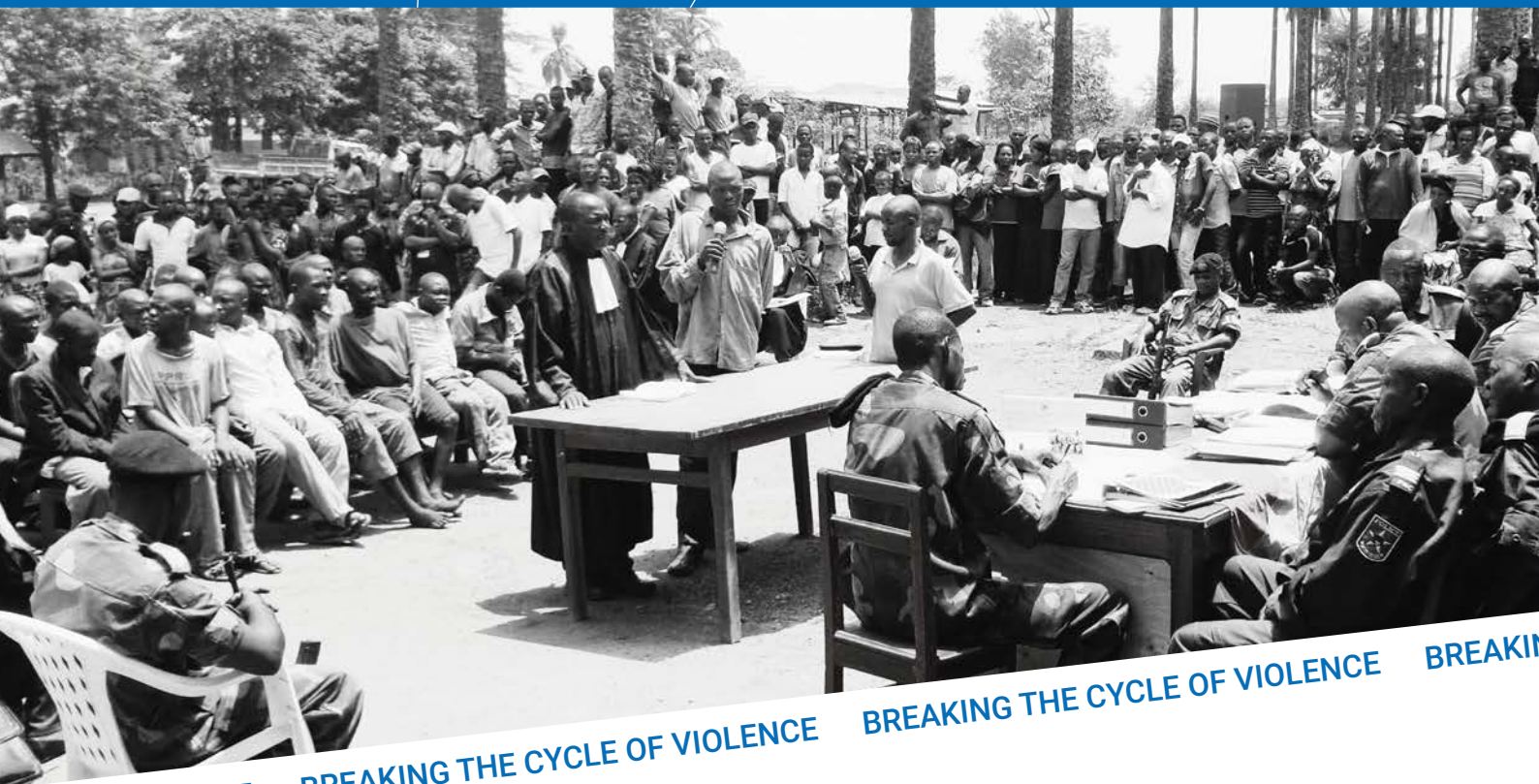


A FUTURE-ORIENTED APPROACH TO CRIMINAL ACCOUNTABILITY AT THE NATIONAL LEVEL IN CONFLICT AFFECTED SETTINGS

Lessons from the Past
and for the Future



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United Nations
Peacekeeping

ACKNOWLEDGEMENT

Through generous funding from the Government of Norway and additional funding from the Government of Portugal, this publication was produced by the Policy Team of the Justice and Corrections Service within the Department of Peace Operations. Acknowledgement is due to Global Rights Compliance who prepared initial papers for the study.

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

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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).

WATCH "Trial that Brought Down a Warlord"






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.



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.



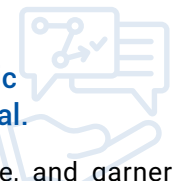
The provision of psychosocial and other support, combined with representation and protection for victims and witnesses through both international and national non-governmental organizations, has proven particularly effective and can be attributed to strong collaboration and partnerships between the peace 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.



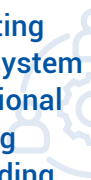
This can serve to inform, engage, and garner support for these efforts, and ultimately contribute to the effectiveness of accountability processes and the promotion of the rule of law. It can also help counter false narratives and ensure that accurate information is disseminated. It is also important 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.





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INTRODUCTION

In conflict-affected and fragile settings, the proliferation of extremist groups and criminal networks, the limited presence of rule of law actors, weak security institutions, the predatory behavior of national security forces and the illegal exploitation of natural resources, combined with endemic corruption, can lead to and fuel widespread and recurring cycles of violence and mass atrocities. These, in turn, generate fear, resentment, distrust and hostility towards the government and cause societies to fragment.

When law enforcement and justice institutions and officials are unable, or cannot be trusted, to protect the people they should be serving, including through an absence of secure and humane prisons, the population, in particular victimized and marginalized communities, will remain vulnerable to atrocity crimes, other gross violations of human rights and discriminatory practices and a broad range of serious crimes directly connected to, and frequently fueling, conflict.

Ensuring accountability at the national level for international and other serious crimes such as conflict-related sexual violence, terrorism and transnational organized crime is an essential component for the protection of civilians, conflict prevention, stabilization and peacebuilding efforts in conflict and post-conflict settings. Bringing perpetrators of serious crimes to justice not only is essential to deter the future commission of such crimes, but also helps to restore confidence in the State and re-affirm the social contract. Accountability initiatives serve to advance lasting political solutions.

The investigation and prosecution of serious crimes, up to and including incarceration, require both political will and dedicated and specialized national capacities

throughout the criminal justice process. Waiting for the political environment to become more conducive or for national justice systems to become more developed should not be an option in countries where atrocities against the civilian population, particularly women and children, are being perpetrated on an immense scale and where meaningful accountability in the short term is critical to end ongoing cycles of violence. 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. Both as an ethical imperative and as a practical matter, prompt and effective action, however challenging, is necessary if accountability is to be ensured. Well-designed, tailored and appropriately timed accountability mechanisms must therefore form part of the broader continuum of interventions.

Although international accountability mechanisms have received considerable support and attention over the past three decades, States continue to have the primary obligation to investigate and prosecute perpetrators. In recognition of the importance of ensuring criminal accountability at the national level as an essential building block for sustainable peace, the United Nations Security Council has regularly mandated peacekeeping operations to assist host authorities to develop national capacities to investigate and prosecute international and other serious crimes. This study looks at four such United Nations peace operations which have been explicitly mandated to support national accountability processes in the Democratic Republic of the Congo (MONUSCO), the Central African Republic (MINUSCA), Mali (MINUSMA) and South Sudan (UNMISS). Different context-driven approaches and models have been supported in these challenging environments. These differ in terms of the nature and scope of international engagement, including the hybrid Special Criminal Court in the Central African Republic, a tribunal based in Bangui; the Prosecution Support Cells within MONUSCO 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 other serious

crimes; and the variety of mobile court initiatives in South Sudan which “bring justice to the people” using community-based approaches.

With the support of United Nations peace operations, notable progress has been achieved to ensure accountability in these four countries for serious crimes fueling conflict, with an increase in the number of alleged perpetrators identified and detained, and an increase in the percentage of cases with confirmed national investigations. In his 2023 report on Strengthening and Coordinating Rule of Law Activities, the Secretary-General recognized that “efforts to strengthen criminal accountability at the national level in post-conflict settings yielded significant results”. By the end of 2023, approximately 4,600 individuals had been tried and over 3,400 convicted for serious crimes by national criminal accountability mechanisms in the Central African Republic, the Democratic Republic of the Congo, Mali and South Sudan. These individuals were found guilty of committing international crimes, war crimes and/or other serious crimes which may fuel conflict, including conflict-related sexual violence, terrorism and crimes committed against peacekeepers. Many are currently serving their sentences in national prison facilities supported by United Nations peacekeeping operations. However, significant challenges remain to ensure accountability for such crimes and the majority of the perpetrators of such acts have yet to be held accountable.

In the past five years, there has also been increased demand to support efforts at the national level to ensure criminal accountability for crimes committed against peacekeepers and other United Nations personnel. Since 2013, 323 Peacekeepers have been killed as a result of malicious acts. DPO has led the Secretariat’s efforts on accountability for crimes against peacekeepers in accordance with Security Council resolution 2589. Following the adoption of the resolution, a Group of Friends to promote accountability for crimes against peacekeepers, comprised of more than 40 Member States, was established in April 2023. There has been notable progress in the Central African Republic, the Democratic Republic of the Congo, Lebanon and Mali, with an increase in the number of alleged perpetrators identified and detained, along with an increase in the percentage of cases undergoing confirmed national investigations. Since 2020,

97 individuals have been convicted in these countries in relation to the killing of 34 peacekeepers and two United Nations experts. A comprehensive online database on crimes against peacekeepers, as requested by the Security Council, was launched in 2024. The priorities of the Secretariat on this matter are further outlined in this report.

Accountability initiatives serve to advance progress on many of the United Nations' key priorities as put forward in the Secretary-General's Our Common Agenda,¹ the draft outcome document "Pact for the Future", the policy brief A New Agenda for Peace² and the Action for Peacekeeping agenda. Moving forward, the Secretary-General's New Vision for the Rule of Law,³ as well as his Guidance Note on Transitional Justice⁴ has firmly placed justice and accountability at the heart of the United Nations engagement on conflict prevention and peace and security. Importantly, this work advances Sustainable Development Goal 16 by promoting responsive and accountable rule of law institutions that provide access to justice for all and legal remedies for victims of violence, including women and children. In this context, supporting national criminal accountability remains paramount especially as the United Nations adapts to provide nimbler and more flexible assistance.

This study focuses not only on the role and added value of United Nations peace operations in advancing criminal accountability at the national level, but also on the need for accountability for a broader range of crimes – from international crimes to other crimes that can trigger or further exacerbate conflict, such as those related to migration and access to water and grazing, in line with the Secretary-General's vision of advancing more people-centred approaches to stabilization, peacekeeping, prevention and peacebuilding. Through the lens of these four peace operations, whilst also drawing on examples of accountability mechanisms developed in other settings, this study analyses the experience to date of DPO support and assistance to national authorities and seeks to identify best practices and lessons learned.

Purpose, Scope and Methodology

The key objectives of this study were as follows:

- To provide a comprehensive account of the achievements to date and the impact of initiatives undertaken by the four peacekeeping operations since 2010;
- To provide lessons to enhance the effectiveness of DPO and other United Nations entities in providing support to national authorities with the investigation and prosecution of crimes fueling conflict; and
- To inform decision-making and approaches to future national criminal accountability systems to enhance investigations and prosecutions and ensure accountability for crimes fueling conflict.

The study focused primarily on four peacekeeping operations – MONUSCO, MINUSCA, UNMISS and MINUSMA (which completed its withdrawal in December 2023) – and analysed the various initiatives undertaken. The missions were selected for the diversity of their mandates, operations and approaches regarding criminal accountability, the political and security contexts in which they have operated, as well as the different phases of their operations.

The methodology employed for this study consisted of a desk review of policy and country-specific documents, academic articles, lessons learned and best practices for supporting national criminal accountability mechanisms, supplemented by interviews and a survey of practice focusing on these four settings. The study involved a variety of consultations with national authorities, senior decision makers both in the field and at Headquarters, academia and rule of law practitioners. The initial findings were presented to an advisory board as part of a scoping exercise.

See Annex 1 for an overview of the different criminal accountability mechanisms.

¹ A/75/982.

² United Nations publication, 2023.

³ United Nations. "New Vision of the Secretary-General for the Rule of Law." 2023.

⁴ OHCHR. "Guidance Note of the Secretary General on Transitional Justice: A Strategic Tool for People, Prevention and Peace." 11 October 2023.

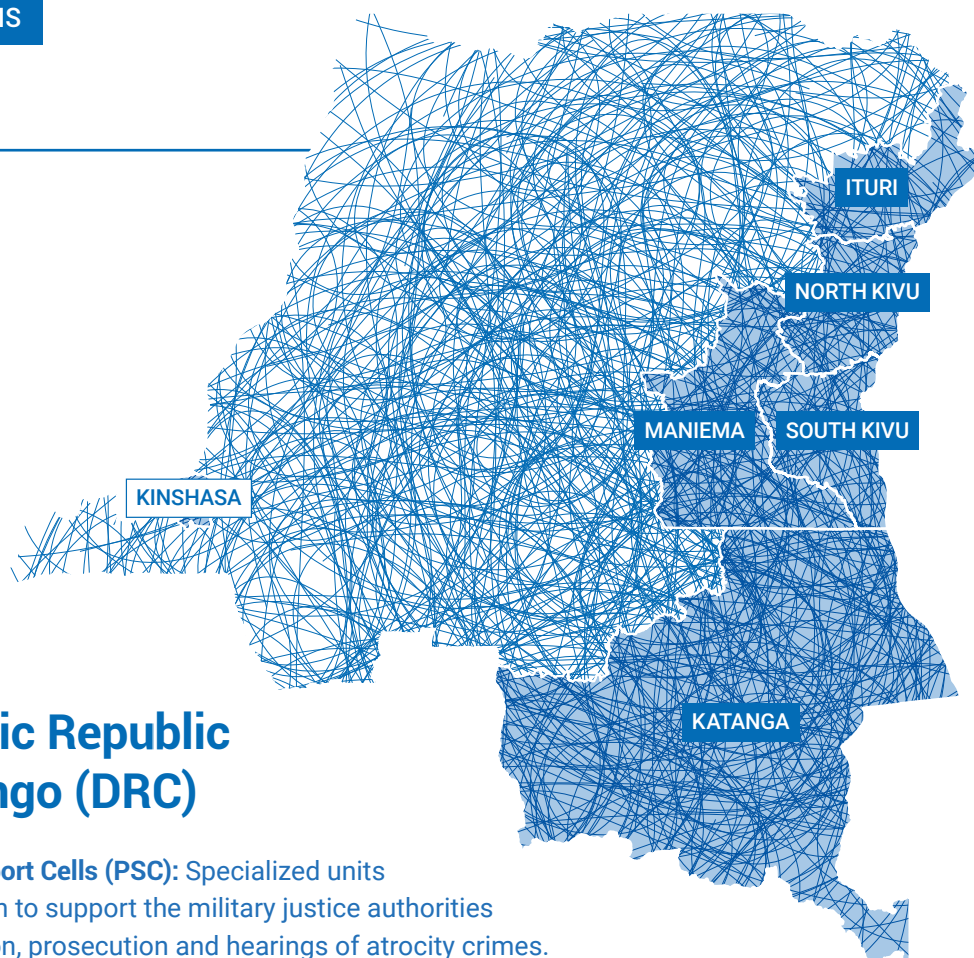




OVERVIEW OF SPECIALIZED NATIONAL CRIMINAL ACCOUNTABILITY MECHANISMS AND OTHER INTERVENTIONS CURRENTLY SUPPORTED BY **PEACEKEEPING** OPERATIONS

This study has reviewed the various types of initiatives that have contributed to strengthening criminal accountability at the national level. Different approaches and models have been supported in these challenging contexts; they include Prosecution Support Cells in the Democratic Republic of the Congo; the hybrid Special Criminal Court in the Central

African Republic; mobile court initiatives in South Sudan; and a specialized judicial unit equipped to investigate and prosecute terrorism-related and serious organized crime in Mali. This chapter summarizes the main features of these criminal accountability mechanisms, as well as the modalities of support by DPO and its partners.



Democratic Republic of the Congo (DRC)

Prosecution Support Cells (PSC): Specialized units within the Mission to support the military justice authorities in the investigation, prosecution and hearings of atrocity crimes.

CONTEXT

Weaknesses in the country's military criminal justice system, which historically held jurisdiction over war crimes and crimes against humanity perpetrated in remote and insecure parts of eastern DRC, prevented the effective investigation and prosecution of such crimes, as well as other gross human rights violations, including widespread sexual violence. The focus on military justice was based on the fact that it was better equipped and had more capacity to investigate and prosecute such cases in the remote and insecure parts of eastern DRC.

MANDATE

MONUSCO was first mandated in 2010 to assist the military justice authorities to bring perpetrators of international crimes to justice, including by establishing the Prosecution Support Cells.

CONCEPT

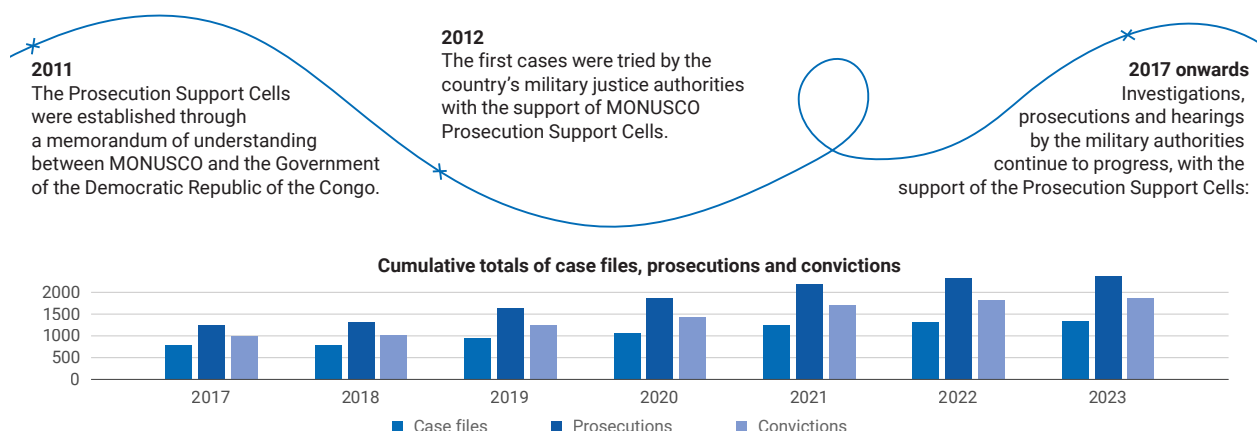
Specialized teams of international prosecutors and investigators established within MONUSCO provide dedicated technical advice and logistical support to military justice authorities to conduct criminal investigations and prosecutions of serious crimes as well as trials for these crimes.

