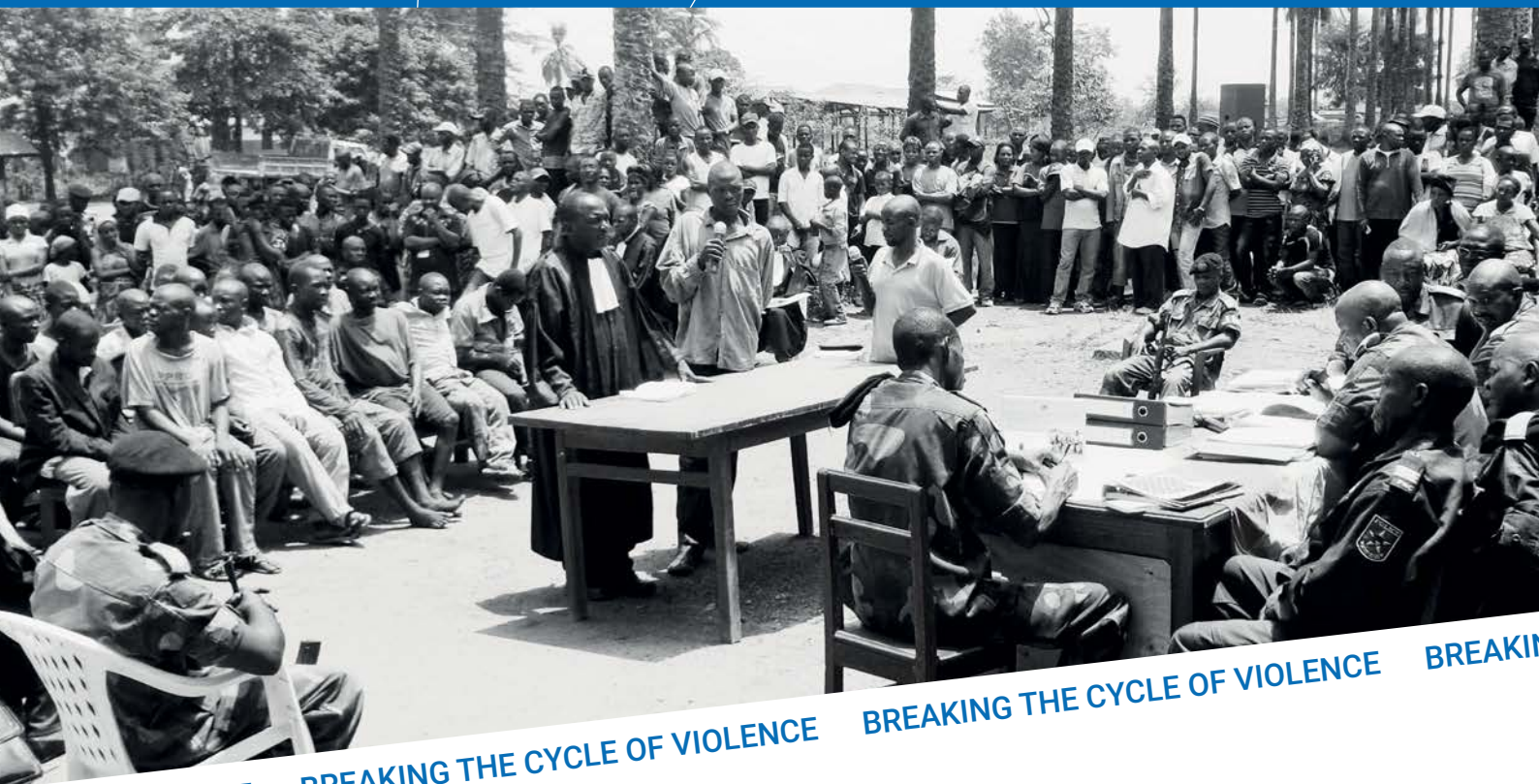


# A FUTURE-ORIENTED APPROACH TO CRIMINAL ACCOUNTABILITY AT THE NATIONAL LEVEL IN CONFLICT AFFECTED SETTINGS

Lessons from the Past  
and for the Future



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United Nations  
Peacekeeping

