not only in Afghanistan but in other settings as well. However, this issue is often not adequately reflected in the mandates and programmes of UN or other international actors in such settings, despite the potential for conflict prevention impact.

- **Strengthen coordination within the UN and beyond.** UNAMA's successful role in convening, coordinating and analysing international rule of law assistance was emphasized as crucial throughout all interviews, as it significantly contributed to steering the dialogue between the Government of Afghanistan and international stakeholders. In other settings, too, the UN should invest in coordination or cooperation with other partners, and also expand joint approaches of different UN entities, for example via the Global Focal Point for the Rule of Law. In addition, experts highlighted the need to re-emphasize and reinforce the overall coordination role in the area of rule of law vested in the Special Representative of the Secretary-General/ Resident Coordinator.[111]

- **Measure progress and impact – systematically and regularly.** In 2015, UNAMA's Rule of Law team, together with UNDP, facilitated the (nationally-led) Rule of Law Indicators Study (RoLIS) to monitor progress on the rule of law over time and inform future policymaking in the sector.[112] As of this writing, no follow-up study has been undertaken (RoLIS was discontinued and replaced by citizen surveys), even though experts pointed to the need for periodical assessments of this kind to evaluate progress over time and identify areas that need further national and international commitment. For other settings, as well, this points to the need to systematically and regularly measure impact of UN interventions, especially in a way that focuses on impact and not solely on outputs.

References

1. Frud Bezhan, "The Taliban, The Government, And Islamic State: Who Controls What In Afghanistan?," *Radio Free Europe/Radio Liberty*, 31 May 2020, https://www.rferl.org/a/taliban-government-islamic-state-who-controls-what-in-afghanistan-/30644646.html.

2. Interview, 25 November 2020; Tobias Haque and Nigel Roberts, "Afghanistan's Aid Requirements How much aid is required to maintain a stable state?," *Lessons for Peace* (London: ODI, 2020), https://l4p.odi.org/assets/images/ODI-L4P-Afghanistan-aid-requirements-Haque-and-Roberts-2020.pdf.

3. United Nations Security Council, "The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General," United Nations, 23 August 2004, S/2004/616.

4. This approach of contribution rather than direct attribution is laid out in Adam Day, *Assessment Framework for Preventive Diplomacy: An Approach for UN Mediators and Policymakers* (Tokyo: United Nations University Centre for Policy Research, 2018); See also, United Nations Department of Political and Peacebuilding Affairs, *Three-Year Strategic Plan: 2020-2022* (New York: UNDPPA, 2020), https://dppa.un.org/sites/default/files/undppa_strategic_plan_2020-2022.pdf.

5. This is often referred to as an "adaptive" form of impact assessments, see, Ian Wadley, *Valuing Peace: Delivering and Demonstrating Mediation Results* (Geneva: HD Centre, 2017).

6. Council on Foreign Relations, "Global Conflict Tracker: War in Afghanistan," last accessed 5 August 2021, https://www.cfr.org/global-conflict-tracker/conflict/war-afghanistan.

7. What's In Blue, "UN Assistance Mission in Afghanistan (UNAMA) Mandate Renewal," Security Council Report, 14 September 2020, https://www.whatsinblue.org/2020/09/un-assistance-mission-in-afghanistan-unama-mandate-renewal-2.php.

8. Ibid.; "Afghan peace talks set to restart in Qatar," *Deutsche Welle*, 5 January 2021, https://www.dw.com/en/afghan-peace-talks-set-to-restart-in-qatar/a-56130327; Frud Bezhan, "The Taliban, The Government, And Islamic State: Who Controls What In Afghanistan?," *Radio Free Europe/Radio Liberty*, 31 May 2020, https://www.rferl.org/a/taliban-government-islamic-state-who-controls-what-in-afghanistan-/30644646.html.

9. Erica Gaston and Lillian Dang, "Addressing Land Conflict in Afghanistan," *United States Institute of Peace Special Report* (2015).

10. UNAMA, *Afghanistan Annual Report on Civilians in Armed Conflict 2019* (Kabul: UNAMA, 2019); UNHCR, "Afghanistan (Islamic Republic of)," last accessed 6 August 2021, https://data2.unhcr.org/en/country/afg.

11. Afghanistan ranks ninth on the 2020 Fragile States Index and on is rank 169 (of 189) on the 2020 Human Development Index. See Fund for Peace, *Fragile States Index 2020* (Washington DC: Fund for Peace, 2020), https://fragilestatesindex.org/data/; UNDP, *2020 Human Development Index Ranking* (New York: UNDP, 2020), http://hdr.undp.org/en/content/latest-human-development-index-ranking.

12. World Bank, "Poverty headcount ratio at national poverty lines (per cent of population) – Afghanistan," last accessed 6 August 2021, https://data.worldbank.org/indicator/SI.POV.NAHC?locations=AF; UNESCO Institute for Statistics, "Afghanistan," last accessed 6 August 2021, http://uis.unesco.org/country/AF; "Coronavirus pushing millions of Afghans into poverty: SIGAR," *Al Jazeera*, 31 July 2020, https://www.aljazeera.com/economy/2020/7/31/coronavirus-pushing-millions-of-afghans-into-poverty-sigar.

13. Afghanistan ranks 157th on UNDP's 2019 Gender Inequality Index. See UNDP, *Human Development Reports. Gender Inequality Index* (GII) (New York: UNDP, 2019), http://hdr.undp.org/en/composite/GII.

14. United Nations, *United Nations Development Assistance Framework for Afghanistan 2015 -2019* (New York: United Nations, 2015).

15. Interview, 7 January 2021.

16. Transparency International, *Corruption Perceptions Index* 2020 (Berlin: Transparency International, 2020), https://www.transparency.org/en/cpi/2020/index/afg.

17. Interviews, 25, 27, and 29 November 2020.

18. Further, only 55 per cent of survey respondents think that the system is accessible to everyone, and that people accused of crimes get a fair trial. See, World Justice Project, *The Rule of Law in Afghanistan. Key Findings from 2019* (Washington DC: World Justice Project, 2019).

19. United States Institute of Peace, *Special Report: Establishing the Rule of Law in Afghanistan* (Washington DC: USIP, 2004); see also, Hatem Elliesie, "Rule of Law in Afghanistan," *Understandings of the Rule of Law in various Legal orders of the World* eds. Matthias Koetter and Gunnar Folke Schuppert (Berlin: FU Berlin, 2010).

20. Articles 3 and 130 of the Constitution include references to Sharia law. Interview, 2 March 2021.

21. Interview, 1 December 2020.

22. Hatem Elliesie, "Rule of Law in Afghanistan," *Understandings of the Rule of Law in various Legal orders of the World* eds. Matthias Koetter and Gunnar Folke Schuppert (Berlin: FU Berlin, 2010); United Nations, *United Nations Development Assistance Framework for Afghanistan 2015 -2019* (New York: United Nations, 2015).

23. United States Institute of Peace, *Special Report: Establishing the Rule of Law in Afghanistan* (Washington DC: USIP, 2004); Per Sevastik, "Rule of Law, Human Rights and Impunity: The Case of Afghanistan," *Hague Journal on the Rule of Law* (2019).

24. Erica Gaston and Lillian Dang, *Special Report: Addressing Land Conflict in Afghanistan* (Washington DC: United States Institute for Peace, 2015).

25. Similar incidents include the 2015 attack on the Mazar-e-Sharif Attorney-General's Office (AGO) provincial headquarters in which 21 people, ten of them prosecutors, were killed. This was followed by the bus bombing at AGO headquarters in Kabul in which two people, including a female prosecutor, died. In 2017, 20 employees of the Supreme Court were killed in a bomb attack outside the court. In 2019, UNAMA documented 17 attacks against members of the judiciary in which 20 people were killed. In 2020, too, a considerable number of justice actors were abducted, killed, or injured during attacks by armed groups.

26. Internal document [on file with author].

27. Interviews, 1 December 2020 and 6 January 2021.

28. Internal document [on file with author]; *United Nations, United Nations Development Assistance Framework for Afghanistan 2015 -2019* (New York: United Nations, 2015).

29. Mostly the US and Germany in the police sector, and, formerly, Italy in the justice sector. Other international actors include the United Kingdom, Denmark, Canada, INL, USAID, DFiD, the EU, EUPOL, The World Bank, GIZ, International Legal Foundation, International Bar Association, USIP, IDLO, NRC, CANADEM and the ICRC. (Internal document [on file with author]; Interview, 17 November 2020; United States Institute of Peace, *Special Report: Establishing the Rule of Law in Afghanistan* (Washington DC: USIP, 2004).

30. United Nations Security Council, "The situation in Afghanistan and its implications for international peace and security: Report of the Secretary-General," United Nations, 18 March 2002, S/2002/278; Stimson Center, *Rebuilding Afghanistan: The United Nations Assistance Mission in Afghanistan (UNAMA)* (Washington DC: Stimson Center, 2002), http://www.jstor.com/stable/resrep10864; UNAMA, "Mandate," last accessed 6 August 2021, https://unama.unmissions.org/mandate.

31. Interview, 17 November 2020; United Nations Security Council, "Special report on the strategic review of the United Nations Assistance Mission in Afghanistan: Report of the Secretary-General," United Nations, 10 August 2017, A/72/312–S/2017/696.

32. Interview, 25 November 2020.

33. Most recently, UNAMA has convened stakeholder meetings on corruption, the investigation of international crimes, Taliban justice and remote court hearings in the context of COVID-19. Up to 2017, when field posts were cut, through its seven field offices, UNAMA supported subnational justice initiatives and rule of law coordination on the provincial level as part of its Provincial Justice Coordination Mechanism. See United Nations Office of Rule of Law and Security Institutions (OROLSI), *The Work of UNAMA in the Areas of Justice, Police and Corrections* (New York: UN Department of Peace Operations, 2015).

34. UNAMA, "Human Rights," last accessed 6 August 2021, https://unama.unmissions.org/human-rights.

35. UNAMA's support to transitional justice in Afghanistan was reinforced in the most recent mandate renewal, when the Security Council mandated the Mission to provide advice "on the establishment and implementation of judicial and non-judicial processes to address the legacy of large-scale human rights violations and abuses as well as international crimes and to prevent their recurrence". United Nations Security Council, "Resolution 2489, adopted by the Security Council at its 8620th meeting," United Nations, 17 September 2019, S/RES/2489 (2019).

36. Interviews, 1 December 2020 and 6 January 2021.

37. LOTFA has four funding windows: 1) Support to Payroll Management, 2) Security, 3) Justice, and 4) a cross-cutting window on anti-corruption. Donors include the UK, Canada, the EU, Denmark, the Netherlands, UNDP, amongst others. The envisioned transition of payroll responsibilities to the Government has been stalling because of hesitation by donors, given the continuously high corruption levels in Afghanistan. LOTFA has significant reputational issues, i.e. in corruption in the payroll and in the HRDD policy compliance, and the windows on justice and anti-corruption are underfunded. Interviews, 25 November, 1 December 2020 and 6 and 11 January 2021; UNDP, "Law and Order Trust Fund for Afghanistan," last accessed 6 August 2021, (http://mptf.undp.org/factsheet/fund/LTF00).

38. UNDP, "Support to Ministry of Interior Affairs, Afghanistan in efforts to contain & respond to COVID-19 situation for ANP (Project)," last accessed 6 August 2021, http://mptf.undp.org/factsheet/project/00121382.

39. UNDP, "Community-oriented Policing Services (COPS)," last accessed 6 August 2021, http://mptf.undp.org/factsheet/project/00120128.

40. Interview, 1 March 2021.

41. The other pillars comprise Women, Peace and Security, women's economic empowerment, political participation, and cross-cutting humanitarian work. Interview, 6 January 2021.

42. Interview, 6 January 2021.

43. Interview, 25 November 2020 and 7 January 2021.

44. Interview, 25 November 2020.

45. Per Sevastik, "Rule of Law, Human Rights and Impunity: The Case of Afghanistan," *Hague Journal on the Rule of Law* (2019).

46. Internal document [on file with author].

47. Interview, 25 November 2020.

48. UNAMA, "UNAMA Welcomes Afghanistan's New Penal Code - Calls for Robust Framework to Protect Women Against Violence." 22 February 2018, https://unama.unmissions.org/unama-welcomes-afghanistan%E2%80%99s-new-penal-code-calls-robust-framework-protect-women-against-violence.

49. Interview, 1 March 2021.

50. Even though it is seldomly executed and has not been applied since the adoption of the new penal code. Interview, 25 November 2020.

51. Interview, 25 November 2020.

52. Interview, 25 November 2020.

53. Legislation related to "counter-narcotics (2007), terrorism (2008), elimination of violence against women (2009), criminal procedure (2014), torture (2016), asset registration and verification (2017), anti-corruption (2017, 2018), access to information (2018, 2019), audits, and prisons affairs management (2020)." Internal document [on file with author].

54. Interview, 25, 27 and 29 November 2020.

55. Interview, 11 January 2021.

56. Interview, 25, 27 and 29 November 2020.

57. Including the contentious prisoner swap at the start of the intra-Afghan peace negotiations as a confidence-building measure between the parties. It included the release of militants who were involved in high-profile attacks and human rights violations. Interview, 30 November 2020; What's In Blue, "UN Assistance Mission in Afghanistan (UNAMA) Mandate Renewal," Security Council Report, 14 September 2020, https://www.whatsinblue.org/2020/09/un-assistance-mission-in-afghanistan-unama-mandate-renewal-2.php.

58. Interview, 26 November 2020.

59. Internal document [on file with author].

60. Internal document [on file with author].

61. Interview, 1 December 2020; UNDP Afghanistan, "Rule of Law. In depth," last accessed 6 August 2021, https://www.af.undp.org/content/afghanistan/en/home/Rule-of-Law/in-depth.html.

62. Interview, 1 December 2020 and 11 January 2021; UNDP Afghanistan, "Rule of Law. In depth," last accessed 6 August 2021, https://www.af.undp.org/content/afghanistan/en/home/Rule-of-Law/in-depth.html.

63. Interview, 11 January 2021.

64. Interview, 11 January 2021.

65. Internal document on file with author; Interview, 1 December 2020.

66. Interview, 17 December 2020.

67. Interview, 17 December 2020.

68. Interview, 17 December 2020.

69. There are currently 23 Women Protection Shelters in Afghanistan, half of which are supported by UN Women. Interview, 6 January 2021.

70. Interview, 6 January 2021.

71. Interview, 6 January 2021.

72. See, United Nations, *The UN Common Position to Address Global Corruption: Towards UNGASS 2021* (United Nations: New York, 2020); UN DPPA and DPO, *Ways to Promote Anti-corruption Elements in Peacekeeping and Special Political Missions* (New York: United Nations, 2020).

73. Internal document [on file with author] (figures as of early 2020); UN DPPA and DPO, *Ways to Promote Anti-corruption Elements in Peacekeeping and Special Political Missions* (New York: United Nations, 2020); Interview, 19 January 2021.

74. The 2017 anti-corruption strategy expired in December 2019 without a successor. Its benchmarks were extended until the (pending) finalization impact assessment of the 2017 strategy and the development of a new one. As of this writing, an interim strategy for 2021 is under discussion as a stop-gap measure. Interview, 1 March 2021.

75. UN Security Council Resolution 2274 introduced the fight against corruption as an area of focus for UNAMA's rule of law unit. United Nations Security Council, "Resolution 2274, adopted by the Security Council at its 7645th meeting," United Nations, 15 March 2016, S/RES/2274.

76. Via its 5.7 million USD Afghanistan Anti-Corruption, Transparency, Integrity and Openness (ACTION) Project funded by Denmark and additional UNDP funds. Interview, 19 January 2021.

77. Interview, 7 January 2021.

78. Internal document [on file with author].

79. Internal document [on file with author] (figures as of early 2020).

80. Interview, 16 December 2020.

81. Such as training CSOs on investigative journalism techniques or educating public information officers on the regulations of the Access to Information Law to enhance transparency on corruption-related issues. Interview, 19 January 2021.

82. World Justice Project, *The Rule of Law in Afghanistan. Key Findings from 2019* (Washington DC: World Justice Project, 2019).

83. Interview, 1 December 2020; Internal document [on file with author].

84. Interview, 25 November 2020.

85. UNDP Afghanistan, "Support to Payroll Management (SPM)," last accessed 6 August 2021, https://www.af.undp.org/content/afghanistan/en/home/projects/SPM.html.

86. Interviews, 25 and 27 November 2020.

87. Donors have so far been reluctant to initiate a handover of responsibilities, given concerns about continuously high corruption levels in the Government. Interviews, 27 November and 15 December 2020.

88. Interview, 1 December 2020; UNDP Afghanistan, "Rule of Law. Overview, last accessed 6 August 2021. https://www.af.undp.org/content/afghanistan/en/home/Rule-of-Law.html.

89. UNDP Afghanistan, "Rule of Law. In depth," last accessed 6 August 2021, https://www.af.undp.org/content/afghanistan/en/home/Rule-of-Law/in-depth.html.

90. Interviews, 25 and 27 November 2020 and 6 January 2021.

91. Interview, 17 November 2020.

92. UNAMA, "Treatment of Conflict-Related Detainees in Afghan Custody," last accessed 6 August 2021, https://unama.unmissions.org/treatment-conflict-related-detainees-afghan-custody.

93. UNAMA, "UNAMA Welcomes Afghanistan's New Penal Code - Calls for Robust Framework to Protect Women Against Violence." 22 February 2018, https://unama.unmissions.org/unama-welcomes-afghanistan%E2%80%99s-new-penal-code-calls-robust-framework-protect-women-against-violence; Internal document [on file with author].

94. Before publication, data is shared with the Government and the Taliban to elicit their views on these incidents and give them a chance to provide input or information. Interview, 6 January 2021.

95. Cale Salih, "The UN Security Council and Transitional Justice: Afghanistan," *The UN Security Council and Transitional Justice* ed. Dr Rebecca Brubaker (New York: United Nations University, 2021), https://i.unu.edu/media/cpr.unu.edu/attachment/4841/UNU_TJ_Afghanistan.pdf.

96. Interview, 30 November 2020.

97. Interview, 30 November 2020; Cale Salih, "*The UN Security Council and Transitional Justice*: Afghanistan," *The UN Security Council and Transitional Justice* ed. Dr Rebecca Brubaker (New York: United Nations University, 2021), https://i.unu.edu/media/cpr.unu.edu/attachment/4841/UNU_TJ_Afghanistan.pdf.

98. Ibid.

99. Interview, 15 December 2020.

100. Frud Bezhan, "The Taliban, The Government, And Islamic State: Who Controls What In Afghanistan?," *Radio Free Europe/Radio Liberty*, 31 May 2020, https://www.rferl.org/a/taliban-government-islamic-state-who-controls-what-in-afghanistan-/30644646.html.

101. Interview, 7 January 2021.

102. Cale Salih, "The UN Security Council and Transitional Justice: Afghanistan," *The UN Security Council and Transitional Justice* ed. Dr Rebecca Brubaker (New York: United Nations University, 2021), https://i.unu.edu/media/cpr.unu.edu/attachment/4841/UNU_TJ_Afghanistan.pdf.

103. Interview, 25 November 2020.

104. United Nations, *United Nations Development Assistance Framework for Afghanistan 2015 -2019* (New York: United Nations, 2015).

105. Interview, 25 November 2020 and 11 January 2021.

106. Interview, 1 December 2020.

107. Interview, 19 January 2021.

108. Interview, 6 January 2021.

109. UN DPPA and DPO, *Ways to Promote Anti-corruption Elements in Peacekeeping and Special Political Missions* (New York: United Nations, 2020).

110. UN OROLSI and DPO, *The Work of UNAMA in the Areas of Justice, Police and Corrections* (New York: United Nations, 2015).

111. By the Decision of the Secretary-General No. 2012/13, pursuant to which "[t]he senior United Nations official in-country - Special Representatives or Executive Representatives of the Secretary-General or, in non-mission settings, Resident Coordinators - should be responsible and accountable for guiding and overseeing United Nations rule of law strategies, for resolving political obstacles and for coordinating United Nations country support on the rule of law, without prejudice to the specialized roles and specific mandates of United Nations entities in-country." United Nations, "Decision of the Secretary-General – 11 September meeting of the Policy Committee," United Nations, 11 September 2012.

112. Based on discussion groups, expert surveys, and administrative data review, the final report measured the performance of the judiciary, prosecutors, police, prisons and defence lawyers against more than 100 baseline indicators to respond to the need of national and international stakeholders to evaluate the performance of the rule of law sector in Afghanistan. The assessment was based on the United Nations Rule of Law Indicators Guidelines, as endorsed by the United Nations system in 2011 and launched under the joint leadership of DPKO and OHCHR Headquarters. See, UN OROLSI and DPO, *The Work of UNAMA in the Areas of Justice, Police and Corrections* (New York: United Nations, 2015).

RULE OF LAW

Support to Conflict Prevention and Sustaining Peace in Bangladesh

by Jessica Caus,
March 2021
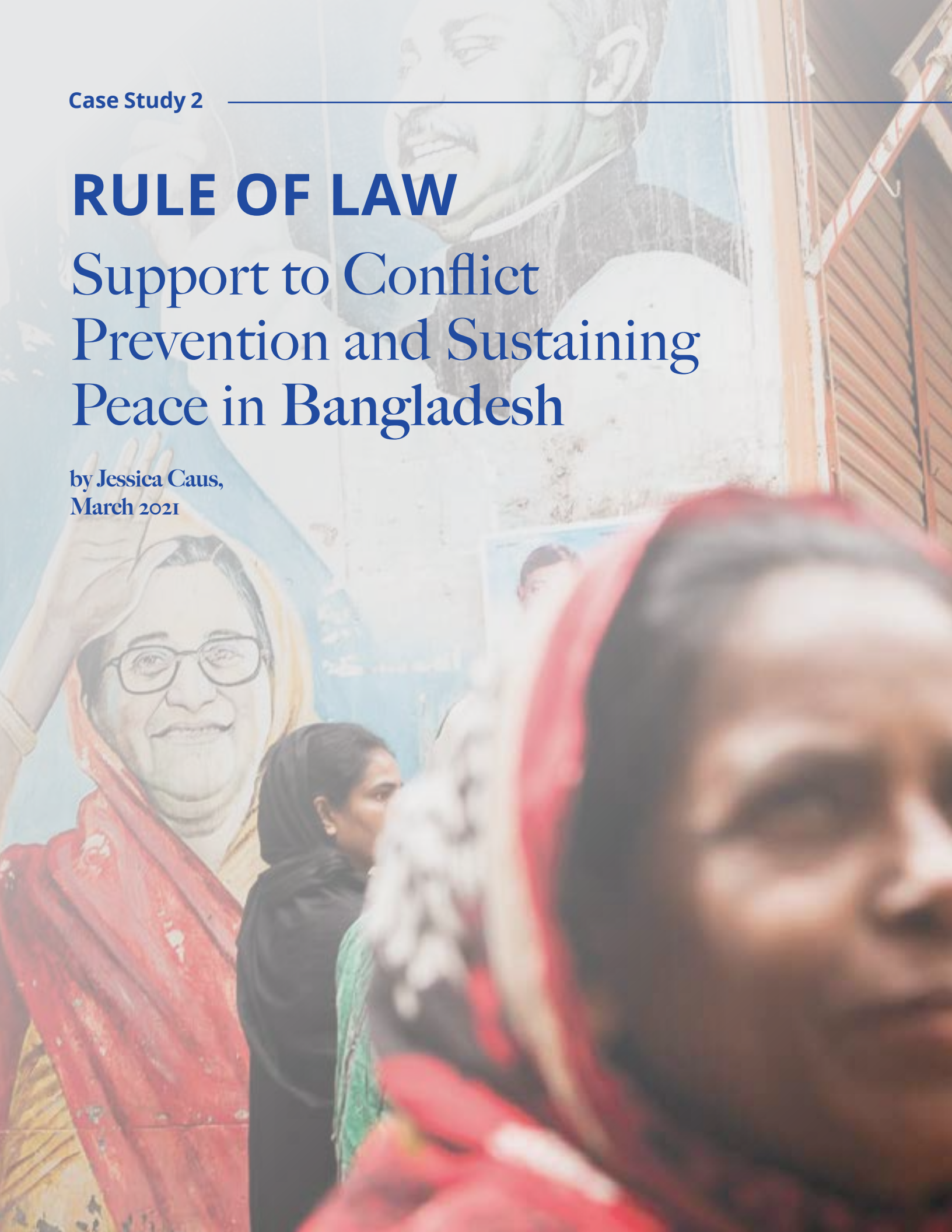
1. Introduction

Located on the Bay of Bengal in the world's largest river delta, Bangladesh represents an environmentally and politically fragile setting faced with multiple human security and conflict risks. It is amongst the countries most exposed and vulnerable to climate change, whose effects such as increased river flooding, rising sea levels, and more intense cyclones are already strongly affecting large segments of the population. Bangladesh also hosts nearly one million Rohingya refugees who have been displaced from bordering Myanmar since 2017, putting a strain on local communities already struggling with scarce resources and infrastructure deficits. At the same time, there are some indications that Bangladesh's ruling party may be drifting away from democratic principles, with widespread allegations of repressing opposition voices, committing human rights abuses, and politicizing independent institutions.[1]

The environmental, socioeconomic, and political challenges in Bangladesh form a complex set of risks that can drive intergroup tensions and, when conditions are ripe, could erupt into larger-scale violence. To mitigate these risks and strengthen local and national resilience, the UN and other international partners have been engaging in short-term humanitarian responses and longer-term development support. This case study explores the UN's engagement in one particular area – the rule of law – examining the related activities and impact of the Resident Coordinator's Office (RCO), UNDP, UN High Commissioner for Refugees (UNHCR), International Organization for Migration (IOM), UN Women, and others. Focusing on the period since 2017, the study asks: *How has the UN's rule of law support contributed to lowering the risks of violent conflict in Bangladesh?* The goal is to examine current rule of law approaches and identify specific evidence of impact, i.e. how these approaches have contributed to conflict prevention.

The paper is based on desk-based research and expert interviews with researchers and UN officials both in New York and Bangladesh. It is structured in five parts: (1) a background on the conflict risk landscape; (2) a brief mapping of UN rule of law actors in Bangladesh; (3) an analysis of specific approaches and evidence of impact, with a focus on the UN's support to e-justice and local-level rule of law programming; (4) mediating factors that either enable or inhibit impact; and (5) lessons and recommendations.

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A note on scope and methodology

Rule of law is defined by the UN 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."[2] Traditionally, this has resulted in a focus on police, justice, and corrections as the primary vehicles for the UN's rule of law engagement. However, we recognize that other areas of the UN's work may also contribute to the core goals of the UN's rule of law work, including efforts to combat impunity, build accountability, advance transitional justice, limit corruption, and address conflict-related sexual violence, amongst others. This project does not adopt a strict definition of the rule of law but is instead largely guided by interviews with experts in a range of field settings, asking them what they consider to be the key rule of law programmes by the UN and its partners.

In terms of the scope of these studies, it is important to highlight that this is not a comprehensive assessment of the UN's work in a given setting. It does not try to capture every rule of law programme, but instead reflects the views of experts about the most impactful, relevant, and effective rule of law interventions in the given timeframe. This expert-driven approach to cases studies is to ensure that they feed meaningful cross-cutting policy recommendations, which is the core purpose of this project.

In terms of methodology, we note that the UN's rule of law work takes place alongside the interventions of a range of actors, including national leaders, bilateral donors, INGOs, and local organizations. While it is our goal to identify evidence of the UN's impact, often the UN is a small player amongst these, supporting and coordinating rather than leading on programming. Given these limited supporting roles and the large number of other intervening factors, it can be difficult to isolate the UN's impact via its rule of law interventions. Rather than speak in direct causal terms about impact, we contextualize the UN's *contribution*, alongside the interventions of others, to the broader goals of risk reduction.[3] Where the precise impact is impossible to ascertain, or where the UN has not generated evidence that directly supports causal findings about impact, we rely on a broad set of expert consultations to help us identify good practice and lessons that could be applied beyond a single country context.[4]

2. The risk landscape in Bangladesh

With over 164 million people, Bangladesh is the eighth-most populous country in the world.[5] Its dense and fast-growing population is faced with risks of various dimensions. Bangladesh is amongst the countries that are most exposed and vulnerable to the impacts of climate change, with large-scale loss of arable land and extreme weather posing immediate threats to livelihoods of hundreds of thousands of people.[6] The combination of higher temperatures and more erratic rainfall has led to increased annual river flooding, resulting in the erosion of riverbanks and loss of cultivable land in a society highly dependent on agriculture. Further, more intense cyclone seasons and rising sea levels are threatening coastal dwellers, especially in densely populated areas. Storm surges and floods are uprooting whole communities, having led to a drastic increase in flood-driven migration. Extreme weather events and livelihoods losses in agriculture have been pushing more and more people into the cities, settling in slums and seeking employment in the informal sector.[7]

Rising urbanization rates in Bangladesh have also meant increased risks of urban and gang violence and higher crimes rates. According to some estimates, displaced people make up 80 per cent of the urban population in Bangladesh, driving dynamics of horizontal inequality and poverty, the rate of which was at nearly 30 per cent in mid-2020.[8] This is also due in part to the COVID-19 pandemic, which has been exacerbating socioeconomic grievances and deepening inequalities, as many Bangladeshis have lost their jobs or have not received their wages because of industry shutdown. In the garment industry, for instance, over 2 million people were laid off in the second half of March 2020 alone; 65 per cent of them were women.[9] These developments have led to increasing labour disputes and protests across the country, with risks of escalating into violence if the grievances persist (see also section 4).

A region experiencing poverty and underdevelopment at heightened levels are the Chittagong Hill Tracts (CHT), a group of three districts on the south-eastern border. The CHT count amongst the poorest and most conflict-prone areas of Bangladesh, with a history of insurgency and occasional fighting between the Government and the mostly indigenous population that has historically been marginalized economically and politically. While a peace agreement has been in place since 1997, large parts of it have not been fully implemented.[10] The area is controlled by the military and has seen a spike in violence in recent years, in particular around land issues as land grabbing (by the army or larger corporations) has become a prevalent practice in the area and competition over land has also increased in the context of new migrant pressures.[11]

In fact, aside from climate-driven and other internal migration, Bangladesh has also been sustaining a high number of Rohingya refugees from Myanmar. While sporadic Rohingya movement into Bangladesh began decades ago, a renewed crackdown on this Muslim minority in Myanmar led to a mass influx of refugees in 2017. Since then, nearly one million Rohingya have settled in the Cox's Bazar district – a district already grappling with resource scarcity and multiple development and security issues.[12] The arrival of the Rohingya, paired with the presence of criminal gangs and armed group elements in the refugee camps and in host communities, has led to increased tensions in the district, often along intercommunal lines, while crime rates and human rights violations are soaring, including extremely high rates of violence against women and girls (more in section 4).

The issue of gender-based violence (GBV) is rampant also beyond the Cox's Bazar context. According to a 2015 survey, over 70 per cent of married women or girls in Bangladesh have experienced a form of intimate partner abuse, including physical assault; acid attacks are a common form of such violence.[13] The high rates of gender-based violence (GBV) and also femicides in Bangladesh are embedded in a culture of gender inequality and marginalization of women, often seen as directly related to the practice of dowry.[14] In all of this, the number of actual incidents of GBV arguably exceeds the number of reported cases by far as women often refrain from filing complaints due to fears of stigma, low levels of trust in the police, a lack of services and shelters, and the social normalization of such violence in Bangladesh's patriarchal society. Of those that do file cases, only 3 per cent are getting justice, while 97 per cent remain deprived, according to research by a Bangladeshi NGO, in part because of long court delays that reinforce the culture of impunity for such crimes.[15] During COVID-19 and the related lockdown measures, the rates of violence against women and girls have risen even more: the months of March and April 2020 saw a 70 per cent increase in reported incidents compared to the previous year.[16]

Long delays in court proceedings are not limited to cases of GBV but pervade the entire justice system. According to estimates, 3.7 million cases are backlogged in the formal courts, while many cases take years or sometimes even decades to be resolved.[17] Further, many Bangladeshis – especially in remote areas – have very limited access to justice, either because they cannot afford justice services, do not have access to legal aid, or simply because they live too far away from the formal court infrastructure.[18] In rural communities, many thus rely on alternative dispute resolution mechanisms to solve their legal problems, which predominantly revolve around land issues, neighbour conflicts, and crime.[19] Deriving in part from the lag in the formal judiciary, another rule of law challenge in Bangladesh is its extremely overcrowded prison system: according to the national Justice Audit,[20] prisons are populated at 200 per cent of their actual capacity, while the majority of prisoners are in pre-trial detention.[21] The challenges in the judicial and penitentiary system, paired with allegations of human rights violations by some elements within the national police, are driving risks in Bangladesh, as lacking access to justice, dwindling trust in national institutions, and higher numbers of unresolved civil and criminal cases are disrupting social cohesion and increasing tensions, with risks of turning violent when conditions are ripe.[22] This is all taking place in an increasingly challenging political environment that is seen as sliding away from a free and democratic rule (especially after the election in 2018 that was marred by allegations of voter intimidation and rigging): judicial independence is seen as dwindling and the ruling party is accused of increasingly politicizing national institutions and silencing opposition voices.[23]

3. UN rule of law actors and involvement in Bangladesh

While the previous section sketched out the context the UN is operating in, this section gives a brief overview of the UN's rule of law actors and involvement in Bangladesh. In this non-mission setting, various entities in the UN Country Team, under the coordination of the Resident Coordinator, are engaging in rule of law work, including through joint programming.

Broadly, UN support to strengthen the rule of law occurs both via analytical and political work and dedicated programming. The team in the RCO, including its various advisors on issues such as human rights, peace and development, and gender, have been conducting analyses on the situation in the country, including the rule of law deficits and their impacts on social cohesion. These analyses serve as a basis for the highly relevant but (in the challenging political environment) more behind-the-scenes advocacy work of the Resident Coordinator, e.g. political advocacy on the review of certain legislation such as the contentious Digital Security Act or COVID-related prisoner releases.[24]

On the programmatic side, UNDP support to the police reform started around 2006, and support to the justice sector started around 2009 in the context of law reforms in Bangladesh.[25] However, it slowed down somewhat after 2016 when the funding environment (and, to some extent, government openness) changed towards a focus on humanitarian crises and building climate resilience as opposed to longer-term rule of law work.[26] The UN has since sustained a number of small-scale rule of law initiatives (some of which are discussed in section 4), hoping to ramp up engagement once the broader political environment allows.

A window of opportunity, or rather: necessity, came with the COVID-19 pandemic, during which UNDP has been supporting the judiciary in digitalizing some of its services (see below). In the Cox's Bazar district – another focus area of this study – UNHCR, IOM, and UNDP are working together on community safety and policing issues: UNHCR and IOM in the Rohingya refugee camps, and UNDP in the local host communities. UNODC and UN Women, too,

are involved in some of the UN's rule of law work and capacity-building of justice actors in Bangladesh.[27] In a tri-partnership with the EU and the Government of Bangladesh, UNDP is further involved in strengthening local dispute resolution mechanisms (see below).

Other engagement includes support for the National Human Rights Commission[28] and preventing violent conflict work to build local research capacity in identifying drivers of violent extremism and improving early warning as well as local and national governance responses.[29] The UN's work in the CHT to strengthen inclusive development, while not strictly under the rule of law portfolio, also includes some rule of law elements such as support for community-based mediation.[30]

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4. Rule of law impact

Across the spectrum of UN rule of law work in Bangladesh, a number of approaches and initiatives were highlighted by experts consulted for this study as having specific effects on conflict prevention or risk reduction and are therefore examined in more detail in this section.

While the conflict prevention lens may not always be fully applicable in the Bangladesh case (as opposed to settings experiencing outright armed conflict or civil war), it still holds value for this analysis. Bangladesh is faced with a broad set of human security and governance risks, including deep structural inequalities and an increasingly authoritarian rule. As laid out in the 2018 *Pathways for Peace* report by the UN and the World Bank, such conditions are driving tensions and risks of violent conflict, necessitating approaches to strengthen more inclusive development as well as transparent and representative politics.[31]

In Bangladesh, the UN's challenge lies in the fact that its programmatic work to strengthen the principles of good governance is taking place in a context that seems to be heading away from such principles. Rule of law institutions are part of a State apparatus that is seen as less and less inclusive, while the Government is wary of outside interventions that are perceived as promoting a Western agenda or securitizing development goals. UN programming in Bangladesh, including in the rule of law area, is thus rarely geared towards conflict prevention specifically, but in the spirit of SDG 16 is contributing to it via its support for inclusive institutions and development. This is the underlying lens for the assessment of impact in this paper.

Access to justice and legal aid in times of COVID-19: remote courts

As detailed earlier, Bangladesh's justice system has long been characterized by extensive case processing times and very high pre-trial detention rates. According to estimates, 3.7 million cases are backlogged in the formal courts, while more than 80 per cent of all detainees are pre-trial detainees.[32] The COVID-19 pandemic has exacerbated these problems, leading to a further backlog of cases with courts closed as part of mitigation measures.

In May 2020, UNDP initiated a virtual courts platform to help Bangladesh respond to the crisis and its impacts on the justice system. Working with the Government, UNDP launched the platform 'MyCourt' and, within three months, trained over 1,000 judges, lawyers, and court officials on the system. Virtual hearings were set up, facilitating better access to justice in times of COVID-19 and also more broadly, as many Bangladeshis, especially in remote areas, typically do not have easy access to the courts.[33] The formal justice sector in Bangladesh had been based entirely on manual systems (paper-based case filing, etc.). UNDP helped digitalize and streamline the process, introducing virtual case management systems.[34]

"In terms of impact, the UN has a real success story to tell here," one expert interviewed for this study explained. To decongest prisons and reduce the number of pre-trial detainees, the project initially prioritized bail hearings. Within the first three months, 15,000 bail hearings were completed online, resulting in the release of over 10,000 inmates, which helped reduce the prison population by 12 per cent at the time – a record in Bangladesh's history.[35] Not only has this, to some extent, mitigated the risk of COVID-19 transmission in the country's overcrowded prisons.[36] In indirect (and hard-to-quantify) ways, it also arguably served a conflict prevention or risk reduction purpose: reducing the number of people in prolonged detention meant that people could return to their families, pursue their livelihoods, and be less likely to fall into economic grievances and criminality or become radicalized in prisons.[37] "There is no doubt that, without our intervention, the prison population would have grown even more," a UN official explained, "and with it all the security risks."

After the initial focus on bail hearings, the UN has started to take up the issue of GBV in its e-justice work. In Bangladesh, violations of the Prevention of Women and Child Repression Act are dealt with by special tribunals meant to offer speedy investigations and trials, but the problem with case backlog remains dramatic. Early 2019, over 160,000 cases of violence against women and children were still pending in the courts, while many take years or even decades to be resolved.[38] The pandemic has been compounding these problems not only in terms of higher GBV rates because of lockdown measures but also in terms of further stalling case processing. To redress this lag, the UN has been setting up virtual hearings of GBV cases, anticipating clear prevention effects, as an increased caseload counteracts impunity and can help deter perpetrators.

A third area of focus in the e-justice work is labour disputes. Micro, small and medium enterprises (MSMEs) – key drivers of Bangladesh's economy – have suffered greatly from COVID-19, and countless people have lost their jobs or have had their payrolls interrupted.[39] As a result, disputes and protests around unpaid salaries are simmering across the country, with a high potential of escalating into unrest and violence in the context of already vast socioeconomic inequalities in Bangladesh. UN support to hold virtual trials on labour and commercial disputes will help resolve more cases in less time, help compensate those eligible, and contribute to de-escalating tensions and mitigating the risks of violence.[40]

An underpinning element of the UN's e-justice work is legal aid provision. In collaboration with the Ministry of Law, Justice and Parliamentary Affairs and National Legal Aid Services Organizations, UNDP set up legal aid cells in particular for disadvantaged and marginalized people, connecting them to pro bono lawyers and supporting national legal aid hotlines and virtual mediation services through the Worker's Legal Aid Cells as an extension of the remote approach.[41] According to UN experts, this has helped ease tensions, especially in the area of labour disputes, bringing together workers and employers to resolve COVID-19-related wage losses and refer cases to the relevant courts.

While the UN has supported remote courts in some other settings, as well, Bangladesh seems to stand out in terms of the dimension and success of this work. The 'MyCourt' initiative was operational within just a few months, and – as examined above – has helped decongest overcrowded prisons, reduce the existing case backlog and support dispute resolution across a number of areas. According to interviewees, this has had a visible impact on mitigating risks in a time when COVID-19 is driving tensions in the domestic and public sphere. To benefit from this approach also beyond the pandemic, UNDP and the Government are examining ways to further digitalize Bangladesh's justice system where feasible. In this regard, UNDP is working with the justice sector to implement the Accelerating Digitalization Project, an initiative serving as a bridge towards a full-fledged, State-led digital justice system in Bangladesh.[42] "This really opens up a new agenda for the judiciary," one expert explained, pointing to the potential of transforming the justice system and extending the remote approach to other areas where the UN can contribute to visible risk reduction, e.g. settling family disputes or commercial disputes.

Community policing and safety in refugee and host communities: the work in Cox's Bazar

An important area of UN support to Bangladesh with various rule of law elements is the work in the Cox's Bazar district on the south-eastern tip of the country, bordering Myanmar. The district bore the brunt of the Rohingya refugee crisis and is arguably amongst the most fragile areas in Bangladesh. Since 2017, Myanmar's crackdown on the Muslim Rohingya minority has resulted in an influx of over 750,000 refugees into Cox's Bazar – a district already dealing with scarce resources and multiple development, security, criminality and corruption challenges.

Across the 34 refugee camps in Cox's Bazar, security conditions are dire. High rates of GBV, murder, theft, kidnappings, human trafficking and drug trafficking, extortion, domestic violence – the refugee communities are experiencing a plethora of criminality issues and human rights violations. These challenges are often linked to increased gang violence and the presence of criminal networks – issues that, at least in part, pre-date 2017 given that porous borders facilitated illicit activity around drugs and human trafficking. Widespread allegations of corruption against 'Majhis' (appointed refugee leaders) and disputes over aid distribution add to the challenges in the camps, as does the lack of trust between the security forces and the camp communities. Shortfalls in security infrastructure, such as lack of night-time lighting or infrequent and limited night patrols by the police, are conducive to further criminality.[43]

The situation in the host communities is equally taxing. Against the backdrop of high gender inequality and restrictive social norms, violence against women and girls has increased drastically, as have other human rights violations as well as crime rates and poverty issues. While host communities were quite welcoming towards the Rohingya at the onset of the crisis, the mounting security and socioeconomic pressures (including competition over resources and land access) have increasingly led to tensions between host and refugee communities, and to local attitudes towards the Rohingya becoming more and more hostile.[44]

The UN is seeking to help stabilize the situation via various initiatives. In the host communities, UNDP has been engaged since 2018,[45] both with local governance support and rule of law programming around community policing, legal aid, and mediation, in close collaboration with UN Women. To this end, UNDP and UN Women have worked with district officials and the district police outside of the camps, providing capacity-building and technical support. UNDP also supported so-called Community Policing Forums (CPFs) – groups of community representatives that serve as a bridge between the police and the communities, helping to identify local security and criminality issues and work out prevention plans.[46] UN Women supported the establishment of dialogue forums between CPFs and communities on the issues of gender and protection. The UN also supported legal aid committees at the district and union level with trainings and other capacity-building, aiming to improve and expand legal aid services, particularly for marginalized community members, by strengthening the legal aid case referral from the local level to the district legal aid offices and courts.[47] In the same vein, UNDP worked with local mediation, youth, and women forums to strengthen their capacities to identify intercommunal tensions and prevent their escalation via mediation and better local governance approaches.[48]

In the refugee camps themselves, UN engagement was initially limited to short-term humanitarian responses, as the Government was apprehensive of longer-term UN Country Team programming for fear of signalling or effectuating a permanent integration of the Rohingya in the country.[49] Around 2019/20, however, the mounting security challenges in the camps prompted the district authorities to request the help of the UN to support the Bangladeshi police. In response (and after a COVID-19-related lag), UNDP, UNHCR, and IOM (and later UN Women) in late 2020 piloted a joint community safety and policing programme that mirrors the work in the host communities – in two camps (as of this writing, the approach is being expanded to eight additional camps).[50]

One of the key components of this programming has been building the capacity of the camp police and strengthening relations between the police and the refugee communities. To this end, the UN agencies have provided logistical and infrastructure support for the units of the Armed Police Battalion (APBn) that are deployed in the camps, and trained them on human rights and refugee protection issues.[51] They also received training on identifying and mediating conflicts in the refugee communities, including structures where female police officers support cases that involve Rohingya women and girls (and improving gender-responsive policing as well as enhancing case management, evidence collection, interviewing techniques, and enhancing access to justice for Rohingya GBV and trafficking survivors).[52]

The UN also helped set up counterparts of the Community Policing Forums (CPFs) in the host communities, namely Community Safety Forums (CSFs), that equally serve as the interface between the refugee communities and the camp police and administration. They are trained to identify and address local conflicts and work with the police to solve security issues. CSFs include representatives from various groups, including youth, women (UN Women supports entirely women-led CSFs), the elderly, disabled people, etc.[53] Further, the Camp in Charge (CiC) – the government representative in each camp – receive trainings to better manage cases of complaints of Rohingya and refer them to the district police and courts.[54]

While it is very early in the lifespan of this project to make definite claims about impact, experts have observed promising developments in the camps where the UN is active. When the camp police first deployed, they used to withdraw at night and patrols were limited to main roads only. With UN support, they have now more frequent and expanded patrols and a 24/7 presence in the camps.[55] UN Women supported the establishment of Women and Children Police Help Desks at police stations in five refugee camps, and have been training and mentoring the female officers deployed at these units to enhance GBV responses and other services for Rohingya women and girls (at the time of this writing, more of such help desk were being established, to deploy at least 100 additional female officers).[56]

There is also enhanced engagement between CiCs, the police and refugee representatives to address and prevent smaller-scale security issues in the camps, including domestic violence, with explicit participation of women in these consultations and broader mediation processes.[57] The participatory approach of this work has allowed the integration of the communities' perspective on the root causes of the security and safety issues in the camps into the prevention responses (underpinned by the UN's own robust analytical and early warning capacities in the Cox's Bazar area),[58] and community leaders were trained and enabled to mediate in disputes.[59]

According to UN experts, through this project the UN has contributed to mitigating tensions at the community level and, according to first estimates, bringing the number of crimes down in the camps where it is active (the concrete rates of this improvement were not yet clear as of this writing).[60] Case reporting and referral to the district police and courts have improved somewhat (with the hurdle that refugees need CiC approval to file a case with the district police), as have legal aid services.[61] Importantly, the interlinked nature of this work between the camps and the host communities has meant that dialogues have started between the two groups, with the potential to mitigate intercommunal tensions and promote peaceful coexistence, even though experts – albeit optimistic - highlighted that it is still too soon to identify impact with precision in this difficult and fragile context.[62]

Supporting local dispute resolution: village courts

Another local-level, people-centred approach to improve citizens' access to justice – especially in rural and impoverished areas – has been UNDP's support to the statutorily enabled Village Court system. In partnership with the EU and the Government, since 2009, UNDP has been supporting the implementor of this project, the Local Government Division of the Ministry of Local Government, Rural Development and Cooperatives, to set up Village Courts as community-level justice delivery mechanisms "by the people and for the people."[63] At the level of the Union Councils – the smallest unit of local government in Bangladesh – this system is intended to improve access to justice for disadvantaged and marginalized groups, especially women, and empower them to solve their disputes swiftly and without much cost.

To do this, UNDP has been building the capacity of the Local Government Division who supervises this system and Union Council officials who run the courts. It also set up systematic performance evaluations, strengthened the Government's monitoring capacity in this matter, and engaged in campaigns to raise awareness about the function of the courts in rural communities. The UN has also been advocating for amending legislation around the Village Courts to expand their jurisdiction and coverage and thus further enhance access to justice.[64]

Currently in its second phase (2016-2022), the project has achieved notable results:[65]

- Village courts were operationalized in 1,080 (out of 4,554) Union Councils across all eight divisions in Bangladesh. This includes new courts piloting in over 15 Union Councils in the three CHT districts, a particularly marginalized and conflict-prone area in the country.

- The courts are now accessible to over 21 million people in rural areas, especially in vulnerable communities.

- Between mid-2017 and early 2021, 220,000 cases have been reported and a vast majority of them (190,000) have been resolved.

- Resolving a case takes 23 days on average and costs courts users an average of USD 2.00 – much less than the national average.

- Of the resolved cases, 94 per cent of decisions have been implemented.

Across the interviews, experts pointed to the Village Court initiative as a notable success story for improving access to justice and reducing tensions on the local level.[66] The courts are resolving petty civil and criminal matters, settling community disputes, and fostering reconciliation. They do not have the power to impose prison sentences, but – in the spirit of victim-centred justice delivery – can rule on compensations or issue fines.[67] According to experts and internal assessment documents, this approach has visibly helped restore peaceful relations between neighbours and family members and elevate the status of disadvantaged community members. In total, the courts have recovered USD 21 million for eligible complainants (an average of USD 186 per person), who were then able to use the compensation for covering their family needs and reduce some of their financial stresses. Because of the increased caseload capacity and the swift processing, the Village Courts are also helping reduce the case backlog at the district level: the district courts have been increasingly referring cases to the Village Courts – nearly 11,000 between 2017 and 2021. These were cases in which applicants have been waiting for a decision by the district courts for over a year; after the referral to the Village Courts, their issues were resolved within 48 days and with significantly fewer costs.[68]

Via its support to this project, UNDP also contributed to a significant improvement in women's participation in and access to justice, dispelling a century-old tradition that saw little engagement of women in traditional conflict resolution. In the Village Court system, women are increasingly participating in decision-making processes as court panel members. In 2020, over a fifth of panel members were women, a significant increase compared to previous years.[69] On the victims' side, around 30 per cent of cases are filed by women – a sign that women's access to justice, at least at the local level, is improving.[70]

By supporting this form of local conflict resolution, the UN has arguably contributed to keeping community tensions down and preventing larger flare-ups of violence that could have arisen without functioning dispute resolution systems. The project also helped counteract some of the dynamics of inequality in Bangladesh, where poor rural populations have traditionally been cut off from proper justice services. The project's success is reflected in public satisfaction rates: 97 per cent of court users (including both applicants and respondents) were satisfied with the services and the decision-making of the Village Courts, citing swift judicial processing, minimal court fees, and the neutrality and fairness of the panel members as the main reasons for their positive rating.[71]

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5. Enabling and inhibiting factors

The previous section analysed a number of rule of law programmes and approaches of the UN over the past years, focusing on their risk reduction impact. This section explores what factors might have enabled, impeded, or otherwise influenced such impact.

Political will

Political will and openness on various levels of government were brought up consistently across the interviews and seen as 'making or breaking' the UN's work and impact. In Bangladesh, the extent of this openness has varied depending on the issue area. The success and speed of UNDP's e-justice engagement in 2020, for instance, was facilitated by strong openness of and cooperation with government actors, who paved the way for the digitalization work only days after the COVID-19 lockdown started.[72] UNDP could rely on a longstanding and good working relationship with the judiciary and other government actors. [73]

More broadly, however, the overall political environment in Bangladesh is challenging for rule of law programming as such, in a country that emphasizes its sovereignty and is wary of too much external intervention.[74] Several UN actors, including in the human rights space, do not have the full spectrum of access or opportunity to engage more systematically in the country.[75] The UN has adapted to this context by pursuing local-level approaches where possible, but also there it is faced with the challenge to ensure buy-in of various levels of government administration, which is not always easy to get (e.g. for the work in the refugee camps in Cox's Bazar, agencies need to go through the Refugee, Relief and Repatriation Commissioner (the head of the government agency responsible for the Rohingya issue), the district police, the CiC for each camp, etc.).[76]

Macro-level v. micro-level

On a related note – even though not an enabling/inhibiting factor per se – is the fact that, in the Bangladesh setting, the assessment of UN impact towards rule of law and conflict prevention strongly depends on which 'unit of analysis' is being applied. At the broader national level, the situation remains challenging and sensitive as various governance indicators suggest.[77] At the local level, as the previous chapters have shown, the UN has achieved some successes and good practices in terms of risk reduction, having worked to strengthen local dispute resolution mechanisms, expand access to justice especially for vulnerable and marginalized populations, and establish a more comprehensive community policing approach in refugee and host communities.

Joint work

In the Cox's Bazar district, the joint project by UNDP, UNHCR, and IOM – where UNHCR and IOM are mirroring those approaches in the camps that UNDP is applying in the communities outside the camps – is seen by many as an emerging good practice. While definite claims about prevention impact would be premature at this stage of the programming, interviewees pointed to emerging successes in terms of strengthening community policing and mediation systems and also easing intercommunal tensions between host and refugee groups, given the interlinked approach by the UN agencies in and outside of the camps.

Funding environment

Joint rule of law work in the Bangladeshi context also comes with challenges, in particular at the interface of humanitarian and development actors and their funding realities. Despite the vision of a 'One UN' approach and the humanitarian-development nexus, the donor landscape remains rather divided between the two areas (i.e. there being different donors for humanitarian versus development initiatives, where separate budgets and projects come with separate timeframes, which are naturally shorter for humanitarian responses as opposed to longer-term development work).[78] Additionally, the funding environment for Bangladesh in recent years has come to prioritize quick impact projects and shorter-term disaster responses (also given increased needs arising from climate change impacts and refugee crises), which does not bode well for comprehensive rule of law programming that requires several years of engagement.[79]

Health, humanitarian, or environmental crises

In terms of crises, the existing UN rule of law programming in Bangladesh is taking place in a context of high humanitarian and environmental risks that can severely hamper progress both on the rule of law and broader development. All stakeholders in Bangladesh – government actors, humanitarian and international actors, beneficiaries and the broader population – are consistently faced with the risk of climate-driven natural disasters such as cyclones or flash floods, which can uproot communities, destroy infrastructure, and annihilate development progress. Recent incidents of landslides or major fires in refugee camps, too, underline the fragility of this context. Additionally, the COVID-19 pandemic has hampered or stalled the rollout and implementation of new programming, restricted the movement of humanitarian staff in the refugee camps, and exacerbated socioeconomic and social grievances across the country. While the UN's e-justice work in Bangladesh has been exemplary of swift and efficient crisis responsiveness, COVID-19 remains a big challenge across the country.

6. Lessons and recommendations

Deriving from this analysis and the expert interviews conducted, the following lessons can inform UN actors and other stakeholders in other settings who seek to improve their rule of law interventions.

- **Work on speeding up justice processes.** Overstretched or inefficient justice systems with a high backlog of cases can reinforce a climate of impunity and undermine social cohesion as the number of unresolved disputes rises. The UN's COVID-19-related e-justice work in Bangladesh has shown how streamlining justice processes, in this case via swift digitalization, can help reduce tensions by resolving more cases in less time, improving access to justice in remote areas, and reduce prison populations, which is especially crucial in notoriously overcrowded prison systems such as Bangladesh's. Interviewees also pointed to the need to improve case management systems to speed up the justice process.

- **Go local.** In Bangladesh, community-based and victim-centred approaches (such as supporting local dispute resolution via the Village Courts system, community-based mediation, or enhancing police-community relations) have proven effective in reducing tensions at the local level. Such programming is particularly crucial to improve participation in dispute resolution mechanisms and access to justice for vulnerable groups, especially women. It can also help ensure that programmatic responses are based on accurate needs assessments by incorporating communities' perspectives on security and prevention issues.

- **Keep small-scale initiatives going when the broader political environment is not conducive.** Local, smaller-scale approaches also serve to keep some momentum on the rule of law front in settings where the broader political climate does not allow for more comprehensive measures. Starting small and building up engagement incrementally also helps build trust with stakeholders. In Bangladesh, the success of single initiatives led to further openings, as evidenced by the expansion of the community safety and security approach to additional refugee camps and host communities, as well as the broader digitalization agenda that followed the positive results of UNDP's COVID-19-related e-justice work.

- **Improve legal aid.** Legal aid is an essential element of a functioning justice system that ensures fundamental fairness and public trust in the justice process. The most effective means of reducing pre-trial detention and ensuring adequate redress for crimes

is to provide persons with access to competent lawyers at the earliest possible stage of the criminal justice process. This is especially crucial for rural, impoverished people and other marginalized groups, especially women. Supporting legal aid case referral mechanisms and building the capacity of legal aid organizations (including by digitalizing their services), as the UN does in Bangladesh, are important action steps in this regard. Further, the introduction of pre- and post-case mediation services can help reduce the caseload in the formal courts.[80]

- **The value of joint programming.** In Bangladesh and other settings, joint UN approaches on the rule of law have often proven effective and can facilitate cross-learning between agencies. In Cox's Bazar, UNHCR and IOM and mirroring the approaches that UNDP is implementing in host communities, while the project

also allows for interlinked approaches to start dialogues and coordinate prevention responses between the host and refugee communities. However, more resources are needed to adequately implement this approach across all Rohingya camps and relevant Unions in the Cox's Bazar District.