COMPETENCE

The purview includes most serious crimes falling within the competence of military courts, namely those crimes listed in the Rome Statute of the International Criminal Court⁵, in particular, war crimes and crimes against humanity, including crimes of conflict-related sexual violence.

5 United Nations, Treaty Series, vol. 2187, No. 38544.

TIMELINE



COMPOSITION

Within the MONUSCO Justice Support Section, a cadre of 30 international government-provided military and civilian prosecutors and investigators are divided into five Prosecution Support Cells for each of the eastern provinces and remote areas (North Kivu (Beni and Goma), South Kivu, Ituri, Maniema Haut Katanga, Kasai Central and Tanganyika – the last two closed in 2022 and 2023).

NATURE OF SUPPORT

The Prosecution Support Cells provide technical and logistical support to prosecutors and investigators of the Armed Forces of the Democratic Republic of the Congo (FARDC) in conducting investigations and prosecutions of international crimes. The Prosecution Support Cells incorporate support to the national authorities for investigations, mobile hearings and trials, including those conducted in remote and insecure areas where atrocities have been committed and where courts barely function or exist. Support also includes victim and witness assistance, psychosocial services and legal representation for victims, provided in conjunction with non-United Nations partners. The Prosecution Support Cells do not initiate, conduct or lead any criminal investigations or prosecutions, but only respond to specific support requests from the military justice authorities. A memorandum of understanding signed between MONUSCO and

the Government of the Democratic Republic of the Congo has allowed the Prosecution Support Cells experts to access the files on priority cases. They provide expert advice on the identification, collection, analysis and strength of evidence, witness and victim protection measures, and broader prosecutorial strategies and legal research. They also provide specialized expertise on essential investigation and prosecution skills such as the collection of telephone and digital evidence, or ballistic expertise. The Prosecution Support Cells also coordinate meetings of different justice partners for the organization of investigations and mobile court hearings and facilitate logistical and security support by the Mission for mobile investigations and hearings, including daily subsistence allowance for national judicial personnel.

PARTNERSHIPS AND FINANCIAL MODALITIES

The Prosecution Support Cells are overseen and implemented by the Justice Support Section of MONUSCO, supported by a joint project with the United Nations Development Programme (UNDP), in collaboration with the Mission's Joint Human Rights Office and civil society organizations. The Cells received initial financial support from the Governments of Canada (Can\$ 2.8 million), the United Kingdom of Great Britain and Northern Ireland (\$157,000) and the International Narcotics

and Law Enforcement Bureau of the United States of America (\$500,000), as well as the Peacebuilding Fund (initially through the International Organization for Migration), and subsequent funding from the European Union. The Prosecution Support Cells are now funded through MONUSCO programmatic funds.

IMPACT

Since 2016, three prioritization processes have been conducted in key provinces with the national authorities to identify the most serious cases for investigation and prosecution. To date, 107 priority cases have been identified.

By the end of 2023, 1330 case files, involving 2379 accused persons, have been processed, with 1859 convictions and sentences, of which 50% were of members of security forces, 24% members of armed groups and 26% civilians.

(See list of emblematic cases below). Mid and senior-level FARDC and PNC officers have been prosecuted for being involved in, or failing to prevent and punish, crimes against humanity and war crimes, including sexual violence. At least 30 senior FARDC and PNC officers as well as several leaders of armed groups members have been convicted and sentenced since 2015. The capacity of the military justice system to investigate, prosecute and adjudicate international and serious crimes has improved and led to better quality of military court decisions.

Three cases of genocide and crimes against humanity were also adjudicated by courts of appeal of Haut Katanga, Ituri and Tanganyika between 2016 and 2022 while the Tribunal Militaire de Garnison of Kalemie judged a case of genocide in 2023.

Recent Cases assisted by MONUSCO Prosecution Support Cells

Munyololo Mbao alias Ndarumanga

In May 2023, a leader of the Ndarumanga armed group was convicted of crimes against humanity of forced pregnancy, sexual slavery, torture, murder, imprisonment and other inhumane acts committed in South Kivu and was sentenced to life imprisonment.

Bantu militiamen

In July 2023, two Bantu militia chiefs were convicted of genocide in relation to the killing of 40 indigenous peoples (Twa) in 2017 in Tanganyika and were convicted.

Kamwina Nsapu

In January 2022, 50 people, including members of the Kamwina Nsapu militia, were convicted for war crimes, terrorism and other charges in relation to the assassination of two United Nations experts in Kasai Central in 2017, and sentenced to death. The case is under appeal at the High Military Court. In March 2021, a Kamwina Nsapu leader was

convicted of war crimes, as well as of terrorism, for participation in an insurrectional movement and criminal association, and was sentenced to life imprisonment. This was the first conviction in Kasai Central in relation to mass crimes committed during the Kamwina Nsapu conflict.

FARDC senior officer

In April 2023, two FARDC colonels and four captains were convicted of the war crimes of murder, looting and mutilation in relation to attacks against civilians in Djugu, Ituri, between July and October 2021. In January 2022, an FARDC colonel was sentenced to 10 years' imprisonment for breach of orders and not assisting a person in danger in relation to the assassination of two United Nations experts in 2017. In May 2022, an FARDC lieutenant colonel and two majors were convicted for war crimes in Bunia and Djugu, and were sentenced to the death penalty. They were accused of atrocities committed by soldiers under their command during military operations against the Coopérative pour le développement du Congo (CODECO) armed group.

Mai Mai armed group members

In 2022, Mirassano, leader of the Mai Mai Rénové armed group, was sentenced to the death penalty for crimes against humanity in relation to atrocities committed against civilians between 201 and 2018 in Tanganyika province. In March 2021, two doctors were convicted of terrorism and other charges in relation to attacks on the Ebola response team in 2019, in Butembo, during which a doctor from the World Health Organization was killed.

Mihonya Chance Kolokolo

In September 2021, the former FARDC member and leader of the Raia Mutomboki Chance armed group, was convicted for crimes against humanity and war crimes. This was the first trial in South Kivu involving charges of recruitment and use of children, and of illegal exploitation of natural resources. It represented a milestone in the fight against impunity in the province.

Takungomo Mukambilwa Le Pouce

In January 2021, the deputy leader of Raia Mutomboki Charlequin, was convicted of crimes against humanity for murder, rape, torture and sexual slavery committed in South Kivu and was sentenced to 20 years' imprisonment and the payment of damages to the victims.

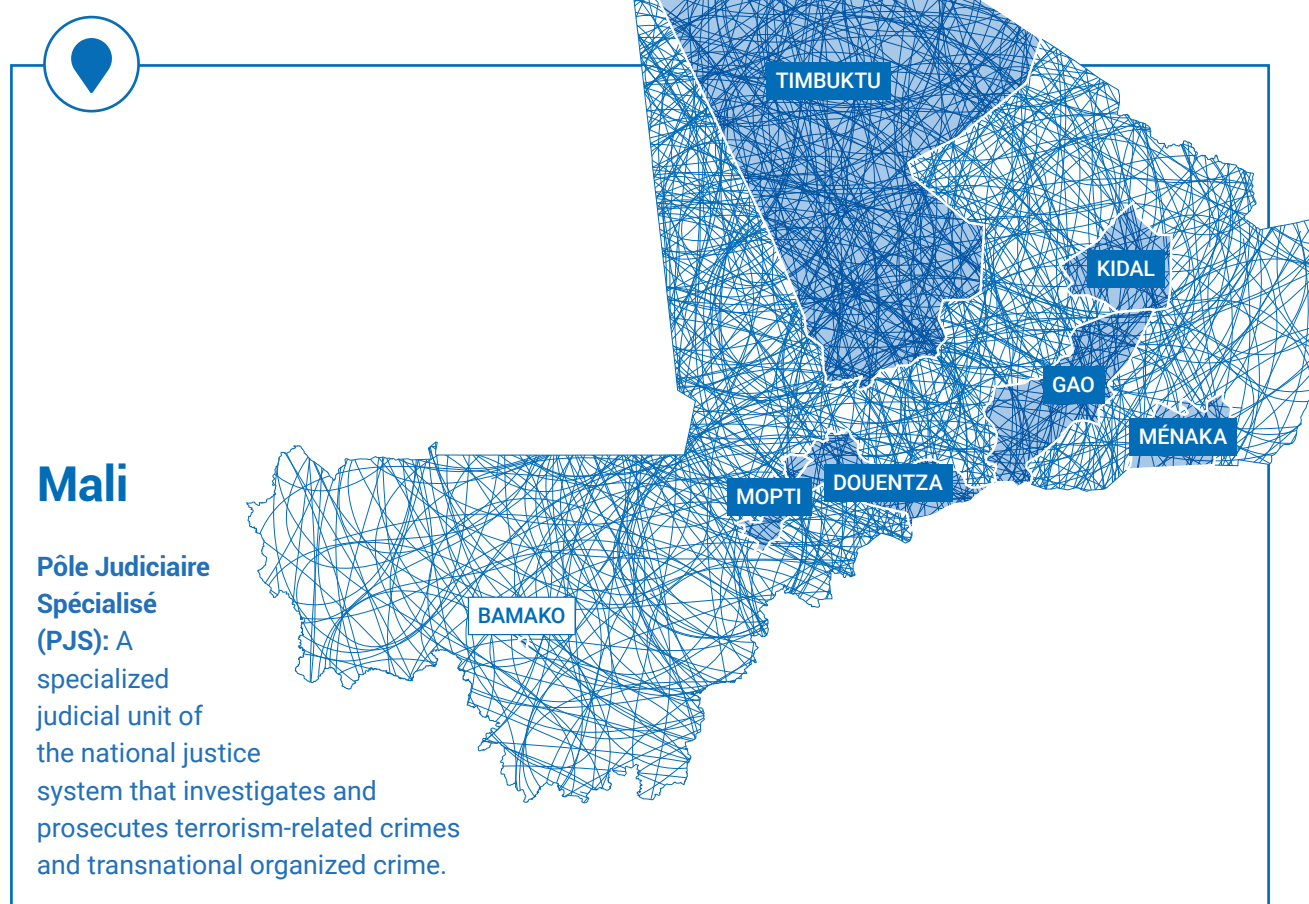
Ntabo Ntaberi Sheka

In November 2020, two former armed group leaders, Ntabo Ntaberi Sheka and Séraphin Nzitonda (alias Lionso), were convicted in a case highlighted as a priority by the Security Council for war crimes, including murder, sexual slavery, recruitment of children, looting, destruction of property and violation of physical integrity, committed in North Kivu in 2007–2017. Both were sentenced to life imprisonment.

Kavumu trial

In December 2018, 12 members of a Congolese militia, including senior parliamentarian Frederic Batumike, were convicted in the Kavumu case for raping 37 children and young girls in eastern Democratic Republic of the Congo. The group believed, under the influence of a traditional medicine practitioner, that raping young children would grant them protection against enemies. This landmark trial – supported by Physicians for Human Rights, TRIAL International, MONUSCO and the Team of Experts on the Rule of Law and Sexual Violence in Conflict – involved collaboration with the health and judicial authorities and the police to gather evidence and witnesses. The arrest of Batumike and his group in June 2016 led to a notable decrease in the rape of minors in the area, demonstrating the trial's significant impact on combating such crimes through the use of mobile courts.





CONTEXT

Except in Kidal, justice and corrections institutions were functioning throughout the country prior to 2012. Following the rebellion in northern Mali, the fight against terrorism, including combating impunity, was reaffirmed as a priority in the peace agreement.

MANDATE

Starting in 2013, MINUSMA support for national criminal accountability in Mali prioritized combating impunity for terrorism-related crimes and transnational organized crimes, as well as holistic capacity-building for the rule of law and addressing the root causes of conflict in the country.

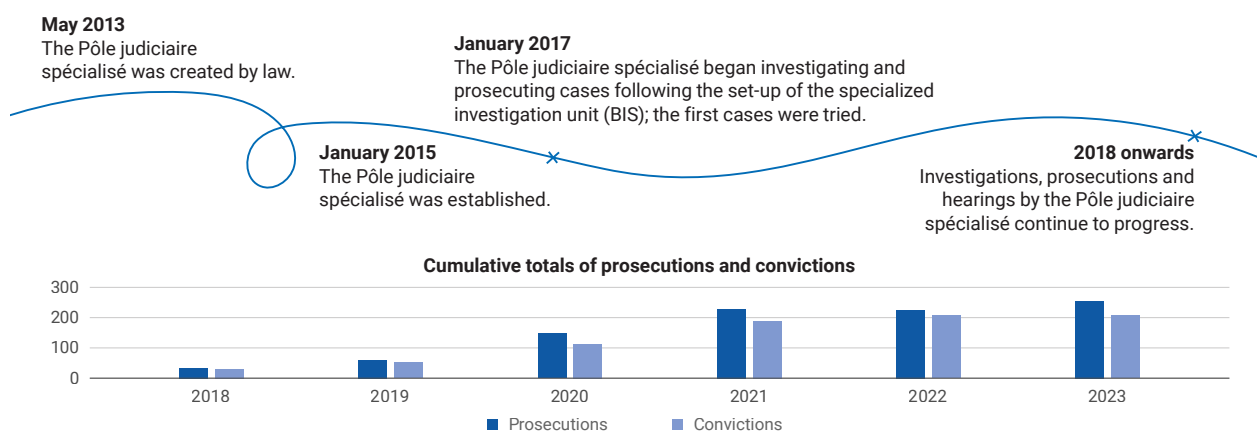
CONCEPT

MINUSMA supported the establishment and operationalization of a specialized investigation and prosecution capacity, with exclusive jurisdiction in the national justice system on terrorism, transnational organized crime and international crime cases.

COMPETENCE

The unit's purview includes terrorism-related offences, transnational organized crimes and international crimes, including crimes against MINUSMA peacekeepers, under the authority of the public prosecutor at the Bamako Court of Appeal.

TIMELINE



COMPOSITION

The unit is made up of the following **national magistrates, prosecutors, investigators and assistants**: one specialized public prosecutor and four deputies; nine investigating judges; one specialized investigation brigade consisting of a head investigator and 50 investigators divided into five teams and four specialized groups (Technical and Scientific Police, Intelligence, External Relations, and Administration and Secretariat); and a team of specialized assistants.

NATURE OF SUPPORT

MINUSMA personnel facilitated nationally led investigations, prosecutions and detentions, including through training, mentoring, equipment, small infrastructure, and direct technical and logistical support. MINUSMA also supported criminal analysis and case management, as well as coordination with other criminal justice chain actors with the aim of resolving issues such as prolonged police custody and pretrial detention.

PARTNERSHIPS AND FINANCIAL MODALITIES

This is a flagship MINUSMA initiative, jointly undertaken with the United Nations Office on Drugs and Crime (UNODC) and in close cooperation with EUCAP Sahel Mali. It was initially implemented under the umbrella of the Global Focal Point for the Rule of Law, with UNDP, Mine Action Service of the United Nations, the United Nations police, the Counter-Terrorism Implementation Task Force, the United Nations Counter-Terrorism Centre, and the Counter-Terrorism Committee Executive Directorate. Through programmatic funding, MINUSMA contributed approximately \$500,000 annually to the specialized judicial unit.

IMPACT

To date, 255 individuals charged with terrorism-related crimes have been brought to trial before the Criminal Court of Bamako, leading to 208 convictions with sentences ranging from 18 months to life imprisonment, as well as the death penalty (it is automatically commuted to life imprisonment as per a moratorium), along with 47 acquittals. A special criminal session heard 18 cases of serious financial crimes, resulting in 27 convictions in 2021. Another 10 individuals were brought to trial and convicted for the murder of six MINUSMA peacekeepers.

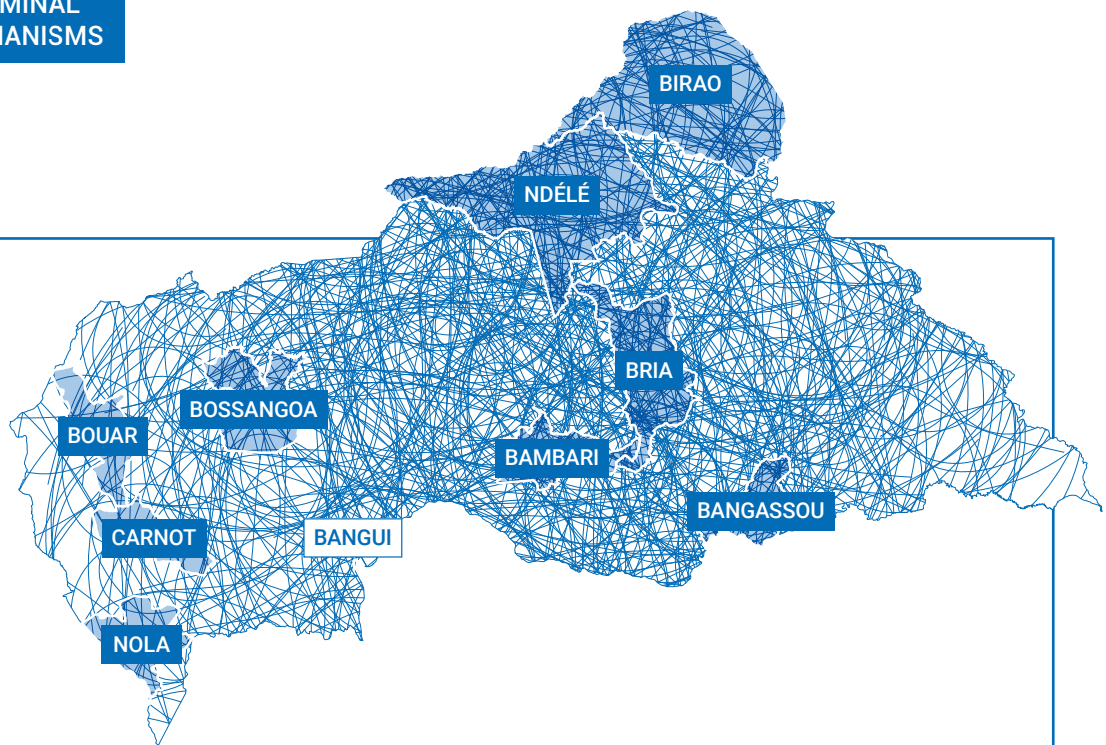
**ET DE CORRECTION
DE TOMBOUCTOU**

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**CEREMONIE D'INAUGURATION DE LA MAISON
D'ARRET ET DE CORRECTION DE TOMBOUCTOU
LE 24 MARS 2015**





Central African Republic (CAR)

Special Criminal Court (SCC): A domestic tribunal of hybrid nature with a mandate to adjudicate core international crimes.