## **ACKNOWLEDGEMENT**

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# **A FUTURE-ORIENTED APPROACH TO CRIMINAL ACCOUNTABILITY AT THE NATIONAL LEVEL IN CONFLICT AFFECTED SETTINGS**

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## ABOUT THE STUDY

Through the lens of four United Nations peacekeeping operations in the Democratic Republic of the Congo, the Central African Republic, South Sudan and Mali, and drawing on accountability mechanisms developed in other settings, the study analyses the experience to date of the Department of Peace Operations (DPO) in providing support and assistance to national authorities with respect to criminal accountability and seeks to identify best practices and lessons learned.

What differentiates this from other studies is not only its examination of the role and added value of United Nations peace operations in advancing accountability efforts, but also its focus on the need for accountability for a broad range of crimes, from international crimes including conflict-related sexual violence, to other crimes that can trigger or further exacerbate conflict, such as those related to cattle-raiding and migration, terrorism and transnational organized crime, in line with the Secretary-General's vision towards advancing more people-centred approaches to stabilization, peacekeeping and prevention.

The study analyses the different approaches, models and mechanisms that have been supported by these missions. These differ in terms

of the nature and scope of international engagement: the hybrid (albeit national) Special Criminal Court in the Central African Republic; the Prosecution Support Cells in the Democratic Republic of the Congo, which provide technical, logistical, security and financial support to military justice investigations and hearings; the Pôle judiciaire spécialisé, a specialized judicial unit established in Mali equipped to investigate and prosecute terrorism-related and serious organized crime; and the mobile court initiatives in South Sudan which *"bring justice to the people"* using a community-based approach.

Funded by the Government of Norway with additional support from the Government of Portugal, the study was undertaken by the Justice and Corrections Service (JCS) of DPO, in collaboration with Global Rights Compliance. This study should be read in conjunction with the documentary produced as part of this same project with the Department of Global Communications. The documentary focuses on the trial of Ntabo Sheka, a Congolese warlord arrested and prosecuted for crimes against humanity in the Democratic Republic of the Congo with the support of the United Nations Peacekeeping Mission (MONUSCO).



# EXECUTIVE SUMMARY

Ensuring accountability at the national level for international crimes as well as other serious crimes which fuel conflict is an essential component of the protection of civilians, conflict prevention, stabilization and peacebuilding efforts in conflict and post-conflict settings. It is a critical tool not only for combating impunity, but also for promoting justice, building trust in national institutions and addressing the root causes of conflict, all of which are essential for achieving and maintaining peace in societies affected by mass atrocities and other serious human rights abuses.

Waiting for the political environment to become more conducive or for national justice systems to fully develop should not be an option in countries where atrocities against the civilian population, particularly women and children, are perpetrated on an immense scale. With the passage of time, the task of ensuring accountability becomes more difficult. Evidence is contaminated, lost or destroyed, and victims and witnesses die or disperse and become more difficult to locate, while their recollections diminish. States continue to have the primary obligation to investigate and prosecute perpetrators. Meaningful accountability in the short term is not just a legal and ethical imperative, but critical for deterring perpetrators and ending ongoing cycles of violence. Criminal accountability at the national level therefore requires more attention, recognition and international support.