- **Work on land issues.** Competition over access to land is a major driver of tension in Bangladesh and other settings. Oftentimes, the UN is not adequately mandated or resourced to address this issue comprehensively. In light of the influence that land disputes have in driving risks across various settings, the UN should systematically ramp up its engagement in this space, e.g. through more comprehensive mandating and fostering local-level mediation mechanisms.

References

1. See, for example, Toby Cadman, "Democracy Is Dying in Bangladesh. Targeted Sanctions Could Save It," *The Diplomat*, 25 September 2020, https://thediplomat.com/2020/09/democracy-is-dying-in-bangladesh-targeted-sanctions-could-save-it/.

2. United Nations Security Council, "The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General," United Nations, 23 August 2004, S/2004/616.

3. This approach of contribution rather than direct attribution is laid out in Adam Day, *Assessment Framework for Preventive Diplomacy: An Approach for UN Mediators and Policymakers* (Tokyo: United Nations University Centre for Policy Research, 2018); see also, United Nations Department of Political and Peacebuilding Affairs, *Three-Year Strategic Plan: 2020-2022* (New York: UNDPPA, 2020), https://dppa.un.org/sites/default/files/undppa_strategic_plan_2020-2022.pdf.

4. This is often referred to as an "adaptive" form of impact assessments, see, Ian Wadley, *Valuing Peace: Delivering and Demonstrating Mediation Results* (Geneva: HD Centre, 2017).

5. United States Census Bureau, "U.S. Census Bureau Current Population," last accessed 5 August 2021, https://www.census.gov/popclock/print.php?component=counter.

6. Adam Day, "Bangladesh," *Conflict Prevention in an Era of Climate Change* eds. Adam Day and Jessica Caus (New York: United Nations University, 2020), https://i.unu.edu/media/cpr.unu.edu/post/3856/UNUClimateSecurity.pdf.

7. Ibid.

8. Ibrahim Hossain Ovi, "COVID-19 impact: National poverty rate rises to 29.5 per cent as of June," *Dhaka Tribune*, 12 August 2020. Available at: https://www.dhakatribune.com/health/coronavirus/2020/08/12/covid-19-impact-national-poverty-rate-rises-to-29-5-as-of-june; UNDP Bangladesh, "About Bangladesh," last accessed 5 August 2021, https://www.bd.undp.org/; Adam Day, "Bangladesh," *Conflict Prevention in an Era of Climate Change* eds. Adam Day and Jessica Caus (New York: United Nations University, 2020), https://i.unu.edu/media/cpr.unu.edu/post/3856/UNUClimateSecurity.pdf.

9. Internal document [on file with author].

10. Interviews, 16 and 25 March 2021; Adam Day, "Bangladesh," *Conflict Prevention in an Era of Climate Change* eds. Adam Day and Jessica Caus (New York: United Nations University, 2020), https://i.unu.edu/media/cpr.unu.edu/post/3856/UNUClimateSecurity.pdf.

11. Interview, 25 March 2021.

12. Interview, 20 January 2021.

13. Human Rights Watch, *"I Sleep in My Own Deathbed.' Violence against Women and Girls in Bangladesh: Barriers to Legal Recourse and Support* (New York: Human Rights Watch, 2020), https://www.hrw.org/report/2020/10/29/i-sleep-my-own-deathbed/violence-against-women-and-girls-bangladesh-barriers.

14. Mohammad Sadikur Rahman, "Dowry, the Oppression of Women and Femicide in Bangladesh," *Journal of Comparative Social Work* 13, 1 *(2018)*, https://doi.org/10.31265/jcsw.v13i1.161.

15. Md Sanaul Islam Tipu, "Women, children denied justice in Bangladesh," *Dhaka Tribune*, 22 June 2019, https://www.dhakatribune.com/bangladesh/court/2019/06/22/women-children-denied-justice-in-bangladesh.

16. Human Rights Watch, *"I Sleep in My Own Deathbed.' Violence against Women and Girls in Bangladesh: Barriers to Legal Recourse and Support* (New York: Human Rights Watch, 2020), https://www.hrw.org/report/2020/10/29/i-sleep-my-own-deathbed/violence-against-women-and-girls-bangladesh-barriers.

17. Interview, 12 and 20 January 2021.

18. World Justice Project, "Bangladesh," *WJP Global Insights on Access to Justice* (Washington DC: World Justice Project, 2019), https://worldjusticeproject.org/sites/default/files/documents/Access-to-Justice-2019-Bangladesh.pdf.

19. The Hague Institute for Innovation of Law, *Justice Needs and Satisfaction in Bangladesh 2018* (The Hague, HiiL, 2018), https://www.hiil.org/wp-content/uploads/2018/07/HiiL-Bangladesh-JNS-report-web.pdf.

20. A groundbreaking national assessment on the functioning of the justice system, based on data collected from citizens, criminal justice institutions, court users, and others.

21. Justice Audit Bangladesh 2018, "Justice System Case Flow," last accessed 5 August 2021, https://bangladesh.justiceaudit.org/national-data/system-overview/justice-system-case-flow/.

22. Human Rights Watch, "Bangladesh: Events of 2020," *World Report 2021: Events of 2020* (New York: Human Rights Watch, 2020), https://www.hrw.org/world-report/2021/country-chapters/bangladesh; Interview, 25 March 2021.

23. The Bertelsmann Transformation Index 2020 classifies Bangladesh as a "moderate autocracy", while the country's score on Transparency International's Corruptions Perception Index (146 out of 179) also gives cause for concern. See Bertelsmann Transformation Index, "Bangladesh," *BTI 2020* (Gütersloh: Bertelsmann Stiftung, 2020), https://www.bti-project.org/en/reports/country-dashboard-BGD.html; Transparency International, *Corruptions Perception Index 2020* (Berlin: Transparency International, 2020), https://www.transparency.org/en/cpi/2020/index/nzl#; Human Rights Watch, "Bangladesh: Events of 2020," *World Report 2021: Events of 2020* (New York: Human Rights Watch, 2020), https://www.hrw.org/world-report/2021/country-chapters/bangladesh; Interviews, 15 and 16 March 2021.

24. Interview, 28 March 2020.

25. Interview, 15 March 2021.

26. Interview, 15 March 2021.

27. Together with IOM, UNODC is implementing the Global Action against Trafficking in Persons and the Smuggling of Migrants ("GLO.ACT – Bangladesh"), a 2018-2022 initiative funded by the EU that includes legislative assistance to and capacity-building of criminal justice practitioners in their fight against trafficking in persons and the smuggling of migrants. See UNODC, "Overview," last accessed 5 August 2021, https://www.unodc.org/unodc/en/human-trafficking/glo-act3/overview.html.

28. UNDP Bangladesh, "Human Rights Programme," last accessed 5 August 2021, https://www.bd.undp.org/content/bangladesh/en/home/projects/human-rights-programme.html.

29. Via UNDP's "Partnerships for a Tolerant and Inclusive Bangladesh (PTIB)" project. See UNDP Bangladesh, "Partnerships for a Tolerant and Inclusive Bangladesh (PTIB)," last accessed 5 August 2021, https://www.bd.undp.org/content/bangladesh/en/home/projects/partnerships-for-a-tolerant-and-inclusive-bangladesh--ptib-.html.

30. UNDP Bangladesh, "Strengthening Inclusive Development in Chittagong Hill Tracts," last accessed 5 August 2021, https://www.bd.undp.org/content/bangladesh/en/home/projects/strengthening-inclusive-development-in-chittagong-hill-tracts.html.

31. United Nations/World Bank, *Pathways for Peace. Inclusive Approaches for Preventing Violent Conflict* (Washington DC: World Bank, 2018), https://openknowledge.worldbank.org/handle/10986/28337.

32. Interview, 12 January 2021; internal document [on file with author].

33. With the caveat that the ICT infrastructure, too, does not cover the entirety of Bangladesh, so that in some instances urban areas have benefited more from the initiative than rural ones. Interview, 20 January 2021.

34. Interview, 20 January 2021.

35. Interviews, 12 and 20 January 2021; internal document [on file with author].

36. On a related note, with UNICEF support, national authorities also worked on decongesting children detention facilities in light of the COVID crisis. Interview, 28 March 2021.

37. Interview, 12 January 2021.

38. Md Sanaul Islam Tipu, "Women, children denied justice in Bangladesh," *Dhaka Tribune*, 22 June 2019, https://www.dhakatribune.com/bangladesh/court/2019/06/22/women-children-denied-justice-in-bangladesh.

39. MSMEs make up 25 per cent of Bangladesh's GDP and employ over 20 million Bangladeshis. See, Ananya Wahid Kader and Manoranjan Pattanayak, *Business Pulse Survey: Impact of COVID-19 on MSMEs in Bangladesh* (Washington DC: International Finance Corporation, 2021), https://www.ifc.org/wps/wcm/connect/b16f90a1-253e-419a-b1fc-739bdec9985c/Bangladesh-Business+Plus+Survey-C.pdf?MOD=AJPERES&CVID=nm9GQXS.

40. Interview, 12 January 2021.

41. Interview, 20 January 2021.

42. Initially, hesitation on the part of some justice actors in Bangladesh has stalled the engagement on e-justice beyond the immediate crisis context of 2020. After continuous advocacy by UNDP, however, the digitalization agenda has now been resumed. Interview, 9 April 2021.

43. Internal assessment documents [on file with author].

44. Internal documents [on file with author].

45. This work is taking place in the two subdistricts of Cox's Bazar that sustain the refugee camps - Teknaf and Ukhiya Thana. UNDP engages via its Community Recovery and Resilience Project (C2RP) and more recently the Peaceful District Programme. C2RP donors include UNDP, UN Women, UNCHR, Germany, and Sweden (which is also funding the Peaceful District Programme).

46. Interviews, 12 and 21 January 2021.

47. The Legal Aid Act of 2000 stipulated free legal aid to Bangladesh's poor, including via involvement of local government institutions to support rural communities, especially women and other vulnerable groups. UNDP has been supporting a case referral mechanism to ensure that community members receive information and support from the elected local government representatives through the free legal aid programme. Interviews, 21 January and 9 April 2021.

48. UNDP has been training mediation volunteers at the subdistrict- and Union-level to resolve petty civil and criminal disputes in communities – a crucial form of (alternative) dispute resolution amidst Bangladesh's overstretched formal justice system. Interview, 21 January 2021.

49. Interview, 25 March 2021.

50. Interview, 21 January 2021; Internal documents [on file with author].

51. 1,600 APBn forces are currently deployed in the Cox's Bazar refugee camps. This civil-military force is operating like a civil police force (patrolling and being able to arrest and detain suspects); it cannot, however, file a case and conduct investigations. For these, the APBn needs to refer the cases to the district police outside of the camps. Interviews, 21 January and 4 March 2021.

52. Interview, 21 January 2021.

53. Interviews, 21 January 2021.

54. UN Women helped strengthen the capacities of the RRRC Officials, the CiC, the police and legal aid providers via trainings on the issues of gender-responsive humanitarian action, women's empowerment and their role in decision-making, including in cases of violence against women and trafficking. UN Women is also engaging in awareness campaigns and community mobilization activities to sensitize communities on protection services and access to justice for Rohingya refugees who have been victims of violence or trafficking. These efforts, according to an expert consulted, are helping strengthen the referral mechanisms between CiCs, legal aid providers and the police based on stakeholder consultations. Interviews, 21 January and 9 May 2021.

55. Interview, 21 January 2021.

56. Interview, 9 May 2021.

57. Interview, 8 March 2021.

58. Interview, 12 January 2021.

59. Interview, 8 March 2021.

60. Interview, 4 March 2021.

61. Interviews, 4 and 8 March 2021.

62. Interview, 4, 8, and 28 March 2021.

63. Interview, 15 March 2021.

64. Internal documents [on file with author].

65. Internal documents [on file with author]; Local Government Division, Ministry of Local Government, Rural Development and Cooperatives, *Village Courts Users Survey* (Dhaka: Activating Village Courts in Bangladesh Phase II Project, 2020); Activating Village Courts in Bangladesh Phase II Project, "Village Courts Performance," last accessed 5 August 2021, https://www.villagecourts.org/case-statistics/.

66. Interviews, 15 and 28 March 2021.

67. Interview, 15 March 2021.

68. Internal documents [on file with author]; Interview, 15 March 2021.

69. Internal documents [on file with author].

70. Internal documents [on file with author]; Local Government Division, Ministry of Local Government, Rural Development and Cooperatives, *Village Courts Users Survey* (Dhaka: Activating Village Courts in Bangladesh Phase II Project, 2020).

71. As an example of good practice and successful governance innovation, the project was showcased at the 2019 Paris Peace Forum. Interview, 15 March 2021; Internal documents [on file with author]; Local Government Division, Ministry of Local Government, Rural Development and Cooperatives, *Village Courts Users Survey* (Dhaka: Activating Village Courts in Bangladesh Phase II Project, 2020).

72. Interview, 20 January 2021.

73. Interview, 20 January 2021.

74. Interview, 29 March 2021.

75. Interview, 16 March 2021.

76. Interview, 4 March 2021.

77. The Bertelsmann Transformation Index 2020 classifies Bangladesh as a "moderate autocracy", while the country's score on Transparency International's Corruptions Perception Index (146 out of 179) also gives cause for concern. See Bertelsmann Transformation Index, "Bangladesh," *BTI 2020* (Gütersloh: Bertelsmann Stiftung, 2020), https://www.bti-project.org/en/reports/country-dashboard-BGD.html; Transparency International, *Corruptions Perception Index 2020* (Berlin: Transparency International, 2020), https://www.transparency.org/en/cpi/2020/index/nzl#; Interviews, 15 and 16 March 2021.

78. Interviews, 8 and 15 March 2021.

79. Interview, 15 March 2021.

80. Interview, 9 April 2021.

RULE OF LAW

Support to Conflict Prevention and Sustaining Peace in **Bosnia and Herzegovina**

**by Adam Day,
March 2021**
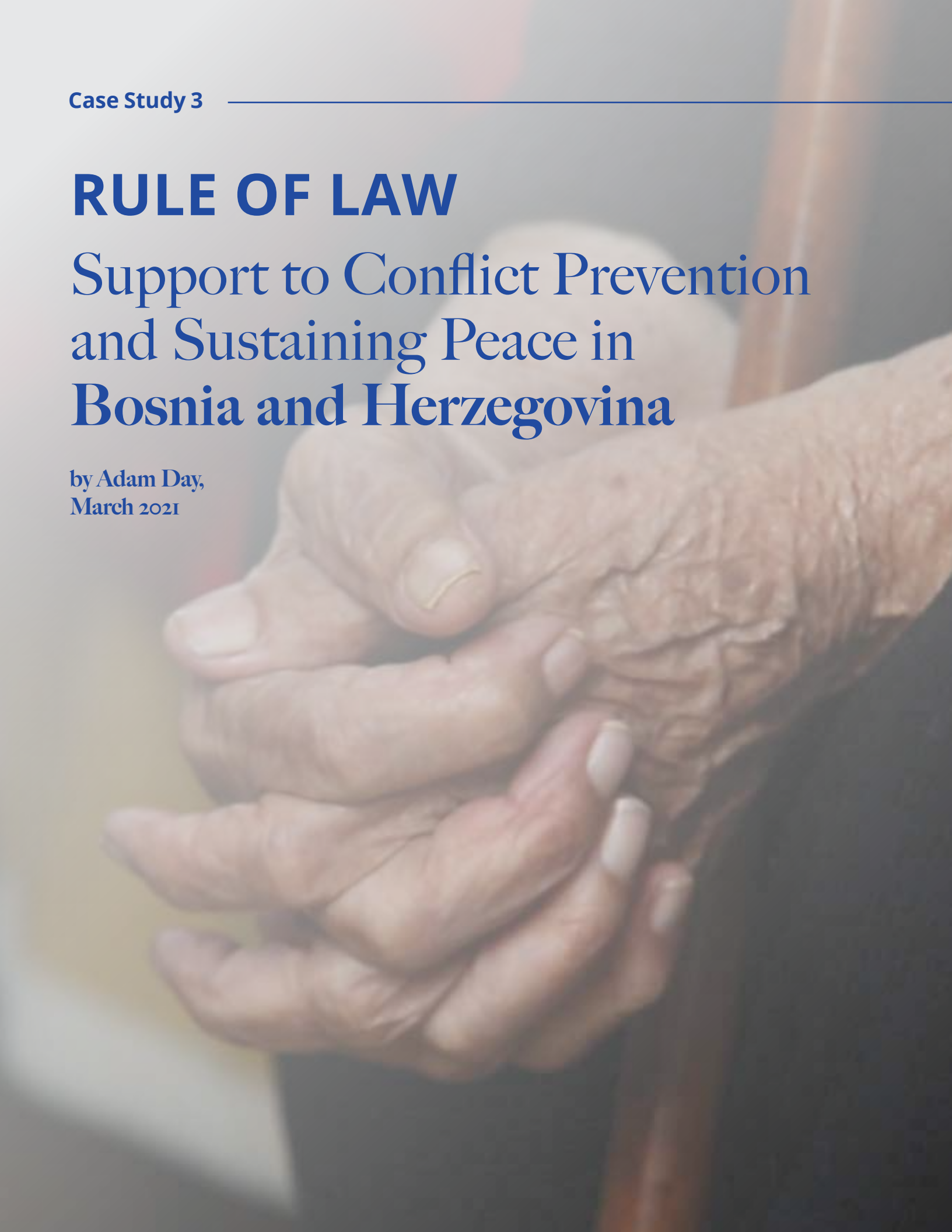
1. Introduction

In the early 1990s, Bosnia and Herzegovina (BiH) underwent large-scale armed conflict characterized by widespread and systematic human rights violations against civilian communities, often on the basis of ethnicity. More than 100,000 lives were lost in violent conflict, while roughly 2.2 million people were forcibly displaced from their homes. The 1995 Dayton Peace Agreement ended the war and established a constitutional framework composed of a complex system of institutionalized power-sharing arrangements. The position of an international High Representative was created to oversee the implementation of the civilian aspects of the peace agreement. While this system successfully saw BiH out of a period of intense conflict, it has also proven an extraordinarily challenging environment to develop effective rule of law institutions and more sustainable forms of governance in a region that remains riven by ethnic and political divisions. Today, BiH lags significantly behind neighbouring countries in terms of meeting EU accession goals, in particular with respect to rule of law institutions such as independent courts, effective policing, and open political space. As a result, while the country has not relapsed into conflict, it has remained deeply divided and has failed to progress towards constructive dialogue, greater trust and reconciliation between ethnic groups and between society and the State. In particular, exploitation of divisions across Bosniak, Bosnian Serb and Bosnian Croat communities on how to address the legacy of widespread human rights violations during the conflict have led to deep polarization and a rise of ethnonationalist political leadership that plays a protectionist role in politics in BiH. Rather than help advance cohesion and end impunity, this atmosphere has led to further fragmentation, a loss of confidence in the State, and stagnant politics. While the risk of an immediate return to conflict is held at bay by the significant international presence in BiH, the lack of progress on rule of law, transitional justice, as well as towards constructive dialogue, trust-building and reconciliation means that peace remains fragile, and conditions for escalation remain.

This case study examines the UN's rule of law work in BiH from 2015 to 2021, with a particular focus on the activities and programmes it has conducted to build capacities and confidence in the institutional capacity of the State.[1] The principal question guiding this study is: *How have the UN's rule of law interventions contributed to conflict prevention, to a reduction in risks of widespread violence in BiH?* As such, it aims to provide an assessment of the impact of the UN, identifying good practices, inhibiting and enabling factors, and lessons for the broader UN system.

The study has five sections: (1) a background description of the risk landscape and the endemic shortfalls in State rule of law capacities; (2) an overview of the main rule of law actors in BiH; (3) an assessment of areas where there is evidence of the UN's impact in terms of conflict prevention; (4) an examination of the enabling and inhibiting factors for the UN's impact; and (5) lessons and recommendations for the broader UN system.

A note on scope and methodology

Rule of law is defined by the UN 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."[2] Traditionally, this has resulted in a focus on police, justice, and corrections as the primary vehicles for the UN's rule of law engagement. However, we recognize that other areas of the UN's work may also contribute to the core goals of the UN's rule of law work, including efforts to combat impunity, build accountability, advance transitional justice, limit corruption, and address conflict-related sexual violence, amongst others. This project does not adopt a strict definition of rule of law but is instead largely guided by interviews with experts in a range of field settings, asking them what they consider to be the key rule of law programmes by the UN and its partners.

Regarding the scope of these studies, it is important to highlight that this is not a comprehensive assessment of the UN's work in a given setting. It does not try to capture every rule of law programme, but instead reflects the views of experts about the most impactful, relevant,

and effective rule of law interventions in the given timeframe. This expert-driven approach to cases studies is to ensure that they feed meaningful cross-cutting policy recommendations, which is the core purpose of this project.

In terms of methodology, we note that the UN's rule of law work takes place alongside the interventions of a range of actors, including national leaders, bilateral donors, INGOs, and local organizations. While it is our goal to identify evidence of the UN's impact, often the UN is a small player amongst these, supporting and coordinating rather than leading on programming. Given these limited supporting roles and the large number of other intervening factors, it can be difficult to isolate the UN's impact via its rule of law interventions. Rather than speak in direct causal terms about impact, we contextualize the UN's *contribution*, alongside the interventions of others, to the broader goals of risk reduction.[3] Where the precise impact is impossible to ascertain, or where the UN has not generated evidence that directly supports causal findings about impact, we rely on a broad set of expert consultations to help us identify good practice and lessons that could be applied beyond a single country context.[4]

2. BiH – a highly fragmented rule of law setting

Today, BiH poses a low risk of return to the kind of large-scale deadly conflict of the early 1990s, but after billions of dollars in foreign assistance, ambitious international administrations, and a supportive stance by the EU, the country has failed to build State institutions necessary for effective governance. In February 2014, popular dissatisfaction with the Government spilled over into widespread protests that resulted in the destruction of many government buildings and temporary momentum for national-level reform, but the demanded changes have still not taken place and institutional capacities have lagged far behind what is demanded by the EU. By 2020, BiH was continuing its downward trajectory in global rule of law rankings, reflecting the stagnation and backsliding of rule of law institutions and processes within the country.[5]

This lack of progress is due in large part to the structures put in place by the 1995 Dayton Accords. At the time of writing, there are a total of 13 constitutions, 14 legal systems, and 140 ministries in the country. Multiple legal frameworks and jurisdictions have led to extraordinary inconsistency in the application of laws, driven in large part by nationalist politicians who have emphasized protection of their ethnic communities' interests over impartial rule of law institutions. Popular confidence in rule of law institutions and the central State more generally is extremely low, while international assessments of judiciary, police, and other governance entities suggests that the country is unable to exercise basic State functions without significant external assistance.[6]

Importantly, constitutional fragmentation on the basis of ethnicity has kept tensions high across the country; ethnic quotas in government institutions mean that State positions are viewed more as sinecures than as representation of the citizenry, while most institutional incentives appear to drive ethnonationalist politicians towards more extreme positions in support of their respective ethnic groups.[7] Politics is often seen as a zero-sum game based more on competition than collaboration, a pernicious context for achieving institutional growth and legitimacy. The combination of slow legislative progress, rampant corruption, and periodic citizens' protests have combined to send warning signals of a potential return to more serious tensions in-country, while the prospects for accession to the EU grew dimmer.

Between 2015 and the time of writing, BiH underwent its worst economic and social period since the end of the 1992-1995 war. Unemployment ranged between 27 and 45 per cent according to many figures, as the

country slipped to 131st out of 189 countries according to the World Bank. While there were some positive developments – such as the 2015 adoption of a Reform Agenda and medium-term Economic Reform Programme to generate greater financial support from international financial institutions – the results have left many communities behind, while institutional capacities have been slow to develop.

Poverty has not been felt evenly across the country: with over 60 per cent of the population living in rural areas, BiH is one of the most rural countries in Europe, leading to chronic shortfalls in the areas of access to justice and highly differentiated levels of institutional capacity from location to location.[8] Indeed, over 50 per cent of the population in BiH suffers from some form of social exclusion, with internally displaced persons and the Roma people largely cut off from State services.

The Gender Agency of BiH states that 53 per cent of women have suffered some form of gender-based violence, while only 10 per cent of those have received support through the victims and witness support offices. Access to justice for women is particularly challenging and takes place in a broader context of limited employment and political opportunities: women account for only 37 per cent of the working population and well over 60 per cent of the inactive, working-age population.[9] However, in some respects, BiH is a leader of the region: it was the first country in the Balkans to adopt a Gender Equality Law (2003) and to adopt a National Action Plan (NAP) on UN Security Council Resolution 1325 in 2010.[10] BiH also adopted a Gender Action Plan in 2013,[11] and successfully launched a financial mechanism to channel donor funds into projects aligned with the Plan. The country has a robust and vibrant community of NGOs focused on gender equality that monitor and advocate for progress.[12]

3. The UN's rule of law mandate and actors in BiH

The UN's role in BiH is largely seen as complementary to the far larger actors in the region, most notably the EU and the development agencies of major donor States like the US, Switzerland, Sweden and the Netherlands.[13] As such, the UN's programming aligns broadly with the Regional Strategy of the Bureau for Europe and the Commonwealth of Independent States and the South-East Strategy of the Regional Cooperation Council, which set out the priorities for BiH to accede to the EU. The UN's work also complements the significant rule of law programming by the OSCE and various international Bar associations.[14]

The UN's Development Assistance Framework of 2015-2020 focused on four areas: (a) the rule of law and human security; (b) sustainable and equitable development and employment; (c) social inclusion; and (d) women's empowerment. Common issues across all four areas include the need to bolster good governance capacities, improve access to public services, and increase employment opportunities in marginalized populations. Specifically within the justice and human security area, the UN's programming focuses on expansion of free legal aid, victim/witness support (especially in the area of gender-based violence), management of military weapons/ammunition and landmines, support to the judiciary in addressing war crimes and conflict-related violence, and a range of work to support better early warning and response systems.[15]

The legacy of war crimes is an especially important area for the UN, cutting across the work of the UN's International Criminal Tribunal for the former Yugoslavia (ICTY) and a range of programming in-country. As the ICTY closed down in 2017, the transition to domestic trials as the exclusive jurisdiction for war crimes required significant support from the UN, including national outreach and sensitization campaigns.

A particular strength of the UN's programming in BiH is its adoption of a gender-specific UN Development Assistance Framework (UNDAF) outcome entitled Gender Equality and Empowerment of Women, with two dedicated output areas that can be measured over time.[16] This has given the UN a strong basis for interface with various government institutions and with civil society organizations focused on gender issues.

Support to governance capacities in BiH is a complex and at times confusing enterprise for the UN, given the multiple governing institutions established under the Dayton Accords. For example, while a typical UN-led legal aid programme would work with a single government institution (e.g. a ministry of justice), in BiH, the UN partners with up to 14 institutions, reflecting the fragmentation of governance across jurisdictions and communities. Here, it is worth noting the continuing impact of the international community's intrusive approach to the Balkans from the 1990s war to present: many international programmes are seen as impositions on local governments, exercising the kind of authority more typical of host States than international partners. While this in part reflects the nascent status of many government institutions in BiH, it also tends to

rankle BiH leaders looking to demonstrate the independence of their own country. According to several UN experts in-country, this dynamic has led the UN family to adopt an explicitly collaborative and supportive stance, avoiding any perception of a political or security role and focusing instead on socioeconomic support. "We are careful to speak of our work in terms of the SDGs and the leave no one behind framework," one expert noted, "in order to keep the host government clearly in the driver's seat."[17] At the same time, BiH represents a setting where the UN tends to implement its own projects directly, far more often than is typical for a middle-income country. Balancing the issues of national ownership and effective UN programming is a challenge across much of the UN's rule of law work, as discussed below.

FIGURE 1: Top 10 donors – programme expenditure 2015-2019 (Million USD)

Donor	Million USD
European Commission	67
Government of Bosnia and Herzegovinia	37
Swiss Agency for Development and Cooperation	26
Swedish International Development Cooperation Agency	14
Government of Netherlands	9
Global Fund to Fight AIDS, Tuberculosis and Malaria	8
Global Environment Facility Trust Fund	6
Government of Norway	4
United Nations Development Programme	3
United States Agency for International Development	3

Source: Atlas Power BI tool (2020), from UNDP Independent Evaluation Office, "Independent Country Programme Evaluation for the United Nations Development Programme in Bosnia and Herzegovina".

TABLE 1: Country programmes outcomes and initiative resources (2015-2019)

Country programme outcome		Indicative resources (USD)	Expenditures to date (million USD)
UNDAF Outcome 3	Effective management of war remnants and strengthened prevention and responsiveness for man-made and natural disasters	29,200,000	71,488,278.52
UNDAF Outcome 4	Economic, social and territorial disparities are decreased through coordinated approach by national and subnational actors	56,250,000	66,842,203.22
UNDAF Outcome 5	Legal and strategic frameworks are enhanced and operationalized to ensure sustainable management of natural, cultural and energy resources	20,400,000	33,689,770.40
UNDAF Outcome 9	Targeted legislation, policies, budget allocations and inclusive social protection systems are strengthened to proactively protect the vulnerable	19,350,000	19,958,267.59
Total		**125,200,000**	**200,799,262**

Source: From UNDP Independent Evaluation Office, "Independent Country Programme Evaluation for the United Nations Development Programme in Bosnia and Herzegovina".

4. Rule of law impact

This section explores the extent to which the UN's rule of law interventions may have reduced the risks of violent conflict in the 2015-2020 period. It does not attempt to capture the full range of UN programming in-country, but rather relies on the available data and a range of expert interviews to identify the most impactful and relevant work in the rule of law area. It is also worth noting at the outset that the majority of interviewees noted the very low likelihood of a return to large-scale violence in BiH, due in large part to the significant presence of international actors in-country. Rather than examine such immediate risks of escalation, this section focuses more on the extent to which the UN's rule of law interventions may have helped address deeper structural causes of violence, the legacy of war crimes, and the risks posed by the proliferation of weapons across the region.[18]

Access to justice

One of the most important areas of UN support has been in victim/witness support, as part of the Regional War Crimes Project. Some of the key achievements in this area include:

- **16 Victim/Witness Support (VWS) Offices were established and fully integrated** in the government system at cantonal/district courts and prosecutors' offices in Sarajevo, Banja Luka, East Sarajevo, Bihac, Novi Travnik, Mostar, Brčko, Trebinje and Zenica. This contributed to cover 50 per cent of jurisdictions and 70 per cent of territory, thus increasing the efficiency of the proceedings as well as the number of victims and witnesses who received adequate emotional, psychological and logistical support.

- **Professional capacities of judges and prosecutors were strengthened.** More than 800 justice sector practitioners were trained in the field of war crimes processing, support to victims/witnesses, and in the area of investigative techniques. Innovative judicial and prosecutorial colleges were set up and institutionalized at the Court of BiH and Prosecutor's Office. A database of more than 25 trainings curricula was transferred to Judicial and Training Centres.

While access to justice is a national issue that cuts across different communities, an acute need was identified for women survivors of sexual violence during the war. In response, a joint IOM, UNDP, UNFPA and UN Women project entitled "Seeking Care, Support, and Justice for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina" ran from 2014-2017, focused on the legacy of the 1992-1995 war. The programme, adopting a transitional justice and survivor-centred approach, achieved a "lasting impact"[19] in three areas: (1) empowerment of victims by improving access to public institutions; (2) capacity-building of survivor support organizations; and

(3) passage of non-discriminatory policies to avoid stigmatization and improve community mobilization. Concretely, the programme contributed to the passage of new laws to protect and provide restitution for victims of torture in Republika Srpska, documented access to free legal aid to roughly 80 victims and nearly 2,000 vulnerable beneficiaries, trained more than 140 prosecutors and judges in the area of survivors' rights, and anti-stigmatization programmes for several hundred participants.

More broadly, access to justice has remained a priority area for the 2015-2020 period. With UNDP support, the number of free legal aid agencies increased to 17 in BiH, with an emphasis on services for women and people with disabilities, enabling roughly 900,000 people to access legal assistance. Additional achievements in the area of legal assistance, done with the support of the UN, include:

- A law guaranteeing free legal assistance before BIH institutions was developed and adopted with the support of UNDP;

- Five new cantonal laws (Sarajevo, Mostar, Bihac, Gorazde, Livno) were developed and adopted, and respective governmental agencies were established and fully integrated in the government systems.

- In four regions where free legal assistance was not provided by governmental agencies, UNDP supported NGOs to extend services through mobile teams, reaching more than 500 users in 15 more rural municipalities.

- The first BiH network of free legal assistance providers was established and strengthened to improve practices and professional standards, exchange experiences and promote the development of an efficient free legal aid system, stretching across nine government agencies and six NGOs.

- A two-year training programme for free legal assistance providers was completed (including gender-based violence, criminal, property and labour law) and follow-up trainings are regularly delivered to free legal assistance providers through the Network until the adoption of the State law.

UN programming has clearly increased the ability of hundreds of thousands in BiH to receive free legal assistance, and it has made important contributions to the ability of survivors of sexual violence to access support and legal aid. "The UN has helped to put sexual violence and the need for adequate access for women on the map in BiH," one interviewee noted.[20] Despite these accomplishments, interviewees suggested that the scale of access issues far outstripped progress. "Roughly half of the women in much of Bosnia and Herzegovina have experienced some kind of sexual violence in the war, but we are only helping a very small percentage of those," one expert noted.[21] Redress for victims of sexual violence is also complicated by the multiple jurisdictions across BiH, the criminal codes of which have varying (and often quite constrained) options for victims of sexual violence.[22] And a 2019 UN report on access to legal aid suggested that large populations in some cantons remained deeply restricted due to a combination of legal impediments, lack of capacities amongst the NGO community, and shortfalls in funding.[23]

Weapons control

One of the major threats to human security in BiH and the broader region is the large and poorly controlled stockpile of weapons and ammunition. One of the UN's key priorities over the past five years has been to assist the authorities in BiH to reduce the number of war remnants and surplus ammunition stockpiles by more than 50 per cent.[24] This set of programmes achieved a 45 per cent reduction within the first two years (2015-2017) and upgraded the security of the five main storage sites in the country. The UN also assisted the Coordination Board for the Control of Small Arms and Light Weapons to produce a weapons control strategy for 2016-2020, which formed a multi-institutional body to oversee the destruction of small arms and light

weapons (SALW) and landmines. UNDP's South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC) has helped to destroy tens of thousands of weapons, upgrade storage facilities, train thousands of State officials, and improve regional cooperation in combating arms flows through and beyond BiH.[25] Senior BiH government officials have expressed appreciation for this work, which has fed the broader Reform Agenda for the country.[26]

Importantly, SEESAC has adopted a gender-sensitive approach to arms control, gathering gender-disaggregated data and promoting tailored policy and legal responses across the region.[27] While it is difficult to assess the impact of these programmes in terms of conflict reduction, the gender-sensitive approach offers positive practices in the areas of police training, data-gathering, and advocacy around the legislative framework.[28] There is some evidence too that

SEESAC has positively impacted the recruitment of police personnel, though more systematic changes are more difficult to ascertain.[29]

A related project called Combating Illicit Arms Trade, led by UNDP, has aimed at harmonizing security regulations and practices amongst BiH and leading EU countries. Funded by France and Germany, this project has put in place a roadmap for preventing SALW trafficking across the region, resulting in the training of 1,500 police on arms detection.[30] Specific accomplishments under this project include: (1) the development of standard operating procedures for 16 border police agencies; (2) the development of a SALW database to track weapons flows in the region; and (3) procurement of equipment for border police. The latest official data indicates significant progress on arms control, including 3,817 pieces of illicit SALW seized over the past two years, while nearly 8,000 weapons were destroyed by BiH authorities.[31]

Transitional justice and war crimes

Addressing the legacy of war crimes and crimes against humanity in BiH and the broader region is considered one of the key priorities for the country to achieve long-term stability. In this context, the UN-led ICTY was one of the most high-profile and important venues for trying those allegedly responsible for serious crimes. The work of the ICTY itself is not the focus of this report, though it is worth noting the important work that the UN has done within BiH in terms of raising awareness about the ICTY, supporting the transition of outstanding criminal cases from The Hague to BiH, and in supporting domestic trials.

A revised National War Crimes Processing Strategy remained pending approval by the Council of Ministers between 2018 and 2020 (though eventually adopted in 2021), significantly slowing the rate at which war crimes were able to be prosecuted in BiH.[32] Nonetheless, some progress has been made in domestic trials, with the support of the UN: for example, in 2019, BiH courts rendered judgments in 26 war crimes cases, convicting 23 of 38 defendants, of an

overall caseload of more than 250 war crimes cases against 512 defendants.[33] According to several experts, this reaffirmation of a war crimes charge sent a public message that the domestic court system was capable in some instances of dispensing justice.

Importantly, the UN International Residual Mechanism for Criminal Tribunal (IRMCT or Mechanism), a legal successor of the ICTY, ruled against the appeal of Radovan Karadzic, the former President of the Republika Srpska and Supreme Commander of the armed forces of Republika Srpska, confirming the 2016 conviction against him for genocide and other crimes and extending his prison sentence from 40 years to a life term. This sent a clear message that there is no space for impunity for war crimes in BiH. Following the closure of the ICTY, the Mechanism continued to play an important role in assisting national jurisdictions in investigating and prosecuting cases involving alleged war crimes and other violations of international law.

Here, it is worth noting a distinction between IRMCT's direct support to trials and UNDP's indirect support to governance, capacity-building, and training. UNDP described this work as facilitating regional cooperation and improving the capacity of national authorities to conduct war crimes trials.

Awareness-raising about transitional justice in BiH is one of most important roles for the UN following the closure of the ICTY in 2017. In order to improve the knowledge and understanding of citizens and communities not only in BiH, but also other countries of the former Yugoslavia about the crimes committed in the region during the conflicts of the 1990s, the UN IRMCT established Mechanism Information Programme for Affected Communities (MIP). The aim of the MIP is to contribute to the processes of transitional justice and strengthening the rule of law in the Western Balkans region. MIP initiatives use the archives of the ICTY and Mechanism, as well as their overall legacies, to present fact-based accounts of crimes committed during the conflicts – in particular through the adjudicated cases of these institutions.

In this regard, the UN IRMCT's social media outreach campaigns in BiH have been extremely successful, for example reaching more than 2 million people in its messaging on Srebrenica and building an overall reach of more than 5 million people in its overall campaigns.[34] Other programmes, including the Inter-University Lecture Programme, which brings together law students from nine universities across the region, have focused on improving the knowledge of young people about the crimes committed during the Balkan wars. It also serves as a platform for discussion about these events in an unbiased manner and promotes basic concepts of transitional justice. In the same vein, the UN has brought chief prosecutors and judges from several Yugoslav states together, removing them from their country context and working to depoliticize the transitional justice processes in BiH and its neighbours.

While the achievements in this area may appear modest – e.g. the inclusion of educational material produced by the UN IRMCT MIP related to the Srebrenica genocide in the official school curriculum in Sarajevo Canton – they point to incremental progress to combat the more worrying narratives in BiH that deny the established facts of the war and reject calls for transitional justice. Unfortunately, the trends in BiH appear to show a slide towards more ethnonationalist politics, with large segments of the population and political leadership continuing to deny the genocide and other war crimes of the 1990s,[35] and the glorification of convicted war criminals on the rise. "If there is one area where more could be done, it would be in combating the dangerous narratives of political leadership in BiH, which continues to pose the most direct impediment to a transition away from war," one expert summarized.[36]

Other indicators of progress in the areas of transitional justice and war crimes include:

- There has been an acceleration in filing requests for cross-border assistance (access to information, evidence, witnesses, etc.) following the UN-supported regional meetings between Serbia, BiH and Croatia. Serbia sent 107 requests in 2020 alone (compared to 43 in 2018).

- The processing of requests for assistance has dramatically sped up, reducing the backlog of case processing overall from more than 70 cases to now less than a 15 per cent backlog.

- With UN support, the Serbian prosecution office has, for the first time, taken over two complex cases ("Samardžija" and "Kušić") from BiH as part of cross-regional cooperation.

Conclusion

Across the expert interviews, there was a general understanding that the UN's role in limiting the risks of a relapse into violence in BiH was quite small. Far more important in the short term is the continued presence of European forces and the strong leverage of the EU and major bilateral partners in the country. "BiH doesn't go back to war mainly because Europe wouldn't allow it to," one expert noted. However, interviewees also expressed concern at the deeper structural trends in BiH, many of which indicated a slide towards ethnonationalism, exclusionary politics, and poor socioeconomic growth. If they continue, these trends could undermine the gains of the Dayton Accords and eventually contribute to an escalatory dynamic in the coming period. In this context, the UN's work to build judicial capacity, promote cross-border cooperation on war crimes, improve access to justice, and help to address the legacy of war crimes in BiH are important mitigation against more extreme politics. Indeed, one of the most salient findings was that the role of the UN as a relatively unbiased actor in a context of very low public trust in State institutions continued to reduce some of the more immediate risks of social unrest. "The UN is a small player," one expert stated. "But it stands between the more extreme elements in BiH politics, and that in itself has preventive value."

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5. Enabling and inhibiting factors

The UN's work in BiH takes place in an extraordinarily complex and challenging environment, including the constitutional framework established under the Dayton Accords, a dominant role by the EU and its constituent members, and a political landscape that has continued to drift rightwards over the past five years. This section identifies the most important enabling and inhibiting factors for the UN's rule of law work in BiH, many of which are well beyond the UN's control.

Dwindling interest/investment

On the one hand, BiH has received an extraordinary amount of international support and dedicated interest, including from the EU in the context of the country's potential accession and a substantial amount of military assistance in the security sector. But UN officials suggested that the levels of support by donors had dropped in the past five years and were currently far short of the kinds of transformational changes envisaged in the Dayton Accords and subsequent programming. This lack of investment has combined with poor economic growth to contribute to large-scale emigration away from BiH: rising youth unemployment and low wages meant that more than 40,000 people left the country in 2019.[37] The result is low levels of trust between the population and the State, driven by poor economic growth and a widespread sense that the State is more reflective of ethnic divisions than a solution to intercommunal tensions.

UN-led programmatic implementation

Typically, UN programming in middle-income countries like BiH would be done almost exclusively through national implementers, such as State institutions or other organizations. UNDP and several other UN programmes in BiH operate in contrast to this model, with up to 90 per cent of programmatic expenditures taking place through direct UN implementation. This preponderance of direct implementation is the result of the unique governance arrangements in BiH, in particular the complexities of dealing with up to 14 institutions in any given area. While perhaps more efficient in some respects, the large proportion of funds implemented by the UN itself, rather than by national

FIGURE 2: ODA investment in BiH (USD billions)
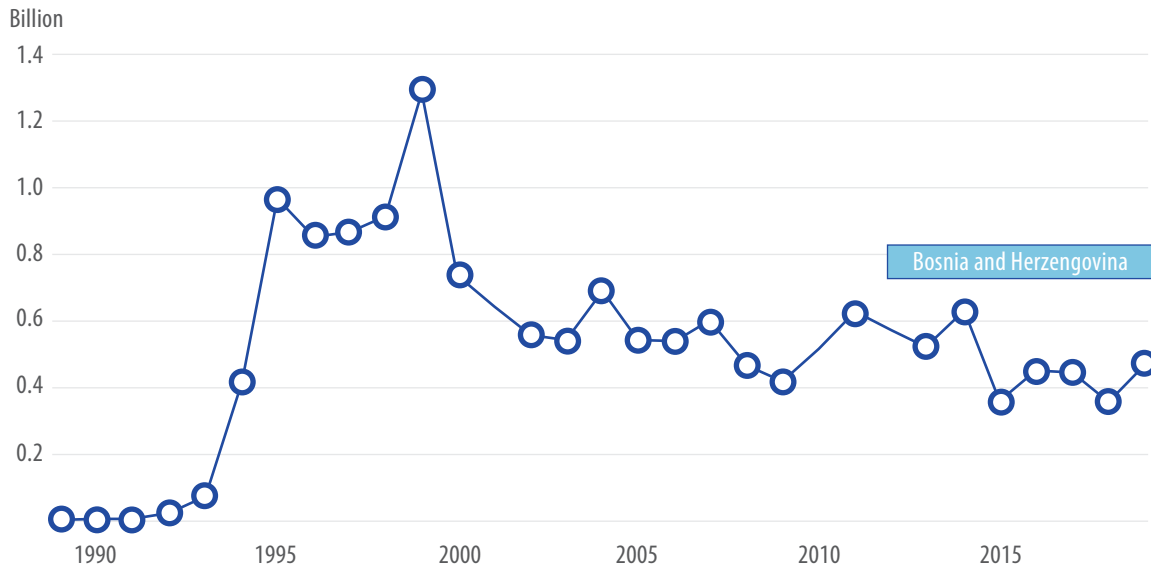
Source: Organisation for Economic Co-operation and Development Statistics

FIGURE 3: Implementation modality – programme expenditure (USD)

Others
4M (2%)

NIM
16M (8%)

DIM
181M (90%)
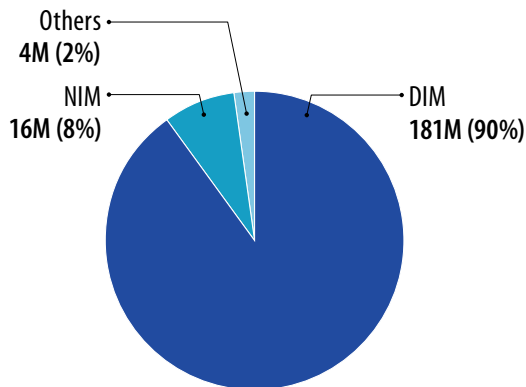
Source: Atlas Power BI tool (2020), UNDP Independent Evaluation Office, "Independent Country Programme Evaluation for the United Nations Development Programme in Bosnia and Herzegovina".

actors, has given rise to concern that the UN may be substituting for domestic systems rather than enabling them.[38] One expert suggested that the UN "isn't really building national capacity, it's just filling in for a dozen governments who can't agree on anything."[39] The extent to which this lack of direct support to national governments may impact longer-term capacities in-country is unclear, but several experts suggested that national leaders have few incentives to invest meaningfully in much of the UN's rule of law programming.

Corruption

The complex multi-institutional set-up in BiH renders the country particularly susceptible to corruption, and a common complaint of UN experts concerned the lack of transparency in how programmatic funds were distributed.[40] "This is meant to be a middle-income country but it feels more like a war zone without any accountability," one expert noted while describing the routine misallocation of programmatic funds. Indeed, the UN's 2020 assessment of UNDP's anti-corruption work noted that "no anecdotal or concrete evidence was provided that corruption has been reduced as a result" of the UN's programming.[41] This does not mean that the UN's work has failed to curb corruption at all, only that the mechanisms to track progress are not fully in place, and that perhaps more direct programming on anti-corruption could be helpful in the future (see below).

Ethnonationalist politics

One of the most insidious elements of social and political life in BiH has been the rise of ethnonationalist politicians, individuals who have fed off the institutional divisions created by the Dayton Accords and the deeply rooted divisions in the country. "The politicians don't care about justice or rule of law," one expert noted. "They just pander to their narrow constituency and drive divisions even deeper."[42] Examples of this dynamic include politicians glorifying convicted war criminals, denying genocide and war crimes and supporting organizations that explicitly deny genocide.[43] Indeed, the political leadership has refused to respond to rulings by the European Court of Human Rights about the discriminatory nature of the BiH constitution on a number of occasions.[44] To date, negative portrayal of the ICTY and glorification of convicted war criminals in the BiH by people and organizations who do not support judicial accountability for war crimes and the strengthening of the rule of law has remained a significant obstacle for transitional justice initiatives. This lack of unifying political leadership has significantly inhibited the more system-wide kinds of rule of law reforms proposed by the UN and its partners.

6. Lessons and recommendations

Drawing from the above analysis, this section provides some broader lessons and recommendations that can be applied across the UN system.

- **Multi-generational change.** Though the Balkan war was nearly 30 years ago, experts frequently described the country as still emerging from conflict, struggling to overcome some of the fundamental legacies of the war. This has created a disconnect between some of the rule of law programming – which identifies outcomes in one- or two-year terms – and the kind of multi-generational change required in the country. Re-establishing a penal code that functions across 14 different jurisdictions is not something that can realistically be accomplished within the timeframes envisaged in many of the international programmes. Instead, BiH offers an example of the kind of transformational change described in the 2018 World Bank/UN *Pathways for Peace* report, requiring decades of investment in the kinds of socially- and politically-inclusive programming that can gradually change deeper structural inequalities and divisions in BiH. This point was captured by a UN official in BiH, who said, "we need to get out of the two-year programming lens and shift donor expectations towards the question of how BiH's society needs to change in the longer term."

- **Changing narratives – putting transitional justice first.** Related to the multi-generational time period in BiH is the issue of deeply embedded narratives about the war and its continuing effects in-country. A common challenge identified by UN officials was the starkly different stories that each community told themselves, while politicians frequently used their public platforms to foment inter-ethnic divisions. Here, the experience of the ICTY offers an example: there was a six-year gap between the creation of the ICTY and the establishment of an in-country outreach programme. According to several UN officials, this gap meant that valuable time was lost in that domestic narratives about the role of transitional justice in addressing the needs of all communities in BiH could have been bolstered. "Transitional justice should be present at the outset of all our work, not something that is brought in later," one expert suggested.

- **Gender-sensitive programming.** The SEESAC programme on SALW flows through the region has adopted a gender-sensitive approach, gathering gender-disaggregated data and advocating for gender-specific policy responses by BiH and its neighbours.[45] This has not only led to important tracking of the links between small arms

use and issues like domestic violence, but has also highlighted broader cultural issues around masculinity, violence, and weapons possession that have impacted BiH's society in the post-war period. As such, the SEESAC programme offers a range of good practices in the gender arena for the broader UN system.[46]

- **The dilemma of national ownership.** BiH presents a challenging context for the concept of national ownership. On one hand, in a setting with such deep inter-ethnic divides and complex inter-institutional arrangements, strong local support for rule of law is fundamentally important. But there is also a recognition that simply leaving matters to national authorities is not feasible, given the divisive approach taken by the political leadership of the country and the perceptions of bias by the judiciary and other rule of law institutions. "We need to do two things," a UN official said. "We need to take over some of the rule of law tasks that the national actors can't do now because of bias or lack of capacity, but we also need to gradually begin building more of a sense across institutions that they are responsible to the whole population."[47]

- **Accession as leverage: the EU as a carrot and a stick.** Across much of the UN's work in BiH, BiH's declared goal of acceding to the EU was the major driving force behind any meaningful change. Passage of legislation around legal accountability for war crimes, or the rights of women, or anti-corruption was all linked to the hope for BiH to become an EU member. "The most important tool in the UN's toolbox is actually the EU," one expert said, noting that good cooperation and alignment of UN planning with EU strategic goals was a key factor in success.

- **The corruption blindspot.** On the one hand, corruption was cited as the dominant impediment to progress on rule of law in BiH, a way in which a broad range of efforts by the international community were undermined. And while corruption levels have been dropping according to most metrics over the past five years,[48] the perceptions of continued corruption at all levels undermines public confidence in the rule of law in-country.[49] In this context, UN experts pointed to the need for more programming in the anti-corruption arena and greater emphasis on tracking of programmatic funds. "Corruption is the elephant in the room," one interviewee pointed out. "We need more of a willingness in the UN system to speak directly about it, and to tackling it head on."[50]

References

1.   It is important to note that this study does not cover earlier UN interventions in BiH, including important engagements like the peacekeeping mission UNMIBH, which had a significant rule of law mandate, particularly in the areas of police reform. The UN system also worked with the OSCE and OHCHR on a comprehensive post-conflict property restitution process dealing with over 200,000 claims before the period in question.

2.   United Nations Security Council, "The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General," United Nations, 23 August 2004, S/2004/616.

3.   This approach of contribution rather than direct attribution is laid out in Adam Day, *Assessment Framework for Preventive Diplomacy: An Approach for UN Mediators and Policymakers* (Tokyo: United Nations University Centre for Policy Research, 2018); see also, United Nations Department of Political and Peacebuilding Affairs, *Three-Year Strategic Plan: 2020-2022* (New York: UNDPPA, 2020), https://dppa.un.org/sites/default/files/undppa_strategic_plan_2020-2022.pdf.

4.   This is often referred to as an "adaptive" form of impact assessments. See, Ian Wadley, *Valuing Peace: Delivering and Demonstrating Mediation Results* (Geneva: HD Centre, 2017).

5.   See, e.g. European Commission, "Key findings on the 2020 Report on Bosnia and Herzegovina," 6 October 2020, https://ec.europa.eu/commission/presscorner/detail/en/COUNTRY_20_1793; In 2020, the World Justice Project reported that BiH had again dropped in global rule of law rankings, a finding that aligned with broader assessments of the stagnation and backsliding of rule of law institutions and processes within the country. World Justice Project, Rule of Law Index 2020 (Washington DC: World Justice Project, 2020).

6.   See, e.g. Ifimes, "2020 Bosnia and Herzegovina: There will be no rule of law without the comprehensive reform of the BiH judiciary – Fadil Novalić case illustrates the state of the BiH judiciary," 9 December 2020, https://www.ifimes.org/en/9942; European Commission, "Key findings on the 2020 Report on Bosnia and Herzegovina," 6 October 2020, https://ec.europa.eu/commission/presscorner/detail/en/COUNTRY_20_1793; OSCE, "Mission to Bosnia and Herzegovina: Rule of law," last accessed 6 August 2021, https://www.osce.org/mission-to-bosnia-and-herzegovina/rule-of-law.

7.   See, International Crisis Group, "Bosnia's Future," *Europe Report* 232 (2014) https://d2071andvip0wj.cloudfront.net/bosnia-s-future.pdf.

8.   World Bank, "GDP growth (annual %) - Bosnia and Herzegovina," last accessed 6 August 2021, https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=BA.

9.   European Commission, "Revised Indicative Strategy Paper for Bosnia and Herzegovina," 8 March 2018, C(2018) 5021, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180817-revised-indicative-strategy-paper-2014-2020-for-bosnia-and-herzegovina.pdf.

10. Bosnia and Herzegovina subsequently revised its NAP in 2014 and 2018, with its current NAP set to expire in 2022. See, Women's International League for Peace & Freedom, "Bosnia and Herzegovina," last accessed 6 August 2021, http://1325naps.peacewomen.org/index.php/bosnia-and-herzegovina/.

11. Ministry of Human Rights and Refugees of BiH, "Gender action plan of Bosnia and Herzegovina," 13 February 2014, https://arsbih.gov.ba/project/gender-action-plan-of-bosnia-and-herzegovina/.

12. The timeframes of Gender Action Plans in BiH (GAP BIH - as the overall strategy for gender mainstreaming are: First GAP: 2006-2011 (the first GAP in the Region); second: 2013-2017; third: 2018-2022. The timeframes of Action Plans for implementation of UN Security Council Resolution 1325 on Women, Peace and Security in BiH as follows: the first Action Plan: 2010-2013 (the first AP in the Region); second: 2014-201; third: 2018-2022.

13. See, e.g. Isabelle Ioannides, *An evaluation of EU peacebuilding in the Western Balkans* (Brussels: European Parliamentary Research Service, 2018), PE 621.816, https://www.europarl.europa.eu/RegData/etudes/STUD/2018/621816/EPRS_STU(2018)621816_EN.pdf.

14. See, e.g. OSCE, "Mission to Bosnia and Herzegovina: Rule of law," last accessed 6 August 2021, https://www.osce.org/mission-to-bosnia-and-herzegovina/rule-of-law; American Bar Association, "Bosnia & Herzegovina Programs," last accessed 6 August 2021, https://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/bosnia/programs.

15. United Nations Development Assistance Framework, *One United Nations Programme and Common Budgetary Framework Bosnia and Herzegovina 2015-2020* (New York: United Nations, 2020), https://bosniaherzegovina.un.org/sites/default/files/2020-11/2019_UN_Country_Results_Report_engl.pdf.

16. See, Marina Hughson, *Gender Scorecard: UNDAF Bosnia and Herzegovina* (New York: UNSDG, 2016), https://unsdg.un.org/resources/bosnia-and-herzegovina-gender-scorecard-report.

17. Interview, March 2021.

18. NB: these areas were identified in interviews as the key contributions of the UN to the prevention agenda.

19. See final narrative report on programme. UNDP, "Joint Programme Seeking Care, Support and Justice for Survivors of Conflict Related Sexual Violence," last accessed 6 August 2021, http://mptf.undp.org/factsheet/fund/JBA00.