CONTEXT

For years, the Central African Republic has grappled with rampant impunity for core international crimes (crimes against humanity, war crimes and genocide). Emerging from conflict, its justice system required sustained support to effectively investigate and prosecute serious crimes through a specialized tribunal that would be able to address complex cases.

MANDATE

Since 2014, MINUSCA has been explicitly mandated to support the operationalization and functioning of the Special Criminal Court, including through the provision of technical assistance to the national authorities, in partnership with other actors. MINUSCA has also been mandated to adopt “urgent temporary measures” to arrest and detain individuals upon the request of the national authorities in areas where national security forces are not present or operational.

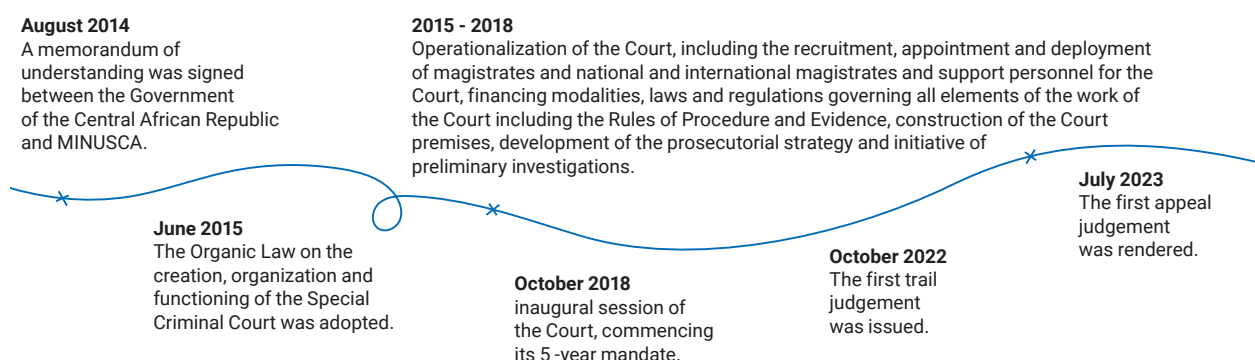
CONCEPT

MINUSCA supports the operationalization and functioning of the hybrid criminal tribunal, composed of both national and international magistrates and support personnel, with a mandate to investigate and adjudicate core international crimes committed in the Central African Republic since 2003.

COMPETENCE

Its purview includes serious violations of human rights and international humanitarian law committed in the country’s territory since 1 January 2003, in particular genocide, crimes against humanity and war crimes.

TIMELINE



COMPOSITION

The Special Criminal Court is made up of 22 national and international magistrates, prosecutors and members; 10 national registrars and secretaries of the Special Prosecutor's Office; 21 United Nations support staff seconded to the Court; 18 national judicial police officers; seven United Nations police officers; and a roster of 52 defence lawyers.

NATURE OF SUPPORT

Dedicated teams of MINUSCA judicial, police and corrections experts provide technical assistance, legal strategic and policy advice, guidance and good offices to support the operationalization and functioning of the Court. MINUSCA responds to requests for assistance from the Court in investigations, arrests, detention, evidence collection and storage, personnel selection, court management, prosecution strategy, legal aid, and security for magistrates and witnesses, etc. MINUSCA in coordination with the Department of Peace Operations, UNDP and national partners, including the Court, conducts outreach to Member States to develop and maintain financial and political support for the Court and the recruitment of international magistrates for the Court.

PARTNERSHIPS AND FINANCIAL MODALITIES

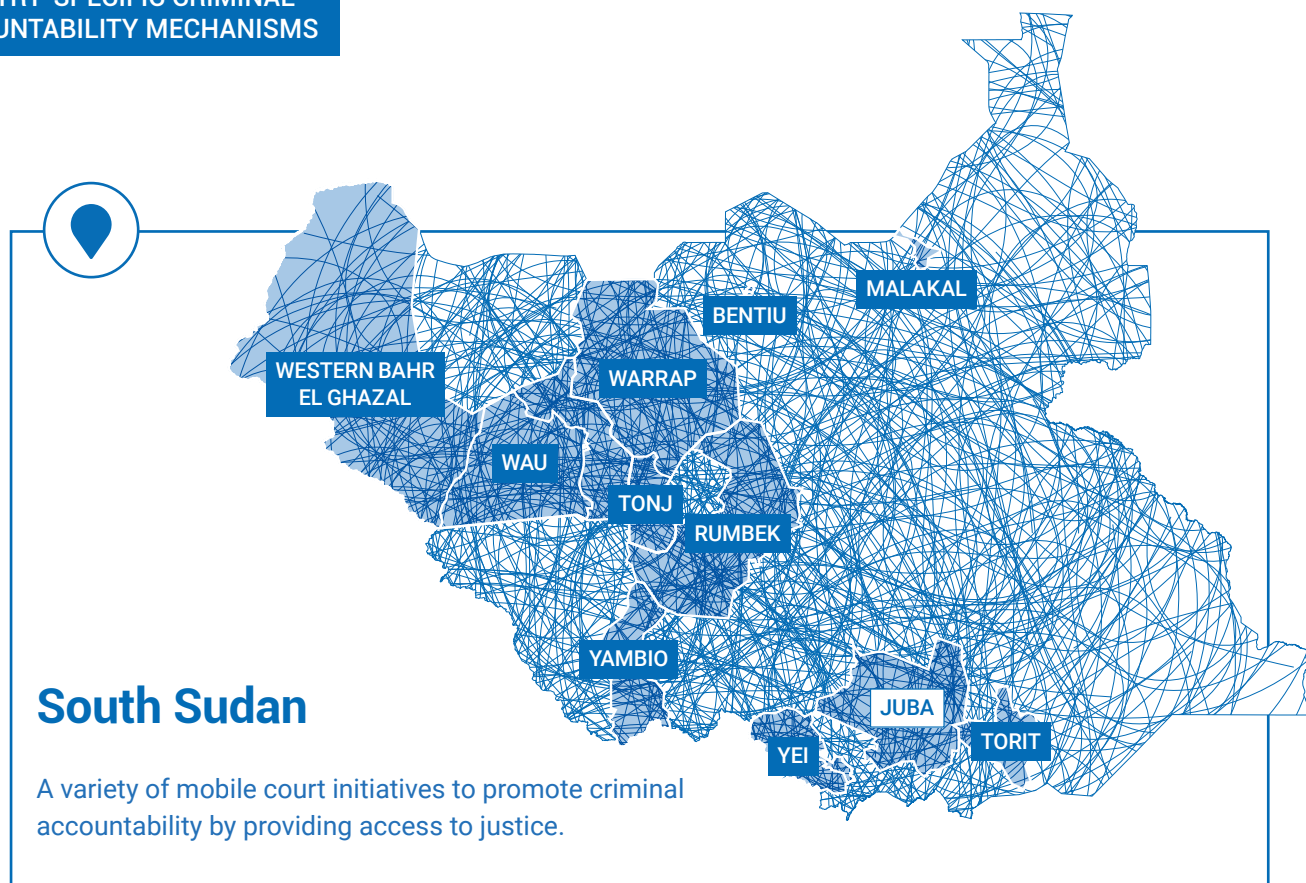
MINUSCA and UNDP are leading partners in the implementation of the joint project in support of the Special Criminal Court. Programmatic funds are included in the MINUSCA budget to support the operations of the Court. Since its inception, the Special Criminal Court has received \$61.8 million (\$38 million from MINUSCA). For 2023/24, the estimated financial requirements of the Court amounts to approximately \$13 million.

IMPACT

Following its first trial (from April to August 2022), the trial chamber rendered its first verdict on 31 October 2022, sentencing three members of an armed group to imprisonment, ranging from 20 years to life, for crimes against humanity and war crimes. The verdict was upheld for the most part by the appeals chamber in a judgment issued in July 2023. As of December 2023, the Court had arrested and charged 44 people for war crimes and/or crimes against humanity, with 24 cases under investigation before the Court's investigating and pretrial chambers. Additionally, over 230 complaints had been filed by victims to the Court.







CONTEXT

The lack of accountability and resulting impunity for serious crimes is a root cause of conflict in South Sudan. Years of war and intercommunal violence have left many parts of the country outside of the reach of statutory rule of law actors and have equally eroded the ability of customary and informal justice actors to intervene and sanction violent behavior. Unable to access justice or redress for their grievances, communities often take justice into their own hands, leading to revenge attacks and ongoing cycles of violence.

MANDATE

Since April 2017, with the re-establishment of its justice and corrections capacity, UNMISS has resumed efforts to support accountability for serious violations, in addition to managing the protection of civilian site detention facilities. In 2020, the Mission mandate was expanded to support reform of the rule of law and justice sector, as part of wider protection of civilian efforts. UNMISS is also mandated to support the implementation of the 2018 Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan. UNMISS supports a variety of mobile court initiatives tailored to address context-specific issues of impunity:

1. Joint Special Mobile Court (JSMC)

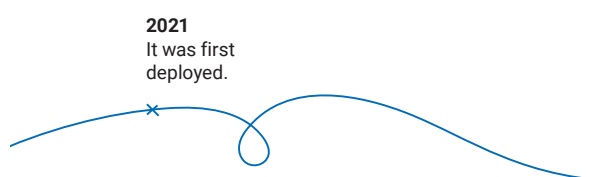
CONCEPT

This is a hybrid court of statutory judges and traditional leaders (who serve as advisers); they are jointly deployed to adjudicate criminal cases.

COMPETENCE

The court's competence includes serious crimes (e.g. sexual and gender-based violence) that occur in the border region between the states of Western Bahr el Ghazal and Warrap during the annual cattle migration.

TIMELINE



COMPOSITION

The court comprises a statutory judge, traditional leaders, prosecutors, defence counsel, investigators, prison officers, security officers, psychosocial counsellors, language assistants and members of the interstate coordination committee on cattle migration. In total, 42 people – 35 non-local officials and seven local officials – have been deployed for four to seven weeks.

NATURE OF SUPPORT

UNMISS provides coordination and logistical and financial support to organize investigations and mobile court hearings, as well as accompanying community outreach engagements. UNMISS justice, corrections and police advisers provide mentoring and technical assistance to judges, investigators, prison officials and prosecutors, and they monitor the proceedings. Accompanying patrols by the UNMISS force enhance stabilization in the surrounding areas.

PARTNERSHIPS AND FINANCIAL MODALITIES

The court was operationalized under a project funded by the South Sudan Reconciliation, Stabilization and Resilience Trust Fund, which was implemented jointly by UNMISS, the Food and Agriculture Organization of the United Nations and the International Organization for Migration. Following the closure of the project, UNMISS continues to support deployments using programmatic funding. It costs approximately **\$90,000 for a four-week deployment of 40 people**. The initial deployment was for seven weeks (44 people) and cost \$192,000.

IMPACT

Since 2021, the JSMC has conducted four deployments, started investigations in 155 cases, arrested 46 individuals and adjudicated 32 cases involving 37 defendants. In all locations where the JSMC had been deployed, local communities have attributed the enhanced peace and stability to the presence of the court and called for it to stay longer to hear more cases. Its presence has also been credited with deterring crimes such as rape and other forms of sexual and gender-based violence, murder, robbery and looting in affected communities, as well as vigilante justice. It has also helped to build understanding and trust in the formal justice system and increase access to justice. By 2022, the number of incidents reported to the police had increased by 13 per cent and the number of incidents reported to chiefs by 9 per cent, compared with the baseline figures collected in 2020. Furthermore, the JSMC has been credited with facilitating accountability in cases involving areas controlled by the main opposition group, which has increasingly cooperated with and assisted the JSMC, resulting in the handover to the court of a cattle-keeper that it had abducted and detained, to be tried for rape, and the return of kidnapped children.

2. Circuit Courts and Mobile Courts in under-served areas

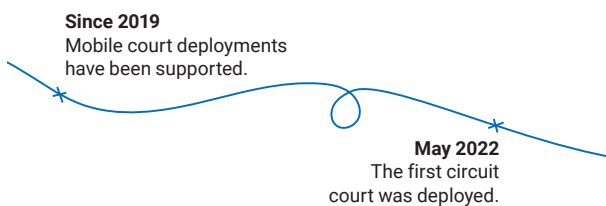
CONCEPT

Competent statutory judges are deployed to adjudicate criminal cases in under-served areas, including areas of anticipated return for internally displaced persons. Mobile court deployments are typically one-off and longer (lasting up to one month), sent from Juba or elsewhere in the country to under-served areas; circuit courts deployments are more frequent and shorter (typically one week), with justice actors from state capitals sent to remote areas.

COMPETENCE

The courts' competence includes all criminal cases.

TIMELINE



COMPOSITION

The courts comprise competent statutory judges. The deployment size varies depending on the actors present on the ground in each location. Deployments can include up to 17 people, with both local and non-local officials.

NATURE OF SUPPORT

UNMISS provides coordination, logistical and financial support to deploy mobile and circuit courts. UNMISS staff also monitor proceedings during most deployments. During circuit courts deployments, UNMISS and the United Nations country team conduct concurrent rule of law activities that target the entire justice chain, including customary courts, to strengthen and develop linkages across

the chain. Support is also provided (including through local non-governmental organizations) to survivors of sexual and gender-based violence, which includes psychosocial support before, during and after the trial.

PARTNERSHIPS AND FINANCIAL MODALITIES

Circuit courts are deployed for a cost of \$2,500–\$3,000 per deployment. The most recent mobile courts funded by UNMISS have cost approximately \$15,000 per deployment. When UNDP has been part of the deployment, most financial arrangements have been covered by UNDP, with UNMISS contributing valuable human resources to monitor and coordinate activities on-the-ground.

IMPACT

Between 2019 and 2023, the mobile courts deployed to Rumbek, Yambio, Bentiu, Malakal, Maban, Kapoeta, Ruweng and Terekeka processed **390 criminal cases involving 479 individuals. They resulted in 265 convictions (including 25 individuals convicted for sexual and gender-based violence) and 136 acquittals. In 2022–2023, five deployments of circuit courts resulted in judgments being issued for 28 cases against 29 individuals for serious crimes, including 24 sexual and gender-based violence cases.** Community feedback indicated that the sexual and gender-based violence cases tried by the courts had sent a strong message regarding accountability for such crimes, particularly those committed against children.

3. General Courts Martial (GCM)

CONCEPT

Military justice officials are deployed to locations outside of Juba to convene general courts martial.

COMPETENCE

The competence of general courts martial includes crimes committed by armed forces, such as conflict-related sexual violence.

TIMELINE

2020
They became
operational.

NATURE OF SUPPORT

Financial and logistical support is provided to the Military Justice Directorate of the South Sudan People's Defence Forces, accompanied by monitoring and on-the-ground technical support and advice during proceedings. Financial support for victim and witness protection services is provided through local civil society organizations. Since 2023, funding has been allocated to provide counsel for civilian victims.

PARTNERSHIPS AND FINANCIAL MODALITIES

It cost approximately \$30,000 for a four-week deployment, which includes travel and per diems for 10 military justice officials, along with victim and witness support.

COMPOSITION

The courts comprise approximately 10 military justice officials, along with victim and witness support (which includes counsel for civilian victims, translation services, social workers, transportation, accommodation, and food and water).

IMPACT

There have been 12 general courts martial deployments, to Bentiu, Maridi, Bor, Renk, Malakal, Wau, Yei, Torit and Juba. By December 2023, general courts martial supported by UNMISS had reviewed **173 cases**, with criminal trial proceedings concluding in **109 cases involving 136 suspects charged** with serious offences.





KEY LESSONS

Based on a review of the criminal accountability initiatives operationalized in four peacekeeping settings and elsewhere, four core questions emerged: Why is criminal accountability critical to peace and security? What factors influence the nature and success of national criminal accountability mechanisms? What types of crimes should be addressed and how to prioritize? What is the United Nations role in this endeavor and what, in the context of a changing landscape for peacekeeping, is the way forward?

This chapter analyses these questions from the political, legal and operational perspectives, with a view to enhancing the support of the United Nations and other international actors to improve criminal accountability at the national level. It discusses the value, gains and challenges involved in national criminal accountability undertakings, from the national, international and the United Nations perspectives. The key lessons presented below are not exhaustive; they are intended to offer guidance and direction based on lessons learned to date.



1

WHY IS CRIMINAL ACCOUNTABILITY
CRITICAL TO PEACE AND SECURITY?

2

WHAT FACTORS INFLUENCE THE
NATURE AND SUCCESS OF NATIONAL
CRIMINAL ACCOUNTABILITY
MECHANISMS?

3

WHAT TYPES OF CRIMES
SHOULD BE PRIORITIZED?

4

WHAT CAN THE UNITED NATIONS
SYSTEM CONTRIBUTE TO
THIS ENDEAVOUR?

1

WHY IS CRIMINAL ACCOUNTABILITY CRITICAL TO PEACE AND SECURITY?



Lesson 1 – Criminal accountability is an enabler for peace; it halts the cycle of violence and prevents relapse into conflict



Lesson 2 – Criminal accountability initiatives contribute to advancing peace processes



Lesson 3 – Criminal accountability initiatives instill a rule of law culture

1 WHY IS CRIMINAL ACCOUNTABILITY CRITICAL TO PEACE AND SECURITY?

The Secretary-General's New Vision for the Rule of Law, launched in 2023, underscores that rule of law is a foundation of lasting peace which enables the development of just and equitable societies with strong institutions that protect populations both in conflict and in peacetime. It also recognizes that *"we are experiencing a global decline in respect for the rule of law, exacerbated by escalating conflicts and weakening national institutions"*.