The study highlights the progress achieved by United Nations peacekeeping operations, together with partners, in helping to strengthen national criminal accountability in support of peace, stability and security. The political engagement of peacekeeping operations, in conjunction with the broad range of technical expertise they provide and their logistical and security apparatus, have proved crucial in assisting national authorities in these endeavors. Without the backing of peacekeeping operations, such efforts would probably not have materialized in the Central African Republic, the Democratic Republic of the Congo, Mali or South Sudan. However, in this changing global environment, an uncertain landscape is

emerging, with a surge of conflicts globally at a time when the role and continuation of United Nations peacekeeping is being challenged. As missions draw down and close, such work will require additional and sustained support outside the scope of peacekeeping operations, particularly in those settings where atrocities continue to be perpetrated. In countries where conflict has subsided, issues of accountability still call to be addressed for longer term peace, security and stability. A case in point is Liberia where, after the departure of the United Nations peacekeeping operation in 2018 and two decades after the cessation of conflict, the issue of accountability featured strongly in the 2023 elections. This resulted in the President establishing the Office of War and Economic Crimes Court in May 2024, emphasizing the importance of justice in the “quest for national unity”. In the context of escalating conflict such as in Haiti, the United Nations is having to consider how support for the rule of law and accountability can be provided where non-United Nations security forces are being deployed to address spiraling gang violence. Notably, demands for justice from affected communities are also emanating increasingly from non-mission settings.

To ensure that Member States see their investment in peacekeeping and other measures to promote peace and security, preserved and protected and not reversed, and to avoid jeopardizing system-wide efforts to reinforce criminal accountability at the national level, the United Nations must adapt its rule of law engagement to this new environment with a greater focus on networked multilateralism. Where regional or international forces will be deployed to enforce peace and neutralize powerful armed groups, terrorist organizations or criminal networks, it will be essential to engage with partners to complement these efforts by establishing sufficient national capacities to ensure effective criminal accountability. Responding effectively to these challenges

calls for coherent and integrated action across the United Nations system.

Within this new approach, there is a need to sharpen and make available peacekeeping rule of law tools to allow for more flexible and adaptive rule of law support to fragile settings. This should entail enhanced dedicated rule of law expertise within the peace and security pillar, building upon existing standing and other capacities, with adequate, predictable and sustainable funding, combined with the increased flexibility to deploy specialized expertise and augment its engagement with regional organizations and frameworks. Such a dedicated criminal accountability support capacity would draw on partnerships, both within and outside the United Nations system, and that the Organization has the ability to support or initiate new mechanisms, upon request, in a broad range of fragile settings. This will need to include the capacity to continue promoting and supporting accountability for crimes against peacekeepers beyond the lifetime of United Nations missions in accordance with Security Council resolution 2589. The Global Focal Point for the Rule of Law, with its recorded successes in joint rule of law programming, remains a valuable platform for increased integration and for pooling shared resources to ensure more concerted rule of law responses.

United Nations peacekeeping support to criminal accountability at the national level is at an inflection point. Based on the successes recorded to date in supporting such mechanisms, future support provided by the peace and security pillar to missions and other fragile and conflict-affected settings must be fortified, requiring both DPO and DPPA to galvanize Member State support, adapt partnerships and enhance the linkages between regional and country-specific approaches.

## KEY LESSONS

**Significant progress has been achieved in strengthening accountability at the national level for serious crimes.**

This study noted an increase in the number of alleged perpetrators identified and detained with the support of the respective missions. By the end of 2023, approximately 4,600 individuals, including those from armed military groups and the security forces, had been tried and more than 3,400 convicted for serious crimes by national criminal accountability mechanisms (i.e. hybrid courts, national criminal sessions, military courts martial and mobile courts) in the Central African Republic, the Democratic Republic of the Congo, Mali, and South Sudan. **These individuals were found guilty of international crimes, war crimes and/or other serious crimes that might fuel conflict, including conflict related sexual violence, terrorism and crimes committed against peacekeepers, with many currently serving their sentences in national prison facilities also supported by peacekeeping operations.** However, significant challenges remain to ensure accountability for such crimes and most of the perpetrators of such acts have yet to be held accountable.