20. Interview, March 2021.

21. Interview, March 2021. See also, UN Women, "Global Database on Violence against Women: Bosnia and Herzegovina," last accessed 6 August 2021, https://evaw-global-database.unwomen.org/es/countries/europe/bosnia-and-herzegovina; Amnesty International, "Bosnia and Herzegovina: Last chance for justice for over 20,000 wartime sexual violence survivors," 12 September 2017, https://www.amnesty.org/en/latest/news/2017/09/bosnia-and-herzegovina-last-chance-for-justice-for-over-20000-wartime-sexual-violence-survivors/.

22. See, Amnesty International, "Criminalization and Prosecution of Rape in Bosnia and Herzegovina," Submission to the UN Special Rapporteur on Violence Against Women, its Causes and Consequences, 1 June 2020, https://www.amnesty.org/download/Documents/EUR6324572020ENGLISH.pdf.

23. UN Women, *UN Women Analysis of the Capacities for Implementation of Council of Europe Convention of Preventing and Combating Domestic Violence and Violence Against Women in Police and Free Legal Aid Sector in Bosnia and Herzegovina* (Sarajevo: UN Women, 2019), https://www2.unwomen.org/-/media/field%20office%20eca/attachments/publications/2019/05/bosnia%20and%20herzegovina%20domestic%20violence/3%20analysis%20of%20fla%20and%20policeengfinal%20bosniacompressed.pdf?la=en&vs=5617.

24. See, Akvo, "EXPLODE – a strategic project of B&H!," 28 July 2013, https://rsr.akvo.org/fr/project/931/update/3394/; South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, "Bosnia and Herzegovina," last accessed 6 August 2021, https://www.seesac.org/Bosnia-and-Herzegovina/; United Nations Development Assistance Framework, *One United Nations Programme and Common Budgetary Framework Bosnia and Herzegovina 2015-2020* (New York: United Nations, 2020),

25. UNDP Independent Evaluation Office, *Independent Country Programme Evaluation: Bosnia and Herzegovina* (New York: UNDP, 2020): 15.

26. See, Council of Ministers of Bosnia and Herzegovina, "Reform Agenda for Bosnia and Herzegovina 2015 - 2018," 9 September 2015, http://europa.ba/wp-content/uploads/2015/09/Reform-Agenda-BiH.pdf.

27. See, South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, *Gender and SALW in South East Europe* (Belgrade: SEESAC, 2016), https://www.seesac.org/f/docs/Armed-Violence/Gender_and_SALW_publication_eng-web.pdf.

28. See, South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, "Western Balkans as an Exporter of Good Practices in the Security Sector," 5 February 2021, https://www.seesac.org/News-Gender-in-Security-Sector/Western-Balkans-as-an-Exporter-of-Good-Practices-in-the-Security-Sector/.

29. Ibid.

30. South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, "Roadmap for a sustainable solution to the illegal possession, misuse and trafficking of Small Arms and Light Weapons (SALW) and their ammunition in the Western Balkans by 2024," Outcome of a High-Level Regional Meeting on SALW in Podgorica, Montenegro, 1 February 2018, https://www.seesac.org/f/docs/News-SALW/Roadmap-for-sustainable-solution.pdf.

31. BiH Government (provided by UNDP).

32. Human Rights Watch, "Events of 2019: Bosnia and Herzegovina," *World Report 2020* (New York: Human Rights Watch, 2020) https://www.hrw.org/world-report/2020/country-chapters/bosnia-and-herzegovina#.

33. Ibid.

34. Interview with UN official, March 2021.

35. See, e.g. Talha Ozturk, "Bosnia publishes report on Srebrenica genocide denial," *Andalou Agency*, 11 May 2020, https://www.aa.com.tr/en/europe/bosnia-publishes-report-on-srebrenica-genocide-denial/1836671.

36. Interview, March 2021.

37. "Massive brain drain threatens Bosnia's labour force," *TRTWorld*, 3 April 2019,

38. UNDP Independent Evaluation Office, *Independent Country Programme Evaluation: Bosnia and Herzegovina* (New York: UNDP, 2020): 10.

39. Interview, March 2021.

40. For background, see, UNODC, *Corruption in Bosnia and Herzegovina: Bribery as Experienced by the Population* (Vienna: UNODC, 2011) https://www.unodc.org/documents/data-and-analysis/statistics/corruption/Bosnia_corruption_report_web.pdf.

41. UNDP Independent Evaluation Office, *Independent Country Programme Evaluation: Bosnia and Herzegovina* (New York: UNDP, 2020): 16.

42. Interview, March 2021.

43. "Bosnia and Herzegovina: Some politicians still ignore 'core European values' 25 years after peace deal," *UN News*, 5 November 2020, https://news.un.org/en/story/2020/11/1076922.

44. See, e.g. Rodolfo Toè, "European Court Rules Bosnian Constitution Discriminatory," *Balkan Insights*, 9 June 2016, https://balkaninsight.com/2016/06/09/strasbourg-court-rules-bosnian-constitution-discriminatory-06-09-2016/.

45. South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, *Gender and SALW in South East Europe* (Belgrade: SEESAC, 2016), https://www.seesac.org/f/docs/Armed-Violence/Gender_and_SALW_publication_eng-web.pdf.

46. South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, "Western Balkans as an Exporter of Good Practices in the Security Sector," 5 February 2021, https://www.seesac.org/News-Gender-in-Security-Sector/Western-Balkans-as-an-Exporter-of-Good-Practices-in-the-Security-Sector/.

47. Interview, March 2021.

48. See, e.g. Trading Economics, "Corruption Index in Bosnia and Herzegovina decreased to 35 Points in 2020 from 36 Points in 2019," last accessed 6 August 2021, https://tradingeconomics.com/bosnia-and-herzegovina/corruption-index.

49. National Democratic Institute, "Public Opinion Poll: Bosnia and Herzegovina," 15 October 2019, https://www.ndi.org/publications/public-opinion-poll-bosnia-and-herzegovina.
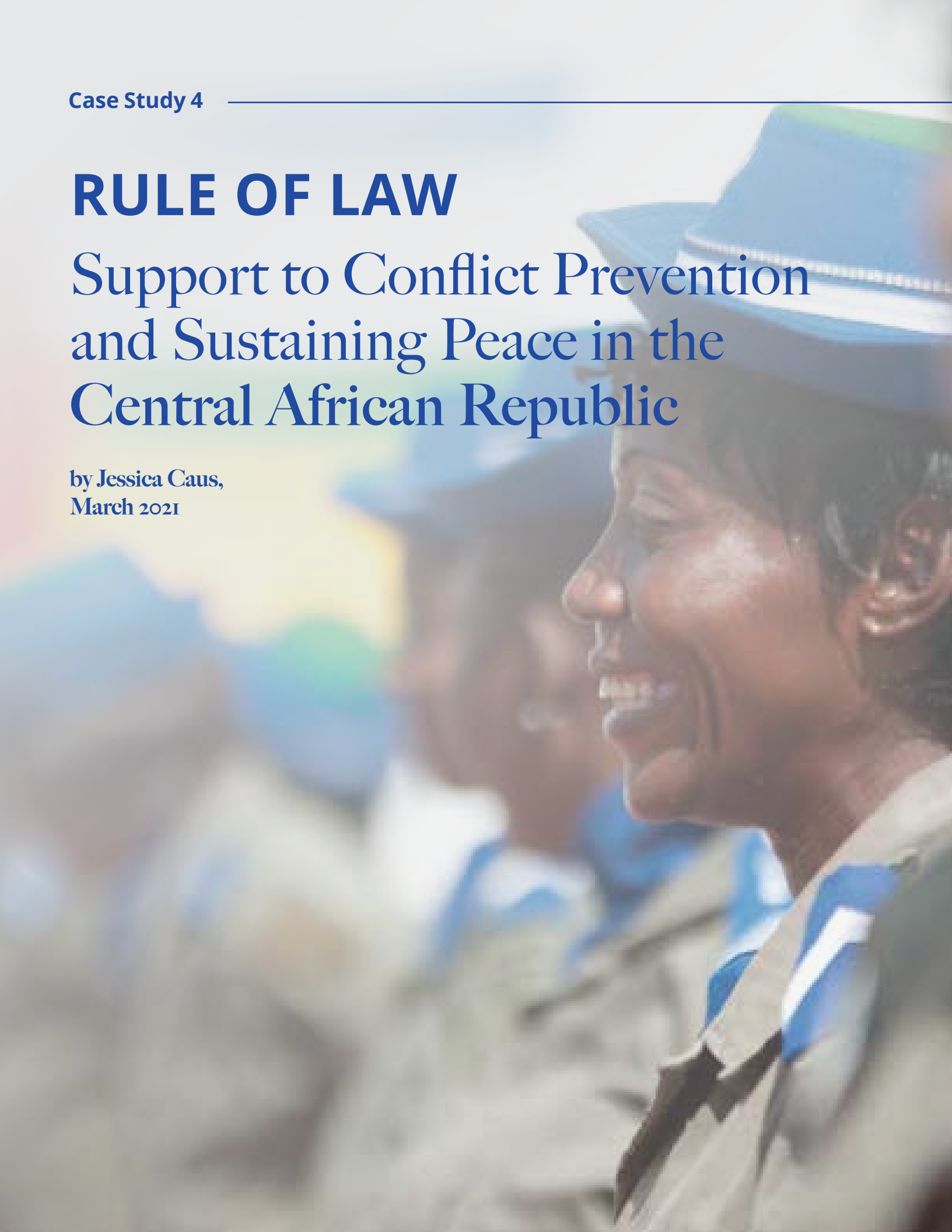
50. Interview, March 2021.

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RULE OF LAW

Support to Conflict Prevention and Sustaining Peace in the Central African Republic

**by Jessica Caus,
March 2021**

1. Introduction

In fragile contexts and post-conflict settings, strengthening the rule of law is an important element of stabilization and recovery and a core focus of the UN. Well executed, rule of law support can contribute to short-term conflict prevention and long-term sustainable peace. With conflict prevention a central goal for the UN and a clear priority of Secretary-General António Guterres, it is vital to understand the linkages between rule of law support and reduced conflict risks in order to effectively strengthen the Sustaining Peace agenda.

This case study examines the UN's rule of law work and its impact in the Central African Republic (CAR). CAR ranks amongst the most conflict-prone and fragile settings worldwide, including extremely weak governance and rule of law capacities. In the context of the country's ongoing armed group violence since the peak of the conflict in 2013-14, the study asks: *How has the UN's rule of law engagement contributed to lowering the risks of renewed large-scale violence in CAR?* Focusing on the period from 2014 to now, the goal is to examine current rule of law approaches and identify evidence of impact, i.e. how these approaches have contributed to conflict prevention.

The paper is based on an extensive literature review and expert interviews with researchers and UN officials both in New York and in CAR. It is structured in five parts: (1) a brief background to the conflict and the landscape of conflict risks; (2) an overview of the UN's main rule of law actors and mechanisms in CAR; (3) an analysis of specific approaches and evidence of impact; (4) mediating factors that either enable or inhibit impact; and (5) lessons and recommendations.

A note on scope and methodology

Rule of law is defined by the UN 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."[1] Traditionally, this has resulted in a focus on police, justice, and corrections as the primary vehicles for the UN's rule of law engagement. However, we recognize that other areas of the UN's work may also contribute to the core goals of the UN's rule of law work, including efforts to combat impunity, build accountability, advance transitional justice, limit corruption, and address conflict-related sexual violence, amongst others. This project does not adopt a strict definition of rule of law but is

instead largely guided by interviews with experts in a range of field settings, asking them what they consider to be the key rule of law interventions by the UN and its partners.

In terms of the scope of these studies, it is important to highlight that this is not a comprehensive assessment of the UN's work in a given setting. It does not try to capture every rule of law programme, but instead reflects the views of experts about the most impactful, relevant, and effective rule of law interventions in the given timeframe. This expert-driven approach to cases studies is to ensure that they feed meaningful cross-cutting policy recommendations, which is the core purpose of this project.

In terms of methodology, we note that the UN's rule of law work takes place alongside the interventions of a range of actors, including national leaders, bilateral donors, INGOs, and local organizations. While it is our goal to identify evidence of the UN's impact, the UN is often a relatively small player amongst these, supporting and coordinating rather than leading on programming. Given these limited supporting roles and the large number of other intervening factors, it can be difficult to isolate the UN's impact via its rule of law interventions. Rather than speak in direct causal terms about impact, we contextualize the UN's *contribution*, alongside the interventions of others, to the broader goals of risk reduction.[2] Where the precise impact is impossible to ascertain, or where the UN has not generated evidence that directly supports causal findings about impact, we rely on a broad set of expert consultations to help us identify good practice and lessons that could be applied beyond a single country context.[3]

2. Conflict risk landscape

The crisis in 2013

Since its independence from French colonial rule, CAR has regularly experienced non-democratic and oftentimes violent power transitions. Following a civil war from 2004-2007, a unity Government was formed under the Presidency of François Bozizé, who had seized power five years earlier.[4] Over the next several years, rebel groups formed across CAR, tapping into longstanding grievances amongst the country's Muslim communities and widespread dissatisfaction with Bozizé's rule.

In 2012, several of these groups began openly fighting against the Central African Armed Forces (FACA), signing a peace agreement in August 2012. By early 2013, that agreement had fallen apart, and the rebel groups coalesced under the broad umbrella group Séléka. Séléka rapidly took many of the major towns in CAR, and in March 2013 succeeded in taking the capital, Bangui, installing a new Government under Michel Djotodia.[5]

While Djotodia formally disbanded Séléka, Christian/Muslim tensions remained extremely high as ex-Séléka members continued to operate across the country, perpetrating a wide range of violent human rights abuses, and community self-defence groups calling themselves anti-Balaka (meaning "anti-machete") formed to fight ex-Séléka groups and began to target Muslim civilians for reprisals.[6] By October 2013, a UN peacekeeping operation was authorized to support French and African Union (AU) troops already on the ground, laying the groundwork for a July 2014 ceasefire agreement between Séléka and anti-Balaka forces.[7]

After the peak of the crisis in 2013-14, the fighting has continued over the subsequent years. The conflict has resulted in the deaths of thousands of Central Africans while displacing over a million, over half of them to neighbouring countries.[8] It further led to a humanitarian crisis, with almost half of CAR's population (that currently totals over 4.7 million) requiring humanitarian aid.[9] The crisis arose from and exacerbated a range of interrelated risk factors, which are described briefly below as they influence the UN's rule of law work in CAR.

Ethnic and socioeconomic grievances

CAR has one of the lowest levels of human development and counts amongst the poorest countries in the world, with over 70 per cent of the population living below the international poverty line.[10] Poverty is not felt equally across CAR, as Muslim communities have historically been marginalized politically and economically, and women and girls

experience high levels of gender inequality.[11] The Séléka uprising was rooted in deep colonial legacies, especially the lack of development across regions outside of the capital Bangui, and the grievances within Muslim communities, which have not been adequately addressed in the peace process to date, posing a heightened risk for further clashes.[12]

State weakness

The grievances in CAR are fuelled by extremely low governance capacities and high corruption levels. CAR consistently ranks near the bottom of established State fragility and corruption indices, with governance structures and public service delivery largely absent, especially in rural areas in the north and south-east.[13] CAR is a large country and yet it has few paved roads outside the capital, cutting off big segments of the population who have more socioeconomic and political ties with neighbouring countries than with their own.[14] Extremely weak institutional capacities, in combination with high levels of corruption, lead to underserved populations and further marginalization of already vulnerable groups. The resulting scarcity has fuelled intercommunal

tensions that, when they escalate, have often formed a vicious cycle where State weakness leads to indignation and armed conflict, which in turn further destroys government institutions and infrastructure.

Ongoing insecurity and resource conflicts

State weakness offers opportunities for non-State actors to fill the power vacuum that prevails in large swathes of CAR, keeping the levels of insecurity extremely high. Armed groups have proliferated in recent years and control vast parts of CAR's territory.[15] Occupying especially remote and rural areas where State authority is completely absent, these groups often terrorize local populations and commit serious abuses against civilians, including very high levels of sexual and gender-based violence.[16] Women and girls also experience violence not directly related to the conflict, including domestic and intimate partner violence, which also contributes to human insecurity in CAR.[17]

CAR's volatile security environment also has a regional dimension, being fuelled by porous borders that allow for a relatively unhindered flow of mercenaries and weapons to and from neighbouring countries. Small arms trafficking

is flourishing in the region, often trickling down from Libya.[18] Equally, illicit networks smuggling gold and diamonds add another element of organized crime – and heightened conflict risk, as competition over CAR's vast natural resources is one of the main drivers of armament and violence in-country.[19]

Increased armament and tensions over resource access have also exacerbated conflicts between farmers and herders in CAR. Pastoralists follow seasonal transhumance patterns, moving their cattle in the dry season to areas largely dominated by farmers. The two communities have increasingly been clashing over access to land and water resources or destroyed crops resulting from the cattle movement.[20]

FIGURE 3: Zones of Influence in the Central African Republic
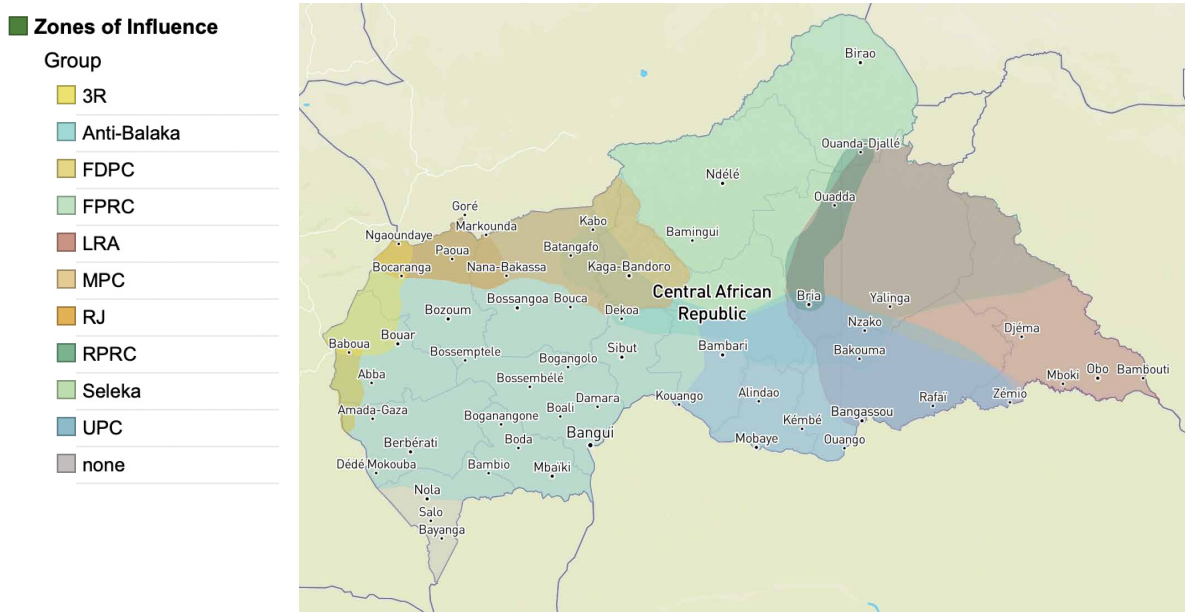
Source: Interactive webmap of CAR, IPIS

Absence of rule of law capacities and issues of impunity

While institutional capacity in CAR has always been very weak, the violence of 2013-2014 led to a further collapse of public order and the rule of law (or what was left of it). Most Central African prisons and court buildings (including criminal records) were destroyed in the fighting, but even before that they were largely lacking sufficiently trained staff. The presence of any form of police or gendarmerie, meanwhile, barely extended beyond the capital Bangui. In this context, the perpetrators of serious international crimes and human rights violations have gone unpunished for years.[21] Near-total impunity for serious crimes has emboldened perpetrators and has eroded the population's already low trust in the justice system and the State overall.[22] Contrary to the previous peace agreement, the 2019 Political Agreement for Peace and Reconciliation in the Central African Republic (APPR-CAR) between the Government and 14 armed groups does address the issue of impunity as one of the main priorities, even though the incorporation of armed group representatives with very poor human rights records into the new Government has been viewed by some as risking "more impunity as a price for peace."[23]

Rule of law deficits are linked to poverty, corruption, economic and political instability, and continuing conflict.[24] Over the course of the deployment of the UN's current mission in CAR, it has therefore prioritized the extension of State institutional authority, in particular in the areas of security, justice, and policing, with a clear mandate to help fight impunity for serious crimes and support the country's transitional justice processes. Improving the justice capacities of the State aligns with popular opinion, where over 60 per cent of the population see justice and holding perpetrators accountable as a key prerequisite for sustainable peace.[25]

3. Main UN rule of law actors and mechanisms in CAR

Building on this context, this section lays out the overall structure of the UN's rule of law involvement and mandates, as various UN actors in CAR are active in the rule of law area.

MINUSCA

Subsuming the existing BINUCA and AU-led MISCA missions, the UN Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) – the largest UN operation in CAR ever – was deployed in 2014 in the context of a total collapse of public order. State institutions, including court buildings and prisons, had been destroyed in the conflict, and violence between armed groups and against civilians was extraordinarily high. To contribute to a basic stabilization of the setting, the Mission was mandated with, *inter alia*, the protection of civilians, support to the peace process, and support to the extension of State authority.[26] MINUSCA also has a broad mandate on the rule of law and key related areas such as human rights, transitional justice and reconciliation, originating from the assessment that stabilizing the security situation required addressing impunity and bolstering confidence in the justice system.[27] The Mission's rule of law work largely focuses on support for CAR's justice, internal security forces (i.e. police and gendarmerie), and corrections systems, including within the UN's joint work (see box).

In the justice sector, MINUSCA has been mandated over the years to provide technical assistance to the national judiciary, help reinforce its independence, build its capacities, enhance its effectiveness, and help authorities identify, investigate and prosecute perpetrators of crimes under international law and other serious human rights violations. MINUSCA is also mandated to support and coordinate international assistance to build the capacities of the criminal justice system within the framework of the UN Global Focal Point on the Rule of Law. The Mission has further been mandated to support the operationalization and functioning of CAR's Special Criminal Court (see below), including providing security for its staff and for victims and witnesses. Additionally, MINUSCA's mandate includes monitoring human rights violations and strengthening the relevant national institutions in that area.

In the corrections and security sectors, MINUSCA is mandated to enhance the effectiveness and accountability of the police and penitentiary system with the support of the UN Country Team. This has included recruiting, training, and mentoring prison guards, police, and gendarmerie officers, and vetting national security actors in line with the UN Human Rights Due Diligence Policy. MINUSCA's over 2,000 police officers have played an important role in the protection of civilians, and their mandate has been further underpinned by the special feature of Urgent Temporary Measures (UTMs), allowing the Mission to arrest and detain alleged criminals where CAR authorities are not present or operational and request MINUSCA's help.[28]

UNDP

Next to MINUSCA, UNDP is a key international partner in CAR and, together with the Mission, the main partner in implementing the UN's joint rule of law assistance, where it manages the joint programmes and funds, including the support for the Special Criminal Court (see box).[29] UNDP's field staff working on rule of law amounts to roughly 20.[30] UNDP's rule of law support focuses on longer-term development and people-centred approaches, including access to justice, transitional justice and trust-building in the justice and security sectors (for specific approaches, see the impact analysis in section 4).[31]

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Joint work under the GFP umbrella

In CAR, the bulk of project-based rule of law work of UN entities is done jointly, in the spirit of the Global Focal Point for the Rule of Law (GFP). This arrangement, co-led by the Department of Peace Operations (DPO) and UNDP, supports coordinated rule of law delivery by the UN in different crisis settings. In CAR, UN entities – including MINUSCA, UNDP, UN Women, UNODC, and the multi-entity UN Team of Experts on the Rule of Law and Sexual Violence in Conflict – have often collaborated on rule of law assistance, from the political to the technical and operational level. This is facilitated through two main joint programmes:

1. **UN joint rule of law programme**

    The "Joint Project to Support the Fight Against Human Rights Violations and the Revival of Justice in CAR" was the UN's main project-based rule of law engagement in CAR from 2014-2019. Its second iteration, the "Joint Project to Support the Restoration of the Rule of Law and the Reform of the Justice and Security Sectors in CAR" builds on its results, partnerships and lessons learned, and will run until 2023. While being a standalone initiative, the joint rule of law project serves as an umbrella and a strategic planning and funding mechanism that subsumes other, separate projects, allowing for integration as the same partners usually work on multiple initiatives. MINUSCA and UNDP serve as the core implementing partners, with support from other UN entities on certain sub-projects. The overarching goal is to help restore CAR's rule of law institutions and support national reconciliation with a view to building lasting peace through various efforts:

    • Supporting security and justice sector reforms, including through policy and legal reform;

    • Capacity-building and support to recruitment, training and deployment of police, gendarmerie and corrections personnel as well as magistrates and lawyers;

    • Strengthening CAR's justice sector in the fight against impunity, including for serious human rights violations and sexual violence (e.g. through a specialized police unit);

    • Supporting the establishment of transitional justice as well as truth-seeking and reconciliation mechanisms to work complementarily with judicial mechanisms;

    • Facilitating citizens' access to justice, etc.

    For specific approaches see the impact analysis in section 4.

2. **Joint support for the Special Criminal Court**

Under the GFP umbrella, since 2016 the UN has also been supporting the operationalization and functioning of CAR's Special Criminal Court (SCC). The SCC was established by law in 2015 to investigate and prosecute serious human rights violations committed since 2003. It became operational in 2018 and is a national court with both national and international judicial staff, having special jurisdiction over violations of international humanitarian law and human rights, notably war crimes, genocide, and crimes against humanity. Uniquely, the SCC is working alongside the International Criminal Court in CAR, marking the first time that the ICC and a hybrid tribunal are investigating simultaneously in the same country. Most of the funding for the UN's joint support project comes from programmatic funds of MINUSCA, which co-leads the project together with UNDP (with other/previous engagement of UN Volunteers and UNODC). The project, currently in its second iteration, was set up to support the SCC's operationalization, and from there its investigations and trials. The joint support, but also individual contributions from UN entities have included a range of activities:

- Outreach for and recruitment of all international magistrates and international technical experts to support the work of the Court;

- Fundraising for the project to support the operations of the Court;

- Extensive outreach campaigns on the Court and its jurisdiction and objectives;

- Physical support (helping renovate the building and related infrastructure and equipment);

- Providing security for the court building and staff;

- Legislative advice including in relation to the Organic Law on the Court, the Rules of Procedure and Evidence and internal Standard Operating Procedures for the Court;

- Support in the creation of strategies for investigation and prosecution, witness and victim assistance and protection;

- Capacity-building of justice actors (training judicial personnel and a special unit of judicial police).

See also the impact analysis in section 4.

UN Team of Experts on the Rule of Law and Sexual Violence in Conflict

Co-led by DPO, OHCHR, UNDP, and the Office of the Special Representative of the Secretary-General on the Rule of Law and Sexual Violence in Conflict (OSRSG-SVC), the UN Team of Experts on the Rule of Law and Sexual Violence in Conflict regularly deploys experts to settings experiencing high rates of conflict, and it often plays an understated but important role in strengthening criminal accountability for conflict-related sexual violence. Active in CAR since 2012, the Team seeks to strengthen CAR's law enforcement and the judicial response to conflict-related sexual violence crimes. Over the past several years, it has been providing capacity-building support and technical advice to the national judiciary and the SCC (including input to the law on the creation of the SCC).[32] Together with UNDP and MINUSCA, in 2015 the Team helped establish and operationalize a specialized police unit mandated to investigate sexual violence – the *Unité Mixte d'Intervention Rapide et de Répression des violences sexuelles faites aux femmes et aux enfants* (UMIRR).[33] In late 2019, the Team deployed a full-time expert to MINUSCA's Justice and Corrections Section, for strengthened support to fight impunity for sexual crimes.[34]

Donor and government forums

In New York, specific support for and exchange about the rule of law in CAR happens through the Reference Group on the Rule of Law and the Fight Against Impunity in CAR.[35] Chaired by Morocco, this group of 16 UN Member States meets approximately twice a year to discuss the situation in CAR and mobilize resources. GFP partners in New York and Bangui as well as national partners brief the group about the progress of the SCC and highlight the needs in the field to garner the necessary political, financial, and technical support for rule of law initiatives.[36] In addition, the CAR Configuration of the Peacebuilding Commission has placed the rule of law in CAR as one of its key peacebuilding priorities and also convenes Member States of the Configuration in New York at both Ambassador and expert levels for briefings from UN rule of law personnel and national justice sector representatives, to exchange on progress and needs of the rule of law sector in CAR. This informs the advice of the Peacebuilding Commission to the Security Council as part of the dialogue between the two around the mandate of MINUSCA.

In CAR itself, coordination amongst donors, implementing partners, and national authorities takes place through various arrangements. For instance, the Ministry of Justice, different UN partners and bilateral donors, as well as other stakeholders in the judiciary, civil society and the Bar association regularly convene to bolster the implementation of CAR's newly established national justice sector policy. Other forums for international partners, convened once a month by MINUSCA, allow for further coordination on justice and security sector-related matters, such as support to CAR's police and gendarmerie.[37]

4. Rule of law impact

Reviving the justice system and fighting impunity

CAR has a long history of violent conflict, accompanied by gross human rights violations and conflict-related sexual violence, all of which culminated during the large-scale violence of 2013-2014, but which have also continued thereafter. Open fighting for several years reduced an already weak set of governing institutions still further, leaving few if any State capacities beyond the capital Bangui. Unable to apprehend or hold to account the vast majority of human rights violators, the Central African authorities have suffered from very low public confidence, a resurgence in armed group activity, and a country-wide problem with impunity. Rights-holders – victims and survivors of crimes and human rights violations – have little access to justice.

In this context, the UN has helped the national authorities rebuild the criminal justice chain and enhance access to justice, providing technical and operational support to the Ministry of Justice, for the renewal of the policy and legal framework, training judges and other actors, and supporting CAR in relaunching criminal trials while also increasing the population's access to these services, e.g. through legal aid initiatives.[38] The UN's and other external partners' work has also included an enormous amount of physical restoration, construction and other infrastructural work to rebuild adequate and operational police, justice and corrections institutions. According to the experts interviewed, MINUSCA's role was integral to help the Central African authorities identify priorities, coordinate with international partners, and establish security conditions conducive for the redeployment of judicial personnel and infrastructures. These approaches have achieved some notable results, such as:

- With UN support, the Government undertook a broad consultative process with national and international partners to develop and adopt the first National Justice Sector Policy (2020-2024), which sets the strategic direction for justice reform in CAR, including on the independence and accountability of the judicial system. MINUSCA and UNDP are playing a key role in facilitating its implementation.

- The UN helped to re-establish two of the three Courts of Appeal – Bangui in 2015 and Bouar in 2017 (which have not been functioning for years). The courts have jurisdiction for trying serious crimes, i.e. those punishable by ten or more years of imprisonment. Ten criminal sessions have been held since, during which 460 individuals were sentenced for various crimes. In 2016, for the first time since the 2013 crisis, court sessions

in the first instance courts were held in various regions in CAR, initially only focusing on civil cases and in recent years also first instance criminal cases. The UN played an instrumental role in providing logistical and financial support to judges and court personnel to convene mobile court sessions as a confidence-building measure where the security situation did not allow for permanent deployment of judges or where infrastructure was insufficient to support the permanent reopening of courts. In addition to providing access to justice to people living in areas where courts had not been functioning for many years, this initiative was seen as a first step in building public confidence in the judiciary and State institutions in general and potentially contributing to the acceptance of the redeployment of rule of law and other State institutions to these areas as part of broader stabilization efforts.

- As of December 2020, 19 of 27 courts were functioning again; 17 of them are holding regular criminal hearings.

- Between 2017 and 2019, MINUSCA supported over 220 redeployments of magistrates and 12 temporary assignments to the regions (and, in the wake of the electoral violence in December 2020, facilitated the return of many magistrates to Bangui).

- Having resumed operations, the Courts of Appeal have been able to contribute to the fight against impunity with UN support by completing high-profile cases for serious crimes, including by members of armed groups. For example, in early 2018, the Court in Bangui for the first time convicted someone for conflict-related crimes – General Andjilo, an anti-Balaka warlord who received a life sentence. Equally, in early 2020, the Court heard two cases involving attacks against peacekeepers, including the so-called Bangassou trial that led to the conviction of five anti-Balaka leaders for war crimes and crimes against humanity – the first ever conviction for crimes under international law in CAR.

- More than 14,000 people received legal aid services through nine legal clinics run by female lawyers, including more than 3,000 survivors of sexual and gender-based violence (SGBV).[39]

While it can be difficult to pinpoint the precise impact of these activities, there are a number of indications that suggest the UN's anti-impunity work has helped reduce some risks in CAR. In particular, by rebuilding the judiciary in several places, Central African authorities have been able to remove some dangerous actors from the conflict arena and process them through trials. Interviewees consulted in this study consistently pointed to these judicial improvements as part of the reason CAR has not witnessed the levels of violence of the 2013-2014 period.[40] More symbolically, too, the high-profile trials have sent a signal to armed actors that they may have severe penalties for human rights violations.

MINUSCA and the UN Country Team have played an essential role in restoring the basic functioning of the criminal justice system and law and order in Bangui and other parts of the country where there had been a complete vacuum following the 2013 crisis. Importantly, the population has significantly increased its confidence in the judicial system, with numbers of Central Africans who trust the national justice system more than doubling since late 2017.[41] At some moments, a single trial has appeared to trigger a jump in confidence, such as the war crime session against General Andjilo mentioned above. As with most criminal court sessions in CAR, this trial was broadcast in full on the radio, generating national publicity and widespread awareness. Immediately following that trial, public surveys indicated a significant increase in public confidence in the judiciary.[42] This is relevant also for the broader political process, where a large majority of citizens believe justice and accountability for past crimes are integral to lasting peace.[43]

However, interviewees also pointed to major room for improvement for rule of law impact in CAR. The number of actual trials pales in comparison to the thousands of serious human rights violations reported by reputable organizations and is also evidenced by the high rates of pre-trial detentions, which are well over 80 per cent in most prisons across the country.[44]

Moreover, the focus on crimes committed during the most recent conflict has meant that longstanding grievances related to earlier time periods have been neglected, potentially angering some populations.[45]

Also, the UN's focus has been on supporting the criminal justice system, while an equally important conflict prevention area is underrepresented in the approaches of UN and other international partners: that of land rights.[46]

Particularly in recent years, increasing violence between pastoralists and sedentary farming communities has been the source of much of CAR's instability, with relatively few resources available to resolve conflicts at a local level. In fact, several interviewees suggested that the UN's top-down approach to justice might have missed some inexpensive, impactful work on local training and support to legal assistance also beyond the issue of land rights.[47]

Operationalizing the Special Criminal Court

The SCC was established with a mandate to investigate and prosecute violations of international human rights law and international humanitarian law. As a hybrid tribunal, it is formally integrated into the national judiciary and operates in complementarity with the ICC and national ordinary courts. A substantial part of the UN's efforts to strengthen CAR's judiciary has focused on the operationalization and functioning of the SCC. The UN, under the lead of MINUCSA, has in essence driven the political, policy and legal elements necessary to operationalize the SCC and has also helped set up the Court's building, related infrastructure, and equipment, provided legislative advice, and engaged in outreach campaigns to sensitize the population to the Court's existence and mandate. Broadly, the UN contributed to:[48]

- The domestic law on the SCC, the Rules of Procedure and Evidence, the strategies for investigation and prosecution (informed by a milestone UN mapping of human rights violations from 2003-2015),[49] and a strategy for victim and witness protection;

- The establishment of the investigative organs, a Special Police Unit, and a Special Lawyers Unit; the Special Prosecutor and most national and international magistrates have been sworn in;

- As of 2019, the SCC had received 60 complaints; as of this writing, ten preliminary investigations have been opened, nine cases are before the judges, and 12 individuals are currently in pre-trial detention.

As the Court became operational in 2018, it is very early in the lifespan of the SCC to make definitive claims about its impact in CAR. As of the writing of this report, preliminary investigations were underway, but no trials had yet begun (they will commence in 2021 in accordance with the phased operationalization approach). Interviewees highlighted that the Court represents an important symbol of accountability and is playing an important role in investigating cases dating back to 2003, but also serious crimes under international law that continue to be perpetrated in violation of the political agreement. That said, popular support for the SCC (or knowledge of its existence) may be mixed. According to a population survey conducted early 2020 of over 5,200 Central Africans in twelve prefectures and the capital city of Bangui, more Central Africans wish to see perpetrators tried in ordinary criminal courts (49 per cent) than in the SCC (40 per cent), while 10 per cent prefer trials in the ICC. Public trust in the SCC has slightly decreased from 53 per cent in late 2018 to 45 per cent in early 2020, which may be partly due to its long lead time.[50]

The SCC has also suffered from massive underfunding, despite the relatively inexpensive hybrid model. The aspirational budget of the Court is approximately USD 13 million per annum. However, annual funding for the Court has not exceeded approximately USD 8 million per annum to date, approximately half of which is drawn from MINUSCA's budget through programmatic funds, with the remainder coming from the EU and other donors.[51] This has impacted the operationalization of the various organs of the Court, in particular

functions such as court administration, victim and witness protection, outreach, and records management. The lack of a multi-year source of funds has left the SCC in a precarious position, and rather modest pay packages pose difficulties in attracting international magistrates.[52] At the same time, however, the costs of the Court dwarf those of CAR's judicial system, which only has USD 2 million as its annual budget.[53] While the sustainability of the national budget to the judiciary remains challenging, interviewees pointed out that this imbalance in funding may contribute to a perception that the UN has not allocated its resources towards the most impactful role the judiciary could play, for example via trials in national ordinary courts.[54] Some experts, however, pointed to the substantial resources that the UN has also dedicated to the support for the ordinary courts to investigate and prosecute serious crimes, and highlighted the unique role and mandate of the SCC to conduct in-depth and complex investigations into large-scale atrocities perpetrated in CAR over many years with thousands of civilian victims in a manner that the Courts of Appeal would not be able to do.[55]

Strengthening internal security forces

Alongside judicial support, the UN has focused on strengthening CAR's security sector, which remains one of the most poorly developed in the world. With funding from the US and the UN Peacebuilding Fund (PBF), and increasingly with CAR State budget, over the past seven years UNDP, MINUSCA, and other entities have led a number of initiatives to build the capacity of Central African police and gendarmerie,[56] including:

- Rehabilitating police commissariats and brigades in Bangui and other cities such as Bouar, Bambari, Bangassou, Berberati, Sibut, Bocaranga, Batangafo, Bozoum and Bouca;

- Rehabilitating the police and gendarmerie schools and Judicial Police Units;

- Helping fund police and gendarmerie salaries from 2014-2017 and vetting officers in line with the UN Human Rights Due Diligence Policy; and since 2017, helping fund arrears of police and gendarmerie salaries related to their retirement plan to support the renewal of the internal security forces;

- Supporting the recruitment, training, and deployment of 2,300 internal security forces over the last three years;

- Enhancing the professionalization and inclusivity of the police (introducing regional quotas and gender targets; literacy and numeracy tests in the recruitment process; human rights trainings)

- Supporting the design and implementation of a community-oriented policing policy, with special emphasis on the implementation of the PK5 community-oriented policing project that allowed the restoration of State authority in the 3rd Arrondissement in Bangui and declared it a free weapon zone;

- Establishing and supporting UMIRR, a specialized police unit for rapid response to and prevention of sexual violence (see section on Gender Justice).[57]

MINUSCA's police component also works alongside national authorities to provide security in Bangui and other towns across CAR. A notable and unique feature of MINUSCA's mandate in this regard is the mandate on Urgent Temporary Measures (UTM), enabling the Mission to arrest and detain individuals suspected of crimes where national authorities are not operational and request the Mission's help.[58] Between 2014 and 2020, over 500 individuals were arrested by MINUSCA forces under UTMs and handed over to national authorities.

MINUSCA's broad rule of law mandate, especially including the UTMs, equips the Mission with a considerable scope of action and resources, supporting collaboration with national authorities and taking actions on its own in the criminal justice realm. Uniquely, in the case of a security incident, MINUSCA can open its own

investigative file, document the facts of the case, temporarily detain suspects, and then support the arrest and investigation.[59] In a setting of deep shortfalls in policing capacity amongst national actors, the UN's mandate to take forward the first steps in the penal chain is seen as crucial in combating violent crimes and armed group activity.[60] In the past few years, MINUSCA has made several high-profile arrests, capturing a number of high-level/upper hierarchy armed group members.[61]

MINUSCA's ability to "take people off the streets" was cited by several interviewees as clear evidence of reducing risks in some parts of the country. While there remain a large number of violations of the peace process, the establishment of a weapons-free zone in the north-east of the country has largely held, with support from MINUSCA, leading to a drop in violence.[62] The high-profile arrests of several armed group members have sent a

public message, and violence and crime levels in Bangui have remained relatively stable.[63] A concrete moment of prevention and de-escalation impact occurred in mid-2017 in Bria, a town in the east of the country that experienced an outbreak of violence between anti-Balaka and ex-Séléka factions that displaced tens of thousands of civilians. MINUSCA's support to national authorities reportedly had a significantly de-escalating effect as it helped arrest and detain fighters and prevent the situation from spinning out of control.[64]

However, despite some indications of strengthened internal security forces, the violence in CAR, including against civilians, has continued at high levels. Armed groups have proven resilient, maintaining control over vast parts of the territory. The number of active groups has also increased over the years (which may, however, be in part related to splintering and therefore possibly not a conclusive metric).[65]

Restoring the corrections system

Before MINUSCA arrived in CAR, many prisons were destroyed, the remaining ones barely functioning, and the number of escapes was extremely high due to a lack of capacity. Part of the UN's core support was thus the restoration of and improvements to corrections buildings, including in Bangui, Bambari, Ngaragba, Bossembele, Bossangoa, Berberati, and Mbaïki.[66] In 2015, a mass prison break from a Bangui prison (600-700 people) prompted MINUSCA's corrections unit to shift its way of working from a traditional UN monitoring and mentoring approach to one that builds capacity from the ground up, demilitarizing the prison system and training civilian guards to ensure a basic functioning of corrections and security in the prisons, with notable results:[67]

- Since 2014, the number of functioning prisons under State control rose from three to 13; the total detention capacity was increased to over 1,000.

- Over 100 civilian guards were trained on prison management and security.

- Early 2020, 20 new civilian guards, including five women, were introduced.

- Another 300 new penitentiary staff were recruited, half of which are currently in training while the other half are deployed in prisons across CAR for internships.

- MINUSCA has been supporting the implementation of the Government's 2019 strategy on the demilitarization of the prison system, and the implementation of new procedural rules and a code of conduct for prison personnel.

This approach, along with MINUSCA's rapid intervention teams and 24/7 presence at some prisons, visibly helped prevent further large-scale escapes and other incidents. The number of escapes has dropped dramatically over the last years, from hundreds a year to only a very limited few over the 2018-2020 period.[68] Security within prisons was also improved significantly, reducing the numbers of mutinies and violence from 3.7 incidents per 100 detainees in 2016 to none in 2020 (until election-related unrest led to cases at two prisons in December 2020). According to a UN official, CAR "now has moderately secure prisons," compared to several years ago.[69] According to UN experts in

CAR, UN engagement has helped to improve prison conditions significantly, and the drastic reduction in escapes is clearly connected to the prevention of crimes that could or would have occurred had inmates continued to escape at the rates of the period around 2015. The corrections support is especially crucial given that MINUSCA is continuously improving its track record regarding high-profile arrests of armed groups members. Preventing the escape of high-profile detainees and sex offenders is crucial to curb their possibilities for further offence, and is a task that the Mission has proven successful in handling.[70]

Transitional justice

To support the priorities on national reconciliation outlined in the 2019 peace agreement (and in circulation since the 2015 Bangui Forum), with PBF funding the UN has recently started a project supporting CAR's transitional justice and the establishment of a justice and truth commission – the *Commission Vérité, Justice, Réconciliation et Réparations* (CVJRR). Within this project, together with several State and civil society partners, UNDP, MINUSCA, and UN Women collaborate to improve the population's access to justice, providing legal aid to victims of human rights violations, including sexual and gender-based violence. Concretely, the UN has been setting up legal counselling centres in different areas of CAR and providing psychosocial support for victims of SGBV and other crimes, while also creating referral mechanisms for such cases. This way, as of early 2020, over 14,000 people have received legal aid services, including more than 3,000 SGBV survivors.[71] Furthermore, plans are in the works to train hundreds of judicial personnel on issues around gender mainstreaming and transitional justice.

With regard to the creation of a justice and truth commission, the UN has been a member of the Steering Committee for its establishment and supported the drafting of the law for the CVJRR that was promulgated in April 2020. At the time of this writing, the UN is also involved in the selection of the eleven Commissioners of the CVJRR. Once they are selected, MINUSCA and UNDP will roll out their technical and operational support to the commission. Additionally, the UN is launching a study detailing modalities and options for reparations in CAR to support the work of the CVJRR and the establishment of a trust fund for reparations (as stipulated in the peace agreement).[72]

Given the fairly recent roll-out of the project as of this writing, aiming for a robust and evidence-based impact assessment would be premature. However, it is safe to say that strengthening transitional justice mechanisms addresses a big need of the Central African population. Over 60 per cent of people are against any form of amnesty for perpetrators and 91 per cent say it is important to unveil the truth about the crimes committed during the 2013 crisis.[73] The UN's support for the justice and truth commission and the victim-centred approaches help address these needs and present further strides in the fight against impunity and towards a more sustainable peace in CAR.

However, armed groups in CAR hold, and have in some cases managed to increase, their political influence, which hampers a coherent fight against impunity of all perpetrators. The 2019 peace agreement was a crucial step towards peace in CAR. However, the inclusion of some armed group leaders into the Government has led to a perception of *de facto* impunity for those leaders, corroding the nation's trust in the credibility of anti-impunity efforts and people's demands for justice.[74] Their inclusion may also incentivize further violence, signalling to other conflict parties that political clout can defend from consequences. This poses a dilemma: the incorporation of armed group members, potentially responsible of serious crimes or human rights violations, into official positions of State authority suggests that (their) impunity in the immediate term was seen as a necessary price for peace in CAR, whereas it is exactly that impunity that can have reverse and destabilizing effects, undermining public trust and incentivizing violent actors. A strong transitional justice approach in the context of the political process could reconcile this dilemma.

Gender justice

Throughout the country's violent history, and also in contexts unrelated to the armed conflict, the issue of sexual and gender-based violence (SGBV) has been widespread in CAR and continues to befall vast numbers of Central Africans to this day. UN partners, in their efforts to support the fight against impunity, have concentrated a notable part of their resources and political advocacy towards strengthening accountability for sexual crimes.[75] A result of these efforts was the 2015 creation of a special police unit to investigate gender-based violence, known as UMIRR.[76] MINUSCA, UNDP, the UN Team of Experts on the Rule of Law and Sexual Violence in Conflict and other entities supported the operationalization of this unit, including rehabilitating the physical infrastructure and guiding the establishment of the UMIRR.[77] The UN has trained officers on investigative techniques around such crimes, set up psychosocial assistance for victims, and built out mechanisms to ease the referral of cases from the police unit to prosecutors.[78] The expert recently deployed to CAR by the Team of Experts has been providing mentoring and other technical support services to the unit, while also advising CAR's judiciary on matters related to the investigation and prosecution of SGBV.[79]

In terms of impact, interviewees consistently rated UN support to the special police unit UMIRR as an important milestone in tackling SGBV.[80] As of this writing, according to a UN official, over 1,000 investigations into SGBV allegations have been completed – a number that on the one hand pales in comparison to the actual rates of violence (a quarter of Central Africans know someone who has been sexually assaulted). On the other hand, however, these numbers still signify an improvement in a country where people usually have not been prone to lodging complaints about such crimes to national authorities, either because of stigma or simply because they did not know where to go.[81] The work of UMIRR is seen as a successful step in strengthening the outset of the criminal chain, signalling to potential or future perpetrators that their actions will have consequences and creating a deterrence effect.

Sexual abuse by UN peacekeepers

Sexual violence in conflict continues to be a widespread issue in CAR, perpetrated by almost all conflict parties. Since MINUSCA deployed in 2014, a series of allegations of rape and other forms of sexual exploitation abuse (SEA), including of children, by UN peacekeepers has cast a shadow on the Mission and called into question UN's ability to prevent and respond to violations. The UN was heavily criticized for failing to follow up on many allegations of SEA despite compelling evidence, first in relation to abuse committed in 2014 by French and West African forces, while later news reports referring to leaked UN inquires suggest that many other cases were also never taken up. The UN has since tried to establish more transparency and accountability, expelling 120 Congolese troops in 2016 after investigations into sexual abuse allegations and identifying 41 more suspects from Burundi and Gabon. The responsibility to investigate and prosecute UN peacekeepers lies with the troop or police-contributing country.

Major room for improvement, however, lies in the uptake of cases by the justice system. As of this writing, apparently none of the cases investigated by UMIRR have been adjudicated, highlighting once again the capacity limitations in CAR's judiciary and the chronic underinvestment in the sector by partners. Given how weak the Central African system was when the UN first started its rule of law support, the yardstick for measuring impact might need to be recalibrated here, according to a UN official: "At least the victims are now turning to the State to seek a response – this is the beginning of rule of law and indeed a big achievement in the CAR setting." In their efforts to strengthen the criminal chain

further and advocate for addressing pending SGBV cases, UN partners in 2019 have supported the Bangui Court of Appeal to have a criminal session primarily focused on sexual violence cases, resulting in 22 cases being put on the Court's docket.[82] In light of the continuously high number of sexual crimes, the progress on accountability has started, but there is still a long way to go for actual violence reduction impact.[83]

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5. Enabling and inhibiting factors

The previous section analysed a number of rule of law programmes and approaches of the UN over the past years, focusing on their conflict prevention impact. This section explores what factors might have enabled, impeded, or otherwise influenced such impact, ranging from the contextual conditions in CAR to factors more in the UN's control.

Insecurity and State weakness

Across all interviews, the continuously high insecurity in CAR was ranked as the number one factor impeding the UN's rule of law work and impact. MINUSCA contributed to a relative stabilizing of the setting beginning in 2014 – as one UN official put it, "without MINUSCA, the Central African Republic would be much worse off."[84] Yet, armed groups have proliferated in recent years. The peace agreement of 2019 is viewed by many as fragile; the rates of violence remain high and atrocious human rights abuses are far from over.[85] Persisting violence erodes already fragile State institutions and leads to setbacks across all UN stabilization and recovery efforts – including rule of law work, which hinges on a minimum standard of functioning institutions and governance.

Because of the violence and the weakness of the State, the level on which the UN could base its rule of law programming in CAR was very low compared to other, more stable settings. The collapse of public order meant that, first, basic infrastructure such as court buildings, prisons, or police stations had to be rebuilt before any more substantial rule of law support could even begin. Low education rates in CAR and a population decimated in the conflict either by death or displacement further limited human resources and national capacity, which has struggled at times to fully absorb the initiatives introduced by the UN.[86] CAR's State weakness and lack of capacity has curbed impact to some extent, given that the UN first needed to establish a basic functioning of judicial and security services and that true, tangible impact towards fighting impunity and preventing conflict also hinges on the steps that follow *from there*.

Security Council dynamics

Assessments suggest that with regard to Central Africa, the Permanent Five members of the Security Council do have a basic consensus and share common interests that allowed for the Mission's robust mandate, including on rule of law.[87] This relative unity has been the key precondition for the UN's broad and ambitious role in CAR. However, generally rising tensions amongst Security Council members also begin to extend to the CAR agenda, as illustrated by some discord between Council members in 2019 during the renewal of the sanction's regime mandate.[88] For the Mission to retain its broad scope – and from there its chances for impact – in CAR, constructive cooperation in the Council is a necessary condition.

Robust mission mandate and capacities

Many interviewees saw MINUSCA's robust rule of law mandate and capacities as well as its political and good office support as key determinants of impact, as they allowed for approaches that meaningfully support national authorities in their fight against impunity. Particularly, the special feature of UTMs by which the Mission can arrest and detain perpetrators has proven impactful in strengthening the first links of the penal chain, taking criminals and armed group members off the streets and deterring others from committing more violence. "Most missions don't have that kind of mandate and resources, so this is really an asset for the UN as a whole," one expert suggested.

Others, however, cautioned against unduly high expectations of a mission and raised the question of how broad rule of law mandates should really be. Given that rule of law support and the related institution-building are long-term endeavours, they normally exceed the lifespan of a mission, suggesting the need for other partners to step in sooner, and with more resources of their own. However, in practice, partners are most likely operating with close to the maximum amount of resources that they are able to muster from donors, especially in the early years following the deployment of a peacekeeping mission when bilateral funds for UN Country Team or other partners are often available due to the profile of that particular country context at the time. Moreover, Country Team partners have also been able to utilize programmatic funds from mission budgets to advance mandated tasks in coordination with mission rule of law capacities. While managing expectations about what a mission can deliver is important, Security Council members are usually generally aware of what can be expected from each mission due to regular political dialogue with the mission and the Secretariat and reporting from the Secretary-General. Broadly written mandate language may actually benefit missions in some instances, allowing them to pivot support in areas that are crucial to peace and security and the broader political process as the context on the ground evolves.

The multidimensional resources available to the Mission and the empowerment that comes from being free from donor-driven interventions have enabled MINUSCA in partnership with others to support national authorities to re-establish the basic foundations of the justice sector and the criminal justice system, where there had been an almost complete vacuum in 2014. While an argument can be made that too much reliance on the Mission, either by the UN or by CAR itself, can hamper or even reverse conflict prevention impact when a mission leaves and its initiatives are not absorbed by the State or UN partners, and eventually dry up. This problem is not, however, unique to the rule of law sector and is at the heart of the Secretary-General's new approach to early transition planning in peacekeeping settings.

Relationships with government actors

A key factor enabling impactful rule of law support by the UN has been its relations with national actors. MINUSCA has big political leverage in CAR and many contacts in the Government, as does UNDP, who can rely on good relations with government counterparts.[89] UN officials in CAR generally reported that national authorities are very open to discuss and cooperate on rule of law initiatives and joint planning, which is, of course, a key requirement for any rule of law engagement and the related impact to materialize.

However, many interviewees added some nuance: while a general openness on the part of the Government does exist, if or how this translates into actual results is another question.[90] Corruption levels in CAR remain high and governance capacities low, often limiting true buy-in and commitment of national partners – and thereby curtailing the possibilities for a nationally-owned and sustainable fight against impunity and conflict prevention impact. Another challenge remains the low level of women's participation in the Government – demonstrating that the Government is not representative of the population in CAR.[91]

Joint work

As described throughout this study, the bulk of the UN's project-based rule of law support in CAR happens in collaboration, via the GFP arrangement. Experts credited this joint approach with increased credibility and efficiency of the UN. UN partners benefit from co-location of resources and staff, as the joint rule of law programme serves as a single funding mechanism and allows staff to work on various projects under a single umbrella. Not only does this streamline the interaction with government actors, for whom this means having one UN counterpart instead of staff from various UN agencies, funds, and programmes.[92] It also produces synergies as, for instance, UNDP and MINUSCA can benefit from their complementary strengths, political leverage and expertise. As

one UN official in CAR put it: "GFP partners work very well together, and we get a lot done."[93]

The degree of collaboration, however, not only hinges on programming and mission structures (such as the placement of MINUSCA's justice and corrections sections under the Deputy Special Representative of the Secretary-General/ Resident Coordinator/Humanitarian Coordinator which enabled synergies with the UN Country Team and particularly UNDP), but also on the personalities and priorities of UN leadership in-country. Some interviewees suggested that, to some extent, siloed approaches still persist within and across UN entities in CAR, presenting some opportunity costs for rule of law cooperation and impact.

Lack of resources and capacity

As evidenced by the gaping hole in SCC funding, of which only half is covered, a lack of resources counts amongst the biggest impeding factors for rule of law impact in CAR. Chronic shortfalls in funding have caused setbacks for furthering the Court's operationalization and trials, which have yet to begin. Despite successful outreach efforts to sensitize the population to the Court's existence and undertakings, the time lag on trials hampers progress on the fight against impunity

and the public's trust in the justice system – important markers of impact.

In addition to funding shortfalls, and also resulting from them, is the absence of important UN partners on the ground. UNODC, for instance, was previously active in CAR through MINUSCA funding, but had to discontinue its operations due to a lack of resources. A UN official in-country identified UNODC as an important missing partner whose presence would be crucial to fill

certain mandate gaps of the Mission and work on issues that are most relevant to a holistic rule of law response, such as corruption or trafficking.[94] Not only are those issues major impediments for the UN's present rule of law support in CAR, but illicit networks and organized crime are so intertwined with the presence and influence of armed groups, that fighting one without the other significantly impedes the prevention of conflict.