States often have to contend with the perennial tensions between the desire for peace and demands for justice and accountability in the aftermath of conflict. Accountability remains the incontestable and primary obligation of the State and can provide significant deterrence in societies emerging from conflict and repression. However, in some contexts, accountability, in particular criminal prosecutions, may be perceived as too politically sensitive, posing a risk to the fragile gains of a nascent peace process, with the potential to deter perpetrators of serious crimes from laying down their arms. From the perspective of the United Nations, it is sometimes seen as a delicate balance between 'arbitrating for peace' and providing justice and accountability support for past and ongoing human rights violations.

Practice has shown that in settings where criminal accountability initiatives have been undertaken with the support of peacekeeping operations and its partners, whether as part of a holistic transitional justice approach or as stand-alone initiatives, a number of visible results have emerged in relation to stabilization and conflict transformation in those areas. In the Central African Republic, a recent population survey revealed that *"the population strongly believed that justice contributed to the establishment of peace in the country"*. The Special Criminal Court was described as playing a 'mobilizing role for national authorities' in terms of prosecuting perpetrators.

Peace and justice are inherently intertwined and mutually reinforcing. In no context can there be a binary choice between peace, on the one hand, and justice, on the other, or a choice of whether it should be peace first or justice. This is especially pertinent in contexts where pervasive impunity for serious crimes has been identified as a key cause of or contributing factor to the continuation of the conflict. This was recognized by the Secretary-General in 2004 when he stated that *"justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives"*.⁶ The pursuit of peace should never include the acceptance of impunity. Ultimately, justice and peace should not be seen as conflicting or contradictory forces. Rather, when properly pursued, they promote, sustain, reinforce and complement each other. The question is therefore not whether to pursue justice and accountability, but what kind of justice and how to pursue it. This study has found that, overall, undertaking criminal accountability initiatives benefits countries in three ways:



Lesson 1 – Criminal accountability is an enabler for peace; it helps to halt the cycle of violence and prevent relapse into conflict

Criminal accountability is not only about holding individuals responsible for their actions, but also, more broadly, about creating the conditions for sustainable peace. While rule of law and justice systems may take decades to re-establish in countries emerging from conflict, criminal accountability initiatives have proven to be a good investment in the short to medium term, to adjudicate serious crimes fueling conflict in contexts where pervasive impunity for serious crimes has been identified as a key cause and contributing factor to the recurrence of such crimes. This has been the case, for example, of the Joint Special Mobile Courts in South Sudan, where deployments to remote border areas have proved to be effective in responding to communities' repeated calls for accountability, deterring potential violence and demonstrating that the justice system is a viable alternative to pursuing revenge and thereby escalating violence.

Criminal accountability mechanisms are a critical tool not only for combating impunity, but also for promoting justice, building trust and confidence in national institutions and addressing the root causes of conflict including through reconciliation, all of which are essential for achieving and maintaining peace in societies affected by violence and human rights abuses. Without accountability, spoilers are emboldened to perpetrate further destabilizing crimes. A study by the UN-World Bank Pathways for Peace Study found that *"implementing domestic criminal prosecutions for past human rights violations has a significant relationship with the non-recurrence of intra-state conflict."*⁷ When the United Nations supports national systems in post conflict contexts, it strives where possible to move beyond purely retributive criminal accountability measures for past crimes. The accountability mechanisms look forward with a clear objective to halt the cycle of violence and prevent relapse.

In the Democratic Republic of the Congo, for example, findings have shown positive signs of deterrence and increased trust between local populations as a result of accountability measures. With the support of the United Nations-led Prosecution Support Cells, investigations and hearings are being conducted in remote and insecure areas of the eastern part of the country close to where atrocities have been committed and where courts barely function or exist, helping to build the confidence of the local population in the ability of the national justice system to hold perpetrators of serious crimes accountable.

On 10 December 2018, in his acceptance speech in Oslo, Nobel Peace Prize Laureate, Denis Mukwege spoke about the deterrent effect of prosecutions:

*I decided to travel to the village of Kavumu. To my surprise, the villagers knew the suspect. Everyone was afraid of him [...] For several months, his militia has been terrorising the whole village. [...]. His parliamentary immunity enabled him to abuse with impunity. The two babies were followed by several dozens of other raped children. [...] With other human rights defenders, we went to a military court. At last, the rapes were prosecuted and judged as crimes against humanity. The rapes of babies in Kavumu stopped.*⁸

⁷ United Nations and World Bank, Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict (Washington, DC, World Bank, 2018).

⁸ Endnote 2.

In the Central African Republic, the Special Criminal Court was able to investigate cases dating back to 2003, but also has an open ended forward-looking temporal jurisdiction which has enabled it to respond to more recent incidents including mass killings and

other serious crimes perpetrated in the wake of the 2019 political accord. The first completed trial resulted in the arrest and conviction of members of an armed group that had perpetrated serious crimes in violation of the agreement.

Lesson 2 – Criminal accountability initiatives contribute to advancing peace processes

Justice and accountability inevitably arise during peace processes or other political transitions. At the strategic level, criminal accountability initiatives are often political endeavors and can be a useful tool for signaling an end to the cycle of violence and consolidating the fragile gains of a peace process. In most post-conflict environments, there are likely to be competing demands for accountability, stability and reconciliation; striking the right balance will be a challenge. Tensions almost inevitably exist during peace processes, if senior members of the negotiating parties believe they are personally at risk of being prosecuted. In many contexts it can be a major challenge to find a path to peace in a manner that fully respects the demands for justice.⁹

In some cases, political considerations may lead to a lack of willingness to pursue justice, and in others, there may be a commitment to holding perpetrators accountable. 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 and create new relationships between warring parties. Alongside key constitutional issues, electoral timelines and broader considerations typically included in ceasefire or peace agreements, a vital element of any political settlement will include creating or reviving mechanisms to address the root causes of the conflict and ensure non-violent resolutions.

Integrating rule of law priorities in political settlements is key to ensuring that dispute settlement mechanisms are established and accepted by the parties, agreeing on possible transitional justice arrangements, and making the justice chain acceptable and credible to parties and communities. In Mali, the existence

of a negotiated peace agreement, preceding the intervention of MINUSMA, was regarded as a positive factor for including justice and accountability in the peace process. Despite the fragility of the peace process, justice interventions to reinforce criminal accountability have had some positive impact, leaving behind a fully functional specialized unit, the Pôle judiciaire spécialisé, within the Bamako Court of Appeal to investigate and prosecute terrorism-related and international crimes following the departure of the peacekeeping operation. Following the political agreement in 2019 in the Central African Republic, the Government made a concerted effort to highlight the importance of a broad ranging transitional justice process that accounted for serious crimes. The Special Criminal Court, acting in complementarity with other national courts, was to play a key role as a visible pillar of the transitional justice architecture and is actively investigating crimes of direct relevance to that process.

Similarly, in other peacekeeping settings, criminal accountability has been grounded in the mandate of the Security Council to support the implementation of the rule of law provisions in respective peace agreements, many of which make direct references to criminal accountability mechanisms. A 2023 evaluation by the United Nations Office of Internal Oversight Services concluded that the support provided by five evaluated United Nations peacekeeping operations (in the Central African Republic, the Democratic Republic of the Congo, Mali, South Sudan and Kosovo) was not only *“aligned with the respective mandates and underlying peace agreements”*, but also *“aimed at contributing to stabilization and durable peace in the respective mission areas”*.¹⁰

9 See “Transitional Justice in Peace Processes”, Priscilla Hayner, 2023.

10 Synthesis of Results of the Support to the Rule of Law by Five Peacekeeping Operations (IED-23-009).



Lesson 3 – Criminal accountability initiatives instil a rule of law culture

As the 2023 New Vision for the Rule of Law emphasizes, although strengthening the rule of law is a long-term endeavor, immediate short-term interventions are often necessary to advance accountability, protect civilians, and establish a safe and secure environment. Criminal accountability plays a pivotal role in fostering a rule of law culture within society, serving as a cornerstone for the maintenance of order and stability. When people and marginalized communities feel that they are denied justice with no recourse to a remedy, and that their grievances have not been unresolved, a sense of injustice develops. The failure of the State and its institutions to protect people's rights and hold perpetrators of serious crimes accountable can be a significant driver of instability, insecurity and conflict, manifesting itself in renewed cycles of violence. Ensuring that all people are accountable to and protected by the law, is the very essence of a rule of law culture.

Legitimacy is the most challenging component of the rule of law as it concerns the fundamental relations between a State and its citizens. It is a complex, ongoing and multidirectional construction of the social contract governing State-society relations, informed and influenced by the

interests, perceptions and aspirations of society. Strengthening legitimacy is an ongoing process that governments must continually engage in, with government services acting as channels of interactions between state and society. A mission's engagement to extend or otherwise establish justice services should always be designed and implemented in a way that reinforces positive changes in values and promotes incentives, instilling a culture of accountability and respect for the rule of law. For example, in the early days of MINUSMA, the focus was on combating destabilizing crimes that constrained the implementation of the peace agreement. A lack of accountability in Mali for such crimes was found to perpetuate a culture of injustice, insecurity, and impunity, further eroding trust in the authority and legitimacy of the State and its justice institutions. Accordingly, MINUSMA, together with the European Union and other partners, supported the establishment of the Pôle judiciaire spécialisé. In South Sudan, hearings of the Joint Special Mobile Court were the first time that inhabitants in remote areas had ever seen a statutory court. The fact that judges resolved the cases, and even held local chiefs to account, has demonstrated that no one is above the law.



2

WHAT FACTORS INFLUENCE THE NATURE AND SUCCESS OF NATIONAL CRIMINAL ACCOUNTABILITY MECHANISMS?



Lesson 4 – Establishing tailored and context specific models



Lesson 5 – Adopting a “whole of the criminal justice chain” approach



Lesson 6 – Strengthening national capacities



Lesson 7 – Ensuring independent, impartial judicial processes free from political interference



Lesson 8 – Harmonizing ties between informal, customary and formal mechanisms



Lesson 9 – Adopting a human rights-based approach



Lesson 10 – Incorporating people and victim-centred approaches



Lesson 11 – Strengthening linkages to broader transitional justice processes



Lesson 12 – Proactively approaching strategic communications



Lesson 13 – Managing national and international expectations

2

WHAT FACTORS INFLUENCE THE NATURE AND SUCCESS OF NATIONAL CRIMINAL ACCOUNTABILITY MECHANISMS?

There are no pre-packaged solutions and the options to be considered should be context driven, based on a meaningful national consultative process, whilst drawing upon the accumulated wealth of experience to date. There has, however, been a growing trend towards supporting efforts at the national level,

and several important lessons have emerged from peacekeeping support to national mechanisms with various levels of international involvement. These interlinked lessons can usefully inform future decision-making with respect to criminal accountability models.



Lesson 4 – Establishing tailored and context specific models

There are several reasons why nationally led criminal accountability mechanisms, whether fully national or hybrid, should be supported in conflict-affected settings. National accountability mechanisms respect the sovereignty of the host country and are perceived as being more proximate to the victims, communities and society at large, and potentially more legitimate in the eyes of public. One of the lessons from MINUSMA, as highlighted by El-Ghassim Wane, the former Special Representative of the Secretary General of MINUSMA, was the need for peacekeeping to give more consideration to African instruments rather than focus on international mechanisms. Supporting the national Malian judiciary to create a specialized unit on terrorism offenses and expanding the modality to Burkina Faso are good examples of a nascent regional approach in the Sahel.

National accountability is now often the default option where there is political will within the country concerned and an openness to internationally supported accountability efforts. National accountability mechanisms are invariably less costly than international mechanisms. United Nations support to national mechanisms also serves to build the necessary capacities of the national judiciary in settings where national justice institutions are weak and need to be rebuilt and leave a legacy of a functioning system.

Each of the criminal accountability mechanisms described in this study has been determined by and tailored to its specific country context and integrated into the national legal framework. MINUSCA provided substantive support for the drafting of the organic law establishing the Special Criminal Court in the Central African Republic and its rules of procedure and evidence. MINUSCA technical support was also fundamental to the preparation of a complete set of tertiary legislation governing the exercise of the Courts' various organs and working modalities. The role of the Mission to support the operationalization and functioning of the Court was also clearly set out in detail in successive Security Council mandates since 2015. Mali passed a law to establish the Pôle judiciaire spécialisé, a specialized unit with exclusive jurisdiction over terrorism-related crimes, transnational organized crime and international crimes. The Prosecution Support Cells in the Democratic Republic of the Congo were granted privileged access to national authorities' case files through a Memorandum of Understanding between MONUSCO and the Minister of Defence. The Joint Special Mobile Court in South Sudan was established pursuant to a national Warrant of Establishment issued by the Chief Justice, upon the request of two state governors.

In each of these cases, political will and broad national consultations were necessary to achieve the outcome and relied upon securing strong national commitment through national ‘champions’ to advance these initiatives.

Where there was a lack of capacity of national institutions, the additional challenge of balancing national ownership with robust international support arose. With the Special Criminal Court, the national authorities opted to establish a national Court as a constituent part of the broader national justice system. The composition of the various organs of the Court was carefully considered to reflect joint decision-making authority between national and international magistrates. For example, the trial chambers have three judges, two of whom are national and one of whom is international; the Appeals Chamber is constituted by two international magistrates and one national. The Chief Registrar is a national, the deputy an international. The prosecutor is an international, the deputy a national. The Court operates within the domestic legal framework of the Central African Republic; all judges of the Court are appointed by the President of the Republic. National court staff are selected by the national authorities to work in the Court; all national and international personnel at the Court receive stipends from donor funds administered by the United Nations.

In the Democratic Republic of the Congo, the Prosecution Support Cells were given access

to case files to provide advisory support. Upon request from the national authorities and mandate permitting, United Nations peace operations are in some contexts authorized to undertake investigations, collect evidence and even make arrests and undertake other judicial activities.

Overall, the approach adopted in each of the mechanisms has been one of responsiveness to local needs and a gradual reduction of international support while incrementally increasing the role of the national authorities. In many of these mechanisms, the remuneration of judges including subsistence allowance for participating in mobile courts is provided by the international community. This may impinge on the extent to which these mechanisms are perceived as nationally owned and independent.

While nationally-led mechanisms offer many advantages, there are also situations where international or hybrid mechanisms may be necessary, particularly when there are concerns about impartiality, significant lack of capacity, or the involvement of high-ranking officials in the alleged crimes. The choice between national, international, or hybrid mechanisms will often depend on the specific circumstances of a case and the willingness and capacity of the national government to pursue justice. Ultimately, the decision as to which model is adopted in any given context is often determined by international and national political dynamics, rather than a careful assessment of the pros and cons of different models.



Lesson 5 – Adopting a “whole of the criminal justice chain” approach

Enhancing criminal accountability requires a *“whole of the criminal justice chain”* approach, integrating policing, justice, and corrections functions, including investigations, arrests, detention, evidence collection and storage, personnel selection, court management, prosecution strategies, legal aid, and security and support for magistrates and witnesses. The success of the Pôle judiciaire spécialisé in Mali was a result of the wide scope of support provided by MINUSMA and its partners to facilitate nationally-led investigations, prosecutions and detentions, including through training, mentoring,

equipment, small infrastructure, and direct technical and logistical support. MINUSMA also supported criminal analysis and case management, as well as coordination with other criminal justice chain actors with the aim of resolving issues such as prolonged police custody and pretrial detention. Similarly for the Special Criminal Court in the Central Africa Republic, MINUSCA has been providing a broad range of support through its judicial, police and corrections experts to provide technical assistance, strategic guidance and good offices to support the operationalization and functioning of the Court.

The Mission responds to requests for assistance from the Court in investigations, arrests, detention, evidence collection and storage, personnel selection, court management, prosecution strategy, legal aid, and security for magistrates and witnesses.

Criminal accountability initiatives cannot succeed without robust investigative capacities or safe, secure and humane places of detention for those arrested on suspicion of having committed serious crimes. Particularly in conflict affected settings, prisons are frequently given a low priority, despite it being widely recognized that issues of over-incarceration, prison overcrowding, substandard conditions and neglect undermine the effectiveness of criminal justice systems. Other ramifications of these shortcomings are profound, affecting public safety, health and human rights, as well as resulting in substantial financial and socioeconomic burdens.

In various countries – particularly those grappling with conflict, post-conflict scenarios, or other crises – the dire state of prisons has adversely influenced peace, security, and stability. In such contexts, strengthening national capacities to investigate and prosecute serious crimes inevitably requires corresponding support to reinforce prison security and the management of high-risk detainees.

In the Central African Republic, investment in prison services in parallel to the establishment of the Special Criminal Court, including through the construction and operationalization of a new annex to the main prison in Bangui to house high-risk prisoners (the potential spoilers to the fragile peace process), was recognized as being essential to efforts to address criminal accountability and fight impunity.

Extending prison security for enhanced accountability in the Central African Republic

In 2014, only three of the previously existing 38 prison facilities were operational in Central African Republic. As part of efforts to strengthen prison management and security, MINUSCA has focused on extending the presence and demilitarization of the country's prison services to alleviate significant overcrowding and to securely and humanely house high-risk detainees. Since then, 40 government-provided MINUSCA prison officers have been delivering mentoring and advisory support in prisons throughout the country. From 2017, an additional 68 government-provided prison security specialists have been stationed on a 24/7 basis at the Camp de Roux prison in Bangui (a prison annex for high-risk detainees established in 2015), and at Ngaragba Central Prison to support national prison officers in handling security incidents, thereby reducing the recurrence of major escapes. This approach to prison security has consistently proven effective. Despite the prison population in the Central African Republic having grown steadily each year, the number of escapes from Ngaragba Central Prison and its Camp de Roux Annex has remained low. In 2023, of 83 escapes recorded in the Central African Republic, only six were recorded in Ngaragaba and

none at Camp de Roux, despite these two facilities holding together approximately 60% of the country's prison population. It should be added that none of these escapees were high-profile prisoners. Additionally, high security detention wings were added to Ngaragba Central Prison and Bambari Prison in 2023. The new facilities are meant for detaining high-profile and high-risk prisoners, including those arrested by the Special Criminal Court. As of April 2024, however, these facilities have not been inaugurated.