**Criminal accountability initiatives cannot succeed without a “whole of the criminal justice chain” approach, effectively integrating policing, justice, and corrections functions, including legal aid.**

The corrections sector is often overlooked but is essential for ensuring safe, secure and humane detention for those arrested on suspicion of having committed serious crimes. Criminal justice systems involve multiple actors with a range of professional skills and, accordingly, capacity building across the system is essential. Such capacity building activities should first and foremost focus on the transfer of knowledge and skills from internationals to nationals and on sustainability. The overriding principle is to ensure meaningful national ownership of capacity building processes and institutions.

**Criminal accountability in such contexts is often political in nature and therefore requires the application of a multi-disciplinary and politically informed lens, particularly to address the risks of judicial processes being instrumentalized.**

This may involve support for the development of prosecution or prioritization strategies, based on fair and transparent criteria and procedures in order to maintain the integrity of the process. This prioritization of cases by the national authorities also allows for greater coordination, focus and tailoring of the support provided by international partners, both in terms of financial and technical support.

**Criminal accountability contributes to ending the cycle of violence, advancing peace processes, preventing relapse into conflict and instilling a rule of law culture.**

**Criminal accountability is not only about holding individuals responsible for their actions. It also helps create the conditions for sustainable peace, promoting justice, building trust and confidence in national institutions and addressing the root causes of conflict.** It contributes to deterrence, halting cycles of violence and avoiding the recurrence of conflict. The question is not whether to pursue justice and accountability, but what kind of justice, when and how. Whether as part of a broader transitional justice approach or as a stand-alone initiative to address conflict drivers, accountability should, in one form or another, feature in negotiated peace agreements to signal a break from the past. More broadly, criminal accountability plays a pivotal role in fostering a rule of law culture within the security forces and more broadly within society, serving as a cornerstone for the maintenance of order and stability in society.



**Properly tailored and context-specific engagement, albeit challenging, can be undertaken at almost every stage of the conflict.**



The right balance needs to be achieved between national ownership and more robust international engagement to ensure credible and effective criminal accountability. Any decision will require in-depth and inclusive consultations with both national and international stakeholders regarding the most appropriate mechanisms, their feasibility and the existence of the appropriate conditions, including security and political challenges and the availability of resources. They should be tailored to the specific country context and integrated as part of the national legal framework. Options adapted to complex contexts can range from the collection or preservation of evidence during the active conflict, building cases during sensitive peace negotiations, to the establishment of specialized mechanisms, with or without the exercise of prosecutorial or judicial functions by internationals. The approach adopted in the four mission settings has been one of responsiveness to local needs and a gradual reduction of international support towards full national ownership.

**From a conflict-prevention perspective, priority should be given to addressing serious destabilizing crimes that fuel conflict.**



While the investigation and prosecution of international crimes, such as war crimes and crimes against humanity, remain critical, other serious crimes can also be significant in terms of their role in fueling and exacerbating conflict. **Such crimes can have destabilizing effects on societies and be powerful conflict drivers, especially when they are perpetrated systematically.** The study underscores the priority placed on conflict-related sexual and gender-based violence. It also underlines that pursuing accountability for crimes against peacekeepers is fully complementary to accountability for serious crimes against civilians and that the obligation and responsibility of the

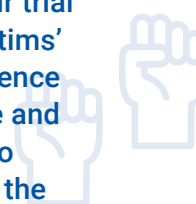
United Nations to follow up on these cases continues beyond the closure of missions. Furthermore, greater attention needs to be given to other crimes which fuel conflict, such as terrorism, hate crimes, transhumance-related crimes, illicit natural resource exploitation and, in recognition of its increasing magnitude and impact as a major driver of conflict and instability, transnational organized crime.

**In contexts where prosecuting those senior officials deemed the most responsible may be difficult, if not impossible in the short term, the study highlights the value in prosecuting lower to middle ranking offenders.**




Such investigations and prosecutions have the potential to create an invaluable evidence base for more politically challenging and sensitive prosecutions in the future against offenders higher up the command chain. They can also help to instill a culture of accountability for such crimes, including within the national security forces, while also deterring the commission of future atrocities.