Lack of data and realistic needs assessments

Another impeding factor is a chronic lack of data to aid meaningful decision-making and programming in CAR, resulting in unclear or disparate pictures of the rule of law needs on the ground.[95] Some interviewees suggested that, for instance, the establishment of the SCC was not based on a realistic needs assessment, as it not only exceeds the costs of the national justice budget by far, but also works in parallel to the ICC and national ordinary courts in investigating war crimes and human rights violations, posing the question whether it really matches the capacities and needs in-country.[96]

COVID-19

Apart from the general effect that the COVID-19 pandemic is slowing down the implementation of UN projects in CAR and beyond, the coronavirus presents serious challenges in the fight against impunity in CAR. As for the SCC, the pandemic has delayed the arrival of additional international judges and has resulted in existing magistrates working remotely, sometimes out of country, which has disrupted or postponed hearings of victims and witnesses.[97] The pandemic particularly impacted the capacity of victims to report crimes and access justice, significantly slowed the ability of law enforcement to investigate, and of judicial authorities to prosecute and adjudicate human rights violations, including on SGBV. A potential derailing of the peace process due to the pandemic would also increase significantly the level of insecurity for women inside and outside their homes. This would, in turn, have an adverse impact on women's participation in the upcoming elections, as women will be less likely to register for voting and women candidates will not be able to campaign.

To respond to the COVID-19 crisis, MINUSCA has, first, supported national authorities to decongest overcrowded prisons to stop the spread of the virus, which helped mitigate the risks of COVID-19 but might pose additional risks as released prisoners might potentially reoffend.[98] However, the vast majority of those released, due in part to careful advocacy of the Mission, were individuals in pre-trial detention for lower-level crimes or those who had been convicted for lower-level crimes. Second, to counteract and prepare for health- and other COVID-19-related risks in CAR, the UN (in collaboration with WHO and ICRC) has been providing face masks and other personal protective equipment to detainees and prison staff throughout the country, as well as to the internal security forces and actors in the justice sector.[99] Third, bringing in the Ministry of Health and the WHO, the UN also designed a COVID-19 response and prevention plan for CAR's prisons, including further support for decongesting prisons where needed.

6. Lessons and recommendations

While the UN has dedicated substantial resources to several rule of law areas in CAR in recent years, its impact towards reducing conflict risks is difficult to identify with precision. In the justice sector, the UN has helped re-establish functioning courts in bigger cities, which have resumed criminal sessions and begun a more systematic fight against impunity for crimes committed in the armed conflict. Without the support of MINUSCA, it is unlikely that there would be functioning criminal justice institutions dealing with serious crimes in main population centres at this time, including Bangui and Bouar. Through its coordinated approach and sustained advocacy and technical assistance with national police, justice and corrections institutions, MINUSCA has facilitated the arrest and transfer of hundreds of individuals, including armed group members, suspected of serious crimes, allowing national institutions to at least demonstrate that the sector is somewhat operational despite the ongoing conflict. There was a widespread view that this support has helped (though in a limited way) to disincentivize perpetrators from further offence; there is also evidence that it increased the population's trust in the justice system, an important benchmark in the efforts towards sustainable peace. With regard to the SCC, shortfalls in funding and staffing have curbed the Court's progress and impact to date. In the security and corrections sectors, the UN's recruitment and training support has contributed to increased functioning of Central African police, gendarmerie, and prisons, strengthening the country's capacity to take violent offenders off the streets and minimize prison breaks, with clear prevention effects. Furthermore, efforts to strengthen criminal accountability for SGBV have picked up pace, especially since the introduction of a special police unit. The preventive impact of UN support to transitional justice in CAR, however, has yet to materialize given its fairly recent roll-out. Overall, the UN helped initiate the first steps in the fight against impunity in CAR, which can be critical leverage in the broader context of the political process to advance a political dialogue amongst all the relevant stakeholders, while holding perpetrators of crimes and human rights violations accountable. However, given the difficult realities on the ground, there is still a long way to go to sustainably strengthen CAR's rule of law and reduce conflict risks. Deriving from this analysis and the expert interviews conducted, the following more general lessons can inform UN actors and other stakeholders in similar settings who seek to improve their rule of law interventions.

- **Set realistic expectations of the mission and plan the transition carefully.** MINUSCA has a robust rule of law mandate that has evidently helped extend State authority in CAR and strengthen national institutions in the justice, security, and corrections sectors. However, some experts cautioned against expecting too much from a peacekeeping mission in this regard, given that rule of law support and the related capacity-building are longer-term endeavours that normally exceed the lifespan of a mission.[100] However, peacekeeping missions are not expected or designed to address longer-term rule of law endeavours. Peacekeeping missions have a clear comparative strength to provide critical support in the direct aftermath of conflict; and in active conflict contexts to support national authorities to conduct law and order operations, investigate and prosecute international crimes and other crimes that fuel conflict and re-establish a functioning penal chain and justice sector, thereby creating conditions for longer-term peacebuilding initiatives. Peacekeeping mandates should be designed with a focus on what can realistically be achieved and what is necessary to advance the protection of civilians, the broader political process and improve the security situation on the ground. Ideally, an exit strategy would be planned early on that is flexible enough or can be adapted to account for major changes in the context on the ground and that ensures the sustainability of efforts after mission drawdown.

- **It is essential to have, at the different stages of a mission's life, a strategic vision that can then be supported by programmes on what the UN aims to achieve in terms of rule of law support within the broader political process.** The capacities of the UN Country Team need to be bolstered to ensure that rule of law efforts can be absorbed and sustained after the mission exits.

- **Include work on land rights and natural resources.** While the expectations of what a mission can achieve need to be adjusted and overly long "laundry lists" of tasks are an often-cited complaint, there is still an important area underrepresented in the responses of the broader UN system: that of land rights. In CAR and many other settings, conflicts over land are amongst the main drivers of violence, and current mandating and resourcing does not enable the UN to tackle this crucial rule of law area. Access to natural resources was also cited as a key conflict driver that did not receive sufficient attention in the prevention approaches by the international community. Bolstering the UN's work around these issues would be an important element of a holistic rule of law approach.

- **Mobilize and prioritize resources.** Naturally, the areas in which the UN in CAR could register the most progress were those that had adequate funding. Support for the SCC, however, is lagging, in large part due to significant funding gaps despite the contributions of MINUSCA and other major donors such as the EU. Donor and stakeholder forums such as the CAR reference group or the Peacebuilding Commission country configurations are a good way to highlight the needs on the ground and mobilize the necessary resources. Also, where funding is limited, the resources available need to be allocated in the most impactful way, which requires careful needs and impact assessments and can also mean raising the profile of less costly, meaningful bottom-up work. The UN's tendency to measure activities rather than impact means there is often have little sense of which programmes are the most effective and deserving of the funds available.

- **Bolster bottom-up and local approaches.** Several interviewees pointed to the potential of local approaches that can have a wide reach and impact, such as legal aid services and legal training. UNDP and other partners in CAR promote access to justice in their efforts to strengthen the rule of law; and also in other settings, people- and victim-centred approaches can offer helpful ways to increase people's participation and offer inclusive rule of law support. To support genuine bottom-up work, collaborating with local partners such as local chapters of INGOs or reputable civil society organizations can be a helpful way to gain a foothold on the ground and spread the reach of more grassroots-oriented work such as legal assistance or legal training. This type of cooperation can help effectively deliver on justice needs across all levels of society and leave behind more sustainable capacities.

- **Include the informal justice system.** Closely intertwined with the previous point, experts raised concern that the UN in CAR and elsewhere overly focuses on supporting the statutory, formal justice system – often at the expense of informal mechanisms which, in fact, many local populations have been relying on as the sole mechanisms for conflict resolution, e.g. traditional courts at the chiefdom-level. For effective rule of law support, it might be necessary for the UN to adapt its approaches (and more broadly its understanding of rule of law as such) to local practices and the realities on the ground. "Justice has to be closer to the people," one expert suggested, "and simply coming in with a top-down approach and not using the structures that are already there can really destabilize a country." A suggestion that can balance adaptive *and* supportive functions would be a design where a light, principled support mechanism is established in the centre of the justice and reconciliation architecture in-country – one that does not conduct its own activities, but that supports local ones in an advisory function, introducing measures of quality control and principles of conduct (such as impartiality, etc.).[101]

- **Cooperate internally.** As this study has shown, joint work on the political, operational, and technical level can significantly enhance the UN's credibility and efficiency in rule of law initiatives. UN partners can benefit from the co-location of resources and staff and from eliminating duplicate (or even mutually hampering) interventions, to ensure a comprehensive and coherent UN approach on rule of law. This does not only pertain to joint work across a mission and the UN Country Team, but also within a mission itself and its different pillars in the justice, corrections, security, and human rights areas.

- **Use gender justice as a catalyst to strengthen the fight against impunity and the rule of law.** The prioritization of the fight against impunity for SGBV, including conflict-related sexual violence crime, early on by UN partners involved in CAR has resulted in concrete results that served as catalysts to help the national authorities address traditionally underreported crimes, and contributed to the fight against impunity and the rule of law. The UN should consider implementing a similar approach in other contexts where SGBV, including conflict-related sexual violence, is widespread.

UN Photo/Eskinder Debebe

References

1. United Nations Security Council, "The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General," United Nations, 23 August 2004, S/2004/616.

2. This approach of contribution rather than direct attribution is laid out in Adam Day, *Assessment Framework for Preventive Diplomacy: An Approach for UN Mediators and Policymakers* (Tokyo: United Nations University Centre for Policy Research, 2018); see also, United Nations Department of Political and Peacebuilding Affairs, *Three-Year Strategic Plan: 2020-2022* (New York: UNDPPA, 2020), https://dppa.un.org/sites/default/files/undppa_strategic_plan_2020-2022.pdf.

3. This is often referred to as an "adaptive" form of impact assessments, see, Ian Wadley, *Valuing Peace: Delivering and Demonstrating Mediation Results* (Geneva: HD Centre, 2017).

4. Siân Herbert, Nathalia Dukhan, and Marielle Debos, *State fragility in the Central African Republic: What prompted the 2013 coup?* (Birmingham: GSDRC, 2013).

5. International Crisis Group, "Central African Republic: The Roots of Violence," *Africa Report* 230 (2015).

6. International Peace Information Service, *Central African Republic: A Conflict Mapping* (Antwerp: IPIS, 2018).

7. The establishment of the Mission was also justified by the warning of the Special Advisor on the Prevention of Genocide that the country was on the brink of a genocide.

8. Bureau of International Narcotics and Law Enforcement Affairs, "Central African Republic Summary," last accessed 6 August 2021, https://www.state.gov/bureau-of-international-narcotics-and-law-enforcement-affairs-work-by-country/central-african-republic-summary/; Concern Worldwide, *Conflict and Displacement: Voices of Displacement and Return in Central African Republic's Neglected Crisis* (Dublin: Concern Worldwide, 2018), https://reliefweb.int/sites/reliefweb.int/files/resources/conflict_and_displacement-_voices_of_displacement_and_return_in_central_african_republics_neglected_crisis.pdf; UNHCR, "Réponse Régionale – Crise Centrafricaine," last accessed 6 August 2021, https://data2.unhcr.org/fr/situations/car; Council on Foreign Relations, "Global Conflict Tracker: Violence in the Central African Republic," last accessed 6 August 2021, https://www.cfr.org/global-conflict-tracker/conflict/violence-central-african-republic.

9. UNDP, "In CAR, violence against women is surging amid COVID-19 pandemic, study finds," 14 July 2020, https://www.undp.org/content/undp/en/home/news-centre/news/2020/In_CAR_violence_against_women_surging_amid_COVID19.html; World Bank, "Population, total – Central African Republic," last accessed 6 August 2021, https://data.worldbank.org/indicator/SP.POP.TOTL?locations=CF.

10. CAR is ranked second to last on the 2019 Human Development Index. See UNDP, *2019 Human Development Index Ranking* (New York: UNDP, 2019), http://hdr.undp.org/sites/default/files/hdr2019.pdf; World Bank "The World Bank In Central African Republic," last accessed 6 August 2021, https://www.worldbank.org/en/country/centralafricanrepublic/overview.

11. CAR ranks 159th on the Gender Inequality Index in 2019. See UNDP, *2019 Human Development Index Ranking* (New York: UNDP, 2019), http://hdr.undp.org/en/composite/GII.

12. Lise Morjé Howard et al., *Assessing the Effectiveness of the United Nations Integrated Multidimensional Stabilization Mission in the Central African Republic (MINUSCA)* (Oslo: Norwegian Institute of International Affairs, 2020).

13. Fund for Peace, *Fragile States Index 2020* (Fund for Peace: Washington DC, 2020), https://fragilestatesindex.org/data/; Transparency International, Corruption Perceptions Index 2019 (Berlin: Transparency International, 2019), https://www.transparency.org/en/cpi/2019/results/caf; Lise Howard, *Assessing the effectiveness of the UN mission in the Central African Republic* (Oslo: Norwegian Institute of International Affairs, 2019), https://effectivepeaceops.net/blog/assessing-the-effectiveness-of-the-un-mission-in-the-central-african-republic/.

14. Lise Morjé Howard et al., *Assessing the Effectiveness of the United Nations Integrated Multidimensional Stabilization Mission in the Central African Republic (MINUSCA)* (Oslo: Norwegian Institute of International Affairs, 2020).

15. According to some sources, three-quarters of CAR's territory is under armed group control. Interview 28 September 2020; Amnesty International, "Central African Republic: Five years later, more efforts to be done to get special criminal court fully operational," 3 June 2020, https://www.amnesty.org/en/latest/news/2020/06/central-african-republic-five-years-later-more-efforts-to-be-done-scc/.

16. Ibid.

17. According to data from 2006, 26 per cent of women aged 15-49 years reported that they had been subject to physical and/or sexual violence by a current or former intimate partner in the previous 12 months. See, UN Women, "Central African Republic," last accessed 6 August 2021, https://data.unwomen.org/country/central-african-republic.

18. Nicholas Marsh, "Brothers Came Back with Weapons: The Effects of Arms Proliferation from Libya," PRISM 6, 4 (2017), https://cco.ndu.edu/News/Article/1171858/brothers-came-back-with-weapons-the-effects-of-arms-proliferation-from-libya/.

19. Lise Howard, *Assessing the effectiveness of the UN mission in the Central African Republic* (Oslo: Norwegian Institute of International Affairs, 2019), https://effectivepeaceops.net/blog/assessing-the-effectiveness-of-the-un-mission-in-the-central-african-republic/; International Peace Information Service, Central African Republic: A Conflict Mapping (Antwerp: IPIS, 2018), https://ipisresearch.be/publication/central-african-republic-conflict-mapping/.

20. Lise Howard, *Assessing the effectiveness of the UN mission in the Central African Republic* (Oslo: Norwegian Institute of International Affairs, 2019), https://effectivepeaceops.net/blog/assessing-the-effectiveness-of-the-un-mission-in-the-central-african-republic/.

21. Bureau of International Narcotics and Law Enforcement Affairs, "Central African Republic Summary," last accessed 6 August 2021, https://www.state.gov/bureau-of-international-narcotics-and-law-enforcement-affairs-work-by-country/central-african-republic-summary/.

22. Lise Howard, *Assessing the effectiveness of the UN mission in the Central African Republic* (Oslo: Norwegian Institute of International Affairs, 2019), https://effectivepeaceops.net/blog/assessing-the-effectiveness-of-the-un-mission-in-the-central-african-republic/.

23. Lise Morjé Howard et al., *Assessing the Effectiveness of the United Nations Integrated Multidimensional Stabilization Mission in the Central African Republic (MINUSCA)* (Oslo: Norwegian Institute of International Affairs, 2020).

24. Lisa Ejelöv and Richard Zajac Sannerholm, *The UN Global Focal Point for Police, Justice and Corrections is at the Crossroads* (Sandöverken: Folke Bernadotte Academy, 2015).

25. Interview 28 September 2020; Patrick Vinck, Phuong Pham, Mychelle Balthazard, and Alain-Serge Magbe, "Central African Republic," *Peace, Justice and Security Polls* 5 (2020), http://www.peacebuildingdata.org/sites/m/pdf/CAR_Poll5_ENG.pdf.

26. MINUSCA, "Mandate," last accessed 6 August 2021, https://minusca.unmissions.org/en/mandate.

27. The recommendations of the Secretariat (United Nations Security Council, "Report of the Secretary-General on the Central African Republic submitted pursuant to paragraph 48 of Security Council resolution 2127 (2013)," United Nations, 3 March 2014, S/2014/142) were reflected in Security Council Resolution 2149 (2014) through a strong rule of law mandate and the introduction of the innovative provision on urgent temporary measures, which was subsequently adapted to include separate provisions on the support to the establishment of the Special Criminal Court. United Nations Security Council, "Resolution 2149, adopted by the Security Council at its 7153th meeting," United Nations, 10 April 2014, 10 April 2014, S/RES/2149.

28. Interview, 21 September 2020; United Nations Security Council, "Resolution 2499, adopted by the Security Council at its 8666th meeting," United Nations, 13 November 2019, S/RES/2499: para. 26.

29. Interview, 1 October 2020.

30. Interview, 28 September 2020.

31. Interview, 28 September 2020.

32. Interview, 14 October 2020.

33. Interviews, 8 and 14 October 2020.

34. Interview, 14 October 2020.

35. Paige Arthur et al., *Review of the Global Focal Point for Police, Justice, and Corrections* (New York: Center on International Cooperation, Folke Bernadotte Academy, and Norwegian Institute of International Affairs, 2018).

36. Interview 1 October 2020.

37. Interview, 28 September 2020.

38. Interviews, 4 and 8 September 2020.

39. As of late 2020. Internal documents [on file with authors]; Interviews, September and October 2020; UNDP, *United Nations Development Programme 2016 Global Programme Annual Report* (New York: UNDP, 2016); UNDP, United Nations Development Programme 2017 Global Programme Annual Report (New York: UNDP, 2017); Paige Arthur et al., *Review of the Global Focal Point for Police, Justice, and Corrections* (New York, Center on International Cooperation, Folke Bernadotte Academy, and Norwegian Institute of International Affairs, 2018); Amnesty International, *'On trial, these warlords lowered their eyes': The Central African Republic's challenging pursuit of justice* (London: Amnesty International, 2020).

40. Interview, 4 September 2020.

41. Internal documents of file with authors; Patrick Vinck, Phuong Pham, Mychelle Balthazard, and Alain-Serge Magbe, "Central African Republic," *Peace, Justice and Security Polls* 5 (2020).

42. Interview, 28 September 2020; Patrick Vinck, Phuong Pham, Mychelle Balthazard, and Alain-Serge Magbe, "Central African Republic," *Peace, Justice and Security Polls* 5 (2020).

43. Ibid.

44. Internal document [on file with author]; Human Rights Watch, "Central African Republic," *World Report 2020* (New York: Human Rights Watch, 2020), https://www.hrw.org/world-report/2020/country-chapters/central-african-republic.

45. Interview, 16 September 2020.

46. Interview, 4 September 2020.

47. Interview, 29 September 2020.

48. Internal document [on file with author].

49. MINUSCA, UNDP, OHCHRO, and SRSG for Sexual Violence in Conflict, *Report of the Mapping Project documenting serious violations of international human rights law and international humanitarian law committed within the territory of the Central African Republic between January 2003 and December 2015* (New York: United Nations, 2017).

50. Interview, 28 September 2020; Patrick Vinck, Phuong Pham, Mychelle Balthazard, and Alain-Serge Magbe, "Central African Republic," *Peace, Justice and Security Polls* 5 (2020).

51. Interview, 8 September 2020.

52. Interview, 29 September 2020; Paige Arthur et al., *Review of the Global Focal Point for Police, Justice, and Corrections* (New York: Center on International Cooperation, Folke Bernadotte Academy, and Norwegian Institute of International Affairs, 2018).

53. Estimation in 2018. Interview, 29 September 2020.

54. Interview, 29 September 2020.

55. Moreover, some suggested that the very existence of the Court and the commitment of the national authorities and the international community to its success is a clear indicator that the crimes that occurred in CAR warrant an extraordinary response in order to contribute to the transitional justice process and the fight against impunity for the people of CAR. In this regard, some consider that the Court will have a lasting legacy in CAR in terms of truth telling and accountability and also capacity-building of the range of national magistrates and court personnel working alongside international counterparts and in complementarity with the ICC and the ordinary courts. The national staff and magistates working at the SCC

will likely be absorbed into other courts following the completion of the Court's work bringing valuable experience and expertise to the national system well beyond the lifespan of the Court. Following the political agreement in 2019, the Court has also played an important role in responding to violations of the agreement that also constitute serious crimes by opening investigations in coordination with the Courts of Appeal.

56. In line with the implementation of the Internal Security Forces capacity-building and development plan adopted in 2016.

57. Internal documents [on file with author]; Interviews, 8 and 21 September 2020; UNDP, *United Nations Development Programme 2017 Global Programme Annual Report* (New York: UNDP, 2017).

58. MINUSCA is mandated to "urgently and actively adopt, within the limits of its capacities and areas of deployment, at the formal request of the CAR authorities and in areas where national security forces are not present or operational, urgent temporary measures on an exceptional basis, without creating a precedent and without prejudice to the agreed principles of peacekeeping operations, which are limited in scope, time-bound and consistent with the objectives set out in paragraphs 31 and 32 (e), to arrest and detain in order to maintain basic law and order and fight impunity and to pay particular attention in this regard to those engaging in or providing support for acts that undermine the peace, stability or security of the CAR." United Nations Security Council, "Resolution 2552, adopted by the Security Council at its 8776th meeting," United Nations, 12 November 2020, S/RES/2552.

59. Interview, 16 September 2020.

60. Interview, 16 September 2020.

61. Interviews, 16 and 21 September 2020.

62. United Nations Security Council, "Central African Republic: Report of the Secretary-General," United Nations, 12 October 2020, S/2020/994: para 101.

63. Patrick Vinck, Phuong Pham, Mychelle Balthazard, and Alain-Serge Magbe, "Central African Republic," *Peace, Justice and Security Polls* 5 (2020); Impact Initiatives, "After Years of Violence Bangui is on the Path to Recovery," 30 July 2019, https://www.impact-initiatives.org/what-we-do/news/after-years-of-violence-bangui-is-on-the-path-to-recovery-guided-by-data/.

64. Interview, 4 September 2020.

65. Lise Morjé Howard et al., *Assessing the Effectiveness of the United Nations Integrated Multidimensional Stabilization Mission in the Central African Republic (MINUSCA)* (Oslo: Norwegian Institute of International Affairs, 2020).

66. Internal document [on file with author].

67. With US funding through the UNDP/MINUSCA rule of law programme. Interviews, 4 September and 9 October 2020; Internal document [on file with author].

68. Internal document [on file with author]; Interview, 9 October 2020.

69. Interview, 9 October 2020.

70. Interview, 16 September 2020.

71. Internal document [on file with author].

72. Interviews, 7 October and 16 November 2020.

73. Internal document [on file with author].

74. Lise Morjé Howard et al., *Assessing the Effectiveness of the United Nations Integrated Multidimensional Stabilization Mission in the Central African Republic (MINUSCA)* (Oslo: Norwegian Institute of International Affairs, 2020).

75. In 2012, the United Nations signed two Joint Communiqués to strengthen the prevention and response to CRSV with the Government of CAR and with the Disarmament, Demobilization and Reintegration Steering Committee of CAR. This engagement was renewed in 2019 when a new Joint Communiqué on the prevention and fight against CRSV was signed with the United Nations during the visit of the Special Representative of the Secretary-General on Sexual Violence in Conflict (SRSG-SVC) to CAR in 2019. United Nations Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, "Communiqués," last accessed 6 August 2021, https://www.un.org/sexualviolenceinconflict/digital-library/joint-communiques/.

76. The creation of this unit was one of the main commitments in the Joint Communique on the prevention and protection against conflict-related sexual violence, which the national authorities signed in 2012 with the UN. See, United Nations and Government of the Central African Republic, "Joint Communiqué," 12 December 2012, https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2012/12/joint-communique/with-the-government-of-the-central-african-republic/CAR-Communiques_JC_2012.pdf. A new Joint Communique was signed in May 2019 between the United Nations and the national authorities to strengthen protection, service delivery and accountability for SGBV crimes (see in particular the section on justice, which includes references to legislation, reparation, UMIRR, etc.). See United Nations and Government of the Central African Republic, "Communiqué conjoint," 31 May 2019, https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/05/joint-communique/joint-communique-of-the-central-african-republic-and-the-united-nations-on-prevention-and-response-to-crsv/20190531-Joint-Communique-of-Govt-of-CAR-and-UN.pdf.

77. Interviews, 8 and 14 October 2020.

78. Interview, 8 October 2020; Paige Arthur et al., *Review of the Global Focal Point for Police, Justice, and Corrections* (New York: Center on International Cooperation, Folke Bernadotte Academy, and Norwegian Institute of International Affairs, 2018).

79. Interview, 14 October 2020.

80. Interview, 8 and 14 October 2020.

81. Interview, 8 October 2020; Patrick Vinck, Phuong Pham, Mychelle Balthazard, and Alain-Serge Magbe, "Central African Republic," *Peace, Justice and Security Polls* 5 (2020).

82. United Nations, "Team of Experts on Rule of Law and Sexual Violence in Conflict," 3 May 2020, https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/05/2pager2020SPREAD.pdf.

83. See also paragraphs 20-23 of the Secretary-General's annual report on CRSV: United Nations Security Council, "Conflict-related sexual violence: Report of the Secretary-General," United Nations, 3 June 2020, S/2020/487, https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/06/2019-REPORT-OF-THE-SECRETARY-GENERAL-ON-CRSV-ENGLISH.pdf.

84. Interview, 4 September 2020.

85. Amnesty International, "Central African Republic: Five years later, more efforts to be done to get special criminal court fully operational," 3 June 2020, https://www.amnesty.org/en/latest/news/2020/06/central-african-republic-five-years-later-more-efforts-to-be-done-scc/.

86. Interview, 9 October 2020.

87. Lise Morjé Howard et al., *Assessing the Effectiveness of the United Nations Integrated Multidimensional Stabilization Mission in the Central African Republic (MINUSCA)* (Oslo: Norwegian Institute of International Affairs, 2020).

88. Security Council Report, "February 2019 Monthly Forecast. Central African Republic," 31 January 2019, https://www.securitycouncilreport.org/monthly-forecast/2019-02/central-african-republic.php.

89. Interview, 28 September 2020.

90. Interviews, 9 and 14 October 2020.

91. As of 2018, women made up only 14 per cent of ministers, 8.5 per cent of the National Assembly, 8.3 per cent of the High Court of Justice, 22 per cent of the national Economic and Social Council, 17.3 per cent of the civil service and 9 per cent of prefects and sub-prefects. See, United Nations Security Council, "Letter dated 5 December 2018 from the Permanent Representatives of Peru, Sweden and the United Kingdom of Great Britain and Northern Ireland to the

United Nations addressed to the Secretary-General," United Nations, 6 December 2018, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2018_1087.pdf.

92. Interview 1 October 2020; Lisa Ejelöv and Richard Zajac Sannerholm, *The UN Global Focal Point for Police, Justice and Corrections is at the Crossroads* (Sandöverken: Folke Bernadotte Academy, 2015).

93. Interview, 28 September 2020.

94. Interview, 9 October 2020.

95. UNDP, *Draft country programme document for the Central African Republic (2018-2021)* (New York: UNDP, 2017).

96. Others note that the Special Criminal Court was a specific request of the transitional authorities in CAR, who understood that the massive scale of war crimes and crimes against humanity to which the civilian population had been subject to since 2003, required a comprehensive criminal justice response with appropriate visibility and resources as part of a broader approach to transitional justice in the country and to ultimately reduce the threat of further violence by prosecuting the architects of that violence. They note that the SCC is designed to act in full complementarity with the ICC and with the ordinary courts in CAR and that it is clear, given the complexities and massive scale of the crimes committed in CAR, that solely relying on the ordinary courts in CAR to address such crimes in a manner that that captures the scope and gravity of the suffering of victims would not be sufficient. Donors unlikely would have committed the level of resources that the SCC has been able to mobilize given its unique character and mandate. There is no evidence to suggest that such resources would have been made available to other elements of the national justice sector, bearing in mind that the Court is a national court in any event. Moreover, no other peacekeeping mission has received the level of programmatic funds for judicial support that MINUSCA has, evidencing the catalytic effect of the Court as a vehicle for attracting additional resources, rather than diverting resources from other parts of the justice sector.

97. Interview, 4 September 2020.

98. Interview, 4 September 2020.

99. Interview, 16 November 2020; Asako Okai and Alexandre Zouev, "Rule of law and sustaining peace in times of COVID-19," UNDP, 26 June 2020, https://www.undp.org/content/undp/en/home/blog/2020/conflict-prevention-and-peace-in-times-of-covid-19.html.

100. Interview, 4 September 2020.

101. Interview, 20 November 2020. However, it is important to note that informal mechanisms can be inadequate to address serious international crimes and human rights violations, especially cases of SGBV, including conflict-related sexual violence. See, United Nations, *Handbook for United Nations Field Missions on Preventing and Responding to Conflict-Related Sexual Violence* (New York: United Nations, 2020), https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/06/2020.08-UN-CRSV-Handbook.pdf).

RULE OF LAW

Support to Conflict Prevention and Sustaining Peace in Colombia

by Adam Day,
March 2021
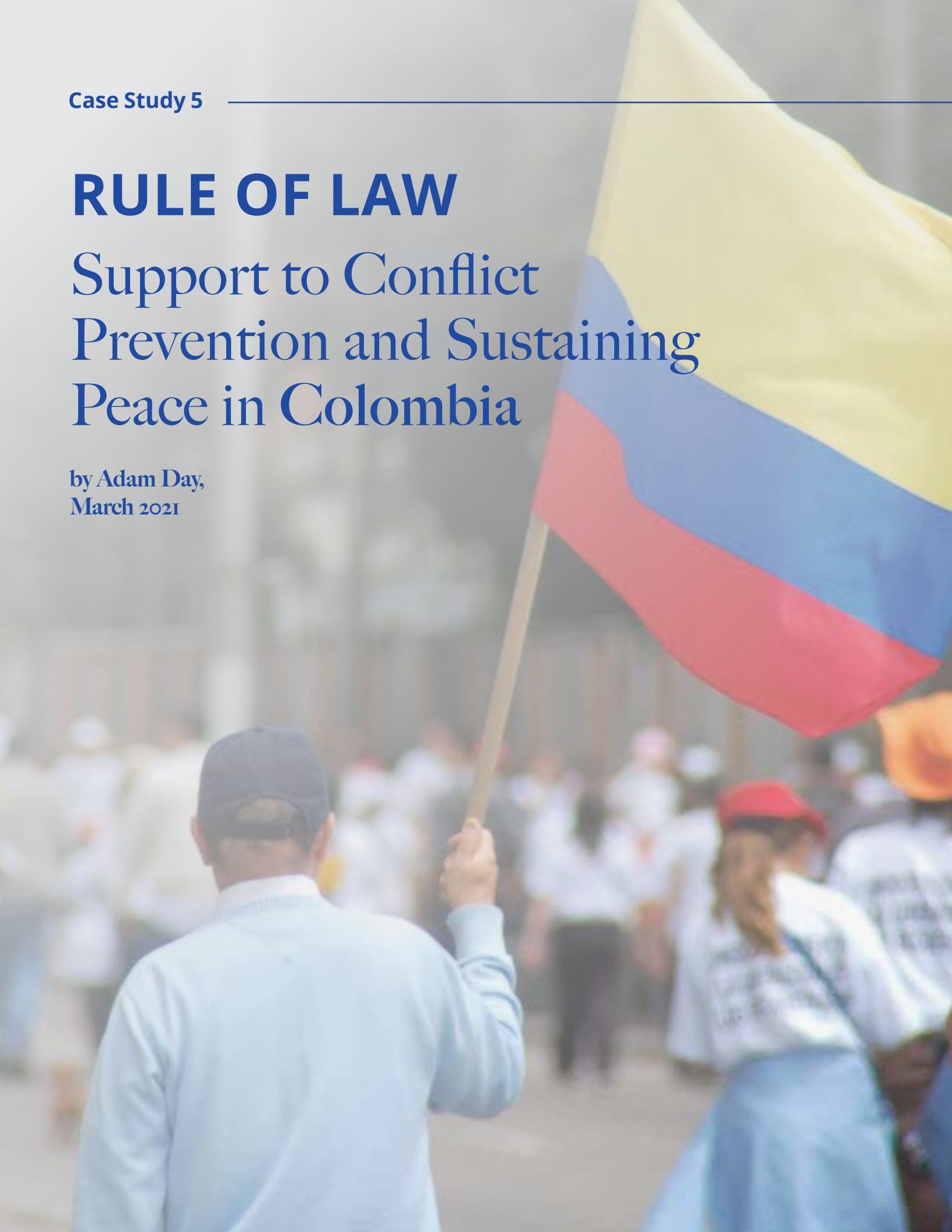
1. Introduction

In November 2016, a peace agreement was signed between the Colombian Government and the Revolutionary Armed Forces of Colombia – People's Army (FARC-EP), ending 50 years of conflict. The agreement resulted from four years of talks in Havana, Cuba, during which the risk of relapse into large-scale conflict remained extremely high. In fact, many of the conflict drivers in Colombia emanated from weak or contested rule of law institutions in rural areas, the dominant role of illicit drug trafficking networks, and deeply rooted disputes over land ownership. Addressing systemic marginalization and using the justice system to give voice to the many victims of the conflict were seen as crucial aspects of the peace process. Though many of the deeper causes of violence were not fully addressed through the peace talks, the 2016 agreement has been widely regarded as a success, putting in place some of the key processes and institutions to move Colombia out of recurrent cycles of violence. Within the first two years after the signing of the agreement, the country saw a significant nationwide decrease in the levels of violence compared to earlier decades, including large reductions in killings, kidnappings, and other indicators of conflict, while a nationally-run transitional justice process emerged as a crucial institution for the Colombian people to move beyond conflict into sustained peace. However, over the course of the last two years as of the time of writing, violence has increased once again and the transitional justice system has come under increasing attack, while managing to continue its work.

This case study examines the UN's rule of law work in Colombia during the four years it supported the peace process (2012-2016) and the first two years of the UN Special Political Mission in Colombia, which oversaw the laying down of arms by the former guerrillas (2016-2017). The principal question guiding this study is: *How have the UN's rule of law interventions contributed to conflict prevention, to a reduction in risks of widespread violence in Colombia?* As such, it aims to provide an assessment of the impact of the UN, identifying good practices, inhibiting and enabling factors, and lessons for the broader UN system.

The study has five sections: (1) a background description of the risk landscape and the endemic shortfalls in State rule of law capacities; (2) an overview of the main rule of law actors in Colombia; (3) an assessment of areas where there is evidence of the UN's impact in terms of conflict prevention; (4) an examination of the enabling and inhibiting factors for the UN's impact; and (5) lessons and recommendations for the broader UN system.

A note on scope and methodology

Rule of law is defined by the UN 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."[1] However, we recognize that other areas of the UN's work may also contribute to the core goals of the UN's rule of law work, including efforts to combat impunity, build accountability, advance transitional justice, limit corruption, and address conflict-related sexual violence, amongst others. This project does not adopt a strict definition of rule of law but is instead largely guided by interviews with experts in a range of field settings, asking them what they consider to be the key rule of law programmes by the UN and its partners.

Regarding the scope of these studies, it is important to highlight that this is not a comprehensive assessment of the UN's work in a given setting. It does not try to capture every rule of law programme, but instead reflects the views of experts about the most impactful, relevant, and effective rule of law interventions in the given timeframe. This expert-driven approach to cases studies is to ensure that they feed meaningful cross-cutting policy recommendations, which is the core purpose of this project.

In terms of methodology, we note that the UN's rule of law work takes place alongside the interventions of a range of actors, including national leaders, bilateral donors, INGOs, and local organizations. While it is our goal to identify evidence of the UN's impact, often the UN is a small player amongst these, supporting and coordinating rather than leading on programming. Given these limited supporting roles and the large number of other intervening factors, it can be difficult to isolate the UN's impact via its rule of law interventions. Rather than speak in direct causal terms about impact, we contextualize the UN's *contribution*, alongside the interventions of others, to the broader goals of risk reduction.[2] Where the precise impact is impossible to ascertain, or where the UN has not generated evidence that directly supports causal findings about impact, we rely on a broad set of expert consultations to help us identify good practice and lessons that could be applied beyond a single country context.[3]

2. Conflict risk landscape

For five decades, the conflict between the FARC-EP, the Colombian Government, other guerrilla groups, and paramilitary organizations has formed part of a broader set of interconnected political and criminal challenges facing the country. The causes of violence can be linked to a range of factors, including the uneven presence of State institutions in the peripheries of the country, historic political and economic marginalization of rural communities, a deep-rooted tradition of community self-defence groups sometimes supported by national political actors, and, beginning in the 1980s, the creation of powerful criminal networks that thrived off the drug trade and strong local support. Recurrent failures of the Government to address political and economic marginalization led to a series of contests over power, from the Liberal/Conservative "Violencia" between 1948-1958 to the subsequent rise of the National Liberation Army (ELN), formally founded in 1964. In the same year, Communist Party-affiliated self-defence groups formed themselves into the Revolutionary Armed Forces of Colombia or FARC (later renamed FARC-EP, for People's Army), which emerged as a powerful platform for articulating land reform demands by some sectors of the rural population.

The conflict between guerrilla groups, including the FARC-EP and a combination of government and right-wing paramilitary groups, continued through the 1980s and 1990s, as the FARC's influence grew through their relationship with burgeoning drug cartel businesses and illicit mining. By the 1990s, the FARC was an established player in the drugs trafficking industry – primarily through its "taxation" of the illicit coca trade, an activity that supported its fight against the State and allowed the group to exercise *de facto* control over significant parts of the rural countryside. Government actors too were linked to drug cartels, reducing public confidence in the State and driving popular resentment. Meanwhile, several paramilitary groups consolidated under the umbrella of the United Self-Defence Forces of Colombia (AUC), making them a powerful force able to confront the State. Levels of violence between and by both parties to the conflict and drug cartels peaked in the 1990s. This culminated in the joint US/Colombia "Plan Colombia" in 2000, a military-led security and counter-narcotics programme targeting coca cultivation and aiming to build State capacity in areas under armed group control.[4]

Between 1998 and 2002, the Pastrana Government attempted a peace process with the FARC, but efforts failed after the FARC used the political and geographic space provided by the negotiations to strengthen their ranks, also abducting a Colombian Senator – an act to which the Government responded with aerial bombardments on guerrilla-held

locations.[5] The collapse of the peace process contributed to a growing popular alignment with hard-line military approaches to the guerrilla groups, helping Alvaro Uribe's right-wing candidacy to succeed to the presidency in 2002. The Uribe Presidency was characterized by aggressive counterinsurgency campaigns and negotiations with paramilitary groups, leading to the demobilization of the AUC. In 2005, the passage of a Justice and Peace law put in place a legislative framework for demobilization and eventual transitional justice mechanisms (used for the later peace process). However, lack of governance in the peripheries of the countryside meant that some AUC units remained active, and other individual paramilitary members rejoined smaller criminal groups that further undermined and/or replaced State authority.[6]

Between 2012 and 2016, the Santos Government and the FARC-EP undertook a formal peace process. Norway and Cuba acted as guarantors in the Havana-based negotiations, while Venezuela and Chile played the role of accompanying States. The talks revolved around an agenda to address rural development, political participation, ending the fighting, combating illicit drugs, protecting the rights of victims, and modalities for verifying and implementing the agreement.[7] After steady progress on many of these issues, in 2014 the FARC-EP declared a unilateral ceasefire, significantly reducing tensions, though allowing the Government to continue to pressure the groups in the field. Amidst widespread scepticism about the FARC-EP's willingness to disarm and strong political opposition to the talks, the peace process remained extremely fragile for many months. However, the likelihood of a final peace deal became apparent once the parties reached an agreement on one of the most crucial issues – the establishment of a transitional justice system – and the eventual agreement on broad terms for a bilateral ceasefire and security guarantees for disarmament.

In mid-2016, the FARC-EP and the Government reached an accord, also agreeing that the UN would deploy a verification mission to oversee the ceasefire and cessation of hostilities.[8] While a national plebiscite initially rejected the peace deal, subsequent negotiations with the political opposition – led by former President Uribe - led to a revised agreement that was ratified by Congress in December 2016. Talks began with the ELN around this time, and led to a temporary ceasefire that the UN Mission was temporarily tasked with verifying.[9] However, the ceasefire ended and talks with the Duque Administration broke down in 2019, and elements of the ELN remain active to this day.

The peace agreement in 2016 triggered a significant decrease in some forms of violence, such as terrorist attacks, kidnappings, and conflict-related killings.[10] In fact, homicide rates had fallen steadily throughout the peace process,[11] reaching an "all-time low" in 2017, while conflict-related violence also dropped notably.[12] Pundits referred to the "Colombian miracle" in which the peace process appeared to catalyze a rapid improvement in security and significant progress towards more democratic institutions, including towards a truth and reconciliation commission.[13]

At the same time, the legacy of conflict created significant risks of relapse into large-scale violence: an estimated 262,000 people were killed and 120,000 went missing during the 50-year conflict, while huge segments of the population endured enforced disappearances, torture, sexual violence, and forced displacement.[14] A 2018 study found that roughly 17 per cent of the Colombian population had suffered human rights violations during the conflict, placing particular urgency on the truth and reconciliation process.[15] And while conflict-related violence dropped dramatically with the onset of the peace talks in 2012, other forms of violence actually began to increase after the 2016 agreement, including the killings of ex-combatants, community leaders, and human rights defenders in conflict areas where illegal armed groups and criminal organizations have competed for control over territory and illicit businesses in the wake of the FARC-EP's departure and the central State's lack of prompt action to extend its presence to fill the vacuum. As such, tensions between the parties and across the Colombian population remained extremely high, and the need for effective conflict prevention and sustaining peace approaches stayed acute throughout the 2012-2018 period.

3. Mapping of actors in Colombia

During both the 2012-2016 peace negotiations and immediately following the 2016 agreement, the UN played a limited, supporting role to the protagonists of the Colombian peace process. As the below diagram demonstrates, the key actors in the peace process were the leadership of the Colombian Government and the FARC-EP. Directly supporting the peace process were the Governments of Cuba and Norway, which acted as guarantors of the process and provided direct support to the parties. The International Committee of the Red Cross (ICRC) played an important role with the parties, including by bringing delegations to Cuba early on. Venezuela and Chile were formally "accompanying" States to the process, also supporting the parties across the areas of negotiation. And the US, which named a delegate to the talks, was considered a crucial player in supporting the overall peace process.

Reflecting its relatively robust public domain, Colombian civil society organizations are extremely strong, including in the area of rule of law. Groups like Dejusticia have been operating for more than 15 years, specifically in the area of strengthening Colombia's rule of law capacities in-country, and are seen as crucial actors in the push for accountability and human rights protections.[16] Additionally, international groups, such as the American Bar Association, have played a significant role in helping to strengthen the rule of law response, build judicial capacity, and protect human rights.[17] In the realm of transitional justice, the International Center for Transitional Justice has maintained a significant programme in Colombia since 2005.

Initially, the UN was a marginal player in the formal peace negotiations. There were no UN officials present in the early talks, and the UN was not formally associated with the Havana process as a guarantor or an accompanying entity. However, as discussed below, the UN's role gradually increased over time as it was able to support public forums and victims' participation in the talks. For example, in December 2014, the UN arranged victims' visits to Havana, during which the group directly spoke to the participants in the peace process. By July 2015, as the FARC-EP and the Colombian Government created a technical subcommission on a ceasefire, the UN was asked to participate directly. And in January 2016, the Security Council mandated a monitoring and verification mission to Colombia, which added a new dimension to the UN's profile in the country.

At the start of the peace process, the UN's presence in Colombia was already the largest in Latin America, with 24 agencies and more than 2,000 UN staff spread across 46 cities and 138 field offices.[18] Of these, the primary rule of law actors within the UN were UNDP, OHCHR, UNODC, and UNICEF, all of which have maintained a longstanding presence in-country. In fact, OHCHR, since the 1990s, has maintained one of its largest field presences in Colombia. And Several

UNDP *Annual Human Development* reports during the 2002-1010 period were widely acknowledged by peace advocates in the country as helping to maintain legitimacy behind the need to address root causes, such as land, at a time when the Colombian Government preferred to frame the conflict in terms of a war on terrorism. Some of the UN's programming prior to the peace process – e.g. UNDP's Programme on Reconciliation and Development (REDES) – had a strong focus on historically marginalized communities and local peacebuilding.[19] Other UN roles, such as the 2002-2010 London-Cartagena Process, created a UN-led framework for dialogue amongst the Government, civil society, and the international community. These programmes, established well before the 2012 peace process, positioned the UN well to support the talks, and indeed to support the post-peace reintegration and reconciliation processes as well.

While the UN's expansive presence in Colombia was generally seen as positively contributing to the peace process, it has at times been perceived as overstepping its role in a country with relatively strong State institutions.[20] Indeed, some Colombians recalled the UN's role in the failed FARC-EP/Government talks in the early 2000s, where a UN envoy attempted to revive the process in a fairly public manner that rankled many in-country.[21] As a result, from the early 2000s until the 2012 peace process, an "unwritten rule" prohibiting the UN from engaging directly with non-State armed groups emerged, which limited the UN's role early on in the 2012-16 peace talks.

FIGURE 1: Timeline of the Peace Process in Colombia

Source: Renata Segura and Delphine Mechoulan, Made in Havana: How Colombia and the FARC Decided to End the War (New York: IPI, 2017).

4. Rule of law impact

This section assesses the extent to which the UN's rule of law interventions may have reduced the risk of escalation into widespread violence, focusing first on the 2012-2016 peace process, and then on the first two years of the UN Verification Mission's presence in Colombia.

It does not attempt to capture the full range of UN programming in-country, but rather relies on the available data and a range of expert interviews to identify the most impactful and relevant work in the rule of law area.

Victim participation in the peace process

At the outset of the peace negotiations in 2012, President Santos designed a fairly closed process without much international involvement, emphasizing that it was to be "a Colombian process for Colombians."[22] To ensure confidentiality in the highly sensitive talks in Havana, the Government initially restricted any form of public participation as well, including by barring Colombian civil society groups. This meant that the UN Country Team was similarly sidelined, without a direct role. However, in mid-2012, a member of Colombia's Congressional Peace Commission proposed that the UN help Congress build up public participation in the Havana process, arguing that lack of participation could undermine public confidence in the outcome.[23] Following agreement by the Government, between 2012 and 2013 UNDP and IOM organized 18 regional roundtable events in nine different regions of Colombia, gathering public input for the peace process agenda. These were widely seen as a success, and the FARC-EP and Government subsequently requested that the UN and the Colombian National University co-host major public forums on the

peace process. Throughout 2013, the UN helped over 12,000 people participate in these public forums, and 3,000 citizens' proposals were conveyed to the negotiating parties in Havana. These consultations not only helped bolster public confidence in the process, but also put important issues in front of the parties, including serious human rights violations by both sides (such as sexual violence, assassinations and forced displacement).[24]

Crucially, the forums also increased confidence in the UN as a positive actor in the peace negotiations, opening the door to one of the UN's most important roles: ensuring victim participation in the talks in Havana. Upon request of the parties in 2014, the UN and the Episcopal Conference of the Catholic Church organized small victims' delegations to travel to Havana and participate directly in the talks. Here, the UN's principal roles were helping to select appropriate victim representatives (a highly controversial process that required the UN to deal with many external pressures) and supporting their travel to Havana. According to one expert, this generated a "radical change" on the part of the FARC-EP

in particular, which had shown little interest in reconciliation processes with victims.[25] In fact, victim participation in Havana directly led to the FARC-EP's first formal act of apology, which took place at the site of one of the worst civilian massacres of the war, Bojayá.[26] A range of experts suggested that this incipient recognition of responsibility for human rights violations, by the FARC-EP but also the Government, played an important role in building confidence in the process and reducing the risk that the negotiations would lapse into conflict.

There is some evidence that UNDP's capacity-building and work directly with the Colombian ministries also helped to bring the justice processes physically closer to the affected populations, many of which lived far from city centres and had little access to institutions. In one study, this resulted in roughly 70 per cent of victims populations being contacted by judicial authorities, which was often accompanied by psychosocial support.[27]

Victim participation not only built confidence but also had a substantive impact, directly shaping the transitional justice components of the peace agreement. In fact, neither side in the negotiations had previously publicly accepted or acknowledged their role in the atrocities of the civil war until the 2014-15 process in which

victim participation contributed to a Victims'/ Transitional Justice Agreement in December 2015.[28] According to the Resident Coordinator at the time, victim participation played a direct and crucial role in unlocking the peace negotiations, which had stalled for several months. "The presence of victims in Havana made it impossible for either side to ignore the fact that atrocities had been committed by all sides," he said. "This was immediately important for moving the parties back to the table and getting them to be serious about the transitional justice provisions of the process. It was also really important back in Colombia in terms of building public confidence."[29]

With the door now open to more direct UN involvement, the UN Country Team and the Resident Coordinator were able to participate formally and directly in the talks, including on key issues related to gender (UN Women), separation of minors from the ranks of the FARC-EP (UNICEF and IOM), addressing the issue of illegal crops (UNODC), and more substantive advice on transitional justice (OHCHR). This participation helped to create a role for the UN in the post-agreement period, as the negotiating parties included in the final peace agreement many of the UN entities that had visited Havana during the talks.[30]

Women's role in the peace process

While women's participation in the negotiations is often reduced to the phrase "victim participation," the role of women was broader and more influential than that. Nonetheless, one of the key initial entry points for including women in the process did arise via the widespread victimization of women by all sides in the conflict. The Inter-American Commission on Human Rights has regularly reported on the distinct and pervasive impacts of the Colombian conflict on women, which exacerbated existing issues of discrimination and marginalization while also creating new vulnerabilities for violence.[31] Women and girls constitute nearly 80 per cent of Colombia's internally displaced population, and are especially vulnerable to the socioeconomic impacts of the war.[32] At the outset of the peace process, women faced deeply rooted, systemic

forms of discrimination, including dramatic underrepresentation in the political sphere, significant income disparities, and far less access to justice than men.[33] One of the most pernicious impacts of the Colombian civil war has been the widespread use of sexual violence by all sides in the conflict. According to Oxfam, the prevalence of sexual violence in over 400 municipalities was around 18 per cent, meaning that over the ten-year period preceding the peace process, nearly 500,000 women were the direct victims of sexual violence.[34]

Initially, women had essentially no role in the peace process and were completely unrepresented by the parties in the opening rounds of talks. However, via its support to the Havana talks, the UN and partners in the

international community were able to gradually encourage greater women's participation. When it co-organized working group consultations in the nine regions of Colombia, the UN ensured that between 40-50 per cent of the participants were women, while UN Women synthesized the recommendations from the consultations and transmitted them to the negotiators in Havana.[35] After the first year of talks, persistent engagement of women in local and regional processes helped to open the negotiations to greater participation. In October 2013, with the support of UN Women and the UN system more broadly, a National Summit of Women for Peace was held in which 450 representatives of women's organizations met in Bogota and articulated three key demands of the peace process: (1) that the parties stay at the table until an agreement was reached; (2) that women be included at every stage of the process; and (3) that women's needs, interests and experiences be considered during the talks.[36] These demands were partially met, as the November 2013 round of talks included two women as plenipotentiaries on the government peace delegation. A few months later, a subcommission on gender was established, helping to feed recommendations related to rural development, political participation, agriculture and other areas into the talks. Indeed, women's participation grew significantly over time: by February 2015, the FARC-EP delegation was made up of more than 40 per cent women, which roughly reflected the FARC-EP composition in Colombia.[37] By the end of 2015, women represented more than half of the delegates in a variety of subcommissions in Havana, including on important issues such as political participation.

Beyond the talks, the UN has contributed to gradual but important progress on gender equality in terms of domestic policy and implementation of the peace agreement.[38] In part as a result of international support and pressure (though it should be acknowledged that domestic organizations played a pivotal role in pressing for gender equality), Colombia has taken significant steps towards better gender parity in the political and economic spheres, while also developing improved institutional capacities to address sexual violence. As of today, Colombia has now ratified all international treaties on human rights and women's rights, has passed domestic legislation on gender equality, has included gender equality in its 2012 Victims and Restitution of Land Law, and passed Law 1257 that sets in place guarantees for equal access to justice.[39] There is also some evidence that the UN's support has contributed to greater Colombian resources dedicated to women's protection and human rights by national authorities, including via a specific set of programmes launched jointly by the UN and the national Government.[40]

Legal advice

While not formally part of its various mandates, UN Country Team members often played an important role in providing legal advice to Colombian authorities, both in the lead up to and after the peace agreement. Some of the interventions included: UN Country Team and the Norwegian Refugee Council collaborating on advice to the Government on the Victim's Law and restitution provisions of the peace agreement; OHCHR-led advice on the transitional justice provisions of the peace process; and the Resident Coordinator's engagement with the Colombian Prosecutor's Office and the International Criminal Court around criminal accountability for human rights abuses.[41]

UN Women also provided legal advice in terms of the transitional justice elements of the peace agreement. Indeed, this advice was not only focused on gender-sensitive approaches to transitional justice but was also intersectional, looking to include the views of women of Afro-Caribbean descent and indigenous communities.[42] When comparing the specific recommendations provided by UN Women and its partners, several appear to have been incorporated into the final agreement, especially around victims' rights and the importance of including the narratives and experiences of women in the process.[43] Moreover, this work resulted in a cooperation agreement between UN Women and the Truth Commission, "baking

in our influence" to the peace process in a more sustainable way.[44]

Several experts suggested that the UN's advice, alongside the support and advice of many other actors, translated into some important accomplishments by the Colombian authorities.[45] Perhaps most relevant was the understanding that the punitive aspects of the peace process (possible prison penalties for human rights abusers) could be balanced with other acts, such as truth-telling, public acknowledgement of wrongs, and forms of community service amounting to reparations for victims that were ultimately positioned at the core of the transitional justice, or "Victims" agreement reached in Havana. "Via our advisory role, we were able to shift the two sides towards less confrontational and more conciliatory forms

of justice," the former Resident Coordinator said. Others agreed, suggesting that the gradual acceptance of less punitive forms of justice helped to keep tensions down during key moments in the talks.

While there is no direct causal link between this engagement and a reduction in conflict risks, several experts suggested that the more holistic, less punitive approach eventually adopted was crucial in building popular confidence in the process, lessening the likelihood that either side would return to violence, and helping to address the broader range of grievances underlying the conflict. One UN expert suggested: "the UN quietly helped to shape the legal framework of the peace process away from the kind of confrontational approach that might have caused a reversion to war."[46]

Transitional justice

The 2016 peace agreement included an ambitious and far-reaching set of transitional justice provisions, addressing the interrelated goals of truth, accountability, and reparations. The so-called Comprehensive System of Truth, Justice, Reparation and Non-Repetition is explicitly designed to prevent a relapse into conflict, including by bolstering the rule of law capacities of the Colombian system to address widespread human rights violations in a holistic manner. In addition to laws establishing criminal accountability for serious human rights violations, the transitional justice provisions of the agreement include support for victims, socioeconomic roles for victimizers (e.g. in de-mining and eradication of illicit crops), and a national-level truth-telling process.[47] Transitional justice is intimately bound up with other areas of national programming as well: for example, part of the restitution process is aimed at forcibly displaced people, providing them with legal avenues toward land ownership.[48]

Given the cross-cutting nature of transitional justice, various UN agencies contribute to it in different ways, alongside other key national and international actors. Based on expert interviews, the most relevant UN actors in this field appear to be OHCHR, UNDP, UN Women,

and the Peacebuilding Fund (PBF), though others certainly contribute as well.

Over the 2012-2018 period, UNDP has provided support to transitional justice through the Transitional Justice Basket Fund, which allows for the provision of support to victims of armed conflict.[49] By the end of 2012, 46,330 people benefited from increased access to justice and reparations. Additionally, 22 municipalities received support to establish transitional justice committees under the provisions of the 'Victim's Reparation and Land Restitution Law', enacted in 2011 by the Santos Administration.[50] This law was an important building block for the peace process as it formally acknowledged the "armed conflict" and therefore the legitimacy of a politically negotiated settlement after years of resistance to this concept by the Colombian Government. As an indication of its significance, the Secretary-General at the time, Ban Ki-moon, visited Colombia to witness the adoption of the Law by the Colombian Congress. Ban Ki-moon also visited Havana for the signing of the Definitive Ceasefire and End of Hostilities Agreement in May 2016 as well as the signing of the Peace Agreement in September 2016.