The prisons in the Central African Republic are now moderately secure compared with previous years. United Nations engagement has notably enhanced prison conditions, resulting in a significant reduction in escapes. This improvement can be linked to the prevention of potential crimes that would have occurred if escape rates had remained high. The support in corrections is vital, particularly as MINUSCA, continues to improve its record in apprehending members of armed groups. The prevention of escapes among high-profile detainees and sex offenders is also crucial to mitigating the risk of further offenses, a task in which the Mission has demonstrated success.

In Mali, the internal and external security of the prison establishments in Bamako, Gao, Mopti, Timbuktu and Koulikoro was strengthened to meet the increasing number of prosecutions by the national authorities, including the Pôle judiciaire spécialisé. A reinforced security area at Dioila prison became operational in November 2022 for high-risk prisoners. Close to 625 prison guards and security forces have been trained to respond to prison incidents, including some 85 prison officers in Bamako, the north and the centre, to address radicalism and violent extremism. In the Democratic Republic of the Congo, convicted individuals are being held in the Ndolo military prison, the Agenga prison in Equateur and the Kabare prison (in South Kivu), all priority prisons presently or in the past managed with the support of MONUSCO.

Providing for effective legal defence for defendants is an essential part of the criminal justice chain. This not only ensures compliance with fair trial standards, but also improves the general functioning of the legal process. The presence of experienced and competent defence lawyers result in prosecutors and judges better performing their functions. In the Democratic Republic of the Congo, the joint MONUSCO/UNDP project included a component to ensure indigent defendants charged with serious crimes had the representation of competent defence counsel including the provision of support to local bar associations and pro-bono legal assistance offices, the training of lawyers and collaboration with bar associations to provide pro-bono representation for defendants through logistical support and, importantly, the provision of daily subsistence allowance to attend court. However, this component of the project was deliberately not implemented by MONUSCO because of the perceived conflict of interest of the Prosecution Support Cells in advising the Prosecutor's Office while also providing support and advice to defence counsel.

One crucial aspect of promoting criminal accountability that cuts across the entire criminal justice chain, is ensuring the timely collection of evidence after an atrocity occurs, often in settings in which national law enforcements and prosecutorial authorities may have limited or no presence or capacity. In contexts where there is inadequate national capacity, missions have not always been sufficiently equipped or even authorized or mandated to do so and may depend upon the national authorities' requests to assist in the collection of evidence in specific cases or circumstances. The challenges faced by United Nations missions in collecting, documenting, handling and handing over evidence to the national authorities for use in future criminal proceedings (the chain of custody), in a manner that ensures the integrity of that evidence, remain a vexed and sensitive issue particularly where no explicit mandate or authority is given to the mission. There are numerous complexities in handing over evidence collected by United Nations personnel, especially where it might compromise an investigation. Issues relating to confidentiality are particularly sensitive where statements are taken from victims or witnesses in cases involving sexual violence. In the absence of specific mandates, this remains an area where further clarity is required.

In MINUSMA, a mission-specific standard operating procedure on the collection, analysis management and transfer of evidence and/or information was developed in 2020. UNMISS does not currently have a specific mandate or guidelines for handing over evidence. In circumstances where United Nations or international personnel are involved in investigations and the collection of evidence, there must be mechanisms in place to ensure it can be shared and be admissible in national criminal proceedings.

Criminal investigations and collection of evidence under urgent temporary measures in the Central African Republic

In 2013, MINUSCA was granted the authority to arrest spoilers and criminals, through the adoption of “*urgent temporary measures*”. Under this Security Council mandate, United Nations Police was authorized to investigate and respond to requests for support from national authorities in relation to serious crimes that “*undermine peace stability or security*”, including crimes committed against peacekeepers. Its criminal investigation section only takes the lead on conducting investigations upon a formal request by national authorities and where no judicial authorities are present. Otherwise, they work with national prosecutors to investigate and collect evidence, including the interviewing of witnesses and analysis of documents and forensics. This is regulated by a MINUSCA-specific standard operating procedures on urgent temporary measures, which specifies that the Justice and Corrections Section of MINUSCA monitors the process and ensures full conformity with national legislation.

The request must necessarily come from the Central African Republic prosecutor who coordinates the process and indicates the type of judicial action needed in each case. In 2022 -2023, a total of seven investigations, including cases of crimes against United Nations peacekeeping personnel. United Nations police is also currently providing support to collect evidence of approximately 50 crimes. This type of support is considered to be a good practice, despite some persistent challenges to be addressed which include the rotation of personnel affecting the quality of support for specific cases, and the lack of scientific laboratory and forensic expertise. One apparent gap is the absence of MINUSCA specific SOPs on investigations, although MINUSCA has advised that it is working on developing a standard operating procedure on forensics and scientific techniques of investigation.

Lesson 6 – Strengthening national capacities

In post conflict or other fragile states national capacity to investigate and prosecute serious crimes is often severely limited, thereby multiplying the challenges involved in establishing and operationalizing national criminal accountability mechanisms.

Given the broad range of national actors involved in the criminal justice chain, ascertaining capacity gaps and training needs will be the essential first step in any such initiative. Each criminal justice system involves multiple actors and a range of professional skills for effective investigations, prosecutions and enforcement of sentences. Specific to national accountability mechanisms and processes, capacity development should address law enforcement, prosecution, investigation, court, victim and witness protection, legal defence, experts and corrections services, as well as substantive law and procedure, forensics, ballistics, evidence collection and management and digital evidence

assessment. Capacity is also required for the development of legislative and policy frameworks for new mechanisms, such as prosecutorial strategies, and for their efficient management and administration. This can include budgeting, resource mobilization, court/registry management, strategic and operational planning, and evidence-based data collection and analysis. Capacity building across a wide spectrum of human rights issues has also been a key area of intervention for peacekeeping missions, as has ensuring that the accountability mechanisms are gender-responsive. There has also been notable support provided to military justice actors to strengthen internal accountability processes.

In the Democratic Republic of the Congo for example, the MONUSCO Rule of Law Section, working with partners such as the Team of Experts and UNDP, has provided training to justice system professionals to better address gender-based violence. This support

extended to organizing training for both civilian and military justice personnel, including magistrates, senior police investigators, clerks of the court, registrars, secretariats of the office of the prosecutor and judicial inspectors. In South Sudan, UNMISS has supported the Ministry of Justice and the Ministry of Interior in providing training programmes for national police officers and prosecutors on human rights awareness and community policing techniques and has conducted on-the-job mentoring for police, justice and corrections officers through the co-location of staff within national institutions.

In providing capacity building support, the focus should, to the extent possible, be placed on establishing national legal education and professional training institutions and sustainable national training capacities such as law schools, magistrates and police schools, for curriculum development and the preparation of training materials, and for the delivery of general or specialized training courses as well as on-the-job professional mentoring. Capacity building must often also include broader support for vetting and recruitment processes.

In terms of international support to build national capacities, capacity building activities should first and foremost focus on the transfer of knowledge and skills from internationals to nationals and sustainability. The role of international judicial actors within or supporting national mechanisms should, as one interlocutor said, be to *"work ourselves out of the job"*. The overriding principle is to ensure meaningful national ownership of capacity building processes and institutions. Whilst the United Nations and other international actors can provide effective support in capacity development, this must be placed within the national context, and should be conducted jointly, with national actors in the lead. This model must translate to national ownership of the accountability mechanisms themselves. In the Central African Republic for example, national ownership in the context of the Special Criminal Court is reflected by the hybrid composition of the magistrates and personnel of the Court. The Office of the Prosecutor and the Registry of the Court are staffed by national and international personnel, all judicial Chambers of the Court are composed of national and international

magistrates and the President of the Court and Registrar positions are reserved for the nationals of the Central African Republic.

Furthermore, the necessary range of technical expertise and experience is also required, given the complexity of the cases being addressed and the numerous avenues of support needed, to establish and effectively manage accountability processes and mechanisms. International expertise and experience should come in tandem with a willingness to quickly develop a contextual understanding of the legal system in place and of the overall social and political context of the acts being investigated. The mere presence of international actors can sometimes be essential for facilitating impartial investigations and prosecutions, given that they are often more easily able to fulfil their roles without national political interference or a political or other agenda.

A clear lesson in terms of United Nations support has been the need for greater flexibility regarding the nature and duration of international contracts. Deployment modalities and strategies are necessary to identify the differing specialized capacities required over time to achieve objectives, source these capacities, and effectively coordinate deployment. The existing pre-defined contractual timelines which control most international deployments are impractical. Recruitment protocols tied to secondment criteria also need to be less restrictive to avoid limiting the pool of potential candidates. Where high turnover of international staff cannot be avoided, there's a need to improve handover practices between outgoing and incoming staff for greater continuity of support. Finally, having national actors engaged in the recruitment of international expertise, as in the case of the Special Criminal Court, can be an effective way to ensure national ownership and provide a stronger understanding of the required skill sets. Ensuring the appropriate support at the right time, from the development and start up phases of any accountability mechanism at the national level, through to their operational activity, whilst navigating the political and social context in which they are operating, requires increased attention from the United Nations.



Lesson 7 – Ensuring independent, impartial judicial processes free from political interference

In post-conflict and other fragile settings, judicial institutions are invariably weak, underfunded, corrupt and vulnerable to interference and misuse for political ends. In such politically sensitive environments, international efforts should identify and support institutions capable of investigating serious crimes independently, impartially, effectively, and fairly. Investigations and prosecutions should be undertaken in relation to serious crimes committed by not only members of anti-government armed groups but also members of national security forces, corrupt officials and politically connected individuals, in a way that reduces the risk of sectarian and ethnic biases.

Regardless of the criminal accountability model employed, it is crucial to provide necessary resources, technical support and political leverage to minimize the risks of political selectivity and instrumentalization. Other preconditions to reduce the risk of instrumentalization of judicial processes include ensuring adequate structures and capacities to promote equal access to justice and legal aid, including advice and representation for victims, witnesses and the accused, as well as improving access to information and transparency in judicial processes, support for victims' groups and freedom of the press. This may involve support for the development of prosecution or prioritization strategies, based on fair transparent criteria and procedures. Any such strategies should promote transparency, making clear

what crimes and what types of perpetrators should be prioritized in order to maintain the integrity of the process. They can serve to establish a priority list of investigations and prosecutions based on criteria for the types and scope of cases. This approach should always include an advocacy and outreach component to help build trust and confidence in the justice system. Other preconditions for judicial independence include judicial selection, codes of ethics, adequate salaries and judicial oversight.

United Nations peacekeeping and its United Nations country team partners have actively supported the enhancement of oversight in many post-conflict settings, including the establishment of the Conseil supérieur de la magistrature, a judicial selection and oversight body for high-level appointments in Haiti; vetting processes in Kosovo; codes of ethics in Liberia; legal aid mechanisms in Haiti and Afghanistan; and anti-corruption commissions in Guatemala.

For each of these initiatives, the presence of international mission personnel to monitor, support and advise on these critical areas has been a determining factor in establishing the credibility and impartiality of criminal accountability mechanisms. Peace operations, through the use of good offices and other forms of mandated engagement, also work to encourage a balanced approach to criminal accountability processes and avoid the instrumentalization of judicial processes and discrimination against certain groups.



Lesson 8 – Harmonizing ties between informal, customary and formal mechanisms

Informal justice mechanisms may reinforce national criminal accountability at the local level. Restorative rather than retributive in nature, informal mechanisms often have a broader reach, are more responsive to the dynamics of local conflicts and are usually recognized, trusted and accepted by local populations. However, they often do not fully adhere to human rights standards, particularly the rights of women, children and marginalized groups. They

are also less suited to addressing serious crimes committed by armed military groups or members of the security forces. The Gacaca courts in Rwanda, established after the genocide of 1994, serve as an example of effective integration of informal and formal justice mechanisms to address serious crimes. These community-based courts helped to manage the overwhelming number of genocide cases, facilitating faster legal proceedings and aiding

national reconciliation. Despite criticisms regarding adherence to human rights standards, the Gacaca model demonstrated how customary systems, with proper adjustments and oversight, can support formal legal processes in post-conflict settings, addressing serious crimes while promoting communal healing.

A majority of cases in developing and post conflict countries are resolved through informal justice mechanisms or other forms of alternative dispute resolution. These mechanisms typically address a wide range of issues of significant concern to the people, including personal security and local crime, protection of land, property and livestock, resolution of family and community disputes, and protection of entitlements. Support to these mechanisms helps to bolster security and stability at a local level. Informal justice mechanisms can also in some circumstances offer more flexible structures and processes, be more cost-effective, and achieve more in terms of outreach to grassroots communities.

Regarding criminal accountability for serious crimes, there are examples of successful United Nations support to mechanisms that combine the respective strengths of the formal system with traditional justice. In South Sudan, UNMISS has supported the establishment of special courts which combine elements of customary and formal justice practices. The role of these customary courts is formally recognized within the Code of Criminal Procedure of South Sudan, which also allows for the establishment of hybrid national courts that combine elements and staff from formal and customary courts. Traditional leaders act as advisors to statutory judges. Such courts have proved to be effective in resolving crimes relating to child abduction, cattle herding and sexual violence, which if unresolved could result in relapse into conflict.

In Mali, *cadis* and traditional authorities have played a key role in dispute resolution and conflict prevention, particularly in remote areas far from courts and tribunals. These traditional justice mechanisms are often the main recourse for litigants. Where possible, it may be important to regulate them in view of the events that occurred during the occupation of the north by terrorist and armed groups, when members of extremist groups pronounced and applied severe sentences not provided for by Malian criminal law. The peace agreement for Mali was specific in terms of the integration of traditional justice mechanisms and harmonization with the formal justice system. The parties agreed to promote genuine national reconciliation based, in particular, on the integration of traditional and customary arrangements without prejudice to the sovereign rights of the State in this area; upgrade the role of the *cadis* in the administration of justice, in particular with regard to civil mediation, so as to take account of cultural specificities, religion and customary laws; and enhance the status of traditional authorities through rules of protocol and precedence. To support the implementation of the agreement, MINUSMA actively engaged in a process of assessments, national consultations with stakeholders at the central and regional levels, and legislative reviews to enhance the role of traditional authorities and to improve complementarity between formal and informal traditional justice mechanisms. This groundwork paved the way for the integration and recognition of alternative and traditional justice mechanisms into the 2023 Constitution for the first time in the history of Mali.





Lesson 9 – Adopting a human rights-based approach

Strengthening criminal accountability at the national level should be guided by and developed in conformity with applicable international standards. The settings in which United Nations peace operations are mandated to deliver rule of law assistance are amongst the most politically unstable and fragile in the world. While ensuring accountability for serious crimes remains the primary responsibility of each State, including corresponding obligations regarding effective remedy and redress, their rule of law and related institutions are often weak or non-existent, especially in remote areas. Those which do exist are often handicapped by the lack of basic institutional structures and resources, a shortage of qualified judges, prosecutors and lawyers, and limited or no access to legal aid for defendants or support and protection for victims and witnesses. Decisions regarding arrests and prosecutions are often instrumentalized and politically motivated, targeting certain individuals or groups whilst overlooking crimes perpetrated by others. Violations of due process rights and the risk of torture and death in places of detention remain high. In many

settings the death penalty is an available sentence for certain crimes.

National accountability efforts in these settings therefore raise particular human rights concerns. Compliance with international human rights standards, including fair trial standards and respect for victims' and defendants' rights, adherence to the "*do no harm principle*", 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. United Nations engagement should be guided by applicable international norms as well as internal United Nations rules, policies and procedures. It should, in principle, neither establish nor assist tribunals that impose the death penalty or endorse the use of amnesties for genocide, crimes against humanity, war crimes or gross human rights violations or abuses.

Human Rights Due Diligence Policy on United Nations support to non-United Nations security forces (2011)

The HRDDP sets out the steps United Nations entities must take to ensure that any support they provide to non-United Nations security forces is consistent with the United Nations Charter and the Organization's obligations under international law. The aims of the policy are to avoid situations in which the United Nations inadvertently aids and abets, or is otherwise complicit in, the commission of grave violations of international humanitarian, human rights or refugee law by recipients of its support. The policy covers different kinds of support, from technical assistance for capacity-building and institution building, to operational and logistical support for the military or police. The policy requires United Nations entities to conduct a risk assessment prior to commencing support to determine the risks involved. It also stipulates that the provision of support must entail monitoring of the recipient's actions, drawing on reporting from reliable sources both within and outside of the Organization.

In missions, human rights components support the Head of Mission in overseeing implementation of the HRDDP. While the current policy is limited to support provided to non-United Nations security forces, this has been interpreted to include the corrections sector and would probably apply to situations where United Nations peace operations and other entities

provide support to national efforts to investigate, arrest, detain, and sentence individuals alleged to be perpetrators of serious crimes. Such support raises particular due diligence concerns in crisis settings where rule of law and related institutions are weak or absent and where the risk of torture and/or death in places of detention and violations of due process rights are high.

UNMISS provides a good example of significant progress in ensuring effective implementation of the HRDDP through its investment in developing the tools needed. These steps include establishing a database to track alleged violations of international law by national security forces and drafting a standard operating procedure on HRDDP implementation. The Mission has also chosen to broadly interpret the types of support that require application of the HRDDP. In recent years, the number of cases that have undergone HRDDP review has increased, likely because of the Mission's broad application of the policy and evolving mandate. In other settings such as Mali, senior United Nations officials pointed out that, while recognizing the necessity for such policy, it should not be restrictive or become an impediment to a mission's mandate and must allow for the flexibility to engage on the difficult and often sensitive issues that the mission is mandated to address.

Fair trial rights and due process guarantees, are minimum guarantees of an equitable justice process. To be effectively implemented, fair trial rights must be adopted as part of a broader commitment to compliance with international norms and standards governing criminal cases, which extends beyond prosecutorial commitments to investigations and punishment.

Systematic and effective trial monitoring in a manner that identifies how investigations and trials are conducted, making concrete recommendations

to address obstacles and deficiencies, should be part of, or complement, any criminal accountability support programme. This can elicit essential information regarding the integrity and quality of investigations, prosecutions and trials, including the performance of judges, prosecutors and defence lawyers and the treatment of victims and witnesses, forming the basis of critical feedback to the national authorities. While monitoring does take place in the Missions reviewed, reports often remain internal and are not made readily available or accessible.