**Compliance with international human rights standards, including fair trial standards and respect for victims' and defendants' rights, adherence to human rights due diligence and the mitigation of risks, need to be effectively incorporated in the support provided to national criminal accountability mechanisms.**



Particular attention needs to be paid to ensuring that United Nations support mitigates the risk of discriminatory or selective use of criminal accountability processes or political instrumentalization and bias. United Nations engagement should be guided by applicable international norms as well as internal United Nations rules, policies and procedures.

**Pursuing people-centred approaches should be paramount, including bringing justice closer to affected communities through mobile courts.**




The **provision of psychosocial and other support, combined with representation and protection for victims and witnesses** through both international and national non-governmental organizations, has proven particularly effective and can be attributed to strong collaboration and partnerships between the peace operation and civil society located in multiple areas of the host country. This should include **meaningful engagement in community-based activities**, such as outreach, awareness-raising and consultations with victim's groups and women's and youth-led organizations, local authorities and traditional leaders.

**The study highlights the challenges inherent in seeking mutually reinforcing advances across the dimensions of justice, truth reconciliation and reparations.**




Where feasible, **harmonizing ties between formal and informal and non-judicial mechanisms** and ensuring **linkages with broader transitional justice processes** will be instrumental in reinforcing criminal accountability to promote healing and reconciliation. Such processes may be inextricably linked to peace negotiations and to the demobilization and reintegration of combatants.

**A proactive approach to strategic communications is also essential.**




This can serve to inform, engage, and garner support for these efforts, and ultimately contribute to the effectiveness of accountability processes and the promotion of the rule of law. It can also help counter false narratives and ensure that accurate information is disseminated. It is also important to **manage the expectations** of both local populations and the international community, including donors. **Establishing a criminal accountability mechanism is never a short-term endeavour but requires sustained international support over years to operationalize and then to transition to full national ownership.** Even when international financial and technical support has ceased, ongoing political attention is essential for continued success.

**The United Nations plays a central role in establishing and operationalizing criminal accountability mechanisms.**




Without the political leverage, broad range of technical expertise, as well as the security apparatus, financial support and logistical capacities, combined with the essential convening role of United Nations peace operations working with partners, it is unlikely that the Special Criminal Court in the Central African Republic or other mechanisms in peace operation settings would have been established or effectively operationalized.

**Missions play a particularly important role in convening and coordinating the support of United Nations system actors and the broader international community in-country, including non-governmental actors providing essential support to victims.**



The successes in these contexts were not achieved in isolation, but rather in collaboration with United Nations Agencies, Funds and Programmes and other partners at the country level, building upon each entity's distinct mandate, roles and strengths. Careful consideration needs to be given to the complementary but distinct roles of human rights monitoring, investigations and reporting, on the one hand, and direct support to national investigative and judicial authorities, on the other.

**With peace operations downsizing and closing, the future of such criminal accountability mechanisms remains in doubt.**



The results achieved in the four settings covered by this study however demonstrate the **importance of building on the unique strengths of multidimensional peacekeeping. The United Nations system needs to consider how such support can be taken forward** and, further, how it can be provided more broadly in non-mission settings.





## DOWNLOAD THE FULL REPORT

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The Justice and Corrections Service (JCS) serves as a centre of expertise on justice, corrections and related rule of law areas within the Secretariat, comprising a team of judicial affairs, corrections and programme officers and support staff. In 11 peacekeeping operations and special political missions, as well as in priority non-mission settings, JCS assists nationally-led efforts to reform the rule of law, deliver essential justice and prison services and strengthen criminal justice systems, including through support to accountability mechanisms to address crimes that fuel conflict, restoration and extension of justice and corrections institutions in conflict-affected areas.



Department of Peace Operations  
Office of Rule of Law and Security Institutions  
Justice and Corrections Service