The PBF has played an important role in supporting the justice elements of the peace

process. Active since 2014, the PBF supported outreach and advocacy for victims' rights, including reparation and restoration measures for victims as required by the peace agreement. Much of the USD 29 million that has been spent since then has gone towards reintegration of former combatants, as well as accelerating the establishment of the Comprehensive System for Truth, Justice, Reparations and Non-Recurrence. These campaigns directly reached more than 32,000 people for an awareness campaign around the peace process, provided reparations for more than 15,600 people (including 7,850 women), and contributed to the Ministry of Labour's decision to spend USD 2.1 million on further reparations measures. This support also contributed to the successful launch of the Truth Commission in 2018.[51] And while it falls outside the time period covered by this study, it is worth noting that the PBF has also taken forward some innovative and potentially impactful work around non-recurrence of sexual violence.[52]

In May 2021, the Security Council expanded the mandate of the United Nations Verification Mission in Colombia to grant it an important role in support of the transitional justice system. As envisioned in the peace agreement, the Mission assumed international verification functions within a system of monitoring and verification of compliance with sentences to be handed down to those convicted of serious human rights crimes by the Special Jurisdiction for Peace, the judicial branch of the Comprehensive System. The Mission's verification applies only to those defendants (former FARC-EP, security force members and third-party civilians) who receive the restorative justice sentences in return for having fully contributed to truth and acknowledged responsibility for atrocities. Third-party UN verification on the ground, in communities where indicted individuals are to carry out works of reparations to victims under the sentences, are intended to spur compliance and build confidence in transitional justice arrangements that are at the heart of the peace agreement and therefore central also to the prevention of relapse into conflict.

While this emerging role involves the UN system more deeply in the transitional justice process, it bears mentioning that the Mission's presence since its establishment has already bolstered political support for this fledgling process amidst continuing political controversy and attacks by sectors who remain averse to the terms of the peace agreement. The Secretary-General's quarterly reports to the Security Council have kept the Council abreast of the evolution of the key transitional justice institutions. The Council's regular statements of support for the institutions and insistence on respect for their independence and autonomy have been widely acknowledged by those entities and their leaders as constituting crucial international backing that strengthens their position.

Reintegration/reincorporation

Colombia has a long history of disarmament, demobilization, and reintegration (DDR) processes dating back to demobilization agreements made with the guerrilla groups in the early 1990s, and more recently to the demobilization of the AUC from 2003 to 2006. The ongoing process through which individuals leaving armed groups can find support in the transition to civilian life is called the reintegration process. A separate – collective - process was established for the FARC-EP who demobilized under the peace agreement, referred to as "reincorporation," reflecting the combination of security measures to protect ex-combatants in the short-term, the socioeconomic dimensions of the process, the creation of a political party for the FARC, and the guarantee of limited representation in Congress agreed in the 2016 peace agreement. Reincorporation also differs from traditional DDR in that the FARC-EP insisted upon collective integration into communities, in an attempt to allow them to maintain much of the space they had occupied in local political spheres.[53] Reincorporation was highlighted by a range of experts as a crucial area that overlapped with the rule of law work of the UN in significant ways. "Reintegration is part and parcel of the UN's rule of law work," one UN official remarked. "It is how the Colombian institutions process individuals from illegal armed groups back into society."[54] In fact, reintegration is explicitly linked to rule of law via the third agenda point of the

FIGURE 2: Implementation levels of the stipulations in point 3 by November 2019
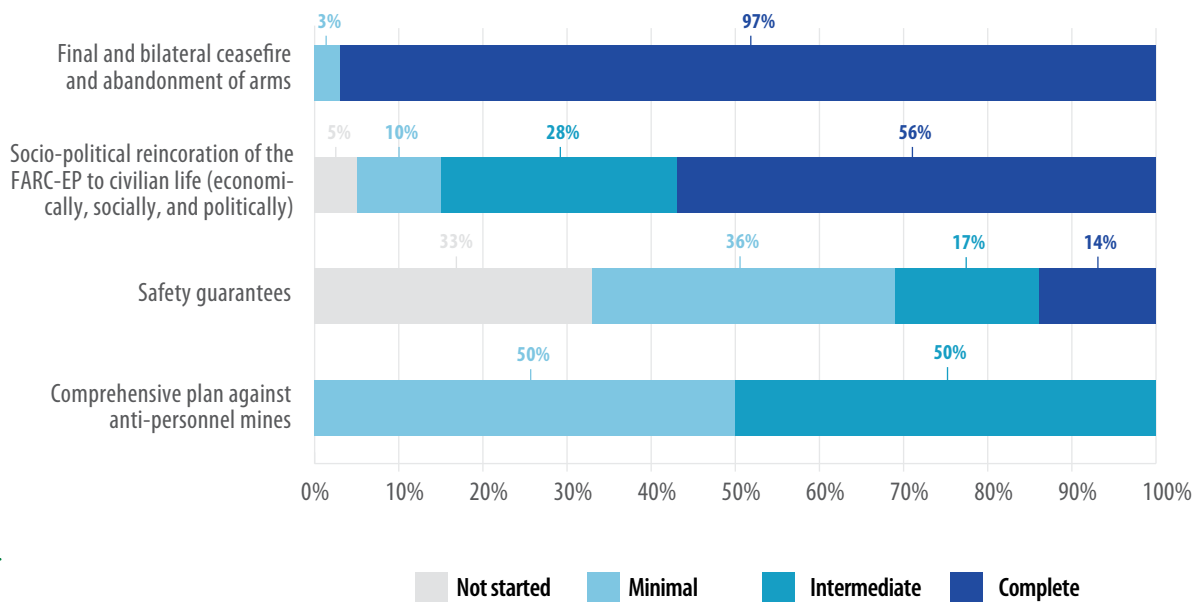
peace agreement, which sees the DDR process as integral to expanding rule of law across the country.[55]

The UN's roles in supporting FARC-EP reincorporation cross several programming areas. The UN Verification Mission was mandated to verify the ceasefire and disarmament (referred to as "laying down of arms") process. After the conclusion of this phase, and as envisioned in the peace agreement, the Mission received a second mandate from the Security Council to report on reincorporation as well as the delivery of security guarantees for former combatants and conflict-affected communities.[56] UNDP and IOM, both with a range of programming in-country, have implemented social reincorporation projects, initiatives to build capacities in reincorporation areas, employment programmes for ex-combatants, and dialogues to improve trust between government and FARC-aligned communities.[57] UNICEF and the Office of the

Special Representative of the Secretary-General for Children and Armed Conflict have supported the reintegration of children from Colombia's armed groups.

There has been progress on reincorporation over the past few years. By the end of 2018, the Office of the High Commissioner for Peace had recognized 13,200 ex-combatants, with 12,940 individuals participating in the reincorporation process.[58] And while progress across the broader range of social and political reincorporation has been uneven (see chart above), the Verification Mission has documented a progressive advance in the establishment of livelihood generating projects for former combatants, the FARC political party (now renamed as "Los Comunes") has actively assumed its representation in Congress and its leadership and the vast majority of former rank-and-file combatants have remained in the reintegration process and committed to the peace process, with only

relatively small numbers having either remained in arms instead of signing the peace agreement or rearmed since. One apparent shortcoming of the reincorporation process up until 2018 was the lack of a dedicated process for the female ex-combatants from FARC-EP. As noted in one study, the understanding of the gendered impacts of participation in the FARC-EP, and indeed the need for tailored responses to reincorporation, does not appear to have permeated beyond the major urban areas of Colombia.[59]

The extent to which reincorporation has reduced the risks of violence is difficult to pinpoint. On one hand, a range of experts suggested that the DDR caseload had clearly reduced the number of individuals involved in armed group activity, and overall the rates of violence remained lower than the periods preceding the peace agreement. Other experts have highlighted the positive aspects of the holistic approach to reincorporation, noting that the work to address socioeconomic and political marginalization demonstrate good practice that should reduce the risks of recidivism and relapse into conflict.[60] However, according to the UN Verification Mission, 2019 experienced an uptick in violence threatening the reincorporation process, with 77 homicides of ex-combatants demonstrating a 19 per cent increase from the previous year.[61] There is also a suggestion that weaknesses in the reincorporation processes can make former combatants more vulnerable to recruitment by illegal armed groups such as FARC-EP dissidents; at the same time, many of those killed since disarming have reportedly been killed resisting such efforts to lure them back into violence. Every expert consulted agreed that the levels of violence would have been worse absent the reincorporation process, though the gradually rising levels of violence are a worrying sign that reincorporation alone is insufficient to address conflict risks.

TABLE 1: Country programme outcomes and budget and expenditures (2015-2019)

Country programme outcome	Budget (USD) 1 February 2018	Expenditures (USD) to 1 February 2018
Growth is inclusive and sustainabe, incorporating productive capacities that create employment and livelihoods for the poor and excluded	109,370,421.58	80,885,305.65
Strengthened institutions to progressively deliver universal access to basic services	87,734,972.25	74,504,795.22
Strengthened national and territorial capacities for the transition to peace (includes early recovery and rapid return to sustainable development)	95,268,365.42	72,036,674.96
Total	**295,373,759.25**	**227,426,775.83**

Source: UNDP Corporate Financing System (Atlas/Piw BI) and UNDP Colombia finance updates

Access to justice

One of the longstanding grievances underlying Colombia's civil war has been the lack of inclusive forms of governance, meaning that the rights and needs of rural populations in particular have been excluded from national political and legal institutions. One of the most acute problems has been access to justice: despite having a highly developed judiciary and one of the highest per capita rates of lawyers in the world, Colombia's justice system has been chronically absent in many rural, agrarian areas, leading to deep trust deficits and greater recourse to either informal justice and/or use of armed groups to resolve differences. Access to justice is particularly challenging for women (especially in rural areas), where large numbers of victims of sexual violence face few prospects of institutional responses by the national authorities.[62]

Assessments of UNDP's work in particular have found that their access to justice programming filled important gaps at the municipal level, improving the capacities of local justice institutions. This work has complemented larger in-country programming by USAID, the EU and others, increasing access to justice in dozens of municipalities between 2012 and 2018. Importantly, there is some evidence that the intensive focus by the UN on gender-based violence – including dozens of trainings for mediators and police inspectors on gender-based crimes – has increased the caseload of sexual crimes in many parts of Colombia.[63]

Local conflict resolution/land

There was widespread agreement that the risks of violent conflict in Colombia were often tied to disputes over land title and use. Indeed, even beyond individual disputes over land, the management of rural areas constitutes a longstanding tension between the two principal parties to the civil war, meaning that efforts to regulate and reduce tension over land will have an outsized impact on the risks of relapse into violence.[64] The UN has worked to reduce those tensions nationally, through land reform, and also at more local levels in terms of helping to resolve conflicts amongst communities. While this is not the main focus of a report focused on rule of law, several experts suggested that the link to the institutional capacities of the State to regulate land were important.

Land restitution was, in fact, an important aspect of the 2016 peace agreement and has been an area where the UN has focused significant support, including by advising the Colombian Government on its national land reform process. In 2019, during a Security Council session, there was widespread agreement that the national reforms around land had played an important role in addressing the impacts of the conflict, though much remained to be done to ensure local access to arable land.[65]

In 2017, a cooperation agreement was signed between UNDP and the Colombian National Land Agency to aid the formulation and implementation of plans for the social management of rural property. Twelve municipalities were subsequently planned out (mainly in the northern part of the country), during which time UNDP also was involved in conflict resolution and the certification of rural properties. While the process is ongoing, up to 13,000 plots are being titled to peasants from rural areas, helping to reduce tensions and alleviate some of the negative consequences of the conflict.

It is also worth noting the particular challenges facing women in terms of land ownership and restitution. Here, the Victims and Land Restitution Law (Law 1448) is trying to return illegally acquired land to its rightful occupants, but in many cases only formalized ownership to those who had already returned to their land. Since traditionally women were not landowners, they were often unaware that they could claim ownership under the new law. In one case, through a UN Women project funded by the Government of Sweden, several communities in south-east Colombia were informed of women's rights to land restitution and subsequently were able to open businesses on newly acquired agricultural plots.[66]

Conclusion

The UN's role in bringing victims and women into the peace process demonstrates unequivocal impact. Not only is there clear evidence that inclusive peace processes in which women play a significant role are more sustainable,[67] but in this case the victim participation was clearly linked to the development of the transitional justice elements of the agreement. A wide range of experts agree that the UN's role helped to make the peace process more inclusive and thus strengthened the overall peace process.

There is also some evidence that the UN's advisory role helped to move the peace process away from more punitive approaches, which could well have derailed the negotiations. The comprehensive approach to accountability, offering non-punitive mechanisms via the transitional justice process, is in part the result of the role of the UN in bringing the parties and victims together and in providing advice at the highest levels.

One of the most important aspects of any peace process is to maintain a sense of forward momentum, and in Colombia this has been especially important in the areas of transitional justice and restitution. Unfortunately, implementation has lagged, but the UN's programmatic and financial support to the transitional justice process does appear to have given tens of thousands of affected people some form of restitution and/or a path towards reincorporation into society, thus reducing the risks that they might resort to violent groups or return to the battlefield.

Here, a worrying trend in recent years has been the uptick in violence, including against former combatants. This does not necessarily indicate a lack of impact by the UN, but could well point to the difficulties the Colombian authorities have faced in reincorporating huge numbers of people in complex settings. Indeed, the peace agreement (even if not totally inclusive of all root causes) constitutes a comprehensive package aimed at bringing development and extending the presence of the State to the marginalized former conflict areas where violence today persists. In this respect, the reincorporation process has been at least a partial success, providing livelihoods to many people who would otherwise have returned to armed group activity, lacking other options.

In the area of land ownership and restitution, the UN's role does seem to have contributed to a larger-scale approach by the national authorities, while UNDP's work to implement some of the national reforms has helped to resolve land ownership in dozens of municipalities. In fact, the Colombia case stands out as one where the UN has dedicated more resources and greater attention to land issues, perhaps reflecting the importance of land tenure as a cause of conflict. But as discussed in the broader policy paper associated with this project, other settings could benefit from the Colombian experience where seeking to address land-based tensions was a priority at both the national and local levels.

5. Enabling and inhibiting factors

The Colombian peace process is largely Colombian-owned, reflecting the relative strength of national institutions, a strong desire by the Government to maintain its sovereignty, and decades of work to build up national capacities. As such, the successes and failures of the process to date are predominantly the result of internal dynamics, with the UN often a supporting actor with a limited role, particularly in the areas of rule of law and transitional justice. Nonetheless, in many respects the UN was able to positively impact the peace process and reduce the risks of relapse into large-scale violence. This section explores the factors that either inhibited or enabled the UN's impact in Colombia.

An incomplete peace

By 2012, the Government and the FARC-EP had reached some form of a mutually hurting stalemate where both appeared to see negotiations as the most viable path forward. This does not mean that the risks of violence remained low throughout the peace talks. In fact, while the indices of conflict-related violence between the Government and the FARC-EP dropped from 2012 onwards, the ELN and other guerrilla groups remained active and killings of human rights defenders and land activists in fact rose during the 2012-2017 period, while other forms of violence (e.g. criminal and/or drug-related, as well as sexual violence) continued relatively unchecked.[68] By 2019, the UN was warning of rises in other forms of violence as well, including homicides and the assassinations/disappearances of increasing numbers of former FARC-EP combatants in particular.[69] New and previously existing armed groups were also actively seeking to replace the FARC-EP in areas in which it had left a gap after years of authoritative presence. This presented several challenges to the UN and its partners: with popular confidence in the peace talks quite low at the time and tensions over land ownership still extremely high, there was a risk that the negotiations would fail to address the more deeply rooted grievances underlying the conflict. Here, the efforts of the UN to advocate for inclusive, comprehensive approaches to the Havana negotiations were very important, including its push for greater women's participation in the talks.

Here, the UN's shifting mandate may have helped its impact. The first Mission's role in verifying the final ceasefire and certifying the laying down of arms of the FARC-EP was an essential confidence-building measure in the transition from the end of conflict to early implementation. The subsequent mandate of the Verification Mission, beginning in September 2017, to monitor and report on implementation of the various mechanisms in the peace agreement to provide security to former combatants and conflict-affected

communities has given the UN a very concrete platform to focus attention on weaknesses in implementation and to press for more effective State responses. Its presence and reporting on these matters to the Security Council is seen by the former FARC-EP and civil society activists as an important point of leverage for implementation. OHCHR's reporting on the human rights situation in the former conflict areas has also focused on these emerging patterns of violence and reinforced calls for full implementation of the relevant provisions of the peace agreement.

Trust levels

The decades-long conflict led to deeply rooted mistrust between the political groupings in Colombia, animosity that was not easily shaken off even after the intensive negotiations in Havana. And while the 2016 agreement was laudable in its ambition to address all major contested areas between the parties, this also created a set of challenges in terms of implementation. For its part, the Government has accused the FARC-EP of failing to live up to its commitments regarding the location of landmines and the handover of its assets, arguing that this has undermined the peace process. In response, the FARC-EP has denounced continued killings of its members and criticized the Government for prioritizing disarmament and demobilization over the broader implementation of the peace agreement.[70] This atmosphere of mutual distrust has presented challenges, but also an opportunity for the UN to play a more direct role in dispute resolution. As laid out in the 2016 agreement, a Commission for the Follow-up, Promotion and Verification of the Implementation of the Final Agreement was created. This allowed for technical working groups to resolve outstanding issues with the UN's support, such as the 2018 process to address the controversial demining process. However, the Commission is underutilized by the parties to the agreement, which may continue to limit its impact for some time to come.

Collective approaches to reincorporation

The 2016 peace agreement articulates a holistic and ambitious approach to the reincorporation of the FARC-EP, including at the social, economic, and political levels. In this context, the FARC-EP pushed to be reincorporated collectively, maintaining a high degree of cohesion and helping to maintain some of the local spheres of power they had established during the war.[71] This approach has a number of benefits, principally that the reincorporation process should in principle address the full gamut of the FARC-EP's demands for more control over rural development, economic livelihoods for its members, and representation in the Colombian political process. However, after several years of stalled and incomplete implementation, the shortcomings are also becoming evident: lack of progress in one area can quickly infect other areas, leading to increased tensions between the sides. Over the long term, the challenge identified by the Verification Mission will be that of providing land to cooperatives and extending reintegration projects, services and security, to a majority of former combatants who have migrated away from official reintegration areas.

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A limited mandate

There were different views about the ways in which the UN's mandate may have enabled or inhibited its impact in Colombia. While the UN Country Team and the peace operation have a large and vibrant presence across Colombia, some experts suggested the mandate in the rule of law area is relatively constrained. The Mission has no formal role in supporting the rule of law institutions of Colombia, while the UN Country Team has relatively limited programmes falling directly under rule of law. As described above, UNDP's inclusive governance programming has allowed for it to direct significant resources towards traditional rule of law institutions, and the UN's support to the transitional justice process in particular reflects some important

work on rule of law. However, several experts suggested that there was a mismatch between the rule of law needs facing Colombia (particularly in rural areas with little institutional capacities) and the mandates provided by the UN to date. This imbalance reflects the sophistication of the Colombian legal system and the strong desire amongst the leadership of the country to maintain sovereign control over its institutions. But it also places a real impediment on the UN in terms of more ambitious rule of law engagement, despite the worrying signs that many of the key trends around violence may be moving in the wrong direction. It should be noted that there is very little appetite within Colombia's leadership for a larger rule of law mandate.

The UN's Verification Mission's mandate is explicitly outlined in the 2016 peace agreement. The agreement specifically states that the Government will request the deployment of a political mission comprised of, *inter alia,* unarmed observers from the region, and specifies the three tasks that the Mission should implement. The Mission's mandate to verify implementation of wide-ranging provisions of the peace agreement that oblige the Colombian State institutions to provide security for ex-combatants and, more broadly, conflict-affected communities, is an important lever for encouraging progress with the backing of the Security Council. This puts the Mission into constant interaction with institutions set up under the peace agreement and existing national entities such as the Attorney General's Office and the Human Rights Ombudsman. A new mandate will involve the Mission in the verification of compliance with the sentences of the Special Jurisdiction for Peace. OHCHR has one of its largest field operations in the world in Colombia.

Territorial reach

One of the most challenging aspects of the Colombian context is the size and relative inaccessibility of much of the country. Particularly given the strong rural/urban dimension to the conflict, and the longstanding grievances of the rural population against the central Government, the need for improved institutional capacities in the peripheries of the country was especially acute. Here, the UN's territorial reach proved an important enabling factor in delivering rule of law and related programming. For example, UNDP maintained 11 local offices around the country, with programmatic activities in 25 of the 32 departmental areas identified by the Government.[72] Similarly, the UN Verification Mission currently has 1 regional and 20 local offices around the country, deploying hundreds of staff who take a proactive approach to verification by working through outreach to ex-combatants, communities and local authorities. According to many experts, this reach enabled the UN to play a more direct role in local conflict resolution, access to justice, and implementation of the peace agreement.

Coherence

Field-based experts highlighted the very good coordination and coherence amongst the key agencies in Colombia as important for the success in their support to the peace process. Here, the role of the Resident Coordinator was pivotal, especially during the 2012-2015 period. By demanding that the entire UN Country Team focus its work on supporting the peace process, the Resident Coordinator catalysed a shift where the bulk of the UN Country Team's programming was oriented in a single direction. This helped the UN leverage three key comparative strengths: (1) its many field offices, especially in rural areas where populations were less aware of the peace process; (2) its significant resources, including large programming in the areas of development, land, and access to justice; and (3) the UN's global expertise on issues of conflict prevention, transitional justice, and peace processes.[73] The Resident Coordinator "took us from a bunch of agencies doing our own thing to a single UN more or less prioritizing the peace process across the board," one UN official noted.[74] Complementarity with the UN Country Team is also part of the mandate of the Verification Mission, which, though not an integrated mission, works particularly closely with agencies, funds and programmes in its work on the reintegration of former combatants.

6. Lessons and recommendations

Drawing from the above analysis, this section provides some broader lessons and recommendations that can be applied across the UN system.

- **Build off small entry points.** The Colombia experience illustrates how innovative approaches to peace processes can build a UN role over time. In 2012, the UN had essentially no entry points into the peace negotiations and had been intentionally sidelined along with most of the international community. However, by gradually showing value in supporting a more inclusive set of negotiations in Havana, the UN gradually took on a more direct and influential role that also positioned it well to support implementation of the agreement from 2016 onwards.

- **Women's participation has substantive impacts.** Much of the scholarship on women's participation in peace processes suggests that it increases the longevity of agreements and tends to lead to more stable agreements.[75] The Colombia case supports such a finding, but also indicates that greater participation of women can strongly impact the substance of the agreements as well. According to several experts, as the role of women increased in Havana, this shaped the terms of the transitional justice provisions of the agreement, transforming them into a far more viable set of commitments than previously.

- **Orient the UN Country Team around peace.** One of the key accomplishments of the 2012-2016 period was the relative coherence of the UN Country Team around the goal of supporting the peace process. This constituted a significant shift from earlier periods, during which the UN Country Team programming was disparate and more focused on responding to the impacts of war. This singular focus appeared to give greater clarity and purpose to the UN Country Team, resulting in more coordinated and effective programming. It also meant that when the peace agreement was signed in 2016, the UN Country Team was well-positioned to support it.

- **Build tailored, linked presences in the peripheries.** As described above, the territorial reach of the UN in the large, inaccessible terrain of Colombia was a key enabling factor. However, as other UN assessments have noted, there was often a lack of tailoring in some of these offices, and resources and knowledge were not easily transferred across them. Especially in countries like Colombia with highly differentiated capacities in

various rural locales, UN offices should be carefully tailored with specific locations in mind. Furthermore, these offices should be connected more systematically, allowing for transfers for resources and knowledge where it can be most impactful.[76]

- **Account for interlinked forms of violence.** The signing of the peace agreement in 2016 catalysed a dramatic drop in violence. However, during the 2012-2018 period, other forms of violence have crept up, including targeted killings of ex-combatants, social leaders, and human rights defenders. Such violence poses a direct threat to the peace process, increases tensions and undermines public confidence in the agreement; indeed criminal violence also undermines State authority and may cause individuals to return to armed groups to protect themselves and their communities.

- **Focus on land.** Colombia stands out as one of the few cases where the UN has prioritized land ownership and restitution as part of its conflict resolution approach. Legal ownership of land and addressing broader socioeconomic disparities through national land legislation was cited as one of the most important factors in whether Colombia would lapse back into conflict or continue on its path to peace. As noted in several of the other case studies in this project, greater focus and capacities on land appear to pay peace dividends. Indeed, one particular area of additional focus might be on informing women of their rights under newly passed land laws: as the above analysis illustrates, women may not be aware of their ability to own land under provisions like the Land Law of Colombia, and information campaigns can have a significant impact.

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References

1. United Nations Security Council, "The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General," United Nations, 23 August 2004, S/2004/616.

2. This approach of contribution rather than direct attribution is laid out in Adam Day, *Assessment Framework for Preventive Diplomacy: An Approach for UN Mediators and Policymakers* (Tokyo: United Nations University Centre for Policy Research, 2018); see also, United Nations Department of Political and Peacebuilding Affairs, *Three-Year Strategic Plan: 2020-2022* (New York: UNDPPA, 2020), https://dppa.un.org/sites/default/files/undppa_strategic_plan_2020-2022.pdf.

3. This is often referred to as an "adaptive" form of impact assessments. See, Ian Wadley, *Valuing Peace: Delivering and Demonstrating Mediation Results* (Geneva: HD Centre, 2017).

4. John De Boer et al., *Criminal Agendas and Peace Negotiations: The Case of Colombia* (Tokyo: United Nations University Centre for Policy Research, 2017) https://cpr.unu.edu/criminal-agendas-and-peace-negotiations-the-case-ofcolombia.html.

5. Roddy Brett, "Colombia Case Study," *Securing and Sustaining Elite Bargains that Reduce Violent Conflict* ed. Christine Cheng et al. (London: UK Government Stabilisation Unit, 2018).

6. John De Boer et al., *Criminal Agendas and Peace Negotiations: The Case of Colombia* (Tokyo: United Nations University Centre for Policy Research, 2017), https://cpr.unu.edu/criminal-agendas-and-peace-negotiations-the-case-ofcolombia.html.

7. International Crisis Group, "Colombia: Peace at Last?," *Latin America Report* 45 (2012).

8. UN Verification Mission in Colombia, "Mandate: The mandate of the UN Verification Mission is set out in a Security Council Resolution," last accessed 6 August 2021, https://colombia.unmissions.org/en/mandate.

9. United Nations Security Council, "Resolution 2381, adopted by the Security Council at its 8063rd meeting," United Nations, 6 October 2017, S/RES/2381.

10. UN interviews, February 2021.

11. Macrotrends, "Colombia Crime Rate & Statistics 1990-2021," last accessed 6 August 2021, https://www.macrotrends.net/countries/COL/colombia-crime-rate-statistics.

12. Hernando Gómez Buendía, "Colombia: ¿seguirá el asesinato de los líderes políticos?," *Razonpublica*, 7 March 2018, https://razonpublica.com/colombia-seguira-el-asesinato-de-los-lideres-politicos/.

13. Atlantic Council Adrienne Arsht Latin America Center, *Path to Peace and Prosperity: The Colombian Miracle* (Washington DC: Atlantic Council, 2015), https://publications.atlanticcouncil.org/colombia-miracle/.

14. Center for Justice & Accountability, "Colombia," last accessed 6 August 2021, https://cja.org/where-we-work/colombia/; "Civilian casualties of Colombia's armed conflict," *Colombia Reports*, 20 July 2019, https://colombiareports.com/civilians-killed-armed-conflict/.

15. Nyasha Laing, "Colombia's Truth Commission Prepares to Embark on the Extraterritorial Truth-Telling Process," ICTJ, 22 August 2018, https://www.ictj.org/news/colombia%E2%80%99s-truth-commission-prepares-embark-extraterritorial-truth-telling-process.

16. Dejusticia, "About Us," last accessed 6 August 2021, https://www.dejusticia.org/en/about/.

17. American Bar Association, "Colombia," last accessed 6 August 2021, https://www.americanbar.org/advocacy/rule_of_law/where_we_work/latin_america_caribbean/colombia/.

18. Government of Colombia and the United Nations, "Marco de Asistencia de las Naciones Unidas para el Desarrollo en Colombia 2015-2019," 2015.

19. Roddy Brett, *Lessons Learned Paper: Local-Level Peacebuilding in Colombia* (Bogotá: UNDP, 2016): 42, www.co.undp.org/content/dam/colombia/docs/Paz/undp-co-peacebuilding-2016.pdf.

20. See, Renata Segura and Delphine Mechoulan, *Made in Havana: How Colombia and the FARC Decided to End the War* (New York: International Peace Institute, 2017), https://www.ipinst.org/2017/02/how-colombia-and-the-farc-ended-the-war.

21. Cale Salih, "Colombia 2012-16," *What Works in UN Resident Coordinator-led Conflict Prevention: Lessons from the Field* ed. Sebastian von Einsiedel (Tokyo: United Nations University Centre for Policy Research, 2018), https://i.unu.edu/media/cpr.unu.edu/attachment/2849/RC-Project-Colombia.pdf.

22. P. Terrence Hopmann and I. William Zartman (eds.), "Colombia: Understanding Conflict 2015," Conflict Management Program Field Trip report of 15-25 January 2015, https://sais.jhu.edu/sites/default/files/2015%20Colombia%20Report%2030%20March.pdf.

23. International Crisis Group, "Appendix B: General Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace," *Latin America Report* 45 (2012), https://peacemaker.un.org/sites/peacemaker.un.org/files/CO_120826_General%20Agreement%20for%20the%20Termination%20of%20the%20Conflict.pdf (indicating

that the parties could delegate to a third party the organization of public participation).

24. Some key background documents used for this issue include: Harvey Danilo Suárez Morales, *Programa de fortalicimiento de la justicia en Colombia* (Bogotá: UNDP, 2012); Fondo de Justicia Transicional, UNDP, Defensoria del Pueblo Colombia and Fiscalia, *Acceso a la Justicia: Participación efectiva de las víctimas en etapas procesales de la Ley de Justicia y Paz* (Bogotá: Fondo de Justicia Transicional, 2011); Fondo de Justicia Transicional, *Rol de Ministerio Público en el Sistema Nacional de Atención y Reparación Integral a Víctimas del Conflicto* (Bogotá, Fondo de Justicia Transicional, 2013); Fondo de Justicia Transicional and UNDP, *Accesso integral y efectivo a la justiciar: Sistematización y análisis de los proyectors del FJT/PNUD relacionados con la Ley de Justicia y Pas* (Bogotá: UNDP and Fondo de Justicia Transicional, 2015).

25. Renata Segura and Delphine Mechoulan, *Made in Havana: How Colombia and the FARC Decided to End the War* (New York: International Peace Institute, 2017), https://www.ipinst.org/2017/02/how-colombia-and-the-farc-ended-the-war.

26. Cale Salih, "Colombia 2012-16," *What Works in UN Resident Coordinator-led Conflict Prevention: Lessons from the Field* ed. Sebastian von Einsiedel (Tokyo: United Nations University Centre for Policy Research, 2018).

27. Fondo de Justicia Transicional and UNDP, *Accesso integral y efectivo a la justiciar: Sistematización y análisis de los proyectors del FJT/PNUD relacionados con la Ley de Justicia y Pas* (Bogotá: UNDP and Fondo de Justicia Transicional, 2015).

28. Roddy Brett, *Lessons Learned Paper: Local-Level Peacebuilding in Colombia* (Bogotá: UNDP, 2016): 42, www.co.undp.org/content/dam/colombia/docs/Paz/undp-co-peacebuilding-2016.pdf.

29. Interview, 21 January 2021.

30. Cale Salih, "Colombia 2012-16," *What Works in UN Resident Coordinator-led Conflict Prevention: Lessons from the Field* ed. Sebastian von Einsiedel (Tokyo: United Nations University Centre for Policy Research, 2018).

31. Inter-American Commission on Human Rights, "Violence and Discrimination Against Women in Armed Conflict in Colombia," 18 October 2006, http://www.cidh.oas.org/women/colombia06eng/part2co.htm; See also, UNDP and Fondo de Justicia Transicional, Procuradoria General de la Nación de Colombia, *Evaluación y seguimiento a las políticas públicas y programas de atención integral, prevención, promoción y protección de los derechos de las mujeres víctimas de la violencia sexual en el marco del conflict*

armado Colombiano (Bogotá: UNDP and Fondo de Justicia Transicional, 2012).

32. Virginia Bouvier, *Gender and the Role of Women in Colombia's Peace Process* (New York: UN Women and USIP, 2016), https://www.unwomen.org/en/digital-library/publications/2017/2/gender-and-the-role-of-women-in-colombias-peace-process.

33. Martha Lucía Sánchez Segura, "Colombia Case Study," Gender Equality and Women's Empowerment in Public Administration (New York: UNDP, 2012), https://www.undp.org/content/dam/undp/library/Democratic%20Governance/Women-s%20Empowerment/ColombiaFinal%20-%20HiRes.pdf.

34. Cited in Martha Lucía Sánchez Segura, "Colombia Case Study," Gender Equality and Women's Empowerment in Public Administration (New York: UNDP, 2012).

35. See, Balance, "Números finales de participación en los Foros de Víctima" [on file with author].

36. Virginia Bouvier, *Gender and the Role of Women in Colombia's Peace Process* (New York: UN Women and USIP, 2016).

37. Ibid.

38. UN Verification Mission in Colombia and UN DPPA, "Executive Summary," *From words to actions: The experience of the UN Special Political Missions in Colombia on women, peace and security (2016-2020)* (New York: DPPA, 2020), https://peacemaker.un.org/sites/peacemaker.un.org/files/Colombia%20Study%20-%20Summary%20report.pdf.

39. Lessons UN Women, "Status of Women's rights in Colombia," last accessed 6 August 2021, https://lac.unwomen.org/en/donde-estamos/colombia.

40. See, Ministro del Interior et al., *Guía para la Incorporación del Enfoque de Género en la formulación o actualización de los Planes Integrales de Prevención y Protección de Derechos Humanos* (Bogotá: Ministro del Interior, Fondo de Justicia Transicional, UNDP and Todos Por un Nuevo País, 2015).

41. Interview, 21 January 2021.

42. Henri Myrttinen and Nicola Popovic, *'We Were Like Cages Birds, This Gave Us Wings to Fly': A Review of UN Women Programming on Gender-sensitive Transitional Justice* (New York: UN Women, 2019), https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2019/a-review-of-un-women-programming-on-gender-sensitive-transitional-justice-en.pdf?la=en&vs=5205. See also, UN Women et al., *Recomendaciones para la incorporación del Enfoque de Género en la futura comisión para el esclarecimiento de la*

verdad, la convivencia y la no repetición (Bogotá: UN Women, 2017) https://www2.unwomen.org/-/media/field%20office%20colombia/documentos/publicaciones/2017/09/docpaz_resumen_web.pdf?la=es&vs=4755.

43. See, UN Women et al., *Recomendaciones para la incorporación del Enfoque de Género en la futura comisión para el esclarecimiento de la verdad, la convivencia y la no repetición* (Bogotá: UN Women, 2017) https://www2.unwomen.org/-/media/field%20office%20colombia/documentos/publicaciones/2017/09/docpaz_resumen_web.pdf?la=es&vs=4755.

44. Quote from interview. See also, UN Women, "ONU Mujeres firma acuerdo de cooperación con la Comisión de la Verdad," 23 October 2018, https://colombia.unwomen.org/es/noticias-y-eventos/articulos/2018/10/cev.

45. For a good description of this, see, Priscilla Hayner, *The Peacemaker's Paradox: Pursuing Justice in the Shadow of Conflict* (London: Routledge, 2018)

46. Interview, January 2021.

47. See, Fabio Andrés Díaz Pabón, "Transitional Justice and the 'Colombian Peace Process," *Truth, Justice and Reconciliation in Colombia* (London: Routledge, 2018) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3192485.

48. Cristián Correa, From Principles to Practice: Challenges of Implementing Reparations for Massive Violations in Colombia (New York: International Center for Transitional Justice, 2015), https://www.ictj.org/sites/default/files/ICTJ_Report_ColombiaReparationsChallenges_2015.pdf.

49. NB, this built on previous UNDP-administered funds, which are described here: UNDP, *El Fondo de Justicia Transicional En Colombia: Programas de Promocion de la Convivencia de Fortalecimiento a la Justicia* (Bogotá: : UNDP, 2014), (https://info.undp.org/docs/pdc/Documents/COL/Sistematizaci%C3%B3n%20y%20lecciones%20aprendidas%20del%20Fondo%20de%20Justicia%20Transicional.pdf.

50. UNDP, *Strengthening the Rule of Law in Crisis-Affected and Fragile Situations: Global Programme Annual Report 2012* (New York: UNDP, 2013)

51. United Nations Peacebuilding, "The Secretary-General's Peacebuilding Fund: Colombia," 6 February 2020, https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/colombia.pdf.

52. UNDP, "Territorial model for non-repetition guarantees and citizen empowerment of youth and women victims of sexual violence and forced disappearance during the armed conflict," last accessed 6 August 2021, http://mptf.undp.org/factsheet/project/00113215.

53. Renata Segura and Sabrina Stein, *The FARC's Collective Reincorporation Project: It's Impact on Colombia's DDR* (New York: SSRC, 2019), https://s3.amazonaws.com/ssrc-cdn1/crmuploads/new_publication_3/the-farc-s-collective-reincorporation-project-its-impact-on-colombia-s-ddr.pdf, https://s3.amazonaws.com/ssrc-cdn1/crmuploads/new_publication_3/the-farc-s-collective-reincorporation-project-its-impact-on-colombia-s-ddr.pdf; Maria Atuesta, "Colombia's Peace Experiment: 'Collective Reincorporation'," United States Institute of Peace, 11 February 2019, https://www.usip.org/blog/2019/02/colombias-peace-experiment-collective-reincorporation.

54. Interview, January 2021.

55. Roddy Brett, "Colombia Case Study," *Securing and Sustaining Elite Bargains that Reduce Violent Conflict* ed. Christine Cheng et al. (London: UK Government Stabilisation Unit, 2018): 19.

56. See, e.g. S/2018/874; see also, UN internal document,m "Guía para diligenciar la plantilla de formulación de proyectos productivos de personas en proceso de reincorporación y sus familias" [on file with autor].

57. UNDP Independent Evaluation Office, *Independent Country Programme Evaluation: Colombia* (New York: UNDP, 2019).

58. Hannah Heinzekehr, *Point by Point: The Status of Peace Agreement Implementation in Colombia* (Note Dame: Kroc Institute and Keough School of Global Affairs, 2020), http://peaceaccords.nd.edu/wp-content/uploads/2020/09/Report-4-Point-by-Point.pdf.

59. Alexandra Amling, The Missing Peace: Gender Considerations in Colombia's Reintegration Efforts (Broomfield, CO: One Earth Future, 2019).

60. See, e.g. Adriana Erthal Abdenur, "Ex-Combatant Reincorporation and Conflict Prevention: Notes from Colombia," Igarapé Institute, 13 December 2017, https://igarape.org.br/en/ex-combatant-reincorporation-and-conflict-prevention/.

61. Hannah Heinzekehr, *Point by Point: The Status of Peace Agreement Implementation in Colombia* (Note Dame: Kroc Institute and Keough School of Global Affairs, 2020), http://peaceaccords.nd.edu/wp-content/uploads/2020/09/Report-4-Point-by-Point.pdf.

62. OECD, "Access to justice for women victims of violence in Colombia," Gender Equality in Colombia, Access to Justice and Politics at the Local Level (Paris: OECD, 2020).

63. UNDP Independent Evaluation Office, *Independent Country Programme Evaluation: Colombia* (New York: UNDP, 2019).

64. United States Institute of Peace, "Land, Conflict, and Peace in Colombia: An Interview with USIP's Virginia Bouvier," 10 April 2013, https://www.usip.org/publications/2013/04/land-conflict-and-peace-colombia; Kate Wheeling, "How Conflict Influenced Land Use in Colombia," *EOS*, 20 November 2019, https://eos.org/articles/how-conflict-influenced-land-use-in-colombia.

65. United Nations Security Council, "Colombia's Peace-Consolidation Efforts Need Firm Support as Former Guerrillas Plan to Take Up Arms Again, Special Representative Tells Security Council," 10 October 2019, SC/13982, https://www.un.org/press/en/2019/sc13982.doc.htm.

66. UN Women, "In Colombia, peace is a journey," 18 October 2019, https://www.unwomen.org/en/news/stories/2019/10/feature-in-colombia-peace-is-a-journey.

67. See, e.g. Marie O'Reilly et al., *Reimagining Peacemaking: Women's Roles in Peace Processes* (New York: International Peace Institute, 2015); https://www.cfr.org/womens-participation-in-peace-processes/; Maxwell Adjei, "Women's participation in peace processes: a review of literature," *Journal of Peace Education* 16, 2 (2019).

68. Roddy Brett, "Colombia Case Study," *Securing and Sustaining Elite Bargains that Reduce Violent Conflict* eds. Christine Cheng et al. (London: UK Government Stabilisation Unit, 2018).

69. United Nations Security Council, "United Nations Verification Mission in Colombia: Report of the Secretary-General," United Nations, 1 October 2019, S/2019/780: para 51.

70. United Nations Security Council, "United Nations Verification Mission in Colombia: Report of the Secretary-General," United Nations, 1 October 2019, S/2019/780: para 10.

71. Renata Segura and Sabrina Stein, *The FARC's Collective Reincorporation Project: It's Impact on Colombia's DDR* (New York: SSRC, 2019), https://s3.amazonaws.com/ssrc-cdn1/crmuploads/new_publication_3/the-farc-s-collective-reincorporation-project-its-impact-on-colombia-s-ddr.pdf.

72. UNDP Independent Evaluation Office, Independent Country Programme Evaluation: Colombia (New York: UNDP, 2019).

73. Cale Salih, "Colombia 2012-16," *What Works in UN Resident Coordinator-led Conflict Prevention: Lessons from the Field* ed. Sebastian von Einsiedel (Tokyo: United Nations University Centre for Policy Research, 2018), https://i.unu.edu/media/cpr.unu.edu/attachment/2849/RC-Project-Colombia.pdf.

74. Interview, January 2021.

75. See, e.g. United Nations Security Council, "Women and peace and security: Report of the Secretary-General," United Nations, 25 September 2020, S/2020/946.

76. UNDP Independent Evaluation Office, *Independent Country Programme Evaluation: Colombia* (New York: UNDP, 2019).

RULE OF LAW

Support to Conflict Prevention and Sustaining Peace in the Democratic Republic of the Congo

by Adam Day,
March 2021
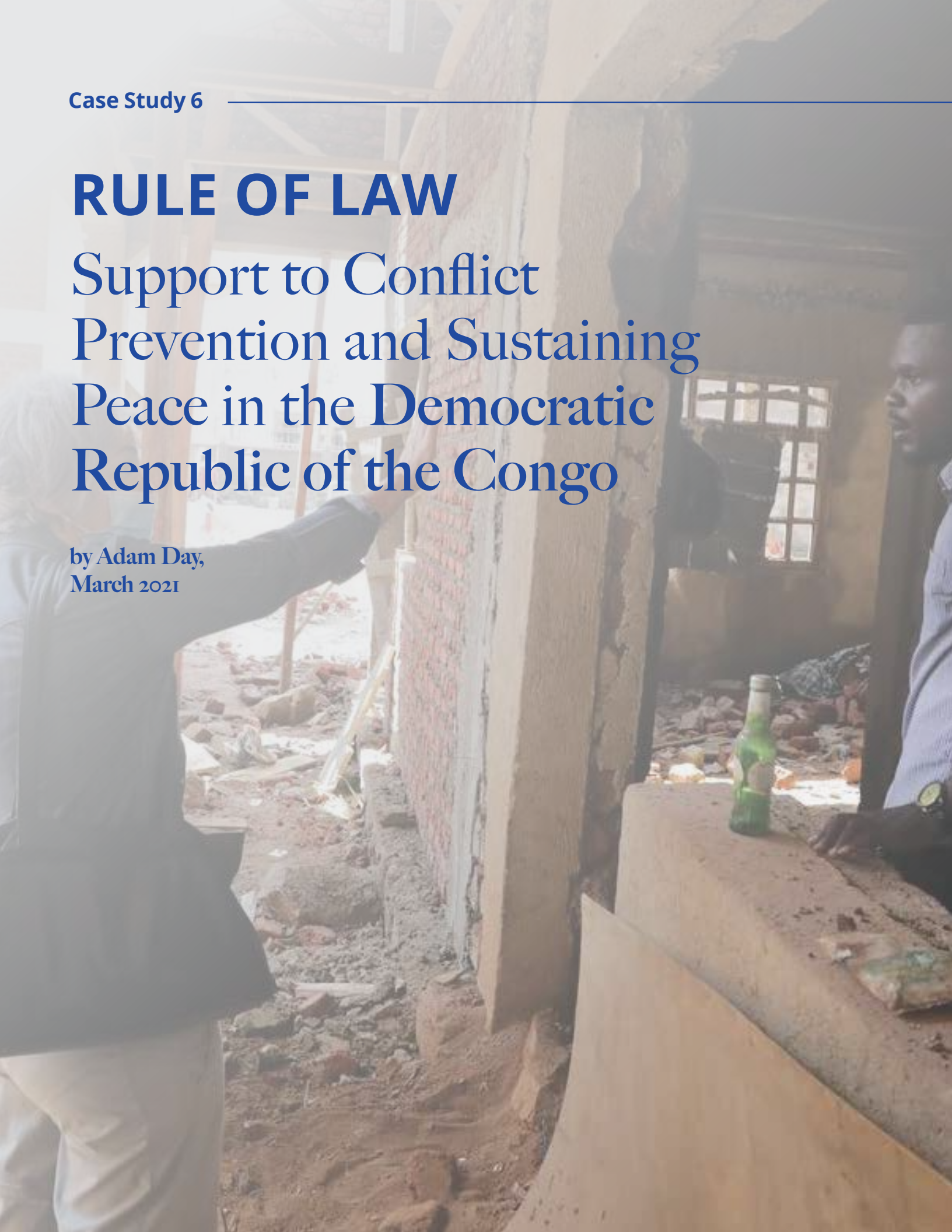
1. Introduction

The Democratic Republic of the Congo (DRC) presents one of the most complex and challenging settings in the world, in large part due to its extremely poor governance and recurrent cycles of violent conflict. Following two brutal civil wars, the country emerged in 2003 with extraordinarily weak institutional capacities ravaged by 40 years of corrupt and autocratic rule, widespread poverty and humanitarian suffering, and an extremely volatile security situation stretching well beyond its national boundaries. Over the past 20 years in the DRC, the UN peace operation, UN agencies, and their partners on the ground have increasingly recognized that these deeply rooted conflict drivers cannot be addressed via a securitized response alone but must be met with strong rule of law engagement, strengthening the institutional capacity of the Congolese system to provide public order, justice, and transparent modes of governance for all its citizens.

This case study explores the UN's rule of law work from 2010 to 2019, focusing on how the UN Stabilization Operation in the DRC (MONUSCO), UNDP, and other UN actors implemented a range of activities designed to improve the Congolese capacities to deliver security, justice, and protections to its citizens. It takes a relatively broad approach to rule of law, including how human rights, transitional justice, national reforms, and other activities contribute to the Mission's rule of law objectives. Across these areas, the study asks: *How have the UN's rule of law interventions contributed to conflict prevention, to a reduction in risks of widespread violence in the DRC?* As such, it aims to provide an assessment of the impact of the UN, identifying good practices, inhibiting and enabling factors, and lessons for the broader UN system. It is based on a range of interviews with UN and NGO experts, largely in the field but also in Headquarters.

The study has five sections: (1) a background description of the risk landscape and the endemic shortfalls in State rule of law capacities; (2) an overview of the UN's rule of law mandate from 2010 to present; (3) an assessment of areas where there is evidence of the UN's impact in terms of conflict prevention; (4) an examination of the enabling and inhibiting factors for the UN's impact; and (5) lessons and recommendations for the broader UN system.

A note on scope and methodology

Rule of law is defined by the UN 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."[1] Traditionally, this has resulted in a focus on police, justice, and corrections as the primary vehicles for the UN's rule of law engagement. However, the authors recognize that other areas of the UN's work may also contribute to the core goals of the UN's rule of law work, including efforts to combat impunity, build accountability, advance transitional justice, limit corruption, and address conflict-related sexual violence, amongst others. This project does not adopt a strict definition of rule of law but is instead largely guided by interviews with experts in a range of field settings, asking them what they consider to be the key rule of law engagements by the UN and its partners.

In terms of the scope of these studies, it is important to highlight that this is not a comprehensive assessment of the UN's work in a given setting. It does not try to capture every rule of law programme, but instead reflects the views of experts about the most impactful, relevant, and effective rule of law interventions in the given timeframe. This expert-driven approach to cases studies is to ensure that they feed meaningful cross-cutting policy recommendations, which is the core purpose of this project.

In terms of methodology, we note that the UN's rule of law work takes place alongside the interventions of a range of actors, including national leaders, bilateral donors, INGOs, and local organizations. While it is our goal to identify evidence of the UN's impact, often the UN is a small player amongst these, supporting and coordinating rather than leading on programming. Given these limited supporting roles and the large number of other intervening factors, it can be difficult to isolate the UN's impact via its rule of law interventions. Rather than speak in direct causal terms about impact, we contextualize the UN's *contribution*, alongside the interventions of others, to the broader goals of risk reduction.[2] Where the precise impact is impossible to ascertain, or where the UN has not generated evidence that directly supports causal findings about impact, we rely on a broad set of expert consultations to help us identify good practice and lessons that could be applied beyond a single country context.[3]

2. The conflict landscape of the DRC

While the DRC emerged from its civil wars nearly 20 years ago, the country has remained mired in recurrent cycles of violent conflict and some of the worst governance indicators in the world.[4] Decades of economic mismanagement, patrimonial rule, corruption, and regional tensions have kept DRC's economy near-total collapse, inhibiting the growth of effective State institutions and contributing to conflict dynamics across the country. One of the poorest nations in the world (in some places, extreme poverty rates are upward of 70 per cent of the population), DRC's economy is largely "informalized," managed through a range of non-State entities rather than via government institutions.[5] The result is that rule of law institutions – courts, police, prisons – have suffered from chronic underfunding, lack of political support from the political centre, and little progress towards professionalization and improved capacity over the past 20 years.

The lack of funding for State institutions has a direct impact on rule of law in the DRC. This may also be indicative of a lack of political commitment and prioritization of the rule of law. Underpaid police have been consistently encouraged to fend for themselves, feeding off the local population in order to support a patrimonial hierarchical system. Popular confidence in the police is extremely low: one survey in North Kivu indicated that only eight per cent of respondents answered "the police" when asked "Who protects you?".[6] The formal justice system remains essentially unknown beyond the major cities of eastern DRC, with fewer than 50 courts ostensibly servicing a rural population of 42 million people. Even where State courts are in place, polling indicates extraordinarily low public confidence in these institutions.[7] Other forms of community research have found the Congolese overwhelmingly prefer to resolve their conflicts through unofficial, non-State channels, due to "the propensity of [State security officials] to extort money and goods."[8]

Taking advantage of limited presence and weak State capacities, armed groups have proliferated in eastern DRC, growing from roughly 20 major groups in 2002 to nearly 100 groups in 2021.[9] Armed groups not only threaten the lives and livelihoods of hundreds of thousands of Congolese citizens, they also operate to strip the State of crucial revenues from enormous natural resources. Controlling most of the artisanal mining sites in the eastern provinces, militias exploit valuable minerals and export them across DRC's borders with Uganda and Rwanda, providing themselves with a constant flow of resources and allowing them to persist despite military pressure from the Congolese army and the UN. Limiting the impact of armed groups activity – through political means, military operations, protection of civilians activities, and via the justice and correction system – is a major priority for the Congolese Government and the UN.

The Congolese security services themselves also constitute a significant risk to many segments of the population and are regularly cited as the most significant human rights violator in the country.[10] Following the end of the Second Congo War in 2003, the formation of the Congolese army (FARDC) from amongst the belligerent parties meant that bitter rivals were brought together and had to vie for position based on their clout with the presidency rather than military competency. Since then, as armed groups have been defeated, some of their elements have been integrated into the FARDC, often in a wholesale manner that undermines the overall chain of command and contributes to splintering within the army.[11] As a result, far from being loyal to the State, large portions of the FARDC appear more willing to respond to the needs of their respective communities and/ or quietly align themselves with the leadership of their former militias. Combating impunity for those in the FARDC who perpetrate serious human rights violations is a major area of work for MONUSCO.

Sexual violence in eastern Congo has consistently been ranked one of the worst in the world.[12] While much of the sexual violence in the DRC is conflict related (i.e. takes place during hostilities involving armed groups), it has also been reported as widespread outside of conflict settings.[13] Over the past 20 years, the Congolese State has struggled to put in place viable, effective judicial mechanisms to hold perpetrators of sexual violence accountable, despite repeated international efforts to improve State capacities.[14]

In this context, the risks of violent conflict arise from the interaction of multiple causes, including: (1) longstanding intercommunal disputes over land and resources; (2) the presence of militias across much of eastern Congo; (3) weak and/ or predatory State security services resulting from decades of corruption and underfunding; (4) absent State institutions in the areas of rule of law and governance; (5) the willingness of the political class of DRC to resort to violence to gain leverage in a highly fractured, deeply unequal society; and (6) a continuing legacy of regional interference in the domestic stability of the DRC. The underlying theory of the rule of law work of the UN in the DRC has been that bolstering the police, justice, and corrections capacities of the State, while working to fight impunity and hold serious human rights perpetrators accountable acts to reduce the risks of violent conflict and sexual violence in particular.

3. Evolution of the UN's rule of law mandate from 2010

This section traces the evolution of the UN's rule of law mandate from 2010 to 2019, through which the major rule of law actors in the DRC are also identified.

In 2010, the UN peacekeeping mission in the DRC transitioned into a stabilization operation, its mandate shifting to place greater emphasis on support to State institutions, helping to extend State authority, and national-level reforms.[15] Within the stabilization mandate, MONUSCO was provided a rule of law mandate which included support to: (1) the national reform of security and judicial institutions; (2) military justice institutions and processes; (3) police reform and professionalization; and (4) developing and building the capacity of rule of law institutions.[16] Importantly, the Mission was tasked to help the Government arrest and bring to justice those responsible for war crimes and crimes against humanity, including through the ICC framework.[17]

This transition to stabilization was important politically, as it was designed to contribute to improved relations with the Congolese Government at a time when President Kabila favoured MONUSCO's drawdown. It was also part of a broader trend of multidimensional peacekeeping missions towards stabilization, based on a theory of change in which State authority would gradually be extended across previously ungoverned areas of fragile States.[18]

In 2010, OHCHR issued a major report, mapping and detailing serious human rights violations that took place during Congo's Second Civil War.[19] A key message in this report was that more should be done in the fight against impunity for these and subsequent international crimes in the DRC. The 2010 establishment of a Prosecution Support Cell programme by MONUSCO was directly tied to the fight against impunity for war crimes and crimes against humanity and charged with providing technical and advisory support to the Congolese justice system. This work has cut across several MONUSCO sections, including the Joint Human Rights Office (JHRO), which has provided support to magistrates for witness and victim protection. From 2011 onwards, MONUSCO focused significantly on support to military tribunals with the aim of fighting impunity for serious crimes (military tribunals have jurisdiction over almost all cases involving serious international crimes). From 2014, a multi-year joint justice support programme – developed by MONUSCO, UNDP, and UNODC – was taken forward with the Congolese ministries of justice and human rights. Over time, MONUSCO has increased its focus on prison administration, including

good prison management/security, capacity-building, and structural reforms designed to reduce overcrowding, improve the conditions of prisons, and reduce the risks of mass breakouts. Training of judicial police and prison authorities was also increased during this period.

While these activities continued throughout the lifespan of MONUSCO, the 2012 takeover of the eastern capital of Goma by the rebel group M23 had a significant impact on how and where rule of law work was focused. In 2013, the Security Council authorized the deployment of a Force Intervention Brigade to neutralize the M23 and re-emphasized the Mission's focus on defeating armed groups in the DRC. This, in turn, also meant that the MONUSCO's rule of law activities were channelled towards eastern provinces and (from 2017) the Kasais, areas where armed group activity was most prevalent. According to several UN interlocutors, this focus on the east also resulted in less of an emphasis on the more national level reforms, which require constant engagement in Kinshasa.[20] The emphasis on military neutralization also meant MONUSCO was engaged in more joint operations with the

Congolese army (FARDC) and had to undertake more procedures to mitigate the risk of supporting officials that had perpetrated serious human rights violations, via the Human Rights Due Diligence Policy.

The constitutional crisis in 2016 was precipitated by President Kabila's unwillingness to accept an electoral timeline for the presidency, leading to large-scale opposition rallies and a spike in violence in both urban areas and in areas of armed group presence. Heavy-handed responses by State security actors led to hundreds of deaths, a greater focus on combating impunity for State actors, and a decision by the UN to also focus on crowd control as part of its broader rule of law focus on expanding civic space conducive to national elections. The resolution of the crisis and 2018 ascension to the Presidency by Felix Tshisekedi has opened a potential door to more national-level reforms though, as of the writing of this study, it is too soon to know whether significant progress will be made.