The United Nations position on the imposition of the death penalty¹¹

The death penalty is a particularly pertinent issue in contexts in which United Nations peace operations provide direct support for the investigation and prosecution of serious crimes that might result in the imposition of the death penalty. In accordance with international law and as a matter of policy, the United Nations opposes the application of the death penalty and advocates for the abolition of the death penalty worldwide. In countries which retain the death penalty, the United Nations should advocate for the application by the national authorities of safeguards or measures to preclude the execution of death sentences, including through moratoriums, requests for guarantees and other high-level political interventions or through the application of mitigatory measures.

More specifically, *“the United Nations should neither establish nor directly participate in any tribunal that allows for capital punishment”*.¹² In the Central African Republic, MINUSCA conditioned its support for the establishment of the Special Criminal Court on the death penalty not being a sentence available to the court. Likewise, the United Nations Assistance Mission in Somalia, in collaboration with UNODC, advocated for a moratorium on the death penalty, which resulted in an agreement that the high security Mogadishu Prison and Court Complex, established with United Nations support, would not hear death penalty cases.

Since the Prosecution Support Cells Programme was established by MONUSCO in the Democratic Republic of the Congo, several death sentences have been imposed, although a moratorium on carrying out these sentences was in place. In March 2024, the Ministry of Justice issued a circular directive lifting the moratorium for certain types of serious crimes, including international crimes and other offences listed in the military penal code. This will likely have a significant impact on this area of the Mission’s work and on efforts at the regional level.

The fact that the death penalty is part of the law, albeit not implemented, also has implications for extradition requests made to other countries by the Congolese authorities. In the case of Nkunda (CNDP rebel group), for example, Rwanda rejected an extradition request on the basis that the Democratic Republic of the Congo still imposed the death penalty.

While recognizing that the support provided by the Prosecution Support Cells to the Congolese military justice system is an important part of the fight against impunity, the extent to which overall United Nations support for that system complies with the HRDDP is a matter for reflection at the senior level of the Mission and United Nations HQ in New York.

In Mali, MINUSMA undertook a *“multidimensional approach”* to promoting human rights and national accountability. The focus on human rights and justice was seen as *“integral to the mission’s support to Mali’s defence and security institutions, with the Mission’s Justice Section providing direct support to the Pôle judiciaire spécialisé, combined with its civil affairs support to communities in*

*northern and central Mali, and its mandated cooperation with the G5 Sahel Joint Force and other international security initiatives.”*¹³ In the Central African Republic, MINUSCA, from the outset, had a clear human-rights focused and victim-centred mandate including monitoring and reporting human rights and humanitarian abuses committed by armed groups including anti-Balaka and Seleka.

11 Guidance Note of the Secretary-General: United Nations approach to rule of law assistance (2008).

12 Endnote 48.

13 International Peace Institute, ‘Prioritisation and Sequencing of Security Council Mandates: The case of MINUSMA’, June 2021, https://ipinst.org/wp-content/uploads/2021/06/IPI-E-RPT-The-Case-of-MINUSMA2021-1_Final.pdf.



Lesson 10 – Incorporating people and victim-centred approaches

Adopting a people and victim-centred approach to any criminal accountability mechanism is key to establishing or rebuilding the trust of people in their governments and renewing the social contract between them, which in turn is critical to long term peace and security. This approach has a number of aspects: mechanisms which are inclusive, representative, responsive and accountable to those they are intended to serve; laws and policies that are non-discriminatory, seek to protect and uphold rights, and provide remedies which are responsive to the specific needs of individuals and communities; meaningful outreach, awareness raising and consultations with a broad spectrum of the population, particularly those most impacted by the crimes being addressed; the support and protection of victims and witnesses; and efforts to ensure access to justice.

In many post-conflict areas, justice systems are usually perceived as corrupt or biased and also difficult to access. National criminal accountability mechanisms, often established in the administrative capital of the country, will usually be granted competence for a certain category of serious crimes across the entire country. Therefore, it is crucial that such mechanisms are able to access remote areas to investigate and adjudicate serious crimes under their jurisdiction and visibly demonstrate justice delivery at the community level. Support in this area, often through the deployment of mobile courts or *audiences foraines* to carry out investigations and judicial activities has been, to date, one of the means sought to reinforce an inclusive and people-centred approach.

UNMISS, in coordination with other United Nations partners, has supported a wide variety of mobile court initiatives tailored to the local context. In eastern Democratic Republic of the Congo, the prosecution support cells, field investigations and mobile courts operated in remote and insecure areas where atrocities had been committed and where courts barely functioned or existed. The case of Paul Sadala, alias Morgan, who was charged with serious crimes committed in Ituri, is illustrative of how the visibility at community level provided by mobile

court hearings can increase trust in justice systems. *Avocats sans frontières* (ASF) initially recorded 60 victims who later participated in the trial. By the time of the appeal, 400 victims were willing to testify. ASF attributed this significant increase to changes in perception of justice by local communities as a result of the mobile courts, supported by the Prosecution Support Cells, being held in the area. In Mali, 28 mobile court hearings were held in the northern and central jurisdictions with the support of MINUSMA, which enabled the processing of approximately 140 civil and criminal cases. In addition, two sessions of criminal assizes were supported in Mopti during which 62 criminal cases were dealt with and 94 persons were convicted.

The fight against impunity also relies on a high degree of awareness among the public of the repercussions of serious criminal and violent behaviour. Collaborative efforts with local authorities and sensitization campaigns can also significantly enhance a community's understanding of legal proceedings. Engagement in community-based activities, such as outreach, awareness-raising and engagement with civil society groups, including victim's groups and women's and youth-led organizations, local authorities and traditional leaders are key to people-centred approaches. This proactive stance should extend to involving local leaders and hosting community events, fostering awareness and participation. In South Sudan, UNMISS-supported courts were more effective when they incorporated local community mobilizers and specific outreach activities, such as interviews and 'call-in' shows broadcast on local radio stations. The study found that more resources should be allocated to this area of work in all settings.

Another significant and challenging initiative in post-conflict settings has been the provision of victim protection and support. Notable progress has been made in enabling and strengthening the capacity of national lawyers to represent victims during criminal proceedings and protect their rights; providing psychosocial support; and enhancing collaboration and information-sharing with victims'

organizations. In the Democratic Republic of the Congo, MONUSCO and national security actors implemented measures collaboratively to ensure the safety of victims during mobile hearings. The provision of psychosocial support, representation and protection for victims and witnesses through the Joint Human Rights Office and international non-governmental organizations, such as TRIAL International, Avocats sans frontières, Physicians for Human Rights, Panzi, Heal Africa and others, has proven particularly effective and can be attributed to collaboration with civil society representatives located in multiple areas of the country who can provide information on the safety and whereabouts of victims and witnesses. As a result, victims in these proceedings were able to be present and represented in court. In the absence of a national legal framework or capacity to protect victims

and witnesses, UNMISS has adopted a localized approach by engaging and collaborating with national civil society organizations to provide victim and witness protection during mobile court sessions. UNMISS has also prioritized communications and outreach to affected communities.

An integral aspect of the people-centred approach is feedback from the population. Feedback mechanisms to understand local perceptions are valuable tools to understand and measure public confidence and increase awareness and domestic legitimacy. Various tools can be utilized to gather local perceptions including individual interviews; public meetings; focus groups; the network approach; local media monitoring and analysis; social media monitoring and analysis; and dedicated public perception and opinion surveys.¹⁴

Incorporating a people-centred approach: building trust, promoting community engagement and raising public awareness

The Joint Special Mobile Court (JSMC) deployments in South Sudan have helped to mitigate livestock-related violence in the border areas of Western Bahr el Ghazal and Warrap States. UNMISS supported the deployments of the JSMC to the border areas of these states to address serious crimes committed during the annual cattle migration seasons. During two case assessment missions and four deployments between 2021 and 2023, the JSMC gathered over 1,400 complaints involving more than 2,200 crimes, investigated more than 155 cases, arrested 46 individuals and adjudicated 32 cases involving 37 defendants. More significantly, the JSMC contributed to peace and stability in the border area; facilitated the return of civilians to the area from which they were displaced during the conflict; and furthered reconciliation between previously conflicting communities, the free movement of people and the resumption of trade. The trust in the court has increased cooperation and confidence in the formal justice system with the main armed controls territory in Western Bahr el-Ghazal.

As a result of the trust built by the investigators, prosecutors and judges who formed part of the JSMC team, during the third deployment of the JSMC, the SPLA-IO handed over a cattle keeper to the JSMC to be tried for rape. This trust was further demonstrated during the fourth deployment when, for the first time the JSMC tried a SPLA-IO member and the SPLA-IO assisted the Court with arrests, security concerns and the return of kidnapped children. The JSMC was the first opportunity for many victims to access the formal justice system, and the first acknowledgement of the harm they had suffered.

As declared by the Paramount Chief of Kuajjena:

The JSMC is peace. When justice is delivered there will be peace. We have been longing for justice and peace to prevail between the two tribes... Now the presence of [JSMC] has brought justice and peace.

– Added community member from Tonj North

14 Endnote 44.



Lesson 11 – Strengthening linkages to broader transitional justice processes

As set forth in the 2023 Guidance Note of the Secretary-General on Transitional Justice, *“the United Nations promotes a holistic approach to transitional justice, understanding truth, justice, reparations and guarantees of non-recurrence as interrelated elements of a coherent policy”*.¹⁵

Transitional justice – which consists of both judicial and non-judicial mechanisms and processes – and national criminal accountability mechanisms are closely linked concepts, often intertwined in the context of societies recovering from conflict, authoritarian rule or mass human rights violations. Criminal trials provide justice for victims and hold perpetrators accountable, which complement mechanisms, such as truth-telling and reparations, to promote healing and reconciliation.

The relationship between criminal accountability and broader transitional justice processes and their role in promoting peace, justice, and reconciliation in societies emerging from conflict or authoritarian rule can, however, be a complex one, with different approaches taken depending on the context. There may be circumstances where the national authorities will choose not to embark on a holistic transitional justice process but opt to only to address criminal accountability. Where feasible, criminal trials should be linked to ongoing or potential future truth and reconciliation processes.

The Central African Republic highlights the challenges inherent in seeking mutually reinforcing advances across the dimensions of truth, justice, reparations and guarantees of non-repetition. In complementarity with the establishment and operationalization of the Special Criminal Court, MINUSCA supported the establishment of the Truth, Justice, Reparation and Reconciliation Commission in 2020 to investigate and ascertain the truth about serious human rights violations committed within the nation from 1959 to 2019. The legislation establishing the Commission provides it with extensive investigative powers including to recommend the transfer of case

files to the Special Criminal Court and other competent jurisdictions. However, the Commission has, since its establishment, failed to make any meaningful progress, causing frustration among victims and human right activists. In addition, as of writing, and one year and six months after its first verdict delivered in October 2022, the Special Criminal Court is expected to carry out one of its more delicate tasks - compensating victims through reparation for the harm resulting from the massacres at Koundjili and Lémouna in May 2019, in the north of the Central African Republic, which was the object of its first trial. The appeal judges opted for *“pragmatism”*, finding that the Court could not order reparation measures that cannot be implemented. As a result, reparation for the 32 claimants is expected to be very modest.

In Mali, in addition to the commitment of the signatory parties to fight impunity, the peace agreement provided for the establishment of transitional justice mechanisms, including through the operationalization of the Truth, Justice and Reconciliation Commission and the creation of the International Commission of Inquiry to shed light on war crimes, crimes against humanity, crimes of genocide, sexual crimes and other serious violations of human rights and international humanitarian law in Malian territory. In 2019, the exclusive jurisdiction of the Pôle judiciaire spécialisé was thus extended to international crimes, including war crimes, crimes against humanity and crimes of genocide, in addition to crimes related to terrorism and transnational organized crime. In Colombia, the criminal justice mechanism was bound to an integrated process that also included the demobilization and reintegration of combatants, truth telling, amnesty and reparation.

The relationship between prosecutions and broader transitional justice mechanisms inevitably raises a variety of challenges and tensions that need to be addressed. Where different processes operate simultaneously or in close sequence

¹⁵ Endnote 34.

to each other, special care must be taken to ensure coherence and complementarity. In many contexts, where addressing accountability is a key issue for peace and security, judicial processes alone will realistically be unable to respond to the scale of the crimes committed. As part of a broader transitional justice process, prosecution strategies may be used to determine which cases should be prosecuted, and which less serious cases should be channeled through non-judicial

or informal mechanisms. Consideration needs to be given to ensure that these relate to or mutually reinforce peace negotiations and/or disarmament processes. For instance, where allegations relate to less serious crimes, those acknowledging their crimes and collaborating with the justice system or other transitional justice mechanisms could be dealt with through more lenient sentences or probatory measures.



Lesson 12 – Proactively approaching strategic communications

Strategic communications play a critical role in national criminal accountability efforts, helping to bridge the gap between the justice system and the public. Often overlooked or underemphasized, they are vital in the context of national criminal accountability. They serve to inform, engage, and garner support for these efforts, ultimately contributing to the effectiveness of the accountability process and promoting the rule of law. Strategic communications raise public awareness about criminal accountability efforts, the importance of justice, and the consequences of crimes. They can be essential to help citizens understand the significance of holding perpetrators accountable, to build support for these initiatives and also manage expectations. They can also help foster a culture of accountability within society by emphasizing that no one is above the law, sending a message that crimes will not go unpunished and deterring potential perpetrators. This can be particularly important when dealing with cases involving powerful individuals or institutions.

Effective communication can also help ensure that the processes of investigation, prosecution, and adjudication are transparent to the public. In high-profile cases, there is often a risk of misinformation, disinformation or rumors spreading. Effective communication can counter false narratives and ensure that accurate information is disseminated, reducing the potential for public unrest or mistrust. This enhances the legitimacy of judicial authorities and trial outcomes, helping the public to perceive verdicts and sentences as fair and just. Trust in this process encourages victims, witnesses, and the broader public to cooperate with investigations and trials.

From a United Nations perspective, strategic communications help to give visibility to the value and impact of the United Nations mission to host-country populations and serve as a tool for mandate implementation.

Measuring and demonstrating impact

In Mali, the United Nations conducted a number of rule of law activities to improve the capacities of the Malian authorities. However, insufficient efforts were put into measuring whether these activities succeeded. The Comprehensive Performance Assessment System (CPAS) in DPO offers a methodology to measure and assess the impact of a peace operation's engagement. Furthermore, increased technical assistance should be provided to the Malian authorities for implementing the indicators for Sustainable Development Goal 16.

The Justice and Corrections Service has been keeping measure of the cumulative results, achievements and impact of the work of justice and corrections components in each peacekeeping operation and special political mission with a rule of law mandate, since the beginning of mandate implementation. This has served to examine trends and impact over time and has allowed DPO to keep a record of advances and setbacks in the rule of law sector of each host country, including a quantitative measure of cases that are being investigated, prosecuted and adjudicated by national authorities as a result of the criminal accountability mechanisms established with mission support.





Lesson 13 – Managing national and international expectations

The support of local populations for justice and accountability may depend on the timing, sequencing and duration of such processes. Assistance from United Nations missions for criminal accountability is itself susceptible to shifting levels of support from the general public, as well as from the broader international community. Therefore, the importance of managing expectations with multiple constituents about the resources required to operationalize such mechanisms and the relative length of time required to investigate and prosecute complex cases is of critical importance. In the Central African Republic, following the decision by the national authorities to establish the Special Criminal Court, significant time and resources were required to prepare the complex organic legislation, establish the modalities of United Nations support to the process and then operationalize the Court with essential personnel. The complex process of mobilizing donor support, joint planning with the national authorities and partners and deploying seconded international magistrates for the Court required time to get the Court to a level of basic functioning. The physical infrastructure for the Court also needed to be built and operationalized. In accordance with the phased approach to the Court's operations, investigative work was the primary focus of its judicial work. Due to the sensitive and confidential nature of investigations, publicly visible and tangible results of the Court's work were not always apparent to the local population. During this phase of the Court's operations, until the commencement of the first public hearings and trial, there was a sustained need for the Court, supported by the United Nations, to conduct outreach and public messaging about its work to demonstrate that progress was being made, but that building complex cases takes time. This was important to maintain a sense of progress with the national population and also with donors. In this regard, the principals of the Court provided periodic briefings, supported by MINUSCA, UNDP and the Justice and Corrections Service, to interested Member States in Bangui and in New York.

The importance of effectively balancing immediate needs with long-term goals in relation to public perceptions of national criminal accountability efforts was clearly demonstrated by the difference in public sentiment towards MINUSMA in northern and central Mali. In the north, surveys indicated that the Mission's development projects and stabilization efforts were widely supported, and local actors were more receptive to the MINUSMA rule of law programme and capacity-building. However, in central Mali where there was persistent fighting between rebel groups and terrorist organizations, such long-term programmes were not well received. According to field personnel, the value of such programmes had been difficult to measure and demonstrate. A survey conducted by the Friedrich-Ebert-Stiftung, showed that the central populations had expected the Mission to make greater use of force to stabilize the area. Although strategically and politically MINUSMA was not able to take such actions, greater resources could have been directed to strengthening accountability for terrorism-related offences.

It is also important to manage the expectations of the international community and donors. Establishing a criminal accountability mechanism is never a short-term endeavour but requires sustained international support over years to operationalize and then to hand over to full national ownership. Even when international financial and technical support has ceased, ongoing political attention at the political level is essential for the continued success of these endeavors. National leadership, with United Nations support, will need to take this into account when determining how to best advance advocacy, outreach and strategic communications to maintain international enthusiasm and continued support without raising unrealistic expectations. This must be accompanied by an exit strategy, including the gradual handover of tasks to national counterparts.

3

WHAT TYPES OF CRIMES SHOULD BE ADDRESSED AND HOW TO PRIORITIZE?



Lesson 14 – Priority should be given to serious destabilizing crimes that fuel conflict



Lesson 15 – Greater attention should be given to cross-border crimes and other crimes requiring a regional approach



Lesson 16 – Focus should be maintained on conflict related sexual and gender-based violence



Lesson 17 – Direct linkages should be made to accountability for crimes committed against United Nations peacekeepers and other personnel



Lesson 18 – Prosecution strategies should be developed to ensure transparency and integrity in the prioritization of cases

3

WHAT TYPES OF CRIMES SHOULD BE ADDRESSED AND HOW TO PRIORITIZE?