4. Rule of law impact

Assessing the impact of UN interventions is a complex process where definitive answers are difficult to reach. This is particularly the case when the question is whether and how a UN activity may have reduced the risk of violent conflict, given the many interrelated factors that drive conflict in any given setting and the frequent absence of underlying data.[21] Taking into account these challenges, this section will examine the most important of the UN's rule of law interventions and programmes in the DRC and attempt to identify the extent to which they may have had an impact on the risks of violent conflict.

The fight against impunity

The term "fight against impunity" for serious crimes captures a range of work by MONUSCO, UNDP and other partners, and was flagged by UN leadership in-country as one of the most important aspects of its rule of law work. This is because for many years eastern DRC witnessed large-scale atrocities by the national security services and armed groups with very little State capacity to investigate or prosecute perpetrators. Started in 2011, a flagship MONUSCO-led initiative was taken forward to establish Prosecution Support Cells (PSC) to provide technical advice to (mainly military) justice authorities on international crimes.

A Memorandum of Understanding (MoU) signed in December 2011 between the Congolese Government and MONUSCO laid down the framework of cooperation for the programme "to support the investigation and prosecution of serious crimes," namely those crimes listed in the Rome Statute. The MoU stipulated that the PSCs would "not initiate, conduct or lead any criminal investigation or prosecution of such crimes." Their function is to support and facilitate the work of the FARDC military justice authorities through the provision of the technical advice and logistical support needed to conduct criminal investigations and prosecutions. Under the MoU, PSC officers were given authority to take the necessary steps to secure the crime scene and any other location where evidence of such crimes could be found if Congolese military justice officials were not present. Also under the MoU, the PSCs are granted access to investigation and prosecution files.

Working in close collaboration with the Congolese military justice authorities, the programme effectively combines the political leverage and technical and logistical support of MONUSCO, with the programmatic support of UNDP, while also strengthening coordination and partnerships between a variety of UN and non-UN actors. The programme, taken together with the efforts of partners, incorporates technical and logistical support for investigations, mobile trials (audiences foraines), victim and witness support and assistance, the provision of legal aid for the accused and capacity-building.

One of the functions that has emerged as central to the work of the PSCs is their role in coordinating the *cadres de concertation* that brings together military justice authorities, and partners, both within and external to MONUSCO, who provide support to investigations and trials of international crimes. The PSCs and the military justice authorities co-chair these meetings, which are usually held once a month or more often if necessary in the context of preparations for particular cases. Typically, the *cadre de concertation* will include representatives of various sections within MONUSCO (the Joint Human Rights Office, Child Protection and UNPOL and the Force as necessary), UNDP, and NGO partners (depending on the location, TRIAL, Avocats sans Frontieres (ASF), American Bar Association (ABA), Panzi Foundation and others). At times, the partners will hold preparatory meetings in the absence of the military justice authorities. In 2015 a list of priority cases was developed by UNDP, MONUSCO, the United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict,[22] ICTJ and national authorities, particularly in North Kivu, South Kivu and Ituri. To account for progress with the priority cases, another prioritization process was completed in 2019.[23]

During the nearly ten years of this programme, the PSCs, led by the Justice Support Section, have worked alongside the JHRO, UNDP and other actors including bar associations and international legal organizations to achieve significant results:

- With PSC support, more than 1,600 accused persons have been processed via the military justice system with a 77 per cent conviction rate, over 50 per cent of which were members of State security forces. It is worth noting that MONUSCO's role in coordinating the *cadres de concertation* has played a key role in moving these cases forward.

- High-profile convictions of senior FARDC officials for war crimes – rape, sexual slavery, and recruitment of children – have demonstrated command responsibility for serious crimes within the State security services. At least 26 FARDC and Congolese National Police officers have been convicted and sentenced in cases involving sexual violence between 2015 and today.[24]

- Dozens of militia members – including in the Kasais, Ituri (including Djugu territory), North and South Kivu – have similarly been convicted of crimes against humanity.

- Observers suggested that the military justice system has improved its overall ability to investigate, prosecute and adjudicate serious crimes, as evidenced in part by the rarity of decisions overturned on appeal.[25]

The underlying theory of change of these activities is that more robust prosecution of serious crimes will have a deterrent effect and reduce the risk of more widespread human rights violations in the future. Not only do investigations and prosecutions deter[26] future atrocities by demonstrating to perpetrators that such actions will be subject to prosecution and result in long-term imprisonment, they also more broadly strengthen adherence to the rule of law, reinforce the unacceptability of the crimes committed, and demonstrate that impunity will not be tolerated. While prosecutions help remove perpetrators from the field of conflict, they also help to restore the dignity of victims and their families by providing public acknowledgement of the gravity of wrongs done. They reduce violent acts of revenge, include intercommunal violence, by redressing victims' and communities' grievances through non-violent means.

While it is difficult to accurately assess the impact of these programmes. One senior UN official stated that, in interviews with at least 20 armed group leaders over the past six years, nearly all indicated that fear of prosecution played a role in their calculations, suggesting that they may have limited recourse of violence as a result.[27] A report by OHCHR similarly recognized the effect of such prosecutions in reducing future harm, but indicated that the relatively small number of convictions versus the overall rate of human rights violations by national security agents in particular may point to limited impact.[28]

A recent UNDP assessment of its own support to prosecutions of serious crimes found that the quality of judgments had improved and the caseload had increased over time, but that the decisions were largely "symbolic" as they were not accompanied by reparations for victims.[29] In contrast, other experts have pointed to relatively long prison sentences as serving more than a symbolic function. Anecdotal feedback received from NGOs in the DRC indicates that the work of the PSC, JHRO, UNDP and its partners has enabled investigations that otherwise would not have taken place, and has helped to strengthen the perception of the Congolese justice system amongst the population.[30] Indeed, several NGOs reported a significant increase in the number of victims coming forward, indicating increased confidence in the judicial process.[31]

In sum, the most persuasive argument for direct impact is the fact that the UN's support to prosecutions has taken thousands of violent actors off the streets and put them through a viable judicial process. There is evidence that these actors would have perpetrated further violence, given their frequent association with armed groups that continue to carry out serious crimes, and the reports that atrocities declined significantly after the arrest of high-level perpetrators.[32] The removal of high-ranking and influential State actors is also an especially important step that likely would not have occurred without the UN's support. The fact that at least 20 armed group leaders have indicated an awareness of prosecutions for serious crimes is some evidence that the anti-impunity work has had an impact more broadly as well. Of course, impunity remains a major issue in DRC – and indeed there has been near-total impunity for crimes committed before 2002, demonstrating a major failing of the Specialized Mixed Chambers – but the UN's accomplishments above do point to some impact.

What are the Prosecution Support Cells?

- Established in 2010 within the Justice Support Section of MONUSCO.

- There are 6 PSCs in four provinces of eastern DRC and the Kasais.

- Staffed with 20 Government-provided personnel, who are international justice and prosecutorial experts, and an advisor from the United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict (In the past some PSCs included a UNDP consultant).

- Managed by the Justice Support Section of MONUSCO, with previous financial support from the EU, Canada and other bilateral donors.

- MONUSCO has a MoU with the Congolese Government to support military justice authorities in the investigation and prosecution of serious crimes.

- Has supported some of the highest-profile international criminal cases in DRC's history (in coordination with other actors including JHRO).

Building civilian justice capacities

In 2010, civilian justice services were practically non-existent for most of the population, with military justice the only option for serious crimes (raising serious concerns by human rights advocates that remain to this day).[33] Less than one-third of the planned 165 peace tribunals were operational across the country, and access to justice was at some of the lowest levels in the world. MONUSCO's work over the subsequent ten years has contributed directly to improved civilian justice capacities, including:

- 31 civilian courts were reopened, 24 buildings were constructed/refurbished for prosecutors' offices, and 30 prosecution offices were equipped in eastern DRC;

- 15 courts of appeal were established and provided with basic equipment;

- 1,300 registrars and clerks were trained on basic judicial competencies;

- Four cases of genocide and crimes against humanity were concluded before civilian courts (in Lubumbashi and Ituri in 2016 and 2019);[34]

- 97 land disputes were mediated amongst families composed of more than 2,000 people, the results of which were endorsed by the peace tribunal in North Kivu.[35]

The gradual increases in capacities of the civilian courts, while important, fall far short of what is needed for a fully functioning judiciary. UN officials expressed continuing concern that trials for serious crimes continue to be conducted by the military courts, which have fewer procedural safeguards than civilian ones, in particular regarding their independence from military authorities and their capacity to prosecute top-ranking officers. Indeed, a 2014 population survey found extremely low levels of confidence in the Government's ability to address risks of violence and impunity via civilian institutions, with large percentages of the Congolese population viewing it as corrupt, biased and enabling impunity.[36] MONUSCO officials similarly suggested that the overall capacities and caseload of the civilian courts had not grown substantially over the past ten years.[37]

However, the resolution of land disputes may point to a more direct impact on the risks of conflict. A range of scholarship has demonstrated the immediate link between contestation over land ownership and violent conflict in eastern DRC, with many of the most serious episodes of violence in the past ten years, related at least in part to land.[38] A key factor in land conflicts escalating into violence is the lack of forums for resolving disputes, and the low confidence in State-run institutions amongst the population.[39] By helping to resolve land disputes involving at least 2,000 people in the North Kivu province, there is a case that the risks of violent conflict were at least somewhat reduced in that area.

Mobile courts

One of the most important and impactful areas where both MONUSCO and UNDP have jointly advanced civilian and military rule of law capacities has been via their support of pre-trial investigation and mobile courts in eastern DRC.[40] While mobile courts have been in the Congolese legal system since 1969, the UN's support to them ramped up in 2010, with significant programming from both UNDP and MONUSCO. Funding joint investigation teams and mobile court sessions has proven an effective way to

dramatically increase the number of trials for violent crimes, and to ensure that SGBV-and conflict-related sexual violence (CRSV) cases are prioritized (UNDP's programmes, for example, require a minimum number of CRSV cases in order for funding to be released).[41] For a cost of USD 20-25,000, a 15-day session can hear up to eight criminal cases involving 16 accused and 60 victims. Over the course of the 2010-2019 period, the UN supported more than 15 sessions annually, processing more than 200 cases per

year, 60 per cent of which related to SGBV.[42] In terms of conflict prevention, the mobile courts have the advantage of being deployed in some of the most conflict-prone areas of eastern DRC, acting to reduce tensions and address impunity where it is most needed. A 2015 survey found that the Congolese population felt relatively confident in the work of the mobile courts, ranking them consistently higher than both civil and military courts (an interesting finding considering that the mobile courts are in fact an extension of those forums).[43] The high ratio of SGBV-CRSV cases also provided protections to hundreds of victims that would not otherwise have existed, though one assessment suggested there was limited evidence that the trials had had a deterrent effect on SGBV-CRSV rates overall.[44] Several interviewees from UN offices in the DRC pointed to reduced rates of serious violence in areas where mobile courts had been deployed, though this case study was unable to identify sustained declines in sexual violence to support such a finding. One such example of potential impact was the 2016 mobile court trial of 14 FARDC elements involved in human rights violations during the 2013-14 military operations against the *Forces de résistance patriotique de l'Ituri* (FRPI). According to some experts in DRC, these trials helped to boost confidence in a 2016 political process between the Government and the FRPI that resulted in the signing of a peace agreement on 28 February 2020, contributing to a reduction in attacks by the group on civilian populations in the area at the time.[45]

Prison conditions and security

Prison overcrowding, prolonged or unlawful detention, and poor prison security are chronic challenges in the DRC. These can combine to create significant risks of violence, limiting the ability of judicial authorities to safely house serious criminals and opening opportunities for regular large-scale prison breaks. In May 2017, for example, 4,200 prison inmates broke out of the Makala prison in Kinshasa, including hundreds of members of rebel groups operating violently around the country and at least one person serving for a conviction at the ICC.[46] In the same period, 900 prisoners escaped from

Combating Sexual Violence in DRC

Historically, the DRC has had some of the worst rates of sexual violence in the world and at one point was given the title "Rape Capital of the World." Around 2010, enormous amounts of donor resources targeted SGBV programming, including large UN-led programmes on access to justice, awareness-raising, institutional strengthening, and witness protection. This led to a joint UN/Government communiqué in 2013 committing to concrete steps against to address CRSV and revised in 2019 (the Joint Communique and Addendum are on CRSV and not SGBV).

There was also advocacy at high levels for accountability for the "FARDC-5" – five high-level FARDC alleged to have committed sexual violence that led to several high-profile trials, including that of "Colonel 106."

Starting in 2010, the UN began building specialized police units for women and children to file complaints, eventually building seven across eastern DRC. The UN has also conditioned its broader support to the justice institutions of DRC on their readiness to prioritize CRSV cases, resulting in a significant increase over the past ten years.

However, rates of sexual violence remain extraordinarily high in DRC, indicating limited impact more broadly. Ensuring adequate support to SGBV-related justice processes will be a major priority for the coming period.

a prison in Beni, including dozens of members of the Allied Democratic Forces (ADF), which is widely considered the most dangerous armed group in the DRC.[47] The ability of these groups to resupply their forces via prison breaks constitutes a clear risk of further violence.

The UN has provided significant support to improving prison conditions, with a growing emphasis on prison security. This work includes the provision of security installations (cameras, physical protective equipment), advisory support, and physical rehabilitation of some prisons by both MONUSCO and UNDP. It also includes the identification and classification of high-risk prisoners. Importantly (and due largely to staffing cuts), MONUSCO has over time reduced the number of prison locations it supports, focusing and amplifying its work on areas that have been identified as specific protection risks, either because of the presence of armed groups or high levels of violence.[48] Facilitating the transfer of prisoners to prisons outside of their home areas is another activity that MONUSCO sees as reducing the risk of prison breaks.

According to UN experts in the DRC, it is highly likely that this support has prevented and/or limited prison breaks over the past several years. The large-scale release of prisoners who had been irregularly or unlawfully detained has somewhat improved conditions and security in many of the largest prisons in the country: between 2015 and 2020, more than 4,300 such detainees were set free, while the ratio of pre-trial detainees to convicted prisoners fell below 40 per cent in some areas for the first time in history.[49] Limiting overcrowding and ensuring sufficient space for those individuals convicted of serious crimes contributes to a reduction of risks. Here, the mobile courts have also played a role in ensuring that violent actors are removed from the general population: in Kananga, for example, 175 irregular detention cases were regularized through mobile court hearings at the prison itself.[50] Serious challenges remain regarding prison security and management however, as evidenced in October 2020 when roughly 1,300 prisoners escaped from a prison in Beni following an attack on the prison by an armed group, including dozens of ADF members set of face trial in the subsequent months.

Strengthening the legislative framework on rule of law

The criminal justice system in the DRC remains deeply underdeveloped as a result of decades of conflict, corruption, and lack of interest by the political elites of the country. In 2010, the UN was faced with a serious shortfall of civilian justice institutions by the State and no government plan for justice reform. This meant that the Congolese civilian justice system was nearly paralysed, unable to process caseloads, leading to massive overcrowding in prisons, failures to bring violent groups to account, and a tendency of groups to practice vigilante justice. While the past ten years have not witnessed significant reform of the legislative framework, MONUSCO and UNDP's support has helped towards some accomplishments including:

- A set of national consultations on justice in 2015, resulting in the Government's adoption of a national justice reform strategy and action plan for 2018-2022.

- The promulgation of legislation allowing for the full implementation of the Rome Statute of the ICC into the Congolese court system.[51]

- The adoption of measures on judicial policy, accountability and oversight resulted in the review of 252 judicial disciplinary cases and the eventual removal of roughly 250 magistrates whose appointments had been irregular.

Interviewees for this study, however, were sceptical about the impact of these reforms, and indeed pointed to a broader lack of meaningful progress on national reforms across the board (including especially security sector reform, but also reforms on reparations and witness/victim protection). While the inclusion of some legislation such as the ICC statute may gradually allow the Congolese justice system to respond

better to international crimes, there is little evidence that the UN's national reform support over the past ten years has generated substantial impact. Indeed, in some areas where the UN has worked to build and reform institutions, the levels of violence have remained unchanged over time. This view was strongly articulated by several Congolese politicians during in-person interviews in Kinshasa in 2018, and is evidenced by the continued prevalence of human rights violations and poor performance by the Congolese security and judicial services.[52]

Crowd control

The UN has consistently reported that the greatest human rights violator in the DRC is the State security service itself, which regularly accounts for more violations than several of the largest armed groups combined.[53] While the above sections have described efforts to end impunity and improve the behaviour of the FARDC in particular, it is worth highlighting a specific area of work that MONUSCO has taken forward with the Congolese National Police: reducing the risks of violence during crowd control. This issue came to the fore during the constitutional crisis from 2015-2018, during which opposition groups held large-scale rallies in many of DRC's largest cities and faced a heavy-handed response from the police force. On a regular basis, rallies would end with 40-50 civilians killed by Congolese police, who often used live rounds of bullets even in relatively peaceful settings.

The MONUSCO police were able to change this practice in a relatively short period of time. The Mission documented police behaviour during rallies, creating a record that included the names and ranks of officers involved in violence. The Mission then advocated for strong penalties – up to 30 years in prison – for those involved in killing civilians, while also offering training and a range of non-lethal equipment to the national police (e.g. rubber bullets). Small but visible steps, such as asking police to sign cards committing them to zero dead during a rally, also helped to change behaviour, and within a year the death rates during rallies had dropped close to zero. Today, frontline police in DRC's major cities rarely carry lethal weaponry during rallies.

Transitional justice

As part of the peace agreement that ended the Second Congolese War, a Truth and Reconciliation Commission ran from 2003 to 2007. While this process did help to identify some of the perpetrators of serious crimes during the war, it concluded with very limited impact in terms of broader reconciliation or national-level healing, and subsequent proposals for transitional justice mechanisms have largely faltered at the national level.[54] Various efforts to push the transitional justice agenda over the past years have stalled, due in large part to a lack of enthusiasm by the Congolese Government. Even the 2010 OHCHR mapping report – which generated a lot of momentum for justice and accountability in the face of widespread human rights abuses – has not resulted in much further progress on transitional justice to date.

Launched in 2019, a new MONUSCO-led initiative on transitional justice in the Kasais region was established with Peacebuilding Fund support. The "Peace, Justice, Reconciliation and Reconstruction in Central Kasai" (PAJURR) project followed from a decision of the High Commissioner for Human Rights to send a team of experts to investigate reports of serious and widespread human rights abuses, including the use of child soldiers, during the 2016 conflict there. The project also attempts to take advantage of the spontaneous surrenders by many of the Kamuina Nsapu group by building a sense of community reconciliation and anti-impunity.

The PAJURR is an innovative project that aims at pacifying relations between communities torn apart by years of conflict through the restoration of the rule of law, the development of structures for conflict prevention, mediation and transformation, and the revival of the local economy. This project is therefore holistic and multidimensional since it intervenes at the institutional as well as grassroots level, i.e. the community and individual levels. It has allowed, for the first time in the DRC, UN-supported consultations that enabled many marginalized people to express their views on truth, reconciliation, reparations, and the

prevention of future conflicts. The report of the popular consultations, which was handed over to the provincial authorities on 4 February, contains concrete recommendations to promote transitional justice mechanisms in Kasai Central, including the establishment of a truth and reconciliation commission at the provincial level. JHRO is advocating and supporting for this commission to be set up. A provincial edict is being drafted, with inputs from the JHRO. A second project, Spontaneous Surrender in Kasai Central, Kasai and Tanganyika (SSKAT), is still in early stages and it is too early to assess its impact.

Conclusion

The UN's rule of law work in the DRC spans a wide range of activities and areas. From the above, and based on interviews with UN officials in-country, there is some evidence that the UN's anti-impunity has played a role in reducing risks of violence from where they might have been otherwise, particularly by removing perpetrators from society and sending signals to potential violent actors about the possibility of prosecution. The mobile courts especially have dramatically increased the number of trials of atrocity crimes before military jurisdictions and have been able to target conflict-prone areas. Improved security in DRC's largest prisons may

well have prevented large-scale prison breaks in areas where armed groups pose a direct threat to the civilian population, though such breaks are far from fully eradicated. And the efforts to reduce violence by police during large rallies have certainly resulted in a dramatic drop in casualties to nearly zero today. There are, of course, many shortcomings and the rule of law capacities of the Congolese State remain some of the lowest in the world, but there is some clear evidence of impact across the UN's work. The following section explores what factors either enable or inhibit the UN from making a greater impact.

5. Enabling and inhibiting factors

The previous section analysed the impact of a range of rule of law programmes and approaches by the UN over the past ten years. This section explores the factors that may have enabled or inhibited impact, including contextual factors in the DRC also factors that were in the Mission's control.

The scale of the problem

Interviewees consistently pointed to the massive scale of human rights violations and extraordinarily weak institutional capacities as an almost insurmountable challenge in the DRC. "How can you assess the impact of our anti-impunity work when impunity has been the norm in Congo for forty years?", one interviewee asked. The sheer size, population, and levels of violence make DRC a difficult setting to evaluate, even given relatively large programming. Some UN staff suggested that the recurrent cycles of violence had "demoralized" the UN, making many in the system sceptical that any change was possible. Especially in the areas of anti-impunity, the extraordinary number of human rights violations across the country means that the relatively low number of concluded cases seems to pale in comparison.

Lack of national budgets and over-reliance on the UN

In almost every area described above, UN and international donor programming constituted nearly the entirety of the investment, with Congolese Government spending at most nominal and always temporary. The lack of multi-year budgets for core rule of law areas (justice, prisons, police) and chronic failure to pay even the most basic salaries by national authorities mean that UN programmes last until the money stops. "Our projects may build a small amount of technical capacity amongst the Congolese, but that dissipates as soon as we wrap up a project," a senior UN official noted. The negative effects are most keenly felt in terms of the UN's reform agenda: no amount of legislative reform or commitments to improving the rule of law institutions of DRC will result in changes unless they are backed by sustained national funding.

Indeed, several interviewees suggested that the fairly constant readiness of the international community to fund rule of law projects has created a dependency of the Congolese system on international support. "The Government has come to expect us [donors] to pay for everything, so they have not gotten into the practice of budgeting for their basic services,"

a donor pointed out.[55] For example, in the case of UN-supported mobile courts, each process is a single expenditure, without any prospect that the Government will fund its own follow-up. This means that even fairly modest costs – e.g. USD 25,000 for a 15-day session of the mobile courts – are not contributing to sustained local capacity. "Our support dies off as soon as we stop funding something, because the Government has no follow through or budget," a senior UN official noted.

Lack of visibility/awareness

Much of the UN's rule of law work in the DRC takes place below the radar, and in areas of witness protection and quiet support to delicate processes, a discreet approach may well be best. However, in the areas of anti-impunity in particular, sending a clear and widely received message is crucial, and often a challenge for the UN. "It isn't clear that the militias are getting the message," one UN official remarked, noting that human rights violations remained widespread amongst some of the most prominent armed groups. However, another senior UN official who had met with at least 20 armed group leaders noted that nearly all had expressed familiarity with the international criminal work of the Congolese Government and the UN, indicating that there might well be a deterrent effect.[56] Trials of State actors – including high-ranking FARDC commanders – also received significant coverage in the press. More efforts and resources on public awareness was frequently cited as a way to improve impact.

A two-tier system

Military courts are clearly the most used option when it comes to trying international crimes in the DRC, despite shortcomings regarding the independence of military courts and the lack of internationally recognized procedures in military trials (e.g. lack of *habeus corpus*, death penalty sentences, and in some cases a lack of ability to appeal).[57] While the UN has made some efforts to bolster civilian courts and increase their capacity to try international crimes, as of the date of writing, the bulk of trials continue to take place via military tribunals. This is due almost entirely to the fact that civil courts do not have jurisdiction over most of the most serious crimes in the DRC. The result is that civil judicial capacities have advanced far less than military ones (despite major efforts by the UN, ICTJ and others), which may negatively impact on the ability of the Congolese system to effectively and sustainably address widespread human rights violations in the future.

Lack of international experience

While international support to joint pre-trial investigations, mobile courts and the Congolese judiciary more generally has been provided by experienced lawyers, very few have direct experience in trying international crimes (i.e. war crimes, crimes against humanity). This is because Member States have thus far provided a pool of lawyers with primarily domestic criminal experience, rather than the kind of experience that might push forward higher-profile crimes that might do more to combat impunity. However, it does appear that the willingness of the national judicial actors to take on serious crimes has increased over time, meaning that the caseload of international crimes has increased as well.[58] One issue here may be the high threshold for trying international crimes: where there is insufficient evidence to support a prosecution for international crime, it may be downgraded to a domestic one (e.g. murder) where less evidence may be required to prove a charge, but the broader impact of trying the case in a manner that properly reflects the gravity and scale of the offending and resulting publicity will necessarily be less as well.

Staffing/funding shortfalls

In both the Justice Support and the Corrections sections of MONUSCO in particular, there appear to be significant shortfalls in the number of staff needed to achieve their respective mandates, as well as reductions in the geographic scope of the UN's rule of law work. The trend appears to be toward a continuation of cuts to staffing. For example, in 2013, there were 80 UN personnel allocated to the Justice Support Section, while that number has currently dropped to 35 without a significant change in the Mission's justice mandate.[59] Reductions in staffing and funding, however, have required a reduction in the ability of the Mission to deliver on core mandated tasks in this area and maximize impact and have required prioritization: the Corrections Section of MONUSCO has gradually reduced the number of prisons it supports, focusing on areas affected by armed conflict. "The reduction has meant we now have a clearer sense of what

we are doing, we are working to prevent violent groups from getting involved in the prisons," a UN official noted. Reducing the resources to deliver on corrections has, however, had adverse consequences on peace and security, as demonstrated by the October 2020 attack and mass escape at the Beni prison where MONUSCO only had two Government-provided corrections personnel assigned to support a large and strategically important prison.

Donor support to rule of law also dipped during the constitutional crisis from 2016-2018, as bilateral donors were apparently reluctant to support the Kabila Government. This meant that some proposed programmes have not received adequate funding in recent years. Several interviewees pointed to funding shortfalls as the cause of discontinued or curtailed rule of law programming.

Good coordination

In supporting the pre-trial investigation and mobile courts in particular, strong coordination amongst MONUSCO, UNDP, various bar associations and INGOs,[60] and the Government appears to have resulted in effective and relevant support to criminal trials for serious crimes. Similarly, the Prosecution Support Cells were cited as an example of good MONUSCO/

UNDP collaboration by several interlocutors, in particular the colocation of UNDP experts within some MONUSCO-led cells. The use of the *cadres de concertation*, bringing together all of the major rule of law actors into a single programme, was also cited as good practice that increased effectiveness.

A broad approach to rule of law

In discussions with the UN leadership in MONUSCO and UNDP, it was clear they took a broad view of what activities might support their rule of law mandates in DRC, looking at improving the penal chain as a whole. For example, MONUSCO's Joint Human Rights Office noted that the application of the Human Rights Due Diligence Policy (used to vet Congolese officials and put in place mitigating measures for working with them, as well as to promote advocacy for investigations/trials or replacement

of commanders alleged to have been involved in grave human rights violations) was part of the Mission's rule of law approach, helping to combat impunity and hold State actors accountable. Similarly, interviews with the police and force components of the Mission indicated that they saw even their protection of civilians activities as linked to rule of law in that they would gradually improve the relationship between State security actors and the population.

6. Lessons and recommendations

The UN's rule of law work in the DRC has spanned multiple decades and very different eras of Congo's post-war existence. While the Congolese experience is a unique one, this section draws more general lessons that could help UN actors in other settings improve their rule of law interventions.

- **Be mobile.** One of the biggest success stories is the UN's support to mobile courts in eastern DRC, and a significant part of the impact appears to be their ability to shift locations. Especially in a large terrain where armed group activity and other forms of insecurity may shift dramatically over short periods of time, mobility is not just a prerequisite for armed peacekeepers, but also for rule of law actors. This will become even more important as MONUSCO continues to reduce its static footprint in the coming period, raising the question of what UN entity might be well-placed to continue this work.

- **Set realistic expectations and focus on what can be done.** A consistent complaint by UN staff and Congolese interlocutors was that MONUSCO in particular had a "Christmas tree" mandate, a 16-page laundry list of tasks, many of which were extremely unlikely to be achieved within the coming decade. National level reforms to the security sector and broad institutional transformations of the judiciary and police simply have not occurred over the past ten years, demonstrating the strong resilience of existing systems of governance and the many challenges facing the UN's reform agenda. In contrast, more achievable tasks, such as increasing the output of the military courts, improving prison security, or supplying mobile trial capacities, have had a demonstrable impact much more in line with realistic expectations. Innovative witness and victim protection mechanisms also have proven effective in the DRC. Even with existing mandates, efforts to streamline and focus on the most conflict-prone areas (as was done by the Corrections, Justice Support, and JHRO sections) may have boosted effectiveness even while reducing the scope of activity.

- **Stay focused on serious crimes.** A shortcoming of some of the UN's work in the DRC has been the tendency to get pulled into lower-level criminal caseloads, whereas the most effective work against impunity remains the higher-profile cases holding the most serious offenders to account. One way to maintain this focus on serious international crimes could be to employ more UN officials with a specific background in international

criminal litigation, potentially from the various UN-led international tribunals and/or hybrid courts. And tasking the PSC to focus more on high-profile cases could also increase the impact.

- **Condition UN support to ensure SGBV, and specifically CRSV, cases are addressed.** In many instances, the UN has conditioned its support to the Congolese courts, requiring them to maintain a high percentage of cases involving SGBV. This has resulted in a nearly 60 per cent SGBV caseload in recent years. Combined with witness protection and victim assistance measures, this can dramatically improve the UN's and the host government's response to SGBV.

- **Look to change police behaviour.** One of the most successful activities MONUSCO has undertaken in recent years has been to monitor police crowd control behaviour and offer specific incentives to reduce the use of deadly force. Focusing on a specific set of behaviours and targeting support (e.g. rubber bullets) to achieve a short-term objective has made a significant difference in a short period of time. It also has the added benefit of improving State-society relations during fraught periods. The use of the Human Rights Due Diligence Policy to mitigate risks of working with the police has also had a positive impact on behaviour.

- **Put more resources into awareness-raising.** The fight against impunity relies upon a high degree of awareness amongst the public of the repercussions of serious criminal/violent behaviour. The most impactful work described above was typically linked to effective communications, either by virtue of it being a very high-profile case, or via specific outreach. Organizations like TRIAL, which have very good outreach campaigns for the trials they support, could serve as models for the UN. Similarly, the work of human rights investigations into serious and widespread crimes, even if it does

not immediately result in criminal prosecutions, can lay an important foundation for the UN's broader anti-impunity work.

- **Build an integrated/joint rule of law strategy.** There has been a tendency historically to view rule of law as a discrete set of activities focused on the police, justice and corrections. While this may be the core of the UN's rule of law work, in settings like the DRC, there are opportunities to strengthen rule of law capacities in a wider variety of ways, including through human rights due diligence, protection of civilians, stabilization, and other activities.[61] By building a holistic strategy that understands how all mission components (and UN agencies) might contribute to rule of law, and indeed how rule of law can contribute to addressing underlying drivers of conflict (e.g. land, natural resources, inclusivity) the UN can maximize its impact. The joint justice programme currently underway between UNDP and MONUSCO offers a good example of this.

- **Coordinate towards an exit strategy.** The coordination between MONUSCO and UNDP around justice support and mobile courts appears to be quite strong and has been acknowledged in a range of previous assessments. Interviewees for this study also pointed to the need for coordination to be geared towards the eventual handover of programming once MONUSCO phases out of the country, including those rule of law activities that will continue by other UN country presences. "We need to have a better joint understanding of how rule of law priorities will be met through the Mission's transition out of Congo," one UN official noted.[62]

References

1. United Nations Security Council, "The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General," United Nations, 23 August 2004, S/2004/616.

2. This approach of contribution rather than direct attribution is laid out in Adam Day, *Assessment Framework for Preventive Diplomacy: An Approach for UN Mediators and Policymakers* (Tokyo: United Nations University Centre for Policy Research, 2018); see also, United Nations Department of Political and Peacebuilding Affairs, *Three-Year Strategic Plan: 2020-2022* (New York: UNDPPA, 2020), https://dppa.un.org/sites/default/files/undppa_strategic_plan_2020-2022.pdf.

3. This is often referred to as an "adaptive" form of impact assessments, see, Ian Wadley, *Valuing Peace: Delivering and Demonstrating Mediation Results* (Geneva: HD Centre, 2017).

4. Transparency International, "Our Work in The Democratic Republic of the Congo," last accessed 10 August 2021, https://www.transparency.org/country/COD.

5. Tom de Herdt and Wim Marivoet, "Informalization, poverty and inequality in Kinshasa (DRC)" Report for Living on the Margins Conference held in Stellenbosch on 26-28 March 2007.

6. Patrick Vinck et al., *Living with fear: A population-based survey on attitudes about peace, justice, and social reconstruction in eastern Democratic Republic of the Congo* (Berkeley: UC Berkeley Human Rights Center, Payson Center for International Development and the International Center for Transitional Justice, 2008).

7. Gallup Poll, "Few urban Congolese have confidence in institutions," 8 August 2008. Patrick Vinck and Phuong Pham, *Searching for Lasting Peace: Survey on Perceptions and Attitudes about Peace, Security and Justice in Eastern Democratic Republic of the Congo* (Cambridge MA: Harvard Humanitarian Initiative and UNDP, 2014).

8. Oxfam, *'For me, but without me, is against me': Why efforts to stabilise the Democratic Republic of the Congo are not working* (London: Oxfam, 2012). NB: internal polling conducted by MONUSCO during this period revealed similarly low confidence in the institutions that were being created under the I4S.

9. Jason Stearns and Christof Vogel, *The Landscape of Armed Groups in the Eastern Congo* (New York: Center on International Cooperation, 2015).

10. United Nations General Assembly, "Human rights situation and the activities of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo: Report of the United Nations High Commissioner for Human Right," United Nations, 24 August 2020, A/HRC/45/49.

11. For example, the integration into the army of the Rwandaphone CNDP and other related groups in 2009 created new brigades that were dominated by a single former armed group, often overwhelmingly of the same ethnic group. See, United Nations Security Council, "Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," United Nations, 2 December 2011, S/2011/738: paras 89-90. This has happened frequently over the past 20 years, but also quite recently, as evidenced by recent demands by the Ituri-based FRPI to integrate into the national army.

12. "UN official calls DR Congo 'rape capital of the world'," *BBC News*, 28 April 2010, http://news.bbc.co.uk/2/hi/8650112.stm.

13. Stephanie McCrummen, "Prevalence of Rape in E. Congo Described as Worst in World," *Washington Post*, 9 September 2007, https://www.washingtonpost.com/wp-dyn/content/article/2007/09/08/AR2007090801194.html; "Children suffer torture, rape and cruelty, NGOs report," *IRIN News*, 18 June 2003, https://www.thenewhumanitarian.org/news/2003/06/18/children-suffer-torture-rape-and-cruelty-ngos-report.

14. Amnesty International, "Democratic Republic of Congo: Ending Impunity for Sexual Violence," 10 June 2014, https://www.hrw.org/news/2014/06/10/democratic-republic-congo-ending-impunity-sexual-violence.

15. MONUSCO's Stabilization Support Unit, "International Security, Stabilisation and Support Strategy: 2013-2017," 28 October 2013.

16. United Nations Security Council, "Resolution 1925, adopted by the Security Council at its 6324th meeting," United Nations, 28 May 2010, S/RES/1925: para 12 (l-p).

17. United Nations Security Council, "Resolution 2098, adopted by the Security Council at its 6943rd meeting," United Nations, 28 March 2013, S/RES/2098: para 12 (d).

18. For a description of the turn towards stabilization, see Charles T. Hunt and Adam Day, "UN Stabilisation Operations and the Problem of Non-Linear Change: A Relational Approach to Governance in Conflict Ecosystems," *Stability: International Journal of Security and Development* 9, 1 (2020).

19. OHCHR, *Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003*, 10 August 2010, https://www.ohchr.org/en/countries/africaregion/pages/rdcprojetmapping.aspx.

20. Interviews, October 2020.

21. See, Adam Day, "Assessment Tool for Measuring the Political Impact of Peace Operations," *The Political Practice of Peacekeeping* (New York: United Nations University Centre for Policy Research, 2020).

22. United Nations Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, "UN Team of Experts on Rule of Law and Sexual Violence in Conflict," last accessed 10 August 2021, https://www.un.org/sexualviolenceinconflict/our-work/team-of-experts/.

23. 38 cases were identified. 19 cases have been completed; 5 have been removed from the list and 14 are ongoing. From the 2019 prioritization process: 30 new cases were identified and 5 have been completed.

24. For a good review of cases involving State actors, see, MONUSCO and OHCHR, "Accountability for Human Rights Violations and Abuses in the DRC: Achievements, Challenges and Way forward: 1 January 2014 - 31 March 2016," 21 October 2016, https://www.ohchr.org/Documents/Countries/CD/UNJHROAccountabiliteReport2016_en.pdf.

25. These statistics are based on internal MONUSCO assessments [on file with author]. It is worth noting as well that there is no formal right of appeal under the military courts in DRC.

26. United Nations Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, "UN Team of Experts on Rule of Law and Sexual Violence in Conflict," last accessed 10 August 2021, https://www.un.org/sexualviolenceinconflict/our-work/team-of-experts/.

27. Interview 10 September 2020.

28. MONUSCO and OHCHR, "Accountability for Human Rights Violations and Abuses in the DRC: Achievements, Challenges and Way forward: 1 January 2014 - 31 March 2016," 21 October 2016, https://www.ohchr.org/Documents/Countries/CD/UNJHROAccountabiliteReport2016_en.pdf.

29. *Rapport de l'Etude sur la strategie de priorisation des poursuites sans l'Est de la République Démocratique du Congo (2015 – 2019)* [on file with author].

30. Charles Briefel, Ignacio Tredici and Ignacio Tredici, *Report of the Criminal Law and Judicial Advisory Service Combatting Impunity in the Democratic Republic of the Congo: Lessons Learned from the United Nations Prosecution Support Cell Programme* (Kinshasa: UN Department of Peace Operations, 2015).

31. Ibid: 4-9.

32. See, e.g. Nobel acceptance speech by Dennis Mukwege, indicating that the number of rapes and other atrocities dropped after the high-profile Kavumu trial. Denis Mukwege, "Nobel Lecture," Oslo, 10 December 2018, https://www.nobelprize.org/prizes/peace/2018/mukwege/55721-denis-mukwege-nobel-lecture-2/.

33. Human Rights Watch, "Etats Généraux of the Justice System in the Democratic Republic of Congo," 27 April 2015, https://www.hrw.org/news/2015/04/27/etats-generaux-justice-system-democratic-republic-congo#.

34. MONUSCO staff suggested that the Lubumbashi case in particular was quite problematic and should be considered carefully before any claim of success.

35. These statistics were compiled based on internal MONUSCO documents [on file with author].

36. Patrick Vinck and Phuong Pham, *Searching for Lasting Peace: Survey on Perceptions and Attitudes about Peace, Security and Justice in Eastern Democratic Republic of the Congo* (Cambridge MA: Harvard Humanitarian Initiative and UNDP, 2014).

37. Interviews with MONUSCO officials 20-25 September 2020.

38. Johannes Beck, "Contested Land in the Eastern Democratic Republic of the Congo," *IFHV Working Paper* 2 (2012), http://www.ifhv.de/documents/workingpapers/wp2_2.pdf; Koen Vlassenroot, "Dealing with Land Issues and Conflict in Eastern Congo: Towards an Integrated and Participatory Approach," Report on a seminar held in Brussels on 20-21 September 2012, https://biblio.ugent.be/publication/3086664/file/3086666; Jason K. Stearns, "Causality and Conflict: Tracing the origins of armed groups in the eastern Congo," *Journal of Peacebuilding* 2 (2014).

39. Gillian Mathys and Koen Vlassenroot, "It's not all about the land: Land disputes and conflict in eastern Congo," *Rift Valley Institute PRSP Briefing Paper* 14 (2016).

40. NB: much of this work is done by the JSC (described above) but is separated out here given the views of several experts that the mobile courts were especially impactful in the DRC.

41. This requirement is made in the context of projects jointly developed and implemented by UNDP, MONUSCO and the United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict.

42. Monica Rispo et al., *Evaluation of UNDP's Support to Mobile Courts in Sierra Leone, Democratic Republic of the Congo and Somalia* (New York: UNDP, 2014). United Nations Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," United Nations, 3 October 2016, S/2016/833; United Nations Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," United Nations, 30 December 2014, S/2014/956; United Nations Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," United Nations, 17 December 2013, S/2013 757.

43. Patrick Vinck, Phuong Pham and Tino Kreutzer, "Eastern Democratic Republic of the Congo," *Peacebuilding and Reconstruction Polls* 3 (2015), http://www.peacebuildingdata.org/sites/m/pdf/DRC_Poll3_Final_Engl.pdf.

44. UNDP, *Evaluation of UNDP's support to mobile courts in Sierra Leone, DRC and Somalia* (New York: UNDP, 2014), https://www.undp.org/publications/evaluation-undps-support-mobile-courts-drc-sierra-leone-and-somalia.

45. United Nations Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," United Nations, 3 October 2016, S/2016/833: para 48.

46. Kimiko de Freytas-Tamura and Steve Wembi, "An Unfortunate Record for Congo: Thousands Flee Cells in Biggest Jailbreak," *New York Times*, 19 May 2017, https://www.nytimes.com/2017/05/19/world/africa/congo-prison-break-kabila.html.

47. Saleh Mwanamilongo, "11 dead, over 900 prisoners escape in Congo prison attack," *Associated Press/Global News*, 11 June 2017, https://globalnews.ca/news/3518871/beni-congo-prison-break/.

48. Interview with MONUSCO official, 24 September 2020.

49. Internal MONUSCO document [on file with author].

50. Ibid.

51. It should be noted that this included the death penalty for crimes against humanity/war crimes/genocide.

52. MONUSCO and OHCHR, "Accountability for Human Rights Violations and Abuses in the DRC: Achievements, Challenges and Way forward: 1 January 2014 - 31 March 2016," 21 October 2016, https://www.ohchr.org/Documents/Countries/CD/UNJHROAccountabiliteReport2016_en.pdf.

53. Ibid.

54. See, Prescilla B Hayner, *Unspeakable truths, Transitional Justice and the Challenge of Truth Commissions* (London: Routledge. 2010): 253; Laura Davis, "Power shared and justice shelved: the Democratic Republic of the Congo," *International Journal of Human Rights* 17 (2013): 289-306; Valerie Arnould, "Transitional Justice in Peacebuilding: Dynamics of Contestation in the DRC," *Journal of Intervention and Statebuilding* 10, 3 (2013): 321-338.

55. Interview, Kinshasa, December 2018.

56. Interview, 23 September 2020.

57. UNDP Evaluation of UNDP's support to mobile courts. NB: there is a moratorium in place on the imposition of the death penalty, though it continues to be used in sentencing.

58. See, Jacques B Mbokani, *Congolese Jurisprudence under International Criminal Law: An Analysis of Congolese Military Court Decisions Applying the Rome Statute* (Rosebank, South Africa: Open Society Initiative for Southern Africa, 2016).

59. NB: from 2019 to present, the mandate has grown somewhat the expectations under the Tshisekedi Presidency appear higher.

60. Including the ABA, TRIAL, ICTJ and others.

61. NB: MONUSCO's PoC strategy contains prosecution/ investigation support as a constituent element, offering a good lesson for other settings.

62. Interview, 25 September 2020.

RULE OF LAW

Support to Conflict Prevention and Sustaining Peace in **Lebanon**

by Adam Day,
March 2021

1. Introduction

The scene of a long and brutal civil war (1975-1990) and multiple wars with Israel, Lebanon has more recently been hailed for its resilience, having endured the region's upheaval and seemingly absorbed the spillover effects of the Syrian civil war. This celebrated resilience – based on the country's perceived economic and financial strength and relatively stable confessional power-sharing system – has been rocked over the last decade, exposing Lebanon's structural fault lines and vulnerabilities. Indeed, the Syria crisis may be best understood as an acceleration of underlying weaknesses in the Lebanese system, many of which revolve around polarized politics and poor rule of law governance capacities.

Since the outbreak of the war in Syria in 2011, Lebanon has undergone a series of overlapping crises that have devastated its economy, strained relations amongst communities, and driven hundreds of thousands of people into vulnerability. As of late 2020, the country was host to roughly 1.5 million refugees who fled the war in Syria, causing massive strains on Lebanon's public institutions and driving up tensions with many host communities.[1] The Syria conflict also significantly impacted Lebanon's social and economic growth, exacerbating an already fragile economy and contributing to a USD 18 billion downturn in growth rate.[2] A stagnant economy and a paralysed Lebanese Government triggered social unrest across the country,

including widespread protests in 2019 and 2020 that turned violent, including during confrontations between politically-affiliated groups as well as with security services.[3] While a new Government took power in early 2020 (only to resign months later and lapse into caretaker mode), the combination of severe outbreaks of COVID-19 and a massive explosion in Beirut on 4 August 2020 has caused further economic collapse, pushing even more of the population into vulnerability, contributing to huge inequalities in terms of access to services, and threatening to worsen the risks of further unrest. Continued calls for reform of the governance system, recurrent complaints about lack of freedom of expression and the heavy-handed response by the security services, have kept Lebanon extremely tense into 2021.[4]

This multifaceted crisis is happening within a context of deep and structural gender inequalities. Lebanon has one of the highest overall gender gaps in the world (ranking 145 out of 153 countries in the 2020 World Economic Forum *Gender Gap* report), and amongst the lowest global rates of women's labour market participation, hovering at 29 per cent for women[5] and 76 per cent for men.[6] Women's participation in politics is cited as some of the worst in middle-income countries (women represent only 4.6 per cent of the 128 elected officials in Parliament). Youth have also expressed strong dissatisfaction with the Government,

often leading protests and pushing for ambitious reforms. Public confidence in the State, in particular by marginalized groups but also more broadly, has been badly damaged by the 2020 Beirut explosion and the stalled efforts to take forward an investigation into those accountable for it.

Lebanon's precarious position today is also the result of a decades-long struggle to emerge from a long period of *de facto* tutelage under Syria and recurrent occupations of Lebanese territory by Israel. The 2006 Lebanon/Israel war remains fresh in the minds of many Lebanese and indeed has been a constant reference point that has allowed Hizbullah to grow into a significant political player in the country. The February 2005 assassination of Prime Minister Rafiq Hariri and 22 others in a massive bombing in downtown Beirut was but the most visible and deadly of a series of terrorist attacks that have kept political tensions high and undermined the population's trust in institutions of accountability and security across Lebanon.

This case study examines the UN's response to these crises between 2017 and 2020, focusing on several rule of law programmes the UN put in place to improve access to justice, build the capacity of municipal policing, and address critical governance shortfalls. It is guided by the central question: *How has the UN's rule of law work contributed to the conflict prevention goals of the UN, to a reduction in risk of violent conflict in Lebanon?* As such, it aims to provide an assessment of the impact of the UN, identifying good practices, inhibiting and enabling factors, and lessons for the broader UN system.

The study has five sections: (1) a background description of the risk landscape and the endemic shortfalls in State rule of law capacities; (2) an overview of the main rule of law actors in Lebanon; (3) an assessment of areas where there is evidence of the UN's impact in terms of conflict prevention; (4) an examination of the enabling and inhibiting factors for the UN's impact; and (5) lessons and recommendations for the broader UN system.

A note on scope and methodology

For the UN system, the rule of law is 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 covers areas of work such as police, justice, and corrections.[7] However, we recognize that other areas of the UN's work may also contribute to the core goals of the UN's rule of law work, including efforts to combat impunity, build accountability, advance transitional justice, limit corruption, and address conflict-related sexual violence, amongst others. This project does not adopt a strict definition of rule of law but is instead largely guided by interviews with experts in a range of field settings, asking them what they consider to be the key rule of law programmes by the UN and its partners.

Regarding the scope of these studies, it is important to highlight that this is not a comprehensive assessment of the UN's work in a given setting. It does not try to capture every rule of law programme, but instead reflects the views of experts about the most impactful, relevant, and effective rule of law interventions in the given timeframe. This expert-driven approach to cases studies is to ensure that they feed meaningful cross-cutting policy recommendations, which is the core purpose of this project.

In terms of methodology, we note that the UN's rule of law work takes place alongside the interventions of a range of actors, including national leaders, bilateral donors, INGOs, and local organizations. While it is our goal to identify evidence of the UN's impact, often the UN is a small player amongst these, supporting and coordinating rather than leading on programming. Indeed, many of the most

influential roles of the UN are normative, centred around its advocacy and public statements rather than concrete programmatic deliverables. Given these roles and the large number of other intervening factors, it can be difficult to isolate the UN's impact via its rule of law interventions. Rather than speak in direct causal terms about impact, we contextualize the UN's *contribution*, alongside the interventions of others, to the broader goals of risk reduction.[8] Where the precise impact is impossible to ascertain, or where the UN has not generated evidence that directly supports causal findings about impact, we rely on a broad set of expert consultations to help us identify good practice and lessons that could be applied beyond a single country context.[9]

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2. Conflict prevention landscape

Lebanon was described by one UN expert as "surviving in a form of stable instability," meaning that many of the factors that have prevented large-scale conflict in the country are also those that present significant risks. For example, Lebanon's confessional power-sharing system is the outcome of the peace agreement that ended its civil war and is widely seen as a strong hedge against intercommunal conflict. At the same time, the confessional set-asides and quotas in Lebanon's governance system have also led to deeply engrained corruption, a lack of accountability across the political arena, and growing public dissatisfaction in the leadership of the country. Similarly, its strong interdependence with Syria, based on reciprocal arrangements for workers and trade, worked for decades to stabilize Lebanon, but were also part of the reason Lebanon became so deeply affected by the Syrian crisis. The war in Syria has accelerated many of the social, economic, and political drivers of instability, though Syria is by no means the sole cause of the risks facing the country.

Over the first six years of the Syrian conflict, more than 1.5 million Syrians fled to Lebanon (roughly one-quarter of the overall population of Lebanon) and settled in communities across the country. Lebanon had already played host to roughly 450,000 Palestinian refugees since 1948, making the country one of the highest per capita refugee recipients in the world. This influx of newly vulnerable refugees created enormous pressures on Lebanon's already weak public service institutions, overwhelming schools, straining infrastructure, and driving an overburdened health sector further into debt.[10] Roughly three-quarters of the Syrian refugees were women and children with specific and gendered needs. Unemployment, already high before the Syrian crisis, soared, deepening longstanding inequalities and heightening tensions within many host communities.[11] While ostensibly maintaining an open border policy, the Lebanese Government created significant *de facto* obstacles for the Syrian refugee population in the country, including refusals to offer work permits, deportations, and periodic closures of border crossing points.[12] Refugees have been chronically unable to access basic services and have faced acute challenges in gaining access to justice institutions, also facing serious discrimination in a highly polarized climate.

Fighting from Syria spilled directly into Lebanon as well. In 2014, forces of the Syrian-based Al-Nusra Front and Islamic State temporarily held the town of Arsal. While they were driven out by the Lebanese Armed Forces (LAF) and Hizbullah in 2017, the border area between Syria and Lebanon has remained extremely tense, with frequent reports of skirmishes and territorial incursions.[13] While the number of deaths was relatively low from these incidents, the fighting drove tensions between Lebanese communities and extremist armed groups higher, contributing to the creation of self-defence groups in

some municipalities starting in 2014 and greater pressures on local police forces. More generally, there are credible reports of the rise of extremist elements within some communities of Lebanon during this period. These dynamics contributed to the deployment of the LAF in greater numbers along the Syria/Lebanon border and a more concerted international effort to support the State security services as part of the extension of State authority in the country.

In the face of unprecedented challenges to the country's stability, Lebanon's political institutions ground to a halt. Sectarian tensions – principally between Hizbullah and a range of Sunni groups – flared up amidst mutual accusations of participating in the Syrian war, leading to a deadlock in Government. Between 2014 and 2016, the country was without a president, while a caretaker Government was unable to take even the most basic of decisions in response to the crisis.[14] While the 2016 election of President Aoun (and the 2018 legislative elections that formed part of the 2016 deal) helped to unlock the governmental paralysis, the Government still proved largely ineffective at addressing the inter-related challenges emanating from the Syria crisis and Lebanon's own downward economic slide. In 2019 and early 2020, large-scale demonstrations took place in protest against increases in taxes, high unemployment, corruption within government, and the lack of basic governance institutions across the country.[15]

The onset of the COVID-19 pandemic significantly worsened the already dire economic situation in Lebanon. By the end of 2020, the Lebanese pound had lost more than two-thirds of its value on international markets, while more than half of the population was considered below the poverty line.[16] With the already overburdened healthcare system stretched well beyond its limits, the most vulnerable in Lebanon faced still greater risks to their health and socioeconomic well-being.[17] In March 2020, for the first time in its history, Lebanon defaulted on its sovereign debt.[18]

In August 2020, the Port of Beirut suffered a massive explosion that killed more than 200 people, wounded more than 6,500, and displaced roughly 300,000 residents in surrounding areas.[19] Estimated costs for rebuilding from the damage were in the billions of dollars, contributing to an overall economic contraction of roughly 24 per cent.[20] Women were especially affected by the explosion, triggering a UN Women-led response plan in addition to the umbrella Reform, Recovery & Reconstruction Framework (3RF), no quotations.[21] The explosion further exacerbated socioeconomic hardships for many communities, and dramatically increased levels of distrust in the Government.[22] Concerns about corruption amongst the political elite, a lack of accountability, and the poor governance capacities of Lebanese institutions remained extremely high, underscoring the need for effective, large-scale support to a country that has felt on the brink of more large-scale escalation into violence.

3. Mapping of rule of law actors/processes

As in most countries, the principal rule of law actors in Lebanon are the national institutions, general security, police, judiciary, corrections, and the ministries that oversee them. The LAF also play an outsized role in rule of law provision as well, given the relatively small presence of police throughout the country. However, the Lebanese Government has been largely paralysed for the past ten years, at times completely blocked and at others simply unable to take national decisions on key issues. Moreover, experts have pointed to chronic shortcomings across many other Lebanese institutions, including poor public perceptions of the judiciary, the use of military courts to oversee civilian affairs, poor access to justice for much of the population, non-functioning anti-corruption efforts by the State, lack of parliamentary oversight of key governance functions, and an increasingly heavy-handed response to popular protests by the Lebanese security services. As a result of these shortfalls and the strong international presence in Lebanon since the post-Taef reconfiguration, bilateral donors, INGOs, the UN and other groups in advocating for governance and rule of law improvements may be more relevant and impactful than in some other contexts.

Lebanon has been the recipient of enormous amounts of bilateral aid and support during the last four years, including significant support to governance institutions. Much of this support is channelled through the Lebanon Crisis Response Plan (LCRP) that has several programmes designed to improve access to services, support host communities, and address the governance shortfalls in Lebanon.[23] Additional significant support to the Lebanese security services has also been provided through the Rome Conference and major bilateral initiatives to support the LAF.[24] The top donors in this context are the US, Germany, France, the EU, the UK, Norway and Canada.[25] In some cases, such as the US and UK support to the LAF, this funding is provided directly to the Government.[26] International NGOs – in particular the American Bar Association and the Norwegian Refugee Council– have played an important role in providing advisory and capacity support to rule of law institutions as well.[27]

International support to Lebanon ramped up significantly in the wake of the August 2020 explosion, after which donors pledged an additional USD 11 billion for reconstruction (some of which will be used for improving the governance capacities of the State and combating corruption).[28] The principal channel for this support has been Lebanon's 3RF, which articulates as a key priority the reform of governance institutions and better accountability.[29] Here, the World Bank, the EU and the UN collaborated in producing the 3RF, working with Lebanese civil society and the Government. Donor support also ramped up and reframed in

response to the COVID-19 Lebanon Emergency Appeal, launched in March 2020 that had received USD 91 million by 31 December for activities to be implemented outside the LCRP.

Of course, not all international support to Lebanon is for crisis response. For example, there was a USD 11 billion international pledging conference in April 2018, held to help Lebanon stave off the current economic collapse. International pledges were conditioned on adopting and implementing fairly minimal reforms, including many in the rule of law arena. However, experts have suggested that these initiatives, along with ongoing discussions with the International Monetary Fund, have not prompted the kind of serious reforms to the Lebanese governance system required to unlock a new relationship with the international donor community and other international financial institutions.

Within the UN system, the main actors working on rule of law issues since 2017 have been UNDP, UNHCR, UNODC, OHCHR, UN Women,[30] and the Resident Coordinator's Office (which is integrated into the UN's special political mission in Lebanon, UNSCOL). As a special political mission, UNSCOL plays a lead role across the UN in advocating for improved rule of law and governance reforms, including in the context of Resolution 1701, which expressly concerns Lebanon's security and stability. The peacekeeping mission, UNIFIL, also plays a role in supporting some rule of law work

in southern Lebanon. Much of the UN's work during this period has been orchestrated under the 2017-2022 Integrated Strategic Framework, the LCRP and more recently the 3RF, all of which provide broad umbrellas for cooperation by the UN. It is also worth noting that some agencies (e.g. UNHCR and UNDP) and OHCHR also maintain regional offices that cover Lebanon and the other countries in the Middle East. The Integrated Strategic Framework provides a full outline of UN actors and partners.[31] The 1325 National Action Plan also contains some independent rule of law programming.

The Special Tribunal for Lebanon, formed by UN Security Council Resolution 1757, was created to establish accountability for the February 2005 bombing that killed Prime Minister Rafiq Hariri and 22 others. While not a UN entity per se, its work is considered integral to the international community's efforts to combat terrorism, build systems of accountability, and help to address deep public scepticism in the institutions of the State.

It is worth a specific mention of the role of women and youth in pushing popular protests during the 2019-2020 period. Though historically marginalized in politics and the broader socioeconomic landscape of Lebanon, there are signs that some women-led organizations may now be playing a more influential role in the domestic trajectory of the country.[32]

4. Rule of law impact

This section assesses the extent to which the UN's rule of law interventions may have reduced the risk of escalation into widespread violence, focusing on the 2017-2020 period. It does not attempt to capture the full range of UN programming in-county, but rather relies on the available data and a range of expert interviews to identify the most impactful and relevant work in the rule of law arena.

Access to justice

Lebanon faced significant access to justice constraints before the Syria crisis, including chronic issues related to victims of past political killings, families of the disappeared, and communities that had limited institutional capacities as a result of the power-sharing arrangements across the Government. In this context, the influx of more than one million Syrian refugees into Lebanon contributed to a significant overburdening of Lebanese institutions and highlighted the severe constraints on the ability of Syrians and other marginalized communities to access key services. More than 70 per cent of Syrians in Lebanon lack legal documentation, while the Lebanese Government has strongly resisted issuing formal residency permits or other documentation that would allow them access to justice.[33] Women refugees (which constitute more than half of the Syrian population in Lebanon) have faced particular forms of discrimination and higher hurdles in terms of accessing legal institutions across Lebanon.[34]

It is important to note that the situation facing Syrians is indicative of a broader shortcoming in the Lebanese system. Lebanese citizens – particularly those in poorer communities – have struggled to access State justice institutions, often relying more on informal, local mechanisms to resolve disputes.[35] Surveys indicate that poor access to justice has been one of the key reasons behind the growing tensions between the Lebanese host communities and Syrian refugees, which at times escalated into violence.[36] Syrian refugees were especially affected by security measures targeting their settlements, such as curfews and raids, with little recourse to the Lebanese justice system.[37] But Lebanese citizens too have faced decades of poor access to justice, a problem which has only worsened in recent years.

Women across Lebanon face serious obstacles to accessing justice processes, though the barriers differ in part based on confession. Lebanon recognizes fifteen different personal legal statuses, depending on confession (Sunni, Shia, Druze, and a variety of Christian sects).[38] Each of these has a separate set of courts to address issues around personal status.[39] Regardless of their confession, women face similar barriers in accessing justice processes, including due to lack of knowledge of their rights, limited financial means, and cultural impositions on their role in public.[40] Women also face the legal hurdle of not being able to pass nationality on

to their children, creating significant problems with accessing institutions for their families (while this issue is a longstanding one that arose from the large Palestinian population in Lebanon, it has come to affect Syrian refugees as well).

Several UN initiatives were put in place between 2017 and 2020 to help address the shortcomings in access to justice. Amongst these initiatives is the establishment of the Access to Justice Working Group, composed of UNDP, UNHCR, the Bar associations of Beirut and Tripoli, under the lead of the Ministry of Justice. According to a range of experts, the coordinated work of the UN and other actors in the access to justice space has helped to bring the key actors together in Lebanon, avoid duplication, and develop a national joint strategy on legal aid. This group's establishment was part of a USD 3.5 million UNDP-led project entitled "Enhancing Community Security and Access to Justice in Lebanon Host Communities" taken forward jointly with UNHCR and with funding from the Netherlands and Canada.[41] The project has helped to build the capacities for the Lebanese State to monitor tensions and be more responsive to risks when they arise, including by increasing the access of Syrians and Lebanese to justice institutions.

While it is difficult to quantify access to justice progress, there are several indications that the UN's work has increased the ability of vulnerable groups to take advantage of legal services in many parts of Lebanon. Some of the key accomplishments in this field include:

- UNDP, UNHCR, the Ministry of Justice and the Bar associations of Tripoli and Beirut through the Access to Justice Working Group supported the development of a national strategy on legal aid and laid the foundations for a **hybrid civil legal assistance system** to be piloted through helpdesks in dozens of municipalities (offering free legal services to disadvantaged people);

- The same grouping supported the Tripoli Bar Association to set up a hotline for free legal assistance in the COVID-19 crisis, including for SGBV survivors and migrant workers; UN Women has now joined these efforts and, with UNDP, is funding and supporting the Tripoli Bar Association to deliver legal aid services to survivors of SGBV, and to build a SGBV investigator roster in the north of the country;

- UNDP supported the Beirut Bar Association's work to help safeguard the legal rights of over 1,000 victims of the Beirut blast;

- UN Women has been working with Anti-Racism Movement and Legal Aid Worldwide (LAW) to provide legal aid services to migrant domestic workers. On 8 October 2020, with support from UN Women, LAW filed a ground-breaking case on behalf of a migrant domestic worker in Lebanon, arguing that her treatment "constituted crimes of slavery, slave trading, trafficking in persons, forced labour, deprivation of liberty and withholding personal documents, racial discrimination, gender discrimination, and torture." The case is moving through national courts;

- UN Women, with LAW, is undertaking a study on gender-based violence and crimes during Lebanon's civil war. The objective is to contribute to issues of accountability and reconciliation.

Taken together, these efforts have improved access to justice for thousands of Syrian refugees, women, and other marginalized populations of Lebanon. While they have not yet addressed the structural issues facing marginalized populations – indeed, the legal framework remains a complex and challenging one for refugees to manage – improving access to justice in the short term has the benefit of addressing issues that might escalate into greater tensions if left unaddressed.

Municipal police

Lebanon has a unique distribution of security tasks across its army, internal security, and police, with many traditional police duties conducted by the LAF (e.g. crowd control, criminal investigations, anti-trafficking). This presents a set of challenges for the UN to support improved policing, though given the growing internal tensions in Lebanon, the need for municipal policing capacities has increasingly been seen as crucial to preventing violence. In particular, as tensions between host communities and Syrian refugee settlements rose during the Syria crisis, the use of these security agencies was seen as potentially risky, given their role in imposing curfews and arrests and the risks of excessive force. In this context, UNDP and UNHCR collaborated with the Ministry of Interior and the Internal Security Forces (ISF) training academy to build up community police with training, integration of women into the police force, and increasing the police force's capacities to de-escalate. Complementing this, UNDP's tension monitoring system has helped to identify areas where additional municipal policing might be required and to build a common core of skills in community policing. UN Women is working with the ISF on issues of social norms, to include awareness-raising on gender equality and women's rights into the standard trainings of uniformed personnel.

In 2017, UNDP supported the development of standard operating procedures and a code of conduct for the municipal police. UNDP also assisted the ISF Academy with the development of a new curriculum for the municipal police, with modules on social skills that focus on conflict management, negotiation, and effective communications. Roughly 500 municipal police officers were trained by the ISF Academy, with UNDP support. UNDP also promoted stronger inclusion of women in municipal police services, with this issue enshrined as one of the five strategic components of the municipal police reform programme developed in collaboration with the Ministry of Interior.

With technical support by UNDP, the Ministry of Interior and Municipalities collected data and analysis on tensions between Syrian refugees and host communities across more than 900 municipalities in Lebanon through the Security Cells. This comprehensive set of data has informed national senior officials on risks of conflicts at the local level across the country. In 2020, the Ministry of Interior shared its security cells report with 63 entities, including ministries, Governors, Parliament and the President's office, helping to build a more common approach to community security.

OHCHR supported the development of a Code of Conduct for the LAF, which was launched in January 2019. Following the launch, the LAF Commander announced new positions of Legal Advisors in all the institution departments in charge of monitoring the dissemination of the Code of Conduct and its proper implementation. (OHCHR also supported the development and updates of Codes of Conduct for the ISF in 2012 and 2017). OHCHR also engaged with the General Security Office (GSO) on developing their Code of Conduct in 2016. In 2019 and 2020, OHCHR supported GSO with a capacity-building programme on migration and borders management targeting more than two hundred GSO personnel on the borders including the airport.

According to several experts, this work has helped the municipal police become a far more important player in reducing tensions, especially in areas hosting large Syrian populations. And these impacts have been widespread: over 200 municipalities are already implementing at least one aspect of the broader reform, and it has been disseminated to more than 550 municipalities. "Getting the municipal police and the ISF to work together on community security is the best chance to keep tensions low around Lebanon," one expert noted.

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Governance after the Beirut explosion

The August 2020 explosion in Beirut caused catastrophic damage to the city and cost hundreds of lives. The explosion, and the stalled efforts by the Lebanese State to investigate and establish accountability, have shaken public confidence and contributed to a significant risk of more widespread unrest.

In the wake of the explosion, the UN, EU and the World Bank developed the 3RF, which principally concerns reconstruction and recovery. However, in developing the plan, and in the context of widespread protests against the Government, the 3RF also includes work to strengthen the independence of the judiciary, implementation of an anti-corruption strategy (including by staffing up and funding the National Anti-Corruption Commission) and strengthening the oversight roles of some government inspection units. As laid out in the plan, Lebanon should adopt new governance models that breaks the capture by political elites of State institutions and helps to build popular trust in the Government. The plan articulates a collaborative approach, based on the inclusion of government, civil society, private sector and development partners. "Building a transparent, viable rule of law capacity in the Lebanese State is a crucial element of the 3RF," one UN expert noted, while others stressed that addressing corruption and improving public confidence in the State were important to preventing more popular unrest.[42]

Though the initial assessment was criticized for being "gender blind," UN Women subsequently coordinated the efforts of 46 feminist activists and women's rights organizations to issue a unified "Charter of Demands". The Charter represents signatories' concerns and demands for an immediate humanitarian assistance process that recognizes and addresses existing gender inequalities and seeks to ensure that all women and girls' needs and priorities are met and that the process is transparent and subjected to due diligence as well as clear accountability mechanisms. The Charter also advocates for the inclusion of voices and needs of all women (especially the most vulnerable groups) in the reconstruction and reform plans of Lebanon.[43] Since then, the representatives of this feminist civil society platform met with the donors' community in Lebanon (October 2020) and with the leadership of the UN, World Bank, and EU (November 2020) to share their concerns and demands. In addition, the members of the platform were actively engaged in the development of the 3RF recovery plan that is more inclusive of women, girls, and marginalized groups' needs in Lebanon. UN Women continues to support the formalization of this platform and to expand its mandate and focus beyond the response to the Beirut explosion.

The 3RF is still being operationalized and it is too soon to understand its impact in terms of tension reduction. However, several UN experts noted that there were good practices that could be identified in terms of leveraging major donors and international financial institutions to push through governance reforms at the national level.

Prisons

Several shortcomings in the Lebanese prison system were identified by experts as potentially affecting the risks of violence in Lebanon. Lengthy delays in trials, allegations of torture, overcrowding, and a dominant role by military (rather than civilian) justice mechanisms were pointed to as key areas needing reform. Several initiatives and programmes have been implemented to address these issues since 2017.

For example, processing prisoners in Lebanon has fallen largely to the Ministry of Interior over the past ten years, despite the clear need to build the capacity of the Ministry of Justice to take on greater responsibility in caseload management. UNODC and UNDP have jointly worked with the two ministries in this regard, and in 2016 agreement was reached with the Government to shift the principal responsibility, a key step in

improving civilian oversight of justice. In addition, a USD 7 million Dutch-funded project on Egypt and Lebanon has helped to strengthen internal management of prisons, build more rehabilitation programmes, and put in place measures to protect children and other vulnerable groups being processed by the justice system.[44]

Some of UNDP's work has helped reduce overcrowding in Roumieh prison, addressing infrastructural issues that had prevented the use of common areas for more than 3,000 prisoners. UNDP's support to women inmates has also improved rehabilitation programming for over 100 people in recent years. UN Women is currently working in Roumieh prison, providing skills training and cash for work to non-violent female offenders that are due for release in the next year to help them prepare for social integration.

Preventing violent extremism

Violent extremism in Lebanon has become a far more central issue during the Syrian conflict amidst the widespread reports that extremist elements had gained a stronger foothold in the country, though it should be stressed that Lebanon's experience with violent extremism predates the Syrian crisis.[45] Within the UN, there is a strong recognition that the prevention of violent extremism must account for underlying structural factors (deep social inequalities, alienation of some social groups, governance failures) alongside the more immediate risks emanating from the conflict.

Here, the UN has supported the Government's development of a national preventing violent extremism (PVE) strategy and National Action Plan, which was formally launched in 2018. While implementation of the plan is ongoing, there has been progress in establishing a PVE network, a monitoring and evaluation framework, an early warning system, and PVE training materials for State actors. During 2019, a series of national consultations were held throughout Lebanon on the nine pillars of the National Strategy for PVE, including governmental entities, municipalities, civil society, private sector, universities and international organizations, with the goal of feeding insights into a National Action Plan. Within the action plan, the justice pillar received funding from the UK and had begun implementation in 2019 but was halted by the COVID-19 pandemic. However, several experts noted that the establishment of the plan itself sent a helpful message from the Government that extremism was an issue that required a national response, which helped reassure some communities that might otherwise feel a greater need to take issues into their own hands (e.g. via the creation of community defence groups).

According to UN experts in Lebanon, it is too early in this process to identify the impact of these efforts, though they are included here to indicate the priority placed on this issue, and also the risks that violent extremism poses to the country.

Accountability and justice

While much of the focus in Lebanon has been on the recent set of crises, the country is also dealing with the legacy of its long civil war, from which thousands of disappearances and killings have not been addressed via any justice process to date.[46] Addressing the past history of large-scale crimes during the civil war, however, is an important facet of building a stronger sense of accountability, and in reducing longstanding tensions amongst communities. After years of advocacy, in 2018, OHCHR supported the development and passage of Lebanon's Law 105, which formally establishes a National Commission for the Mission and Forcibly Disappeared in Lebanon.[47] In 2020, this Commission was provided with Commissioners and has begun its work, with roughly USD 3 million of support from the UN's Peacebuilding Fund, and partnership with UNDP, OHCHR, and UN Women. While the Commission has not yet begun its formal work and faces strong criticism amongst some quarters in Lebanon, the signal

appears to be a somewhat positive one that Lebanon is taking its human rights obligations seriously, including those related to transitional justice. [48]

One of the most important mechanisms to establish accountability for past crimes has been the Special Tribunal for Lebanon (STL), an independent court based in The Hague that was established by the Security Council in the wake of the 2005 assassination of Prime Minister Rafiq Hariri and 22 others. In recent years, the STL has concluded the trials for several of the alleged perpetrators of the assassination and has conducted a wide, victim-focused campaign to establish the facts behind the bombing and related acts of terrorism. While the Court has focused on the Rafiq assassination, it should be noted that the trials take place in the context of more than 80 terrorist attacks within Lebanon since the country's independence, including a spate of killings that took place during the Syria civil war.

It is very difficult to assess the impact of the STL, especially as many of the trials are pending, though it is worth highlighting some of its activities. It was the first court to fully establish the role of victims in terrorism-related crimes (Lebanon uses the civil law system based on witnesses rather than victims), which has meant that hundreds of people affected by the bombing have participated in the judicial process. The STL also has a robust outreach programme, which has conducted reconciliation and truth-telling work with eleven universities and sensitization campaigns with the ISF and LAF. As one senior STL member noted, one of the main accomplishments of the Court has been to generate a national conversation about accountability, "it has given some sense that the recurring terrorist attacks in the country might be addressed through something other than more violence ... though that end is far from in view."

Overall impact

Lebanon remains in an extremely fragile moment as the combination of the Syrian crisis, strong downward economic trends, COVID-19 restrictions, and the August explosion have placed enormous strains on its society. Continuing social unrest as recently as March 2021 at the time of writing indicate that the risks of broader escalation remain very real, while many of the key structural challenges (e.g. corruption, lack of access to justice, deep sociopolitical divides, and lack of political will to implement meaningful reforms) are unlikely to be resolved anytime soon.

However, as the above overview of the UN's work in-county demonstrates, some of the rule of law over the past four years does appear to have helped to mitigate the risks of instability, if indirectly. In particular, the work to improve access to justice, especially for women, and bolster the role of the municipal police appears to have alleviated some of the more acute strains at the local level, providing communities with the key rule of law capacities needed to improve access to justice and reduce the reliance on the

armed forces to provide security. While direct causal evidence is impossible to establish, several experts interviewed suggested that these improvements may have reduced the risk of greater tensions and possible violence.

In a volatile context involving recurrent large-scale social unrest, the work to gradually improve governance, combat corruption, and address longstanding issues of accountability also appears to have contributed to a reduction of risks, though most trends in Lebanon are quite negative at this time. Much of the impact described above has been in part due to sizeable international funding, which has flowed through both the LCRP and the 3RF, both of which have prioritized governance capacities as areas for intensive programming. As several experts pointed out, there is little evidence to support a finding that the UN has directly reduced risks of violence or escalation, though some of the more indirect influences described above do indicate that small improvements to the governance capacities, particularly at the local level, have helped.

5. Enabling and inhibiting factors

Governmental paralysis

One of the greatest challenges facing Lebanon has been the deeply divided political class governing the country, which has resulted in long periods of paralysis, an inability to effectively and inclusively respond to crises and implement meaningful reforms, and a widespread perception of corruption and lack of political will amongst the elite. In particular in the rule of law area, the Government has invested very little in institutional development (particularly in the rural parts of the country), largely leaving issues like policing and justice to local/municipal authorities. This has meant enormous differences across Lebanon in terms of rule of law capacities, and frequently a need for the UN and its partners to take responsibility for the delivery of projects without a stable partner in government. "We never know when the Government might fall, or go into caretaker mode, or just become overwhelmed with a new crisis, which makes joint planning an extremely difficult task," one UN official noted.[49]

Sectarianism

Lebanon's consociational system has resulted in a proliferation of personal status laws across its 15 recognized religious communities, including separate laws for Sunnis and Shia, as well as for Melkite Greek Catholic, Maronite, and Greek Orthodox.[50] With no formal relationship to the State, courts overseeing these different communities have developed widely disparate levels of access, especially for women. And while a range of Bar associations have provided significant support, the fees associated with these courts have created serious barriers to poorer or otherwise marginalized community members, meaning that access to justice depends in part on religious affiliation and wealth.

Lack of legal status

The influx of Syrians prompted an enormous outpouring of hospitality amongst many Lebanese communities that have hosted more than one million refugees for nearly ten years now. Though there have been serious tensions and moments of violence, the willingness of the Lebanese to continue to host Syrians has been remarkable. The same cannot be said of the Lebanese Government, which has refused to grant basic legal rights to Syrians, imposed erratic and onerous visa requirements on incoming people, and has restricted their right to work in-county.[51] Indeed, Lebanon's failure to ratify the almost universally

accepted Refugee Convention was cited as a major inhibiting factor on the rights of Syrians in Lebanon. This combination of obstacles has meant that Syrians have faced enormous challenges in accessing justice institutions and other protections from the Lebanese State. Indeed, in many respects their status has paralleled that of Palestinian refugees that have lived for decades in Lebanon with similar restrictions on the right to work or move freely in the country. "The single biggest problem for access to justice in Lebanon is the uncertainty over legal status of Syrians," a UN official noted. This view should be balanced against the many other voices who have pointed to domestic governance shortfalls as the main driver of access to justice problems in Lebanon.

Underdeveloped police and judiciary

Lebanon's security is dominated by the LAF, while the police force has received far less attention or resources.[52] At the municipal level, this has meant that rule of law activities (e.g. community policing) have been dominated by the army, which has at times been extremely heavy-handed, and which is not well linked to civilian justice systems. The UN's emphasis on building up the municipal police is a reflection of the need to shift to more civilian forms of rule of law. Similarly, experts have pointed to an underdeveloped and widely distrusted judiciary as a serious challenge in helping to establish accountability and public confidence in the State, particularly in the context of popular unrest.

Socioeconomic downturn

The prolonged and acute economic crisis has not only raised tensions, but has also resulted in a decrease in the number of municipal workers in a number of areas.[53] With even fewer services being delivered and municipal police increasingly placed on the front lines of conflict prevention at a community level, these reductions have kept the State stretched and often unable to deliver. This, in turn, has contributed to the large-scale social unrest (e.g. in October 2019) and the calls for greater accountability and less corruption amongst the political elite. As the economy has descended further, the risks of further unrest have grown.

6. Lessons and recommendations

Drawing from the above analysis, this section provides some broader lessons and recommendations that can be applied across the UN system.

- **Legal status matters.** The influx of Syrians in Lebanon highlighted a pervasive pre-existing problem that has plagued the country for decades: large populations of Palestinians and Syrians have a lesser legal status in-county despite their long-term presence, while poorer Lebanese have faced major access problems as well. Addressing access to justice is more than just a socioeconomic – though poverty is a strong inhibitor of access – it requires dedicated capacities to help marginalized communities overcome the legal hurdles related to their residency, right to work, and right to access State institutions.

- **National plans need local implementation.** Lebanon's governing institutions have been largely paralysed for much of the Syria crisis, leading to huge gaps between the adoption of plans and their implementation. Where the UN has appeared to achieve the most impact – such as in municipal policing – it has been through intensive engagement at the local level, helping to transform broad national commitments into tangible changes on the ground. Dedicated budgets for implementation at the local level are crucial in this regard. Where such local implementation has not been possible or has been significantly constrained – such as the national PVE strategy – plans tend to gather dust on shelves.

- **Gain leverage through conditionality.** The joint EU, World Bank, and UN 3RF plan demonstrates the value of bringing key donors together around support to Lebanon. In fact, several experts noted that the traction achieved with the national authorities (e.g. their commitments on anti-corruption and governance) were largely the result of pressures from Lebanon's major donors. "The message from the major donors has been clear," one expert noted. "The kind of international support that Lebanon has received is conditional on the authorities being much more serious about governance, anti-corruption, and improving access to State institutions."

- **Conduct gender-sensitive assessments and programmes.** Both the refugee influx and the Beirut explosion served to highlight the distinct and significant obstacles that women face in accessing justice, gaining representation in government, and benefiting from foreign assistance. A good practice from the Beirut explosion was the gender-sensitive assessment, which was then used for targeted programming.

- **Gather evidence of impact.** One of the major challenges of this study was encountering any evidence of the impact of the UN's rule of work in Lebanon. Overwhelmingly, the UN gathered information about its activities, but very few programmes were based upon a visible theory of change to demonstrate how those activities might have an effect. This is in part because much of the UN's work is advisory and indirect, but that does not mean programmes should proceed without a sense of the impact they might have. In some areas, such as improving the capacities of the municipal police, the theory of change is fairly accessible, and the evidence of impact is more readily available. In other areas, there did not appear to be any tracking of impact at all. For example, how will the UN's PVE work contribute to a reduction in the risks posed by violent extremism, and how will the UN know it is having an impact? If the UN is to demonstrate the value of its rule of law work, it should place greater emphasis and resources on linking activities to outcomes.

- **Aim for intergenerational impact.** One of the insights from the STL experience has been the focus on young people and the hope to gradually address deeply rooted political divisions for future generations.

As one Lebanese pundit noted, "most of the leadership of Lebanon has been around since the civil war, they aren't going to change their minds, you need to change the minds of their sons and grandsons [and granddaughters]."

- **Treat crises as opportunities.** On the one hand, the UN's rule of law work in Lebanon has suffered from the compounding crises over the past years: the influx of Syrians, the rapid decline of the economy, the COVID-19 pandemic, and the August 2020 Beirut blast, all interspersed with regular social upheaval and mass protests. "There are so many crises every day that it is extremely difficult to advance any one project in partnership with the Government," a UN official remarked. But as the above description of the 3RF highlights, with crisis comes opportunity: the UN, EU and World Bank were able to leverage the significant outpouring of international support following the Beirut explosion to build an ambitious and holistic response plan, one based on improving the governance capacities of the State and rebuilding public confidence in the justice sector in particular. The extent to which this is a sustainable source of funding, given competing priorities in the region, remains to be seen.

References

1. See, World Bank, "The Ripple Effects of the Syrian Conflict in the Mashreq Region," 17 June 2020, https://www.worldbank.org/en/news/press-release/2020/06/17/fallout-of-war-in-syria.

2. World Bank, *Preliminary findings of the Economic and Social Impact Assessment of the Syrian Conflict on Lebanon* (Washington DC: World Bank, 2017).

3. "Scores wounded as Lebanon's anti-gov't protests turn violent," *Al Jazeera*, 19 January 2020, https://www.aljazeera.com/news/2020/1/19/scores-wounded-as-lebanons-anti-govt-protests-turn-violent.

4. See, United Nations Security Council, "Implementation of Security Council resolution 1701 (2006) during the period from 21 October 2020 to 19 February 2021: Report of the Secretary-General," United Nations, 9 March 2021, S/2021/240.

5. Central Administration of Statistics and ILO, *Labour Force and Household Living Conditions Survey* (Beirut: CAS, 2019), https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_732567.pdf.

6. World Economic Forum, *Global Gender Gap Report 2020* (Geneva; World Economic Forum 2019), http://www3.weforum.org/docs/WEF_GGGR_2020.pdf.

7. Rule of law itself is defined by the UN 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." United Nations Security Council, "The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General," United Nations, 23 August 2004, S/2004/616.

8. This approach of contribution rather than direct attribution is laid out in Adam Day, *Assessment Framework for Preventive Diplomacy: An Approach for UN Mediators and Policymakers* (Tokyo: United Nations University Centre for Policy Research, 2018); see also, United Nations Department of Political and Peacebuilding Affairs, *Three-Year Strategic Plan: 2020-2022* (New York: UNDPPA, 2020), https://dppa.un.org/sites/default/files/undppa_strategic_plan_2020-2022.pdf.

9. This is often referred to as an "adaptive" form of impact assessments, see, Ian Wadley, *Valuing Peace: Delivering and Demonstrating Mediation Results* (Geneva: HD Centre, 2017).

10. Government of Lebanon, UN Resident and Humanitarian Coordinator for Lebanon and UNDP, *Lebanon Crisis Response Plan* (2017- 2021) - 2021 *update* (Beirut: United Nations, 2021), https://reliefweb.int/report/lebanon/lebanon-crisis-response-plan-2017-2021-2021-update.

11. World Bank, *Preliminary findings of the Economic and Social Impact Assessment of the Syrian Conflict on Lebanon* (Washington DC: World Bank, 2017).

12. Anchal Cohra, "Lebanon Is Sick and Tired of Syrian Refugees," *Foreign Policy*, 31 July 2019, https://foreignpolicy.com/2019/07/31/lebanon-is-sick-and-tired-of-syrian-refugees/; International Rescue Committee, "Overview of Right to Work for Refugees: Syria Crisis Response: Lebanon & Jordan," 1 January 2016, https://www.rescue.org/sites/default/files/document/987/policybrief2righttoworkforrefugees-syriacrisisresponsejanuary25.pdf.

13. See, "Syrian Islamist rebels 'withdraw from Lebanese town after truce'," *BBC News*, 7 August 2014, https://www.bbc.com/news/world-middle-east-28693530; Sulome Anderson, "ISIS Is Trying to Take Over Lebanon. This Christian Village Is on the Front Lines.," *NY Magazine*, 21 June 2015, https://nymag.com/intelligencer/2015/06/this-lebanese-village-is-under-attack-by-isis.html; United Nations Security Council, "Implementation of Security Council resolution 1701 (2006) during the period from 21 October 2020 to 19 February 2021: Report of the Secretary-General," United Nations, 9 March 2021, S/2021/240 (2021).

14. See, "Michel Aoun elected president of Lebanon," *Al Jazeera*, 31 October 2016, https://www.aljazeera.com/news/2016/10/31/michel-aoun-elected-president-of-lebanon.

15. See, "Lebanon Protesters Found Strength in Unity, Ditched Sectarianism," Report Syndication, 27 October 2019, https://reportsyndication.news.blog/2019/10/27/lebanon-protesters-find-strength-in-unity-ditched-sectarianism/; United Nations Security Council, "Implementation of Security Council resolution 1701 (2006) during the period from 21 October 2020 to 19 February 2021: Report of the Secretary-General," United Nations, 9 March 2021, S/2021/240.

16. "Lebanon health workers warn of COVID 'catastrophe' as cases surge," *Al Jazeera*, 2 January 2021, https://www.aljazeera.com/news/2021/1/2/coronavirus-threatens-catastrophe-in-cash-strapped-lebanon.

17. Tamara Qiblawi, "In political turmoil and economic collapse, Lebanon could now be overwhelmed by Covid-19," *CNN*, 22 September 2020, https://www.cnn.com/2020/09/22/middleeast/lebanon-coronavirus-economy-lockdown-intl/index.html.

18. Chloe Cornish and Tommy Stubbington, "Lebanon to default on $1.2bn debt," *Financial Times*, 7 March 2020, https://www.ft.com/content/951a6386-6097-11ea-a6cd-df28cc3c6a68.

19. "A year on, Beirut blast victims still struggling to return home," *Al Jazeera*, 2 August 2021, https://www.aljazeera.com/news/2021/8/2/one-year-on-beirut-blast-victims-still-struggling-to-return-home.

20. Institute of International Finance, "Lebanon: Facing A Fundamental Test," 9 August 2020, https://www.iif.com/Portals/0/Files/content/Research/08_09_20_lebanon.pdf.

21. UN Women et al., *Rapid Gender Analysis of the August 2020 Beirut Port Explosion: An Intersectional Examination* (New York: UN Women, CARE, UN ESCWA, ABAAD and UNFPA, 2020) https://www2.unwomen.org/-/media/field%20office%20arab%20states/attachments/publications/2020/10/rga%20_%20beirut%20explosion%20october%2028%202020.pdf; UN Women, "2020 Beirut Port Explosion Response Plan, 13 August 2020, https://www2.unwomen.org/-/media/field%20office%20arab%20states/attachments/publications/2020/08/un%20women%20lebanon%202020%20beirut%20port%20explosion%20response%20plan%20(238).pdf?la=en&vs=2907.

22. Ranking on a 5 point scale, where 1 = "no trust at all" and 5= "complete trust." Average score was 1.2 for political parties, 1.5 for CDR, and 1.7 for municipalities. Survey not strictly representative due to its design. World Bank, *Beirut Residents' Perspectives on August 4 Blast: Findings from a needs and perception survey* (Washington DC: World Bank, 2020), https://documents1.worldbank.org/curated/en/899121600677984471/pdf/Beirut-Residents-Perspectives-on-August-4-Blast-Findings-from-a-Needs-and-Perception-Survey.pdf.

23. The UN's organizational partners for the LCRP are: UN-Habitat, UNDP, UNFPA, UNHCR, UNICEF, UNIDO, UNOCHA UNOPS, UNRWA, UNWOMEN, WFP, WHO.

24. See, e.g. United Nations, "Concluding Statement of International Conference on Support to Lebanese Armed Forces in Rome," 17 June 2014, https://www.un.org/press/en/2014/pa14.doc.htm.

25. OCHA Financial Tracking Service, "Lebanon 2018," last accessed 8 August 2021, https://fts.unocha.org/countries/124/summary/2018.

26. British Embassy Beirut, "UK announces $13 million for the Lebanese Armed Forces," 16 March 2018, https://www.gov.uk/government/news/uk-announces-13-million-for-the-lebanese-armed-forces.

27. There are obviously a wider range of actors involved, but these were highlighted by several experts as central.

28. "Donors pledge Lebanon over $11 billion for reconstruction," *DW*, 6 April 2018, https://www.dw.com/en/donors-pledge-lebanon-over-11-billion-for-reconstruction/a-43275558.

29. World Bank, *Lebanon Reform, Recovery & Reconstruction Framework* (3RF) (Washington DC: World Bank, 2020), https://www.worldbank.org/en/country/lebanon/publication/lebanon-reform-recovery-reconstruction-framework-3rf.

30. UN Women began working on this in 2020, with a small RoL programme focused on legal aid, legal advocacy and the justice chain. It is funded through UNDP by the Dutch Government.

31. UN Resident and Humanitarian Coordinator for Lebanon, "United Nations Strategic Framework (UNSF) Lebanon 2017-2020," 4 October 2016.

32. See, Claire Wilson, Jumanah Zabaneh and Rachel Dore-Weeks, Understanding the Role of Women and the Feminist Actors in Lebanon's 2019 Protests (New York: UN Women,2019), https://arabstates.unwomen.org/en/digital-library/publications/2019/12/gendering-lebanons-2019-protests. This point, however, is contested by other experts who suggest that the space for women in Lebanese politics has not opened significantly.

33. International Alert, "Access to justice for Syrian refugees in Lebanon," last accessed 8 August 2021, https://www.international-alert.org/projects/access-justice-syrian-refugees-lebanon.; Institute of Law and Justice in Arab Societies, "Legal Aid and Access to Justice in Lebanon," 1 May 2018, https://iedja.org/en/legal-aid-and-access-to-justice-in-lebanon/.

34. UN Women, *Unpacking Gender Realities in Displacement: The status of Syrian refugee women in Lebanon* (New York: UN Women, 2018), https://www2.unwomen.org/-/media/field%20office%20arab%20states/attachments/2018/16-days/syriacrisisimpact-lebanon-final2.pdf?la=en&vs=3545.

35. UNDP Lebanon, "Enhancing Community Security and Access to Justice in Lebanon Host Communities," last accessed 8 August 2021, https://www.lb.undp.org/content/lebanon/en/home/projects/EnhancingCommunitySecurityandAccesstoJusticeinLebanonHostCommunities.html.

36. Ibid.

37. UNDP, "Project Document: Enhancing Community Security and Access to Justice in Lebanese Host Communities," 10 September 2020.

38. UNDP, UN Women, UNFPA and ESCWA, *Lebanon & The Law Gender Justice & The Law* (New York: UNDP, 2018) https://www2.unwomen.org/-/media/field%20office%20arab%20states/attachments/publications/2018/gender%20justices%20and%20the%20law%20in%20the%20arab%20region/country%20assessments/lebanon%20country%20assessment%20-%20english.pdf?la=en&vs=503.

39. Sarah Barakat, *The Cost of Justice: Exploratory Assessment on Women's Access to Justice in Lebanon, Jordan, Egypt and Yemen* (London: Oxfam, 2018), https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620488/rr-womens-access-to-justice-mena-040618-en.pdf.

40. Ibid.

41. UNDP, "Project Document: Enhancing Community Security and Access to Justice in Lebanese Host Communities," 10 September 2020.

42. Interviews, January 2021.

43. Lebanon's Feminist Civil Society Platform, "Lebanon's Feminist Civil Society Platform Commemorates the memory of the victims of the Beirut Blast," 4 August 2021, https://arabstates.unwomen.org/en/digital-library/publications/2020/08/charter-of-demands-lebanon.

44. UNDP, "Project Document: Enhancing Community Security and Access to Justice in Lebanese Host Communities," 10 September 2020.

45. See, e.g. Arie Kruglanski et al., *Potential for radicalization amongst Syrian refugees in Jordan and Lebanon: Risks, factors, and implications* (College Park, MD: START, 2018), https://www.start.umd.edu/pubs/START_CSTAB_PotentialforRadicalizationAmongstSyrianRefugeesJordanLebanon_July2018.pdf; Raphaël Lefèvre, *The Roots of Crisis in Northern Lebanon* (Washington DC: Carnegie Middle East Center, 2014), https://carnegieendowment.org/files/crisis_northern_lebanon.pdf.

46. Human Rights Watch, "Lebanon: Establish National Commission on Disappearances," 28 August 2015, https://www.hrw.org/news/2015/08/28/lebanon-establish-national-commission-disappearances#.

47. ICTJ, "A Step Closer to Uncovering the Fate of Loved Ones: Lebanon Forms a Commission for the Missing and Forcibly Disappeared," 23 June 2020, https://www.ictj.org/news/step-closer-uncovering-fate-loved-ones-lebanon-forms-commission-missing-and-forcibly.

48. Interviews with OHCHR, January 2021.

49. Interview, January 2021.

50. Sarah Barakat, *The Cost of Justice: Exploratory Assessment on Women's Access to Justice in Lebanon, Jordan, Egypt and Yemen* (London: Oxfam, 2018), https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620488/rr-womens-access-to-justice-mena-040618-en.pdf.

51. See, e.g. Oliver Holmes, "New restrictions in Lebanon mean Syrian refugees live in fear," *Reuters*, 17 April 2015, https://www.reuters.com/article/us-mideast-crisis-lebanon-refugees/new-restrictions-in-lebanon-mean-syrian-refugees-live-in-fear-idUSKBN0N819Z20150417; Human Rights Watch, "Events of 2018: Lebanon," *World Report 2019* (New York: Human Rights Watch, 2019), https://www.hrw.org/world-report/2019/country-chapters/lebanon#.

52. For a good overview of the security sector in Lebanon, see, UNDP, *Security and Justice Sector Wide Assessment* (New York: UNDP, 2016) https://www.lb.undp.org/content/dam/lebanon/docs/CrisisPreventionRecovery/Publications/Security%20and%20Justice%20Sector%20Wide%20Assessment.pdf.

53. On the implication of the economic downturn, see, Office of the High Commissioner for Human Rights, "Bachelet sounds alarm over Lebanon economic crisis, calls for urgent and unified response," 10 July 2020, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26072&LangID=E.

RULE OF LAW

Support to Conflict Prevention and Sustaining Peace in Mali

**by Adam Day,
March 2021**

1. Introduction

Mali presents some of the most complex and intractable conflict dynamics in the world, driven by the intersection of violent extremism, secessionist movements, farmer-herder conflicts, transnational organized crime, and weak State governance capacities. In 2012, Mali faced near collapse as a breakaway rebel group took up arms and challenged the State, soon followed by a coup d'état by the Malian military and a spreading insurgency that quickly became linked to violent extremist groups. Deeply enmeshed with regional dynamics, the conflict in Mali was driven by massive arms flows from Libya and Islamist insurgencies that spread across neighbouring Niger and Burkina Faso, allowing Al Qaeda in the Maghreb to find a foothold in the country. These regional dynamics influenced the international response, as the UN, the Economic Community of West African States (ECOWAS), France and Mali's five neighbours (the so-called G-5 Sahel) were all drawn in to help stabilize the situation.

From the outset of the conflict in Mali in 2012, the international community has stressed the need to build strong, effective rule of law and security institutions to address the chronic governance shortfalls of the Malian State. The failure to deliver adequate justice, services and development beyond the central capital has been recognized as a key driver of instability in the country, leading to ambitious and far-reaching rule of law interventions over the past eight years. As a result, much of the UN's work in the country since the 2012 insurgency has focused on support to national rule of law and security institutions, and extension of State authority across the territory of Mali.

This case study explores the UN's rule of law work from the outset of the Malian crisis in 2012 to the 2020 military coup in Mali, focusing on how the UN Stabilization Mission in Mali (MINUSMA), UNDP and other UN actors implemented a range of activities to improve the Malian capacities to deliver security, justice and protections to its citizens. It takes a relatively broad approach to rule of law, looking beyond the traditional police/justice/corrections work to include human rights, national reforms, transitional justice, and conflict-related sexual violence (CRSV) where relevant. Across these areas, the study asks, *How have the UN's rule or law interventions contributed to conflict prevention, to a reduction in risks of widespread violence in Mali?* Based on available evidence and expert opinion, it aims to provide an assessment of the impact of the UN, identifying good practices, inhibiting and enabling factors, and lessons for the broader UN system.

The study has five sections: (1) a background description of the risk landscape and the endemic shortfalls in the Malian State's rule of law capacities; (2) an overview of the UN's rule of law mandate from

2012 to present, mapping out the key rule of law actors in-country; (3) an assessment of the areas where there is evidence of the UN's impact in terms of conflict prevention; (4) an examination of the enabling and inhibiting factors; and (5) lessons and recommendations for the broader UN system.

A note on scope and methodology

Rule of law is defined by the UN 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."[1] Traditionally, this has resulted in a focus by the Security Council on police, justice, and corrections as the primary vehicles for the UN's rule of law engagement. However, we recognize that other areas of the UN's work may also contribute to the core goals of the UN's rule of law work, including efforts to combat impunity, build accountability, advance transitional justice, limit corruption, and address conflict-related sexual violence, amongst others. This project does not adopt a strict definition of rule of law but is instead largely guided by interviews with experts in a range of field settings, asking them what they consider to be the key rule of law engagements by the UN and its partners.

In terms of the scope of these studies, it is important to highlight that this is not a comprehensive assessment of the UN's work in a given setting. It does not try to capture every rule of law programme, but instead reflects the views of experts about the most impactful, relevant, and effective rule of law interventions in the given timeframe. This expert-driven approach to cases studies is to ensure that they feed meaningful cross-cutting policy recommendations, which is the core purpose of this project.

In terms of methodology, we note that the UN's rule of law work takes place alongside the interventions of a range of actors, including national leaders, bilateral donors, INGOs, and local organizations. While it is our goal to identify evidence of the UN's impact, often the UN is a small player amongst these, supporting and coordinating rather than leading on programming. Given these limited supporting roles and the large number of other intervening factors, it can be difficult to isolate the UN's impact via its rule of law interventions. Rather than speak in direct causal terms about impact, we contextualize the UN's *contribution*, alongside the interventions of others, to the broader goals of risk reduction.[2] Where the precise impact is impossible to ascertain, or where the UN has not generated evidence that directly supports causal findings about impact, we rely on a broad set of expert consultations to help us identify good practice and lessons that could be applied beyond a single country context.[3]

2. The conflict landscape in Mali

In 2012, the National Movement for the Liberation of Azawad (MNLA) rose up in northern Mali, challenging the State's authority with forces strengthened by fighters and weaponry from the fall of Ghaddafi's Libya. Taking advantage of the weak State security presence in the northern part of the country, rebel groups struck alliances with a range of regionally-based armed groups, including prominent Al Qaeda-affiliated Islamist groups, including AQIM, as well as Ansar Dine and others.[4] This alliance conquered three northern regions of Mali, declared a separatist republic, and administered much of it with Sharia rule in open defiance to the central Malian Government.[5]

The faltering response by the Malian Government to the insurgency led to high levels of disgruntlement in the national army, triggering a coup d'état in the spring of 2012 which toppled President Amadou Toumani Touré. Immediate condemnation of the coup by Mali's neighbours, the regional organization ECOWAS, and the international community led to a quick agreement to vest power in a transitional Government. At the same time, advances by the rebel alliance towards the capital Bamako in late 2012 prompted the deployment of French troops alongside an African-led International Support Mission (AFISMA), which was rehatted in 2013 to the UN-led stabilization mission MINUSMA.

MINUSMA was deployed into an extraordinarily fragile context characterized by some of the worst socioeconomic indicators in the world, chronically poor governance, and widespread distrust in public institutions. Mali has consistently ranked as one of the poorest countries in the world, ranking in the bottom ten over the past decade.[6] With extremely high birth rates and well over half the population having no education at all, Mali has become one of the most aid-dependent countries in sub-Saharan Africa.[7] The impacts of poverty are not felt equally across Mali's territory: roughly 70 per cent of rural areas experience "severe poverty" versus 17 per cent in urban areas, while the heavy reliance on subsistence agriculture in rural Mali make the populations in the peripheries far more susceptible to irregular weather and crop failure.[8] In fact, over the past eight years, the rates of inequality appear to have worsened – by 2019, around 400,000 people were severely food insecure.[9]

While Mali had for decades built a reputation as a democratic success story, this narrative was increasingly recognized as "a façade for institutional weakness and mismanagement."[10] In fact, from 2007 until the coup in 2012, Mali's governance indicators had plummeted, driven by the widespread use of patronage networks and rampant corruption within government.[11] By 2012, roughly half of Malians believed that most government officials were involved in corruption. Transparency International has consistently ranked the country near the worst on its corruption scale.[12] Corruption and mismanagement have been

FIGURE 1: World Governance Indicators, Mali Average
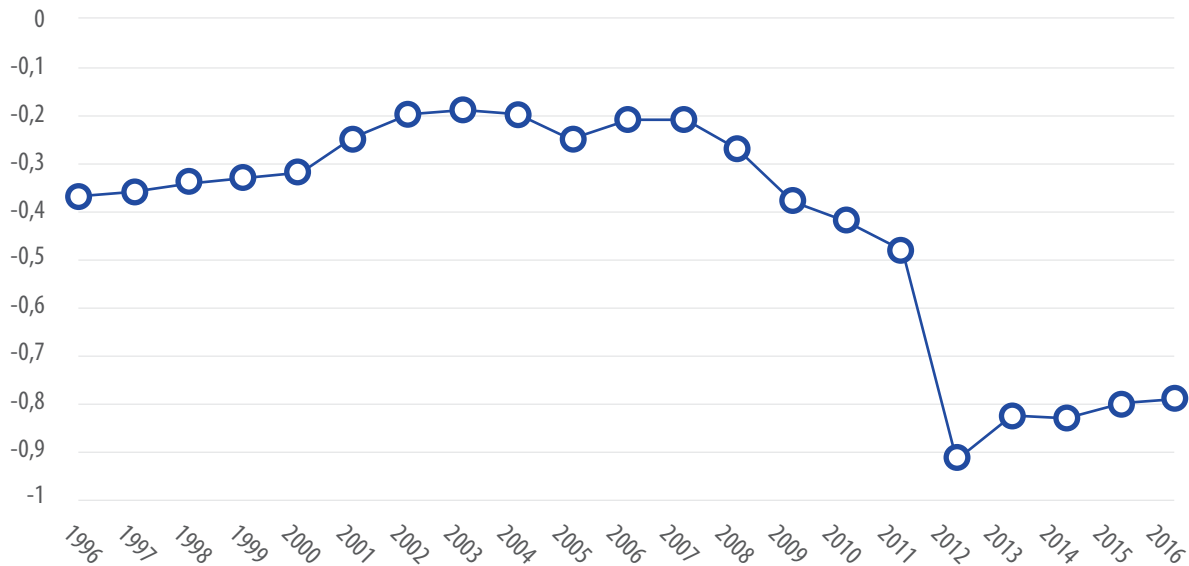
Source: World Bank DataBank

especially prevalent in the rule of law institutions of Mali, which are reliably viewed as partial, subordinated to patronage networks, and unable to provide Malian citizens with equal access to justice.[13]

Poor governance and weak rule of law institutions played a role in the 2012 uprising and in the conflict dynamics over the past eight years.[14] While the various armed groups that formed the Azawad movement had widely varying ambitions, they shared a common frustration that the central Malian Government had failed to live up to its commitments to deliver better services to the peripheries, or to allow them greater autonomy. This discontent allowed violent extremist groups like AQIM, Ansar al Dine, and (in 2015) the Islamic State in the Greater Sahara to gain a stronger foothold in Mali, as they promised better governance than the Malian State had provided before.[15] Wide-ranging trafficking routes – for arms, resources, and people – have also taken advantage of the lack of central State authority to use Mali as a flow-through point, further undermining State institutions and sustaining conflict dynamics.[16]

Following the signing of the 2015 peace agreement between the Government and some rebel groups, conflict dynamics shifted gradually from northern Mali into the central part of the country, though the northern part of the country continued to experience serious bouts of instability as well. This coincided with a dramatic uptick in the number and severity of violent incidents, particularly those involving farmer-herder conflicts between the nomadic Fulani and sedentary Dogon communities. Islamic groups instrumentalized longstanding intercommunal grievances and were able to gain a foothold in rural parts of central Mali, contributing to a dramatic increase in the number of conflict displacements. Importantly, traditional mechanisms for conflict resolution were largely overwhelmed by these new dynamics, driving cycles of violence and a growing sense of impunity for serious crimes.[17] As a result, self-defence groups formed amongst many communities in central Mali, taking advantage of easily accessed weapons flowing through the region and perpetrating large-scale massacres in 2018. In the years 2018-2019, cycles of revenge killings along communal lines in the broader Mopti area were responsible for hundreds of deaths.[18]

In the face of these conflict dynamics, Mali's State rule of law institutions have shown themselves deeply inadequate to the tasks of combating impunity and addressing widespread criminality. One well-respected international legal group characterized the Malian penal system as lacking judicial independence, chronically corrupt, and lacking the basic resources to process criminal caseloads.[19] Malians surveyed have consistently ranked the judiciary as one of the most corrupt State institutions, while endemic corruption is often linked to the extremely poor salaries across the justice institutions.[20] These rankings have not changed much over time and are not necessarily completely negative in terms of Mali's global ranking. Indeed, the World Economic Forum ranked Mali's judiciary more independent than many Eastern European countries, as well as much of Latin America.[21] And Malians are not significantly more distrustful of their judiciary than Americans.[22]

A significant challenge in Mali is not only the weak State institutional rule of law capacities, but also the parallel processes for addressing justice and accountability across the country. Nearly 80 per cent of family and land conflicts are dealt with via traditional justice systems, while traditional chiefs have also played a crucial role in addressing criminal cases especially in conflict-affected areas with little State institutional capacity.[23] While complementarity amongst State and traditional authorities can actually be beneficial, in this case it appears to reflect low confidence in the State. Public confidence in traditional authorities is, in fact, much higher than in the State in many parts of the country, meaning that the focus on State institutional capacity often must contend with widespread public distrust in the central Government.[24]

FIGURE 2: Answers from 2097 respondents to a survey to a survey question relating to which authorities they consulted in the event of a severe crime or a minor dispute at the local level
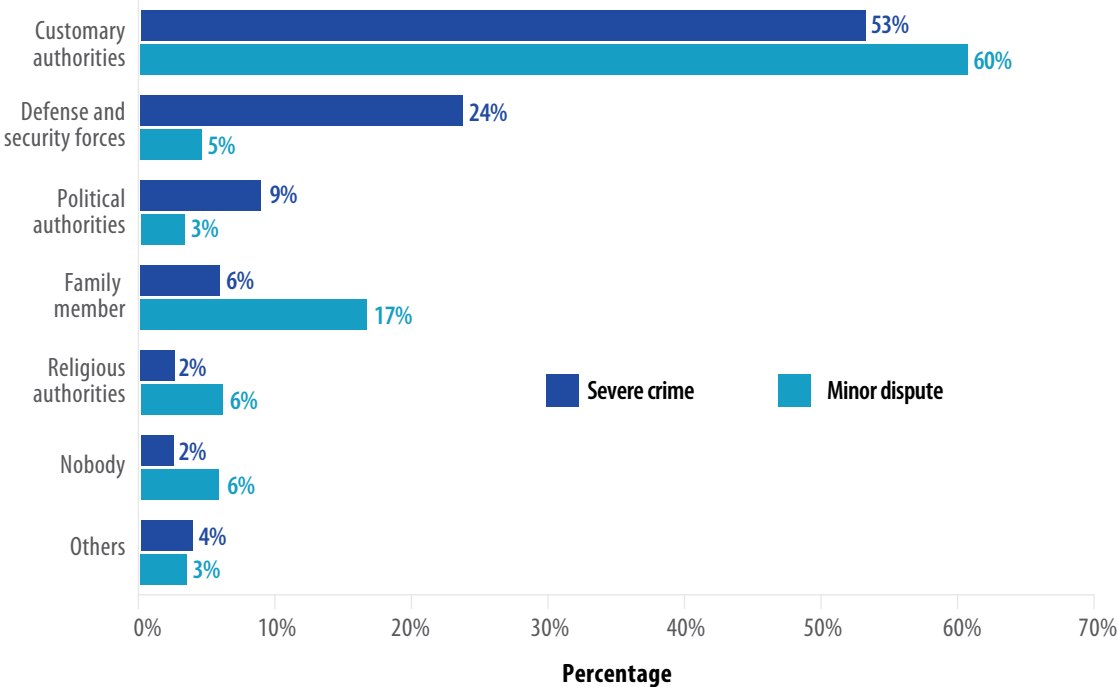
Source: Mamadou Bodian, Aurelien Tobie and Myriam Marending, SIPRI Background Paper 4 (2020)

# 3. Evolution of the UN's rule of law mandate from 2013 to date

This case study traces the UN's rule of law engagement from the deployment of MINUSMA in 2013 to the time of writing. It is important to note at the outset that MINUSMA was established following the deployment of a 3,000-strong ECOWAS Standby Force and a similarly sized African Union-led operation (AFISMA).[25] It was also deployed alongside the French-led *Opération Serval*, which worked with Malian and African Union forces to recapture the three main northern cities in 2013. In addition to the significant deployment of regional and international forces, Mali was one of the largest recipients of bilateral development assistance, receiving nearly USD 6 billion in the 2011-2015 period alone (though it should be noted that much of this aid has been conditional).[26] The UN's mandate – both the peacekeeping operation and the broader UN family – thus overlapped significantly with other international engagement in Mali, including a strong counter-terrorism approach by international forces.

From its inception, MINUSMA's mandate had two main objectives: support/implementation of a peace process, and extension of State authority throughout the country. This latter task included deterring threats, preventing the return of armed elements to formerly affected areas, and rebuilding the Malian institutions of the State. Part of its stabilization mandate included assisting in bringing to justice – either domestically or via the International Criminal Court (ICC) – those guilty of international crimes.[27] This mandate remained at the core of the Mission from 2013 to 2020, though in 2018 shifted to include terrorism-related crimes, mass atrocities and transnational organized crime as well as a greater geographic focus on central Mali, where the bulk of the violence had taken place following the 2015 peace process.[28]

Specific to the rule of law, MINUSMA's initial mandate required the Mission to support national efforts to rebuild the security sector, especially the police and gendarmerie through technical assistance, capacity-building, co-location and mentoring, as well as the rule of law and justice sectors.[29] In 2015, the mandate was expanded to include bringing to justice those responsible for serious abuses of international humanitarian law, either by national trials or by referral to the ICC.[30] From 2015 onwards, the Mission was also tasked with extending the authority of the interim authorities under the 2015 peace agreement and implementing the reconciliation and justice measures of the agreement.[31]
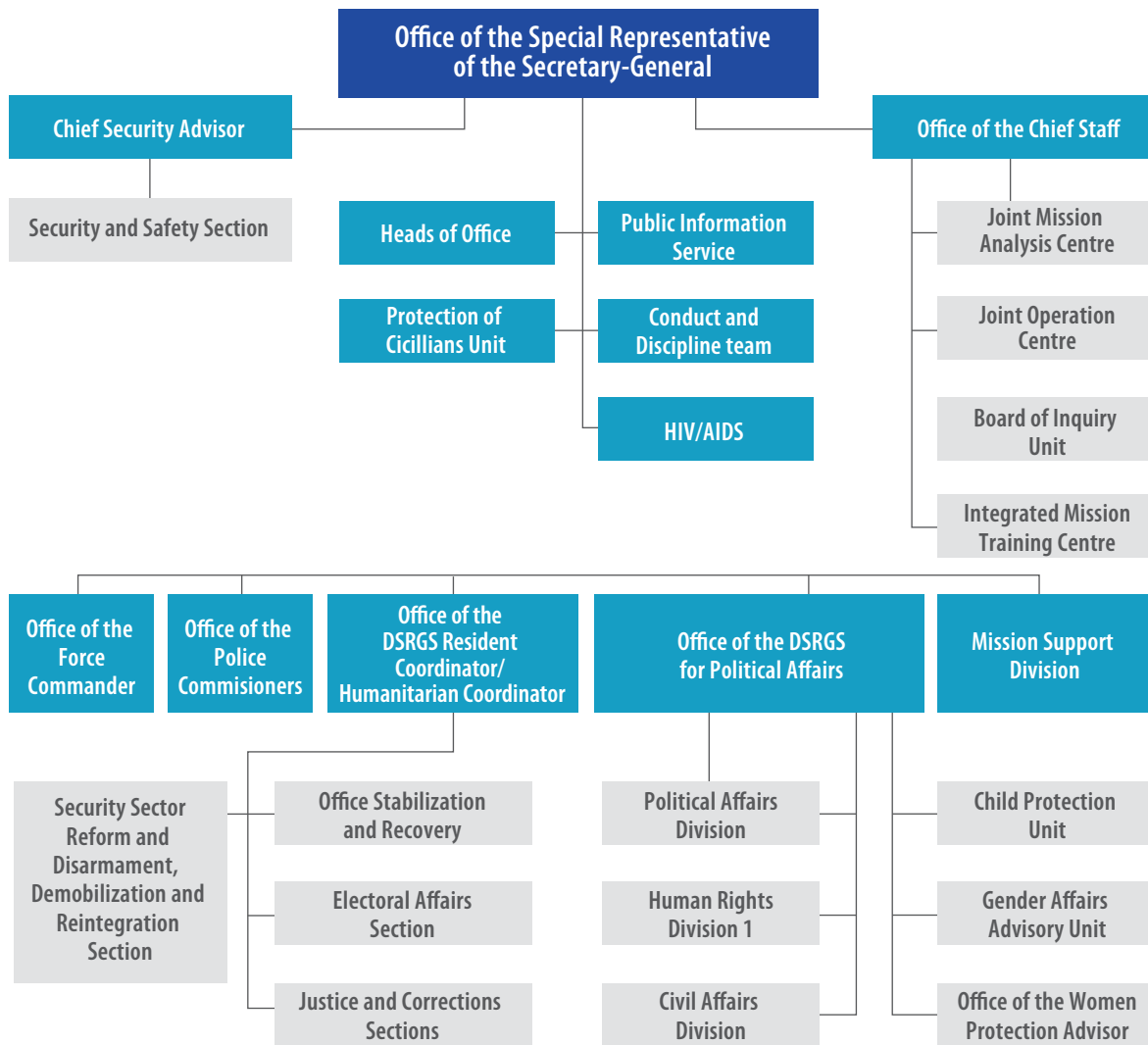
The Council also emphasized that MINUSMA's restoration of State authority and rule of law was the Mission's highest priority, also listing support to the justice and reconciliation measures high on the priority list.[32]

Conflict-related sexual violence (CRSV) and sexual and gender-based violence (SGBV) are widespread in Mali.[33] A major priority for the UN's rule of law work is to help build the capacities of the Malian institutions to reduce the rates of sexual violence, hold perpetrators accountable, and protect the interests of victims.[34]

UNDP's work in Mali has had a strong rule of law focus since 2012, including several projects done in collaboration with UNODC and MINUSMA. Broadly, UNDP's work has addressed restoration of State authority and access to justice in northern Mali, improving prison conditions, and anti-corruption.