National criminal accountability mechanisms supported by the United Nations in peacekeeping settings have essentially focused on international and other serious crimes related to the conflict dynamics.

Generally, International crime refers to acts that occur across national boundaries that violate international law including genocide, war crimes, crimes against humanity, and aggression as defined in various international treaties and agreements including the Rome Statute of the International Criminal Court - the primary treaty governing international criminal law. Article 5 of the Rome Statute defines the crimes within the jurisdiction of the International Criminal Court. Individuals who commit them may be prosecuted by international tribunals or in domestic courts with jurisdiction over such offences. International crime is a complex and multifaceted concept, and its definition may be further refined within specific legal frameworks and treaties.

However, some criminal activities that directly relate to the conflict and which can strengthen armed criminal groups may not necessarily amount to or be classified as international crimes. In many contexts the focus is placed on international or war crimes, whereas in others it may be more on specific types of crimes such as terrorism-related crimes, crimes falling within the competence of military courts, or local and transhumance-related crimes.

EXAMPLES OF TYPES OF CRIMES ADDRESSED BY VARIOUS MECHANISMS

Special Criminal Court (Central African Republic): Core international crimes committed in the country's territory since 1 January 2003, in particular the crime of genocide, crimes against humanity and war crimes.

Specialized investigation and judicial unit (Mali): Terrorism-related offences, atrocity crimes or activities related to transnational organized crime, including trafficking in human beings, arms, drugs or natural resources and smuggling of migrants, as well as crimes against MINUSMA peacekeepers.

Prosecution Support Cells to military courts (Democratic Republic of the Congo): Most serious crimes falling within the competence of military courts, namely those crimes listed in the Rome Statute (in particular war crimes and crimes against humanity, including crimes of sexual violence).

JSMC (South Sudan): Serious crimes, including sexual and gender-based violence, which occur in the border region between the states of Western Bahr el Ghazal and Warrap during the annual cattle seasonal movement.

General courts martial (South Sudan): Serious crimes falling within the competence of military courts, including for conflict-related sexual violence.

Circuit courts and mobile courts (South Sudan): Crimes of sexual violence and unnatural offences.

Multiple lessons have been learned from this engagement:



Lesson 14 – Priority should be given to serious destabilizing crimes that fuel conflict

The crimes that receive the most attention in conflicted-affected settings are those crimes directly related to the conflict, especially international crimes. In order to achieve or sustain peace, prosecuting such crimes effectively is often the top priority for both national and international actors.

While the investigation of international crimes, such as war crimes and crimes against humanity, is of critical importance, in many contexts other serious crimes are also significant because of their role in fuelling and exacerbating conflict. Crimes relating to illegal resource exploitation, corruption, money-laundering and other economic crimes, religious intolerance, hate crimes, gender-based violence, trafficking in drugs, property crimes, human trafficking, election fraud, forced displacement and climate justice can all have significant destabilizing effects on societies and be powerful conflict drivers, especially where they are perpetrated systematically. Some, but not all, of these crimes would amount to international crimes. Peacekeeping support to national criminal accountability mechanisms should seek to address other destabilizing crimes.

Criminal accountability mechanisms are context-specific in nature, both in terms of the model that is used and the types of crimes they address in each setting. The jurisdictions of the different mechanisms discussed in this study cover international crimes, terrorism-related and transnational organized crimes, sexual violence as well as other serious crimes related to intercommunal and transhumance violence. Other criminal accountability initiatives have focused, inter alia, on narcotics in Afghanistan, piracy and crimes committed by Al Shabab in Somalia, transhumance

and cattle rustling conflicts in Darfur and South Sudan and gang related violence in Haiti. The focus on those serious crimes that fuel these conflicts helps to ensure the maximum impact of criminal accountability initiatives.

Experience in peacekeeping settings has highlighted the need to consider an expansion of the types of crimes being prosecuted. DPO, through its Justice and Corrections Service at Headquarters and its standing capacity based in Brindisi, has undertaken several initiatives, recognizing that neither the national judicial authorities nor peacekeeping missions may have the necessary capacities and resources to further expand criminal accountability mechanisms to other types of crimes, which are often complex in nature and politically sensitive.

Corruption is increasingly recognized as a major obstacle to lasting peace and security in almost every setting. It fuels conflict by weakening rule of law institutions, undermining public trust in democratic processes and the legitimacy of the State. It jeopardizes stabilization and peace processes, emboldening non-State armed groups by facilitating access to arms and funding for their operations through illicit avenues. Strengthening criminal accountability for perpetrators of serious corruption offences has, to date, been a limited area of engagement in peace operation settings, despite the growing recognition of corruption as a driver of conflict. Notably, the recent Executive Order of the President of Liberia establishes the Office of War and Economic Crimes Court based on the need to address corruption cases connected to and growing out of the conflict.



Achieving Peace through Integrity

Since 2022, DPO and UNODC have been developing a practical guide for United Nations peace operations, special political missions and United Nations presences in other fragile settings as part of their joint initiative *“Achieving peace through integrity”*. The objective is to help ensure that United Nations missions and other field presences in conflict-affected or fragile settings are better equipped to apply an anti-corruption lens to their engagement and where appropriate provide tailored assistance to national authorities in strengthening their integrity and transparency mechanisms by developing anti-corruption strategies and incorporating anti-corruption safeguards into their institutional frameworks.

In Afghanistan, prior to the Taliban takeover, the United Nations Assistance Mission in Afghanistan successfully supported the establishment of the national Anti-Corruption Justice Centre and reported annually on its progress, notably the increase in indictments and trials against high-ranking officials, including from the military and members of parliament. This promoted greater transparency and public awareness of the outcomes of corruption cases, while also highlighting the insecurity faced by justice personnel undertaking such investigations and prosecutions.

Likewise natural resource exploitation also fuels violent conflict when illegally trafficked or inequitably distributed. Such crimes do not happen in isolation; they are usually symptomatic of larger-scale organized criminal networks, corruption and money-laundering. A significant proportion of natural resource crimes are carried out on a transnational basis by the same networks involved in the smuggling of weapons, drugs and people. The proceeds of these illegal activities enable armed groups to sustain their operations

and commit other crimes that fuel conflict, such as the forced recruitment of soldiers, including children; land grabbing; crimes against humanity and war crimes; and rape and other forms of sexual violence. However, peacekeeping operations have not prioritized its support to combat natural resource exploitation offences. This study recommends that, where feasible, future efforts by the United Nations to support criminal accountability should consider an expansion of the types of crimes being prosecuted.



Lesson 15 – Greater attention should be given to cross-border crimes and other crimes requiring a regional approach

Criminal accountability does not stop at the border. A crucial element in strengthening the capacity of national criminal accountability mechanisms is fighting impunity for cross-border crimes. Strengthening judicial cooperation between countries of the region enhances the effectiveness of judicial authorities, law enforcement agencies and relevant ministries, and supports victims, witnesses and communities in those countries affected by transnational criminality. Transnational crime has increased in magnitude and impact over the past decades and has become a major driver of conflict and instability. Effectively addressing these crimes helps to combat impunity and protect people and communities, deter the influence

of international criminal networks, address corruption and its impact on governance, and disrupt the sources of funding of many illegal armed groups.

Strengthening accountability for cross-order crimes can take several forms, including implementing and developing training for practitioners who are investigating and prosecuting priority cross-border crimes at the national and regional levels; establishing an inventory or mapping of cross-border criminal cases, including a list of the categories of crimes most relevant to judicial cooperation, and of national prosecution policies and strategies; and supporting joint investigations where permissible under national

and international law, through mentoring offered by a pool of experts, targeted capacity-building and the provision of technical assistance.

The Allied Democratic Forces (ADF), an Islamist rebel group operating in both Uganda and the Democratic Republic of the Congo, has perpetrated numerous serious crimes with cross-border dimensions in both territories. Several priority cases involving the ADF are currently being investigated and prosecuted by the Congolese military justice system. In this context, MONUSCO has worked closely with the Office of the Special Envoy for the Great Lakes and the Justice and Corrections Service to support the Congolese judicial authorities with regional judicial cooperation. This involves drafting requests for judicial assistance from the competent authorities in Uganda and other neighboring countries to facilitate witness interviews and promote joint prosecution efforts. These efforts

are carried out through cooperation mechanisms established within the framework of the International Conference on the Great Lakes Region (ICGLR).

The flagship initiative for fighting impunity for cross-border crimes in the African Great Lakes region aims to assist member States of the ICGLR in their efforts to respect and protect human rights, advance justice and the rule of law, strengthen criminal accountability, break recurring cycles of impunity and curb the financing of armed groups. As a part of the initiative led by the ICGLR and the Office of the Special Envoy, MONUSCO has provided specific support to the country's judicial authorities, including digital investigation, ballistics, and expertise on forensics and witness and victim protection. The Mission's work, in accordance with this initiative, is critical to fighting impunity for cross-border crimes in the Great Lakes region.

Regional engagement on criminal accountability

The Justice and Corrections Service has actively assisted various regional offices in tackling transnational rule of law challenges. In the African Great Lakes region, it has collaborated with the Office of the Special Envoy of the Secretary-General, the International Conference on the Great Lakes Region and national authorities to combat cross-border crimes that jeopardize peace and stability, including natural resource trafficking, international law violations, terrorism and other forms of transnational organized crime. In West Africa and the Sahel, it has supported the United Nations Office for West Africa and the Sahel (UNOWAS), the Economic Community of West African States (ECOWAS) and national authorities in addressing the increasing misuse of justice systems and the significant risks it poses to governance.

DPO is seeking to expand its current support to regional offices, special political missions and resident coordinator offices by enhancing its capacity to develop strategic guidance and to make available expertise, capacities and resources that it has access to or is managing. In particular, the Justice

and Corrections Service will provide specialized expertise on justice, corrections and related rule of law areas, including through the deployment of the Justice and Corrections Standing Capacity (based in Brindisi, Italy) and government-provided experts from national justice and corrections services.

A priority for DPO is to support national and regional efforts to enhance criminal accountability. Addressing serious crimes that fuel conflict remains a priority for the United Nations, as this has proved to be an effective prevention tool by combating impunity, weakening criminal networks, addressing natural resource trafficking, holding security forces accountable and deterring the reoccurrence of violence. The support would target crimes under international law, transnational organized crimes, terrorist crimes, natural resource trafficking and crimes against United Nations personnel. In parallel, the support would address detention issues, with the aim of ensuring the safe, secure and humane detention of those deprived of liberty, and preventing violent extremism and radicalization.

Recognizing the importance of regional approaches to address the need for improved international judicial cooperation particularly in the area of extradition, mutual legal assistance, joint investigation, and to

strengthening international and regional cooperation networks, more robust United Nations engagement is required at the regional or sub-regional level.



Lesson 16 – Focus should be maintained on conflict related sexual and gender-based violence

In relation to all four mission contexts, there has been and continues to be a focus on conflict-related sexual violence. However, such cases pose particular challenges, including an over-reliance on the direct evidence of victims, many of whom will be reluctant to come forward. Targeted support needs to be provided in this regard, and missions may not always be equipped with the necessary expertise or resources.

In 2009, the Security Council established the mandate of the Special Representative of the Secretary-General on Sexual Violence in Conflict, in recognition of the widespread and systematic use of sexual violence as a weapon or tactic of war and the impunity enjoyed by perpetrators, evident through the limited prosecution and punishment of perpetrators. While it recognized that in conflict and in post-conflict situations national justice systems may be significantly weakened, it emphasized the importance of the fight against impunity and ensuring justice to victims¹⁶. Under the same resolution, the Council established the Team of Experts on the Rule of Law and Sexual Violence in Conflict, which aims to foster national ownership and responsibility for conflict-related sexual violence by providing support in areas such as criminal investigations and prosecutions, military justice, reparations for survivors, access to justice, legal reform and security sector oversight.

Despite prevailing impunity for conflict-related sexual violence, there have been several noteworthy developments in advancing accountability in this area, a number of which have been supported by the Team of Experts, including in close collaboration with United Nations Peace operations, through both specialized technical and programmatic support. This support builds upon frameworks of cooperation developed between national governments and the SRSG for SVC which, inter alia, identify areas of cooperation in addressing conflict-related sexual violence. In the Democratic Republic of the Congo, MONUSCO collaborated with the Team of Experts to formulate regional prosecution strategies, with the national military justice authorities, for serious international

crimes, including sexual crimes. In the Central African Republic, targeted engagement with national criminal justice institutions resulted in the establishment of the Unité Mixte d'Intervention Rapide et de Répression des violences sexuelles faites aux femmes et aux enfants (UMIRR), the Mixed Response Unit for the Rapid Intervention and Repression of Sexual Violence within the national police and gendarmerie to investigate sexual and gender-based violence. MINUSCA and UNDP, supported by the Team of Experts, facilitated capacity building on specialized investigative techniques and the use of forensic evidence. United Nations support was also important in encouraging the specific inclusion of sexual violence cases in the prosecution strategy of the Special Criminal Court. The first trial at the Court resulted in convictions for crimes of sexual violence.

Maintaining a focus on conflict-related sexual violence in national criminal accountability mechanisms will be imperative to ensure that widespread impunity for these crimes, and its impact on peace and security, is addressed.

For more information on the work of the United Nations Team of Expert on the Rule of Law and Sexual Violence in Conflict, please consult the most recent Annual Report:



16 Security Council resolution 1888 (2009).



Lesson 17 – Direct linkages should be made to accountability for crimes committed against United Nations peacekeepers and other personnel

In 2021, the Security Council adopted resolution 2589 on the protection of peacekeepers. The resolution calls on all Member States hosting peacekeeping operations to promptly investigate and effectively prosecute those responsible for attacks on United Nations personnel. The resolution made it clear that accountability for these crimes is a legal and moral obligation for the international community, and that lack of accountability can have a destabilizing impact in peacekeeping settings. The attention on supporting national efforts to pursue accountability for crimes against peacekeepers fits in the broader context of United Nations mission efforts to strengthen national rule of law capacity, and more specifically accountability for serious crimes against civilians in host States. Accountability for crimes against peacekeepers and accountability for other crimes go hand in hand.

Pursuant to Security Council resolution 2589, the United Nations has a continuing obligation to support accountability for serious crimes committed against peacekeepers. Notable progress has been made in the Central African Republic, the Democratic Republic of the Congo and Mali, with an increase in the number of alleged perpetrators identified and detained and in the percentage of cases with confirmed national investigations.

Missions have played an important role in helping to strengthen national legal frameworks and build national capacity to investigate and prosecute such crimes. This includes the deployment of specialized personnel to assist national authorities in the investigation and prosecution of these cases, or in the provision of transport, communication or forensic equipment to facilitate the processes. The establishment of stand-by teams of investigation and prosecution experts capable of providing prompt support to a host country, bilaterally or through the concerned peacekeeping operation, should be considered. In addition, future status-of-forces or status-of-mission agreements should include the possibility of the deployment of such experts, including as part of joint investigations conducted with the host country.

In the Democratic Republic of the Congo, MONUSCO has provided technical and logistical support, including forensic and ballistic expertise, for the investigation and prosecution of these cases. For example, the Mission's Prosecution Support Cells, through its government provided personnel, has supported groundbreaking technical investigations, including analyzing the shooting down of a MONUSCO helicopter, examining bullets used in attacks against peacekeepers, and providing ballistic expertise in cases related to anti-MONUSCO demonstrations in Goma. While this expertise has been particularly important in relation to attacks upon peacekeepers, such expertise extends to also assisting the Congolese authorities in investigating mass crimes against civilians involving firearms, while providing additional training to national partners and capacity building support to the joint ballistic laboratory. Given the ongoing violence in the country and the vast numbers of civilian casualties, MONUSCO is careful when providing technical support for investigations into attacks against peacekeepers not to give preference to those cases in preference to cases involving serious attacks against the local population.

In Mali, where the 174 MINUSMA personnel killed between 2013 and 2023 represents 53 per cent of all such fatalities across all United Nations peacekeeping operations, a number of actions were taken by MINUSMA, such as issuing, and ensuring the effective implementation of, the Mission's Standard Operating Procedure for the collection, analysis, management and transfer of evidence and/or information; improving the length, quality and procedures for disclosing the information provided to the concerned authorities; enhancing the promptness and availability of the United Nations response to requests from authorities for assistance on investigations; and establishing an internal working group on the judicial response to peacekeeping fatalities to strengthen internal coordination and collaboration with the Malian authorities. As of December 2023, with the support and assistance of MINUSMA, 10 individuals had

been convicted in relation to the killing of six MINUSMA peacekeepers. The Pôle judiciaire spécialisé magistrates, however, still had 33 open investigation cases, with six cases at the advanced stage. The obligation and responsibility of the United Nations to follow up on such cases continues beyond the closure of MINUSMA and other peace operations. With missions gone, additional capacity is inevitably required at Headquarters to undertake

this work and ensure that progress on these cases is not jeopardized.

Looking forward, consideration should be given as to how to approach crimes committed against humanitarian personnel, in line with United Nations Security Council resolution 2175 (2014) and General Assembly resolution 78/118 (2023).



Lesson 18 – Prosecution strategies should be developed to ensure transparency and integrity in the prioritization of cases

In contexts of transition or armed conflict, criminal justice systems are often unable to deal with the large volumes of cases relating to serious and complex crimes. This can be exacerbated by insufficient resources and inadequate capacities. There is also a real risk that prosecutions are instrumentalized and politically motivated. A prosecution strategy can provide the framework for guiding investigations and actions and concentrating institutional, political, human and material resources, while reducing the risk of political interference in judicial matters. Prosecution strategies are tools that are political in nature. Ideally, they should be informed by political dialogue with national authorities, also involving the most affected communities. In combination with sentencing policies, they can be tailored to best support peace processes, transitional justice dialogues, or disarmament, demobilization and reintegration processes, notably by prioritizing the prosecution of those perpetrators that are driving violence.

Inevitably, international attention focuses on those leaders deemed the most responsible for serious crimes, particularly international crimes. While such prosecutions remain an important goal, pursuing these politically charged and sensitive cases in the short to medium term can prove difficult. In many contexts, there may be value, in the short term, in supporting prosecutions of lower-level offenders alleged to have been directly involved in the commission of atrocities. 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. Prosecutions of lower-level offenders 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.