4. Rule of law impact

Mali presents one of the most difficult settings to evaluate the preventive impact of the UN's rule of law work. During the 2012-2019 period, conflict-related fatalities soared, despite the 2015 signature of a peace agreement between the Government and several rebel groups. While an argument exists that the violence rates could have been higher absent the UN's rule of law interventions, the significant increase in fatalities in the centre of the country in the last years may align with the view of many interviewees that the UN's impact on conflict prevention was relatively limited. Violence also shifted significantly during this period as armed groups took advantage of weak State capacities in the central part of the country, combining with already volatile farmer-herder dynamics in the central part of the country. How can 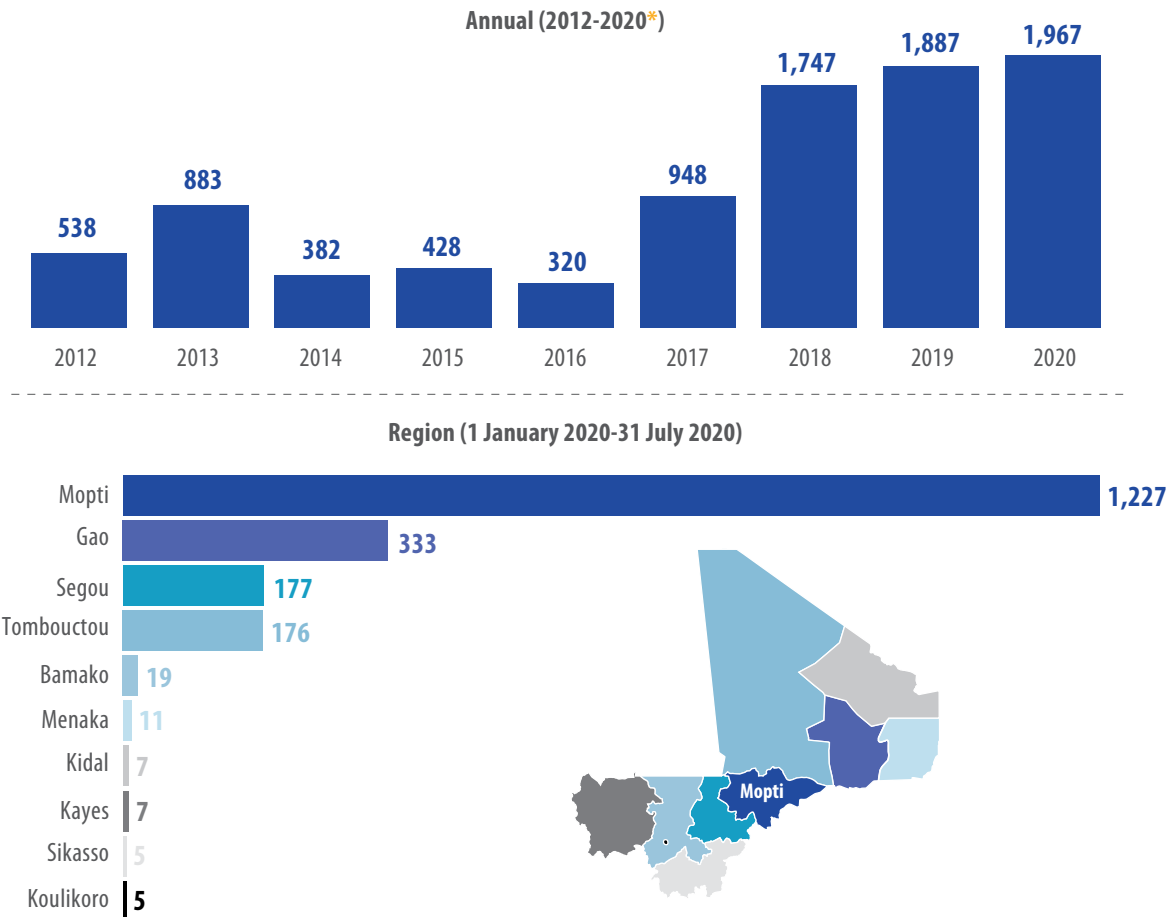the UN claim to have helped to prevent conflict and/or reduce the risk of more widespread violence in this context, particularly given the extremely weak role that State-run rule of law institutions play in central and northern Mali? Across a wide range of interviews with experts based in Mali, there was an almost uniform opinion that the UN's role in preventing the larger-scale violence that took place over the past several years was quite minimal. That does not mean the UN had no impact whatsoever; in fact, there is some evidence supported by expert opinion that in several areas the UN did contribute to a reduction in risk of even greater conflict-related violence during parts of the 2012-2019 period.[35] Acknowledging the difficulties in establishing definitive proof of impact, this section explores the ways in which some of the UN's rule of law work did appear to reduce risks.

The fight against impunity

Combating impunity for serious human rights violations and other crimes fuelling conflicts is at the core of the UN's work in Mali, cutting across a wide range of the UN's programming. The fight against impunity contributes to conflict prevention in several ways: greater accountability for serious crimes takes violent actors out of circulation in the public, it acts as a deterrent to future violence, and it gradually builds greater confidence in the justice institutions, leading to less recourse to violence as a means to resolve disputes.[36] This is particularly important in Mali, where the lack of effective State institutions and high levels of corruption have led to near-total impunity for the serious human rights violations of the past decade.[37] "The best chance the UN has to reduce the risks of violent conflict," a UN official explained, "is to curb the culture of impunity and help the Malian State make tangible progress to holding violators of human rights accountable."38 This view has been echoed by the Malian Government, including the Minister of Justice in 2017 who stated, "Justice, justice and nothing but justice. The first and last remedy for the crisis threatening the survival of our country and its people lies in justice."39

FIGURE 4: Mali: Reported Fatalities

Annual (2012-2020*)

Year	Fatalities
2012	538
2013	883
2014	382
2015	428
2016	320
2017	948
2018	1,747
2019	1,887
2020	1,967

Region (1 January 2020-31 July 2020)

Region	Fatalities
Mopti	1,227
Gao	333
Segou	177
Tombouctou	176
Bamako	19
Menaka	11
Kidal	7
Kayes	7
Sikasso	5
Koulikoro	5

Source: ACLED (As of 31 July 2020)
Note: Gao and Menaka regions shown separately but overall value merged. *1 January 2020 - 31 July 2020
Reporting is imperfect, *inter alia,* due to monitoring bias. Fatality data should be viewed as indicative rather than definitive

The fight against impunity is reflected in much of the below areas of the UN's work, including efforts to improve the State's counter-terrorism response, build law enforcement, prosecutorial and judicial capacity, strengthen the overall penal chain, and take forward a transitional justice process for Mali. It is also at the core of the MINUSMA, OHCHR, UNDP, UNODC, UN Mine Action Service, and UN Women joint programme, "Addressing Root Causes of Conflict through Rule of Law," which began in 2016 and aims to address longstanding grievances and sources of conflict via strengthening the rule of law institutions of the State. In addition to this, the UN continues to work to investigate, monitor, and report on serious crimes and human rights violations, with a view to reducing the widespread culture of

impunity and call for specific actions by the Malian State. Some clear steps have been achieved with UN support in this regard, including:

- Public agreement by the Government to end impunity within the 2015 Agreement on Peace and Reconciliation in Mali;

- Finalization of several high-profile criminal cases, such as: the August 2017 sentencing of Aliou Mahamane Touré, the former self-proclaimed superintendent of the Islamic police of Gao from 2012 to 2013; and the September 2016 ICC conviction of Ahmad Al Mahdi Al Faqi, a member of the Islamic police of Timbuktu in 2012, for destroying cultural monuments in the Timbuktu region;

- A national trial was initiated against the former coup leader General Amadou Haya Sanogo, for the torture and enforced disappearance of 21 "Red Berets";

- Deployment of OHCHR monitoring teams to areas of G-5 Sahel activity, to ensure human rights compliance in counter-terrorism operations;[40]

- Regular public reporting on human rights violations and abuses by State and non-State actors, raising awareness and contributing to public pressure for trials.[41]

Unfortunately, the impact of these public and high-profile efforts is widely described by experts in Mali as minimal in terms of reducing the risks of violence or even curbing the number of human rights violators remaining free. For example, the

Independent Expert on Human Rights in Mali issued a forceful critique of the fight against impunity in 2019, noting that "no significant improvements" had been made in the ability of the criminal justice system to address impunity, while "most perpetrators of abuses and violations of human rights and international humanitarian law go unpunished."[42] These findings align with the fact that widespread violence and serious human rights violations have increased over the past five years, with little available evidence that the conduct of high-profile cases has acted to curb these trends (it is, of course, possible that violence levels would have been worse absent these interventions). Some of the more specific steps to build capacity and address serious crimes described below, however, do appear to have had more tangible impact.

Countering terrorism and transnational organized crime

Some of the most serious violence in Mali is carried out by extremist groups and/or groups designated as terrorist. Supporting the Malian Government's efforts to bring violent extremists to justice and ensure fair, credible trials for alleged terrorists is an important aspect of the UN's rule of law work, and is seen as complementary to the broader fight against impunity. Given the high rate of transnational criminal activity – driven by criminal networks stretching to Libya, East Africa and beyond – efforts to bolster the judicial system to manage transnational crimes is especially relevant to violence reduction.

In 2013, Malian authorities passed a law amending the Code of Criminal Procedure and creating the *Pôle Judiciaire Spécialisé en matière de lutte contre le terrorisme et la criminalité transnationale organisée* (PJS), a specialized judicial unit for the fight against terrorism and transnational organized crime.[43] The jurisdiction of the PJS was extended to international crimes in 2019. A flagship joint MINUSMA/UNODC project in 2018 supported the PJS in investigating and prosecuting crimes, contributing to several tangible results:[44]

- As of February 2021, 147 individuals charged for terrorism-related crimes were brought to trial by the PJS, leading to 115 convictions with sentences ranging from 18 months to life imprisonment as well as the death penalty (automatically commuted to life imprisonment as per a moratorium signed by Mali) and 32 acquittals;

- Finalization of several high-profile criminal cases such as: the October 2020 sentencing of Fawaz Ould Ahmed, aka Ibrahim 10, and two others in relation to the terrorist attacks against the La Terrasse restaurant and the Radisson Blu hotel in Bamako in 2015, and the November 2020 conviction of Souleymane Keita, the alleged chief of the Khaled Ibn Walid Katiba affiliated with Ansar Dine, and 14 accomplices;

- Capacity support to the PJS and associated investigation teams[45] have kept them operational with one special prosecutor, six deputy prosecutors, nine investigating judges, 48 police investigators, and

renovated premises. This continuous staffing of the PJS has allowed for the caseload above;

- MINUSMA has escorted dozens of judicial authorities of the PJS to the scenes of serious crimes in insecure areas to conduct investigations, hear victims and collect evidence, sending a strong signal to affected populations. Through a distinct stream of work, MINUSMA also led capacity-building efforts in support of judicial investigations into crimes committed by the Malian military;

- The national policy on preventing and combating violent extremism and terrorism and the action plan for 2018–2020 were adopted by the Malian Government, with UN support.

It is difficult to ascertain the extent to which these activities may have had a broader preventive impact on rates of violent extremist activity in Mali. During the 2015-2019 period, violent extremism surged, especially in the central part of Mali, despite a concerted effort by the G-5 Sahel, Barkhane, MINUSMA, and a range of other actors seeking to curb the impact of such groups. In this context, the UN has only reported on its activities, not any assessment of whether they were partially responsible for a reduction in violence. Based on available evidence and wide-ranging interviews, this study concludes that, at the very least, the UN's support has increased the caseload of the Malian judicial authorities, removing dozens of violent extremists from the theater of conflict. MINUSMA's escorts of PJS teams into insecure areas also likely increased the reach of the Malian judicial system and increased its caseload on serious crimes. MINUSMA's role in directly supporting the arrest of suspects has also clearly had a small but tangible impact in allowing the authorities to gain custody of individuals who might otherwise have remained involved in violent extremist activity.

More broadly, the UN's efforts to support penal responses to terrorism should be considered alongside (though certainly distinct from) the military-led efforts by the Mission, the G-5 Sahel, and the Barkhane forces. Several interviewees indicated that the combination of military pressure and trials of suspected terrorists has acted to curb the overall levels of violent extremism, especially in the areas of operation. One potential indicator of this is the relative drop in violence in northern Mali during the 2015-2018 period, though other factors (including the growth in intensity in fighting in central Mali and farmer-herder conflicts in the Mopti area) may well have played a more direct role.

Restoring judicial capacity

The 2012 violence resulted in the occupation and destruction of a significant number of judicial services throughout the country, resulting in a near-total curtailment of criminal procedures. In line with the 2015 Law on the Reorganization of the Judiciary, MINUSMA and UNDP supported the return of judicial authorities and the reopening of courts and prosecutors' offices in the regions of Gao, Mopti and Timbuktu, contributing to the following achievements:

- As of May 2020, 14 out of the 23 tribunals in the north and centre are partially operational (in terms of viable infrastructures, deployment of judicial officials, hearings);[46]

- More than 70 per cent of judicial officers returned to office in the north, and 87 per cent in the Mopti region as of the end of December 2019;

- Where the security situation has not allowed for institutionally based cases, mobile hearings have been conducted, including dozens of cases with UN support.

According to several interviewees, there have been real improvements in the quality of justice and in public confidence in the judicial system as a result of the return of courts and judicial officers.[47] However, from 2015 to the date of writing, , there has also been a significant upsurge of violence in much of Mali, limiting any change in popular opinion. For example, a recent survey found that very little had changed in terms of popular perceptions of justice in Mali between 2014 and 2018, despite the above changes.[48] Other surveys have similarly found that the Malian population retains a quite low opinion of the justice system, perceiving it as corrupt and inaccessible, while Mali has remained near the bottom of justice and rule of law indicators from 2012 to date.[49] Several UN officials involved in rule of law work in Mali mirrored these findings. It remains impossible to know what violence levels might have been absent these interventions.

Nonetheless, it should be noted that from 2012 to 2018, northern Mali experienced a significant decrease in levels of violence as much of the most serious fighting shifted to the central part of the country. Interviewees suggested several interrelated reasons for this shift: groups involved in the 2015 peace agreement did reduce their levels of violence; large numbers of international troops were deployed in northern Mali in support of the peace process; and violent extremist groups like JNIM took advantage of the lack of State capacity in central Mali to build coalitions and destabilize those areas.[50] Within these larger trends, they also pointed out that the restoration of State authority and presence in northern Mali played a role: "in the context of the peace process, the return of courts, police and judges meant that northern Mali became much safer," one UN official noted.[51]

Prison security

During the 2012 violence in Mali, 13 of the 59 prison facilities nationwide were targeted by armed groups, particularly in the northern regions of the country. Poor infrastructure and inadequate security meant that prisons were easily overrun: in late 2016, two prisons were attacked by armed groups seeking to release suspected terrorists. Preventing prison breaks and extending the overall capacity of the Malian prison system to handle its prison population reduces the number of violent actors in circulation and constitutes an important step in the overall trust levels between the population and the State.

Here, the Global Focal Point system has played an increasingly important role in the UN's response. Amongst others, a USD 8.4 million joint UNDP/ MINUSMA GFP project entitled "Strengthening Mali's Penal Chain" (also known as the Mandela Prison Project) and the security project initiated by the JCS and MINUSMA that provided support for the development of integrated prison protection plans and the organization of practical simulation sessions for the implementation of these plans. These activities have contributed directly to improved security and capacity of prisons, including:

- 11 prisons are now operational, covering the broader regions of Mopti, Gao, and Timbuktu. Over 90 per cent of prison officers (76 officers) have taken office at their appointed posts in the north, and 93 per cent (80 officers) in the Mopti region;

- The four prisons of Gao, Mopti, Timbuktu and Koulikoro – the latter holding high profile detainees including suspects/ convicts of terrorist acts - have been equipped with security equipment, while simulation-based training has been provided;

- 143 prison guards nationwide have been trained to respond to prison incidents, including 15 prison officers in Bamako and 78 prison officers in Timbuktu, Gao and Mopti to address radicalism and violent extremism. A nationwide roadmap for the implementation of the national policy for the prevention of violent extremism and radicalization in prisons was developed to guide further efforts;

- In Bamako Central Prison, where individuals suspected of or convicted for terrorism are detained, two high-security wings have been rehabilitated and security

cameras installed. A security plan was developed in 2018 and tested through simulations for 550 Malian Security and Defence Forces personnel;

- Computerized software is being rolled-out in seven prisons across the country to enhance case management and facilitate analysis of detainee data. Over 4,000 detainees have been registered and 45 end-users have been trained on its application. As a result, more than 250 cases of prolonged detention were identified as a priority for follow-up with responsible judicial actors.[52]

The lack of major attacks on prisons in Mali over the past four years provides some evidence that improved security may have played a role in preventing prison breaks, particularly given the attacks which took place in 2016. It is less clear, however, what impact the deradicalization training of prison officials, or the improved data tracking capacities within prisons, may have on risks of violence across Mali. The UN does not track radicalization in a systematic fashion in Mali, meaning that this study must rely on national data about the presence and operations of violent extremist groups. As such, the rapid escalation of violent extremism during the 2015-2019 period does not offer any evidence of impact, though at a more localized level the above programming may well be quite effective.

Sexual violence

The rates of SGBV following the 2012 rebellion surged at alarming rates across Mali.[53] UNHCR has registered roughly 3,000 cases of SGBV since 2012, though obviously the real number is far greater.[54] In its annual reporting from 2014 to 2018, the Secretary-General recorded an average of only 87 allegations of CRSV per year, but this is considered a tiny fraction of the thousands of cases alleged by other organizations in Mali.[55] While the intensity and rates of violence varied over time, there was a clear upsurge in both northern and central Mali following the 2012 rebellion and the military coup, including by the major armed groups and the Malian security services.[56] Human rights organizations in Mali have pointed out that a functioning judicial system capable of processing the caseload of SGBV would have both an ameliorative and a deterrent effect, reducing the risks of future violence.[57] Combating impunity for SGBV, and helping to reduce the risks facing women in the conflict, are key priorities for MINUSMA, which has contributed to the following:

- MINUSMA has identified and helped to document hundreds of cases of SGBV over the past eight years, providing witness and victim support via a Mission-run trust fund;[58]

- The Mission has trained dozens of judicial authorities in SGBV cases, offering direct support to trials over the past several years;

- MINUSMA supported a coalition of six victim associations and three regional coordination groups offering legal, psychological and social assistance to 115 victims of sexual violence in Mopti, Gao and Timbuktu regions;[59]

- With the UN's support, in 2018 the Malian Government developed a National Strategy to address sexual crimes, and drafted a related law (though it has not yet been promulgated);

- In 2019, the UN and the Malian Government signed a joint communiqué committing to a more focused response to sexual violence.

There is broad agreement across the UN and major human rights organizations in Mali that the Malian State has been unable or unwilling to prosecute the overwhelming bulk of the SGBV cases to date. The few trials regarding sexual violence that have been conducted have failed to result in prison sentences, while there have been no trials for those accused of committing sexual

crimes during the 2012-2013 period, and no trials of any accused State actors.[60] While the support to victims and witnesses may play an important role in particular instances, there is little evidence to suggest that the UN's rule of law support has acted to curb rates of sexual violence, nor has it resulted in the Malian State taking strong steps to end impunity for sexual crimes.[61] MINUSMA, in collaboration with the UN Team of Experts on Rule of Law and Sexual Violence in Conflict, conducted an assessment in 2019 of the judicial response to collective complaints filed for sexual violence committed in the north in 2012-2013, including causes of blockages. Recommendations drawn from this assessment will be discussed and validated by judicial authorities in 2020 and their implementation will be supported by the UN including in the context of the formulation of a national criminal policy to end impunity.

Transitional justice

The role of transitional justice mechanisms in reducing the risks of continuing violence and/or relapse into war is well documented.[62] In the case of Mali, several transitional justice mechanisms have been established to address the large-scale atrocities of the 2012-13 period, support the broader peace process, and prevent further escalation. The most important of these is the Truth, Justice and Reconciliation Commission (CVJR) established in 2014 to support the peace process and establish accountability for crimes stretching back until 1960.[63] The UN has provided substantial support to the CVJR, including technical advice, support for witness/victim protection, data management, and logistical support for public hearings. This has contributed to the following:

- The CVJR has taken 18,000 victim statements, of which nearly 10,000 have been entered into the database;[64]

- A public hearing (one of four envisaged) took place in early 2021, and plans are underway for future public hearings;

- The mandate of the CVJR has been expanded to include more recent crimes, as well as crimes that have taken place in central Mali.

UN experts involved in the transitional justice work in Mali acknowledge the progress that has been made in recording victim statements, laying the groundwork for future trials, and beginning public outreach. But there was uniform frustration at the slow pace of progress by the CVJR, the lack of any completed trials, and the poor investment by the Malian authorities. The heavy reliance on international consultants to conduct the work of the CVJR, according to some interviewees, suggests low levels of national ownership of the project. "It's an external imposition on the Malian Government, they don't want it," one UN expert noted.[65] Experts also pointed to the expansion of the CVJR's mandate as a challenge: already stretching back to the 1960s, the extended mandate to cover recent crimes in central Mali has been a distraction, placing even greater pressures on the commission at a time when it is already well behind schedule.

This study concludes that it is too early to evaluate the impact of the CVJR. While the broad scope and large number of victims suggest that it might be a crucial element of the broader peace process, as of the time of writing there is little evidence that it has played a violence-reducing role in Mali yet. The progress that has been made thus far, however, does appear to be largely due to the UN's supportive efforts, alongside bilateral donors that have provided significant resources and staff as well.

Overall impact

Broadly, the experts interviewed during this study were sceptical that concrete evidence of impact was readily available, especially concerning the risks of violent conflict. The fact that the levels of violence have increased in some parts of the country since the deployment of MINUSMA in 2012 makes any claim of impact more difficult. The causes of this are multifold, reflecting regional dynamics, shifting conflict trends within the country, and the effects of a peace process that initially only targeted the northern part of Mali. Indeed, in this context the UN is but one of many actors – not least the Malian Government but also a range of other organizations – contributing to the rule of law and conflict prevention in Mali. Here, there is some evidence that the UN's support has enabled several important steps towards reduced impunity, increased judicial caseload for violent offenders, and expanded presence of rule of law institutions in conflict-affected areas. Specifically, UN support has certainly contributed to the conduct of some high-profile trials, 147 trials of perpetrators of terrorist acts, a 70 per cent increase in judicial officers in the north and an 87 per cent increase in central Mali, hundreds of SGBV claims documented, and 18,000 victim statements in a transitional justice process. These activities, while not acting as a major curb on violence levels in Mali, have taken some violent actors out of the conflict arena, increased caseloads for violent crimes, and improved protections for victims. And while the presence of the State is not necessarily a conflict prevention measure in itself, there was relatively agreement across interviews that the efforts to increase State presence likely prevented larger-scale violence and displacement, especially in northern Mali.
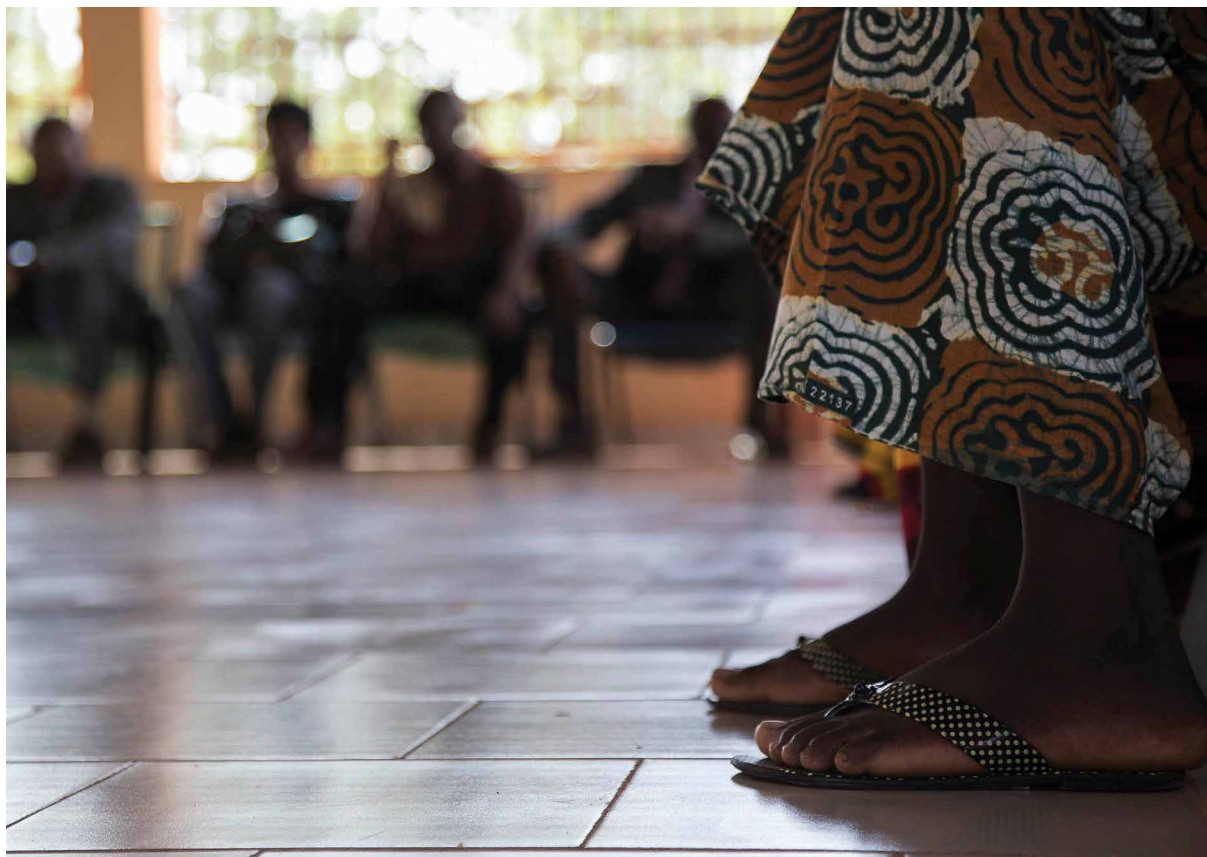
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5. Enabling and inhibiting factors

This section provides an overview of the major factors that either inhibited or enabled the UN's ability to reduce the risks of violent conflict. These include contextual issues outside of the UN's control, but also issues that the UN might be able to influence directly.

The most frequently cited inhibiting factor was the sheer **scale of the problem**. Mali is an enormous territory, and by 2018 violence had spread from the northern regions into the centre, affecting millions of people. This widespread violence, combined with extraordinarily weak governance capacities in the Malian State, meant that the UN has had relatively few resources compared to the task at hand. This has had direct impacts on the Mission's ability to provide adequate security to government officials deployed to the north and the centre, for example. Lack of resources was the most common recurrent complaint by UN staff in Mali, though few were able to articulate how additional resources to rule of law institutions would necessarily do more to reduce the risks of violence.

Lack of political will

The lack of political will across the Malian elite in Government was also cited as a major inhibiting factor. Interviewees suggested that the very slow progress on high-profile cases demonstrated that there was little momentum within Government to hold perpetrators accountable, while some pointed to the release of some key actors in the recent conflict as a signal that the culture of impunity was being perpetuated by the State. A related problem was the very high turnover at the ministerial level, often requiring the UN to restart processes each time a new minister came into power. "Working with the Malian Government is Sisyphean," one UN expert pointed out. "Every time we take our eye off a rule of law project, it either goes nowhere or actually falls back."[66] Several other experts suggested that deeply rooted corruption within the State system meant that the larger reform and capacity-building work was often not welcomed by government partners.

Reliance on partnership with the State

A related challenge has been the reliance on a partnership with the State for implementation of much of the UN's rule of law mandate. "We are implementing a peace agreement and supporting extension of State authority," an expert described, "but most of the Malian population doesn't see the State as the solution to their insecurity problems."[67] As some of the population surveys listed above indicate, and as it is the case in

many similar contexts, the Malian population has a quite low opinion of the State's justice system, and many prefer to use customary, local forms of justice instead. In the longer term, the goal of strengthening the State's legitimate presence throughout Mali may have a violence-reducing impact, but in the short term the UN may need to find more effective ways of working with a wider range of authorities.

Focus on counter-terrorism

The overriding focus on counter-terrorism is a double-edged sword in Mali. On the one hand, it has generated enormous international investment in the country, the deployment of regional and international forces, and dedicated judicial processes within the Malian system. This has produced results, as the PJS caseload above demonstrates. But counter-terrorism also creates blindspots in the broader rule of law response. One human rights expert noted that the focus on terrorism means that other forms of violence – including by State actors – tend to be overlooked or even actively brushed aside. "By focusing on terrorist groups, we actually weaken the overall human rights response, because the overwhelming majority of serious violence is not actually done by violent extremist groups."

Fragmental programming

One of the major challenges identified by experts has been the quite **fragmented and parallel ways that rule of law programming has been done** in the past. Multiple UN agencies, alongside bilateral efforts, have often touched upon the same issues (e.g. extension of judicial capacities) without coordination. But this seems to be changing, in part as a result of the GFP and the ROLSI bi-monthly coordination meetings. "The GFP gives us a common platform, a requirement to coordinate, and it's helping us design a joint conflict prevention strategy across agencies," a UN expert in Bamako explained.

Reach

MINUSMA's **broad geographic reach** was often an enabling factor, particularly for agencies like UNODC that would not otherwise have had access to many parts of Mali. In turn, direct collaboration between UNODC and MINUSMA meant that the Mission has been able to take on UNODC's broader perspective of security, and to take advantage of its more regular contact with police, gendarmerie, and other actors.

Pandemic

The **COVID-19 pandemic** has also had an impact on the UN's work in Mali. Travel restrictions have contributed to a lack of staff movement into many field locations, and a decision to attempt some rule of law activities remotely. As some UN experts pointed out, however, activities like prison security training, capacity support to judges, and direct support to criminal trials require in-person presence.

6. Lessons and recommendations

Based on the above analysis, this section lays out some lessons and recommendations for both the UN in Mali and the UN rule of law system more generally.

- **Take on corruption more directly.** Corruption is perhaps the most important impediment to a well-functioning rule of law sector in Mali. It diverts resources, strips institutions of capacities, and undermines public confidence in the justice system.[68] Yet, relatively little is done by the UN to take on corruption directly, especially in the rule of law arena. Rather than merely support capacity-building within the penal chain, the UN could direct more of its support to the governance structures within the justice sector, increasing transparency and accountability. There are signs that this shift is beginning to happen – and new anti-corruption work in the prisons/justice system is promising – but a broader approach at how corruption undermines the goals of the UN and foments violence would be helpful.

- **Report publicly on "political will".** Reinforce the engagement of UN senior officials to stimulate political will. There is a tendency in the UN to complain privately about the lack of political will, but to publicly laud a government in order to maintain good relations. This makes lack of cooperation from State actors a largely opaque issue, something that rarely receives specific, dedicated analysis. The UN should demand of its rule of law programming that programme monitoring and evaluation detail ways in which partners have obstructed, delayed, or otherwise inhibited programmatic outcomes. These reviews can be external if necessary (or perhaps conducted by OHCHR) but should be public to allow for a broader discussion with donors and partners about appropriate responses.

- **Increase focus on human rights monitoring.** In part as a result of the dominant counter-terrorism narrative in Mali, the UN has not done as much as in other settings to shine a light on government human rights violations. But popular distrust of a government is a significant reason individuals participate in violent activity, turning to armed groups instead of the State for their security. The expansion of MINUSMA's focus to include violence in central Mali was an important step that has helped the Mission look at the broader range of violence actors, including State forces. Increasing the number and profile of public reporting on human rights violations by the governments, and pushing for more accountability

across State actors, including by pursuing technical support to military justice as initiated recently, will take this further, addressing an imbalance in the UN's approach to date.

- **Build a common vision and strategy for rule of law amongst the national actors, UN, and donors.**[69] Recent advances under the and recommendations and GFP have pointed to the positive outcomes of better coordination. But the UN still lacks a common rule of law strategy based on a well-conceptualized theory of change for Mali.[70] The 2020/21 Integrated Strategic Framework is an important step in the direction of a theory of change but is still very activity-focused and unlikely to lead to a better understanding of the impact

of the UN. What are the national-level goals for the UN's rule of law work for the coming years? How specifically will rule of law engagement contribute to lower risks of violence? What roles and responsibilities can be allocated across actors? These kinds of questions could help drive the UN towards such a common strategy, which should be based on or support the development of a national vision, strategy, and plans.

- **Build up support to the informal justice sector.** In the long term, the extension of legitimate Malian State-run institutions might play a vital role in reducing the risks of violent conflict across the country. But in the more immediate term, a majority of Malians hold deep distrust of the State

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and are far more ready to rely on informal, traditional, or other subnational justice mechanisms to resolve disputes and address their needs. Greater investment in those informal mechanisms would not only likely have a greater immediate impact, but would also provide an important additional source of information about how the local populations perceive justice and conflict risks. A proposal to develop bottom-up pilot projects in the area of informal justice would be worth considering, in addition to the ongoing support to build bridges and trust between the formal and informal justice sectors.[71]

- **Keep specific mandates achievable.** Over the past several years, the mandate of the CVJR has been expanded, now covering all serious crimes from several decades ago until present. This expansion, particularly during active conflict in central Mali in 2018, has meant a significant loss of focus, and a sense amongst many that the actual processes of trials and convictions are unlikely ever to occur. "If we keep expanding the jurisdiction, the work of the commission will never move forward," one expert noted. A similar complaint was registered regarding the PJS, which has been asked to take on an ever-increasing realm of cases without new resources. Instead, there should be a rigorous cost-to-outcome analysis, asking what resources would be necessary to take a given caseload through trial, and restricting the mandate accordingly.

- **Think beyond criminality.** The overriding focus of the UN in Mali has been to build the State's capacity to address violent criminality. This reflects the enormous problem of transnational criminal groups, violent extremists, and high levels of endemic violence. But a root cause of the violent conflicts over the past decades

is a deeper lack of trust in the broader justice system. Experts have pointed out that judges are changed when they provide opinions that contrast with elite powerbrokers' demands, that "the entire legal system is beholden to a corrupt political class." Addressing this deeper mistrust in the system may require that the UN focus efforts more broadly on the justice system as a whole, rather than the more immediate criminal trial capacities.

- **Measure change.** The UN conducts a remarkable array of rule of law activities in Mali, spending millions annually to improve the capacities of the Malian State. It is striking how little effort is put into measuring whether these activities are actually succeeding, whether by the UN or the Malian authorities (which have reporting obligations under the SDGs amongst others). The vast majority of UN assessments examine the extent to

and aligned with expected timelines. But very few, if any, interrogate whether the Malian rule of law system is better able to reduce risks and address impunity as a result. The relatively new Comprehensive Performance Assessment System in DPO offers a potential path to greater focus on impact, but more generally the UN would benefit from a refocusing on impact rather than activities. Furthermore, technical assistance should be provided to Malian authorities for the implementation of the indicators for SDG 16. The implementation of the UN rule of law Indicators should also be considered, given that this tool was endorsed by most United Nations entities involved in the rule of law sector.
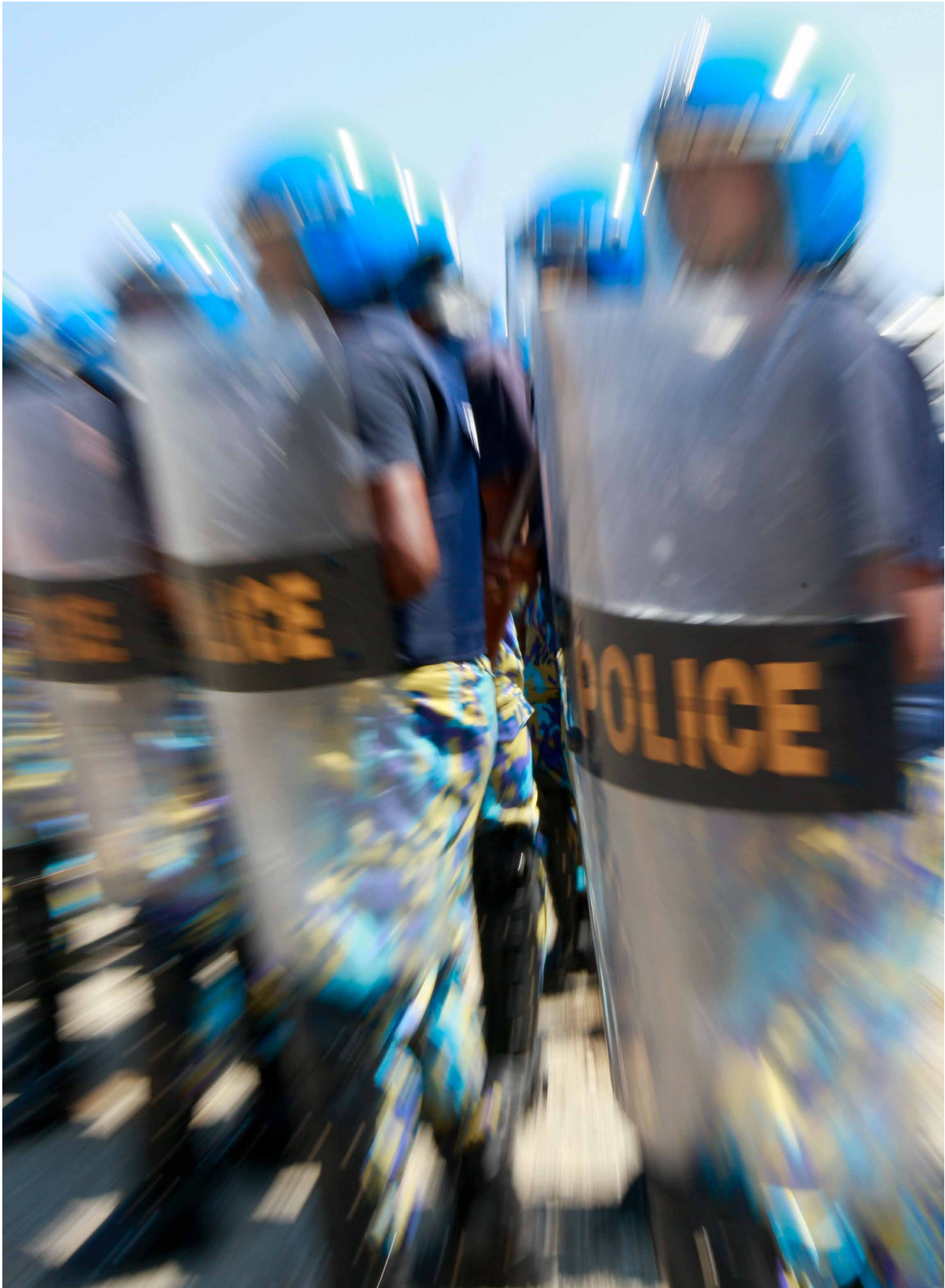
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References

1. United Nations Security Council, "The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General," United Nations, 23 August 2004, S/2004/616.

2. This approach of contribution rather than direct attribution is laid out in Adam Day, *Assessment Framework for Preventive Diplomacy: An Approach for UN Mediators and Policymakers* (Tokyo: United Nations University Centre for Policy Research, 2018); see also, United Nations Department of Political and Peacebuilding Affairs, *Three-Year Strategic Plan: 2020-2022* (New York: UNDPPA, 2020), https://dppa.un.org/sites/default/files/undppa_strategic_plan_2020-2022.pdf. See also, Anna Shotton, *Planning Toolkit* (New York: Office of Rule of Law and Security Institutions, n.d.), https://peacekeeping.un.org/sites/default/files/planning_toolkit_web_version_0.pdf.

3. This is often referred to as an "adaptive" form of impact assessments, see, Ian Wadley, *Valuing Peace: Delivering and Demonstrating Mediation Results* (Geneva: HD Centre, 2017).

4. The MNLA itself is not an Islamist group.

5. Jaïr van der Lijn et al. *Assessing the Effectiveness of the United Nations Mission in Mali/MINUSMA* (Oslo: Norwegian Institute of International Affairs, 2019).

6. UNDP, "Human Development Indicators: Mali" last accessed 8 August 2021, http://hdr.undp.org/en/countries/profiles/MLI.

7. World Bank, *Geography of Poverty in Mali* (Bamako: World Bank, 2015); World Bank, "Fertility rate, total (births per women): Mali," last accessed 8 August 2021, https://data.worldbank.org/indicator/SP.DYN.%20TFRT.IN?locations=ML.

8. OPHI and University of Oxford, *Global MPI Country Briefing 2018: Mali* (Sub-Saharan Africa) (Oxford: OPHI, University of Oxford, 2018); World Bank, *Geography of Poverty in Mali* (Bamako: World Bank, 2015).

9. FAO, *Mali: Humanitarian Response Plan 2019* (Bamako: FAO, 2019), http://www.fao.org/3/ca3211en/CA3211EN.pdf.

10. Morten Bøås and Liv Elin Torheim, "The trouble in Mali – Corruption, collusion, resistance," *Third World Quarterly*, 34, 7 (2013) as referenced in Jaïr van der Lijn et al. *Assessing the Effectiveness of the United Nations Mission in Mali/MINUSMA* (Oslo: Norwegian Institute of International Affairs, 2019).

11. Jaïr van der Lijn et al. *Assessing the Effectiveness of the United Nations Mission in Mali/MINUSMA* (Oslo: Norwegian Institute of International Affairs, 2019).

12. Thomas Shipley, *Mali: Overview of corruption and anti-corruption*, (Bergen: U4 Anti-Corruption Resource Centre and Transparency International, 2017), https://www.u4.no/publications/mali-overview-of-corruption-and-anti-corruption; Wolfram Lacher, *Organized Crime and Conflict in the Sahel-Sahara Region* (Washington: Carnegie Endowment for International Peace, 2012), https://carnegieendowment.org/files/sahel_sahara.pdf.

13. USAID, *Democracy, human rights, and governance assessment of Mali* (Vermont: Tetra Tech, June 2014) https://www.usaid.gov/sites/default/files/documents/1860/Mali_2014DRG%20Assessment_public_FINAL.pdf.

14. Richard Reeve, *Mali on the brink: Insights from local peacebuilders on the causes of violent conflict and the prospects for peace* (London: Peace Direct, 2018).

15. Natasja Rupesinghe and Morten Bøås, *Local Drivers of Violent Extremism in Central Mali* (Oslo: NUPI, 2019).

16. International Crisis Group, "Drug Trafficking, Violence and Politics in Northern Mali," *Africa Report* 267 (2018). Peter Tinti, *Illicit Trafficking and Instability in Mali: Past, Present and Future* (New York: Global Initiative Against Transnational Organized Crime, 2014), http://globalinitiative.net/wp-content/uploads/2014/01/Illicit-Trafficking-and-Instability-in-Mali-Past-present-and-future.pdf; International Alert, Organised crime in Mali: Why it matters for a peaceful transition from conflict," *Policy Brief* (London: International Alert, 2016).

17. Anca-Elena Ursu, *Under the gun: resource conflicts and embattled traditional authorities in Central Mali* (Amsterdam: Clingendael, 2018), https://www.clingendael.org/pub/2018/under-the-gun.

18. Human Rights Watch, *We Used to Be Brothers: Self-Defense Group Abuses in Central Mali* (New York: Human Rights Watch, 2018), https://www.hrw.org/sites/default/files/report_pdf/mali1218_web.pdf; "Gunmen 'kill dozens' in attack on two villages in central Mali," *Al Jazeera*, 18 June 2019, https://www.aljazeera.com/news/2019/06/gunmen-kill-dozens-attack-villages-central-mali-190618180758531.html; Ibrahim Yahaya Ibrahim and Mollie Zapata, *Regions at risk: Preventing mass atrocities in Mali* (Washington DC: Simon-Skjodt Center for the Prevention of Genocide, 2018); Richard Reeve, *Mali on the Brink: Insights from local peacebuilders on the causes of violent conflict and the prospects for peace* (London: Peace Direct, 2018), https://reliefweb.int/sites/reliefweb.int/files/resources/P772-PD-Mali-LVP-Report-ENG_WEB.pdf.

19. Diana Goff and Erwin Van Veen, *A crisis of confidence, competence and capacity: programming advice for strengthening Mali's penal chain* (The Hague: Clingendael Institute, 2015).

20. Freedom House, "Mali," *Freedom in the World 2020* (Washington DC: Freedom House, 2020), https://freedomhouse.org/country/mali/freedom-world/2020.

21. World Economic Forum, "Global Competitiveness Index 2017-2018," *The Global Competitiveness Report 2017-2018* (Geneva: World Economic Freedom, 2017), http://reports.weforum.org/global-competitiveness-index-2017-2018/competitiveness-rankings/#series=EOSQ144.

22. Shawnette Rochelle and Jay Loschky, "Confidence in Judicial Systems Varies Worldwide," Gallup, 22 October 2014, https://news.gallup.com/poll/178757/confidence-judicial-systems-varies-worldwide.aspx.

23. Deborah Isser (ed.) Customary justice and the Rule of Law in War-Torn societies, United States Institute for Peace (Washington DC: United States Institute for Peace, 2011); Ambroise Dakouo, Youssouf Koné, and Idrissa Sanogo, *La Cohabitation des Légitimités au Niveau Local* (Bamako: Alliance Malienne pour Refonder la Gouvernance en Afrique, 2011).

24. See, Mamdou Bodia, Aurélien Tobie, and Myriam Marending, "The challenges of governance, development and security in the central regions of Mali," *SIPRI Insights on Peace and Security* 4 (2020).

25. United Nations Security Council, "Resolution 2085, adopted by the Security Council at its 6898th meeting," United Nations, 20 December 2012, S/RES/2085.

26. Oxfam, "Mobilizing Domestic Resources to Help Mali's Poorest Populations: the Role of French development aid," 1 December 2017, https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bn-mobilising-do¬mestic-resources-mali-061217-en.pdf; Ingo Peters et al., *Lessons to be learned from the EU crisis response in the extended neighbourhood: EU Security Sector Reform in Afghanistan, Iraq and Mali* (Berlin: Freie Universität, 2018), http://www.eunpack.eu/sites/default/files/publications/2018-09_D7.9_Article%20on%20lessons%20learned%20from%20EU%20crisis%20response%20in%20the%20extended%20neighbourhood.pdf; Norad, "Mali," *Mali Country Evaluation Report* 6 (2018), https://www.norad.no/globalassets/filer-2017/evaluering/6.18-ceb-mali/6.18-country_evaluation_brief_mali.pdf.

27. United Nations Security Council, "Resolution 2100, adopted by the Security Council at its 6952nd meeting," United Nations, 25 April 2013, S/RES/2100.

28. United Nations Security Council, "Resolution 2423, adopted by the Security Council at its 8298th meeting," United Nations, 28 June 2018, S/RES/2423.

29. United Nations Security Council, "Resolution 2100, adopted by the Security Council at its 6952nd meeting," United Nations, 25 April 2013, S/RES/2100: para 16(a)(3); United Nations Security Council, "Resolution 2164, adopted by the Security Council at its 7210th meeting," United Nations, 25 June 2014, S/RES/2164: para 13(c)(ii).

30. United Nations Security Council, "Resolution 2227, adopted by the Security Council at its 7474th meeting," United Nations, 29 June 2015, S/RES/2227: para 14(e).

31. United Nations Security Council, "Resolution 2295, adopted by the Security Council at its 7727th meeting," United Nations, 29 June 2016, S/RES/2295: para 19.

32. United Nations Security Council, "Resolution 2423, adopted by the Security Council at its 8298th meeting," United Nations, 28 June 2018, S/RES/2423: para 38.

33. Zoë Gorman and Grégory Chauzal, "Hand in hand: A study of insecurity and gender in Mali," *SIPRI Insights on Peace and Security* 6 (2019).

34. Indeed this priority has grown over time, see, United Nations Security Council, "Resolution 2480, adopted by the Security Council at its 8568th meeting," United Nations, 28 June 2019, S/RES/2480.

35. Interestingly, Mali has relatively low rates of intentional homicide, lower than Brazil, Namibia, Mexico, and South Africa.

36. Interviews with MINUSMA and UNDP Mali staff, October/November 2020.

37. International Federation for Human Rights and Association Malienne des droits de l'Homme, *Choosing justice in the face of crisis* (Bamako: fidh, 2017), https://www.fidh.org/IMG/pdf/20171208_rapportmali_justice_en.pdf.

38. Interview, November 2020.

39. Madiba Keita, Mamadou Ismael Konaté, ministre de la Justice "Il est de l'intérêt de tous que le proces de procès de Amadou Aya Sanogo aille jusqu'au bout, *MaliActu*, 13 November 2017, https://maliactu.net/mali-mamadou-ismael-konate-ministre-de-la-justice-il-est-de-linteret-de-tous-que-le-proces-de-amadou-aya-sanogo-aille-jusquau-bout/.

40. United Nations General Assembly, "Situation of human rights in Mali: Report of the Independent Expert on the situation of human rights in Mali," United Nations, 21 January 2019, A/HRC/40/77: para 26.

41. Ibid.; United Nations General Assembly, "Report of the United Nations High Commissioner for Human Rights on the human rights situation in Mali," United Nations, 26 June 2013, A/HRC/23/57; United Nations

General Assembly, "Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali," United Nations, 7 January 2012, A/HRC/22/33.

42. United Nations General Assembly, "Situation of human rights in Mali: Report of the Independent Expert on the situation of human rights in Mali," United Nations, 21 January 2019: par. 20.

43. International Federation for Human Rights, *Choosing justice in the face of crisis* (Bamako: fidh, 2017), https://www.fidh.org/IMG/pdf/20171208_rapportmali_justice_en.pdf. Article 611-1 of the aforementioned Law states, "In the prosecution and investigation of offences committed in cases of terrorism and organised transnational crime as defined in Article 609-1 and related offences, the territorial jurisdiction of the Prosecution and the specialised offices covers the entire country."

44. The following statistics are drawn from internal MINUSMA documents [on file with author].

45. Called Brigade d'investigation spécialisée.

46. 2019-20 Evaluation de la performance du pilier DSRSG-RC-HC [on file with author].

47. For a list of activities related to improving judicial capacities, see Results-Based Budget for MINUSMA, United Nations General Assembly, "Budget performance of the United Nations Multidimensional Integrated Stabilization Mission in Mali for the period from 1 July 2017 to 30 June 2018: Report of the Secretary-General," United Nations, 11 December 2018, A/73/634.

48. The Hague Institute for Innovation of Law, *Justice Needs and Satisfaction in Mali* (The Hague: HiiL, 2018), https://www.hiil.org/wp-content/uploads/2018/07/HiiL-Mali-JNS-report-EN-web.pdf.

49. Pauline M. Wambua and Carolyn Logan, "In Mali, citizens' access to justice compromised by perceived bias, corruption, complexity," *Afrobarometer Dispatch* 166 (2017), https://www.afrobarometer.org/publications/ad166-mali-citizens-access-justice-compromised-perceived-bias-corruption-complexity; World Justice Project, *Rule of Law Index 2020* (Washington DC: World Justice Project, 2020), https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf.

50. Aurélien Tobie, *Central Mali: Violence, Local Perspectives and Diverging Narratives* (Stockholm: Stockholm International Peace Research Institute, 2017), www.jstor.org/stable/resrep24459.

51. Interview, November, 2020.

52. These statistics are based on internal MINUSMA documents [on file with author].

53. Rosa de Jorio, "Conflict-Related Gender-Based Violence in Mali and the Limits of the Global System of Law," *Mande Studies* 21 (2019).

54. "Little support, no justice for Mali rape survivors," The New Humanitarian, 6 May 2013, https://www.thenewhumanitarian.org/news/2013/05/06/little-support-no-justice-mali-rape-survivors.

55. See, e.g. United Nations, Conflict Related Sexual Violence: Report of the United Nations Secretary General (New York: United Nations, 2019), S/2019/280, https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/04/report/s-2019-280/Annual-report-2018.pdf.

56. United Nations Security Council, "Report of the Secretary-General on conflict-related sexual violence: Report of the Secretary-General," United Nations, 22 June 2016, S/2016/361/Rev.1; Rosa de Jorio, "Conflict-Related Gender-Based Violence in Mali and the Limits of the Global System of Law," *Mande Studies* 21 (2019).

57. International Federation for Human Rights and Association Malienne des droits de l'Homme, *Choosing justice in the face of crisis* (Bamako: fidh, 2017), https://www.fidh.org/IMG/pdf/20171208_rapportmali_justice_en.pdf.

58. United Nations Security Council, "Report of the Secretary-General on the situation in Mali," United Nations, 23 December 2014, S/2014/943; United Nations Security Council, "Report of the Secretary-General on the situation in Mali," United Nations, 24 December 2015, S/2015/1030; United Nations Security Council, "Report of the Secretary-General on the situation in Mali," United Nations, 28 September 2017, S/2017/811.

59. United Nations General Assembly, "Report of the Independent Expert on the situation of human rights in Mali: Note by the Secretariat," United Nations, 2 February 2018, A/HRC/37/78: para 27.

60. United Nations, Conflict Related Sexual Violence: Report of the United Nations Secretary General (New York: United Nations, 2019), S/2019/280, https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/04/report/s-2019-280/Annual-report-2018.pdf.

61. For a good description of this, see, Rosa de Jorio, "Conflict-Related Gender-Based Violence in Mali and the Limits of the Global System of Law," *Mande Studies* 21 (2019).

62. See e.g. Roger Duthie, *Transitional Justice and Prevention* (New York: ICTJ, 2021), https://www.ictj.org/sites/default/files/ICTJ_Report_Overview_TJ_Prevention.pdf.

63. Virginie Ladisch, *Possibilities and Challenges for Transitional Justice in Mali* (New York: ICTJ, 2014), https://www.ictj.org/sites/default/files/ICTJ-Briefing-Mali-Assessment-2014.pdf.

64. United Nations General Assembly, "Situation of human rights in Mali: Report of the Independent Expert on the situation of human rights in Mali," United Nations, 21 January 2019: para 23.

65. Interview, November 2020.

66. Interview, November 2020.

67. Interview, October 2020.

68. Thomas Shipley, *Mali: Overview of corruption and anti-corruption*, (Bergen: U4 Anti-Corruption Resource Centre and Transparency International, 2017), https://www.u4.no/publications/mali-overview-of-corruption-and-anti-corruption.pdf.

69. See, Jan De Vries and Servaas Feiertag, *Strengthening the Rule of Law in Mali* (The Hague: Knowledge Platform Security and Rule of Law, 2015).

70. NB: the Dutch Foreign Ministry has taken some steps to develop a theory of change, which could be a basis upon which to begin a UN-driven one.

71. Diana Goff and Erwin van Veen, *A Crisis of Confidence, Competence, and Capacity: Programming Advice for Strengthening Mali's Penal Chain* (The Hague: Clingendael Institute, 2015).

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