Research undertaken by the United Nations and the World Bank in 2017 indicated that implementing domestic criminal prosecutions for past human rights violations had a significant relationship with the non-recurrence of conflict. The rate of recurrence decreased by approximately 70 per cent when trials were pursued against middle to lower-level offenders.¹⁷ The research suggests that the process of pursuing such prosecutions can have important positive effects in reducing the recurrence of conflict. However, where judicial processes appear retaliatory or otherwise politically compromised or sensitive, they can achieve the opposite.

In the Democratic Republic of the Congo, the international community and the United Nations have supported the adoption of regional prosecutorial strategies for the eastern part of the country. The development of prosecutorial strategies has contributed to a significant increase in the investigation, prosecution and adjudication of international crimes before military courts. This has been achieved through the identification of prioritization criteria which, applied against the

17 United Nations and World Bank, Pathways for Peace.

backlog of cases before military courts, has allowed for selection and faster response to cases by the country's prosecutors. The identification of priority cases by the national authorities has also allowed for greater coordination, focus and tailoring of the support provided by international partners, both in terms of financial and technical support. As a result, evidence collection and case preparation has been strengthened and indictments reflect a more comprehensive list of charges, capturing the true scope of criminality in the Democratic Republic of the Congo, including the recruitment of children, inhuman treatment, torture, forced pregnancy, and pillage.

In Mali, difficulties rapidly arose during the operationalization of the Pôle judiciaire spécialisé with regard to conflicts of jurisdiction and coordination, or a lack of coordination of prosecution efforts and in the prioritization of cases. In response, a circular was issued in September 2022 by the Minister of Justice clarifying the penal policy and prosecution strategy in the fight against terrorism and crimes under international criminal law. It establishes objective criteria for the priority treatment of certain cases by the judicial authorities and provides for the establishment and maintenance of a directory of cases opened on the basis of classifications as terrorism and international crimes. It also specifies the respective jurisdictions, coordination of prosecution efforts between the International Criminal Court and the Pôle judiciaire spécialisé, and the modalities for the implementation of international judicial cooperation in criminal matters. Importantly, in 2021, following extensive work with MINUSMA and the United Nations Team of Experts on the Rule and Sexual Violence in Conflict, the Malian authorities adopted prioritization criteria that informed the selection of cases of sexual violence committed by terrorist groups in 2012-2013 in northern Mali.





4

WHAT IS THE ROLE OF THE UNITED NATIONS ROLE AND THE WAY FORWARD ?



Lesson 19 – The value and impact of the peacekeeping model



Lesson 20 – The convening role of the United Nations to gain consensus, align strategic priorities, build partnerships and mobilize resources



Lesson 21 – The importance of United Nations Headquarters support

4

WHAT IS THE ROLE OF THE UNITED NATIONS ROLE AND THE WAY FORWARD ?

As United Nations peace operations are fundamentally political tools, deriving their legitimacy and leverage from Security Council mandates, they have a critical role to play in building and sustaining political will and consensus and in overcoming the political blockages to meaningful criminal accountability.

Such rule of law assistance also requires integrated, coherent and coordinated responses drawing upon and utilizing United Nations Missions' unique convening authority to rally national, regional and international partners in these efforts, based on established international norms and standards. The presence of United Nations peace operations creates space for political and technical engagement with national authorities. Peacekeeping military and police forces, combined with civilian components, can enable access to remote areas and allow greater interaction with communities across the territory of the host State, thereby facilitating support to national investigations and prosecutions.



Lesson 19 – The value and impact of the peacekeeping model

Integrated peacekeeping operations offer an effective United Nations platform for criminal accountability support. Backed by Security Council mandates and working alongside other rule of law entities, DPO has dedicated extensive resources to strengthening national criminal accountability mechanisms in complex and highly challenging and conflict affected environments. The political leverage, broad range of civilian and uniformed advisory expertise, logistical capabilities, security apparatus, financial support and capacity to convene the United Nations system, position larger multidimensional peacekeeping operations as a strong and effective United Nations instrument to provide this type of assistance. No other actor on the ground, has this breadth of expertise, capabilities and resources.

Criminal accountability initiatives are complex and multifaceted endeavours. To be successful, they must encompass the whole criminal justice chain, including police and other security and law enforcement entities, judicial institutions, prisons, legal defence, as well as human rights bodies and

other public administration entities. Accordingly, as part of a holistic approach to strengthening the rule of law and accountability, the components of peacekeeping operations all play instrumental roles in supporting the establishment and operationalization of national criminal accountability mechanisms. Of particular importance in terms of inter-relationships, is a strong and collaborative relationship between the rule of law and other mission components, to ensure complementary, coherent and mutually supportive strategies, policies and activities with the objective of maximising their respective areas of expertise.

Following is an overview of the main areas of work undertaken by respective mission components with respect to criminal accountability support:

Mission Leadership – Exercising good offices to promote rule of law, including impartial and depoliticized prosecutions, advocate for strategic reforms and elicit national engagement for reforms; build consensus and financial backing to advance criminal accountability mechanisms; coordinate approaches with the United

Nations country team through the Deputy Special Representative of the Secretary-General and Resident and Humanitarian Coordinator.

Justice Section – Leading and coordinating support efforts with the central and local judicial authorities for the establishment and operationalization of criminal accountability mechanisms; playing a central coordination role with both United Nations and non-United Nations actors; supporting efforts to develop the legal framework and prosecutorial strategies; advising and mentoring; developing and conducting specialised trainings; and otherwise supporting legal proceedings and prosecutions by national authorities.

Corrections Section – Supporting under-resourced national prison systems to ensure the safety, security and humane conditions of detention for those detained pre-trial or sentenced to imprisonment for serious crimes, and in particular, management of high-risk prisoners, prison security, pre-trial detention and sentence enforcement.

Human Rights – Building capacity and providing technical assistance with respect to human rights monitoring and reporting, including monitoring and reporting on legal proceedings and due process of criminal accountability mechanisms; conducting human rights due diligence policy (HRDDP) assessments; investigating human rights violations; providing victim support and specialized functions through Women Protection Advisers and Child Protection Advisers.

United Nations police – Building capacity and providing operational assistance to national criminal investigations including (upon request) the collection of evidence, interviewing, scene management and forensics; on rare occasions, carrying out interim policing functions including the authority to arrest and detain.

Civil Affairs – Coordinating community engagement with local officials and civil society, helping to inform and create conflict-sensitive approaches to accountability.

Legal Affairs – Advising on legal matters including relating to the sharing of evidence.

United Nations military force – Ensuring security of court proceedings, logistics of mobile courts deployments, including through escorts, and on rare occasions, carrying out arrests and detention.

Disarmament, demobilization and reintegration/ community violence reduction – Establishing linkages with the ongoing disarmament, rehabilitation and reintegration processes.

United Nations Mine Action Service – Supporting specialized evidence collection (e.g., ballistic, IED)

Security sector reform – Providing advice on military justice mechanisms and linking criminal accountability initiatives to broader initiatives to build accountable and responsive security institutions.

Public information – Supporting strategic communications and outreach on criminal accountability initiatives.

Protection of civilians advisers – Mitigating the harms or risks from activities to which civilians could be exposed.

Achievements operationalizing criminal accountability mechanisms in the peacekeeping context are not attained in isolation, but rather in collaboration with United Nations Agencies, Funds and Programmes (particularly UNDP, UNODC, DCO) and other entities of the Secretariat (OHCHR, the Team of Experts on the Rule of Law and Sexual Violence), some of whom undertake criminal accountability support initiatives as part of their rule of law programmes. At the country level, collaboration is built upon each entity's distinct mandate, roles and comparative strengths. As an example, direct support to national investigative and judicial authorities may need to be distinct from the complementary human rights monitoring, investigations and reporting role of the mission.

Feedback received from interlocutors suggests that it is unlikely that initiatives such as the Special Criminal Court in the Central African Republic, the Prosecution Support Cells in the Democratic Republic of the Congo, the Pôle judiciaire spécialisé in Mali, or the joint mobile courts in South Sudan would have been established or been as effective in the absence of the peacekeeping operations. This was recognized by the former prosecutor for the Pôle judiciaire spécialisé in Mali, Boubacar Sidiki Samaké, interviewed in August 2023: *"If the Pôle judiciaire spécialisé was able to get started, it is because of MINUSMA"*.

The results achieved in the Central African Republic, the Democratic Republic of the Congo, Mali and South Sudan demonstrate the value of building on the unique strengths of multidimensional peacekeeping to support national criminal accountability initiatives. In terms of legacy, both MINUSMA and MONUSCO will leave behind functional specialized investigations and prosecution teams that have largely contributed to building national capacities and transferring knowledge in the areas of terrorism and serious organized crime in Mali and of military justice in the Democratic Republic of the Congo, even where the trials take time to reach their conclusion.

While there are other examples of United Nations providing support to criminal accountability mechanisms in non-peacekeeping settings - such as the International Commissions against Impunity in Guatemala (CICIG), the Special Jurisdiction for Peace (JEP) in Colombia or the United Nations Investigative team to promote accountability for crimes committed by Da'esh/ISIL (UNITAD) – resources and funding are often limited for such

rule of law activities. In some settings, the United Nations presence may be reticent about prioritizing politically sensitive tasks such as accountability. It is unrealistic therefore to expect other parts of the United Nations system to be in a position to assume full responsibility for support provided to national accountability processes.

Looking ahead, as Missions continue to downsize and close, the United Nations system needs give careful attention to how such support can be taken forward and, further, how the system can provide the most effective support to those non-mission settings where the demands for justice and accountability are increasing. There is clear potential for stronger good offices and advisory support, as well as project-based support, for national accountability mechanisms. Dedicated advisory capacity, supported by a team of government-provided justice and corrections personnel, could, for example, provide the necessary initial or preparatory steps towards advancing the establishment of appropriate mechanisms to investigate and prosecute serious crimes.



Lesson 20 – The convening role of the United Nations to gain consensus, align strategic priorities, build partnerships and mobilize resources

Through their good offices, geographic coverage, and wide range of expertise, peacekeeping operations and special political missions are usually well positioned and suited to help build consensus on the way forward to advance criminal accountability, by convening the United Nations system and the broader international community, whilst working to promote national leadership and broad-based consultations with civil society.

At the field level, building and nurturing collaborative partnerships to support national criminal accountability initiatives is essential to overcome the broad scope of challenges involved. Relevant stakeholders involved in criminal accountability initiatives are government authorities, civil society groups, and local communities, non-government organizations, international organizations and legal experts. Each has a role to play with unique resources and expertise. Positive examples of coordination efforts within DPO missions

include the establishment of single coordination focal points among international, national and local actors, regular coordination meetings and information sharing measures among stakeholders. In the Central African Republic, coordination of joint international support for the Special Criminal Court was improved by establishing a framework for consultation and collaboration among stakeholders, which included weekly partner meetings to review ongoing activities and address implementation challenges. A working group advising mission leadership on high level prosecutions and arrests was also established. In the Democratic Republic of the Congo, the Cadres de concertation (consultative framework) has been identified as a primary strength within the Prosecution Support Cells of MONUSCO.

Coordination and partnerships in the Democratic Republic of the Congo

The Cadres de concertation serve as a single Prosecution focal point and hosts monthly meetings between international and national partners to determine roles and responsibilities in current activities. The presence of a single coordination focal point and the regularity of its meetings has been described as a strength of the Prosecution Support Cell Programme of MONUSCO among national actors. The Prosecution Support Cells play an important role in chairing and organizing the meetings of the Cadre de concertation. These meetings bring together national military justice investigators, prosecutors and judges and international partners, in particular, justice, human rights, children and women protection advisers of MONUSCO, United Nations country team partners and other non-United Nations actors such as the European Union and non-governmental organizations. The meetings provide an opportunity to share roles and responsibilities with respect to the required support to national authorities for the organization of specific investigations and *"audiences foraines"*. This results in the coordinated provision of logistical, security and other essential support for mobile courts and, including the transportation of magistrates, and the provision of daily subsistence allowance.

To mitigate the security risks, the MONUSCO military force provides support, including escorts and secure convoys when the operational situation requires, thereby enabling Prosecution Support Cells and their national counterparts to undertake investigations and conduct mobile hearings in remote and insecure locations. In the case of *"Colonel 106"*, for example, the Prosecution Support Cells provided advice and logistical support to prosecutors and judges. The human rights section identified the victims and encouraged them to file complaints and worked with non-United Nations partners such as TRIAL International, Avocats sans frontières, the American Bar Association and RCN Justice et Démocratie to provide psycho-social and other support and legal representation and assistance to the victims and witnesses. The Child Protection Section of MONUSCO provided the military justice authorities with identifying information of a number of child victims. The MONUSCO/UNDP joint project provided funds for the logistical support for investigations and *"audiences foraines"*, including daily subsistence allowance for national officials who travelled to the locations where they took place, and worked to ensure that suspects and accused receive legal representation through agreements with local bar associations.

Joint programmes have proved an effective mechanism for enhancing coherence and collaboration, both across the United Nations system and with partners, to align efforts and direct funding in support of national priorities. They have accordingly been used effectively to support the establishment and operation of national

accountability mechanisms. Missions have played key roles in the development and implementation of such joint programmes, working effectively and collaboratively with national and international partners, as well as providing strong leadership and advocacy at the political level.

Joint Programmes and Joint Projects

Somalia Joint Justice Programme (UNSOM, UNDP, IDLO, UN Women and UNICEF); programme supporting the National Development Plan 2017-2019 goal to 'establish independent, accountable and efficient justice institutions capable of addressing the justice needs of the people of Somalia' (2018-2020).

MINUSMA-UNDP Mandela Project to support prison security reinforcements in the Bamako central prison, including the renovation of two separate high-security wings to contain suspected terrorists.

MINUSMA-GFP Project Addressing the Root causes of conflict through rule of law (2016-2020).

MINUSCA-UNDP Project to support the restoration of the rule of law and the reform of the justice and security sectors in CAR (2020-2023).

MINUSCA-UNODC Project for the Implementation of the Support Project to the Special Criminal Court for the Establishment of Witness and Victim Protection and Legal Aid Programmes.

MONUSCO-UNDP: the implementation of the Joint Justice Reform Support Programme (2020-2024).

MINUSCA-UNDP Project to support the Special Criminal Court in CAR (2020-2023).

The challenges of insufficient financial resources is significant. To sustain the projects implemented within their respective mandates, peacekeeping operations have partnered with other in-country United Nations entities to mobilize the necessary funds and resources. Missions have adopted distinct strategies and sources of funding to address financial constraints. The Global Focal Point for the Rule of Law has successfully facilitated coordination between various United Nations entities, which has in turn led to joint programmes, projects or seed funding. Since its operationalization, the Global Focal Point has created a platform for collective rule of law responses, supported the establishment of over 30 joint rule of law programmes, and facilitated over 100 deployments of expertise and 55 joint assessment missions. Overall, a key to the effectiveness of the Global Focal Point has been its capacity to actively identify opportunities for joint programming in the area of the rule of law, and to encourage joint programming through the provision of expertise and funding, bringing together all rule

of law partners actively engaged on country specific issues at Headquarters and in the field to support various criminal accountability projects.

Programmatic funding provided to peacekeeping missions for the implementation of their mandates has included support to the rule of law and criminal accountability. This has enabled peace operations to supplement their policy and technical advice to national justice, corrections and police authorities with activities and practical support. At the same time, programmatic funding has created a practical and immediate incentive to United Nations integration and collaboration. Programmatic funding from assessed contributions can also serve as seed-funding, especially in fragile and risky contexts where donors may be initially hesitant to invest in new initiatives. In the Central African Republic, for example, programmatic funding enabled MINUSCA and the United Nations country team to join forces in supporting the establishment and functioning of the Special Criminal Court.

MINUSCA – CAR					
<p>Proposed mission's budget: \$925,498,900</p> <p>Approved budget: \$910,057,500 [Source: A/C.5/73/L.47]</p> <p>Financing of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic [A/C.5/73/L.47]</p> <p>13. Notes that the various programmatic activities to be financed through assessed contributions of peacekeeping missions must be directly linked to Security Council mandates and reflect the evolution of those mandates;</p> <p>14. Requests the Secretary-General to include, in the performance report of the Mission, detailed information on programmatic activities, including on how the implementation of those activities has contributed to implementing mission mandates.</p>					
Purpose	Funding (requested)	Funding (approved and allocated)	Implementing Partner	Other funding	Comments
<p>Support to the Special Criminal Court: In order to improve and strengthen independence of the rule of law institutions and their capacity to fight impunity provision is made to support investigations which comprises organization of workshops, development of training curriculum, and criminal and forensic analysis equipment training (\$1,130,000) and personnel cost (\$3,391,000). Mission will continue to execute the MINUSCA-UNDP joint project in support of the Special Criminal Court. A second key implementing partner supporting the SCC will be UNODC which started providing support to the SCC in 2018 on the basis of an MOU.</p>	<p>\$4,521,000</p> <p>That amount includes:</p> <p>\$1,130,000 to strengthen the independence of rule of law institutions, support investigations, training, etc. +</p> <p>\$3,391,000 for personnel costs.</p>		<p>UNDP (\$3,164,700)</p> <p>UNODC (\$994,600)</p> <p>Direct Implementation (\$361,000)</p> <p>[Source: A/73/755/Add.12]</p>	<p>EU (\$2,300,000)</p> <p>UNDP (\$1,100,000)</p> <p>CAR MPTF (\$200,000)</p> <p>[Source: A/73/755/Add.12]</p>	<p>Total amount programmatic funding: \$8,419,200 to cover justice & corrections; human rights; civil affairs; police training; rule of law/SSR; and political affairs.</p>

The Secretary-General's Peacebuilding Fund has also demonstrated support for joint programming in rule of law to reinforce coherence across efforts to support peacebuilding priorities at the national level. The application of the core principles of peacebuilding funding - being timely, catalytic, and risk-tolerant, and facilitating inclusiveness and

national ownership, integrated approaches, and cohesive UN strategies – resulted in catalytic PBF support for both the Prosecution Support Cells in the Democratic Republic of the Congo and the establishment of the Special Criminal Court in the Central African Republic.



Lesson 21 – The importance of United Nations Headquarters support

Dedicated capacity at United Nations Headquarters has played an essential role in advancing field-driven national criminal accountability initiatives, including with respect to generating international political support and leverage, mobilizing human and other resources, providing policy direction and visibility, and ensuring coordinated and integrated approaches across the United Nations system.

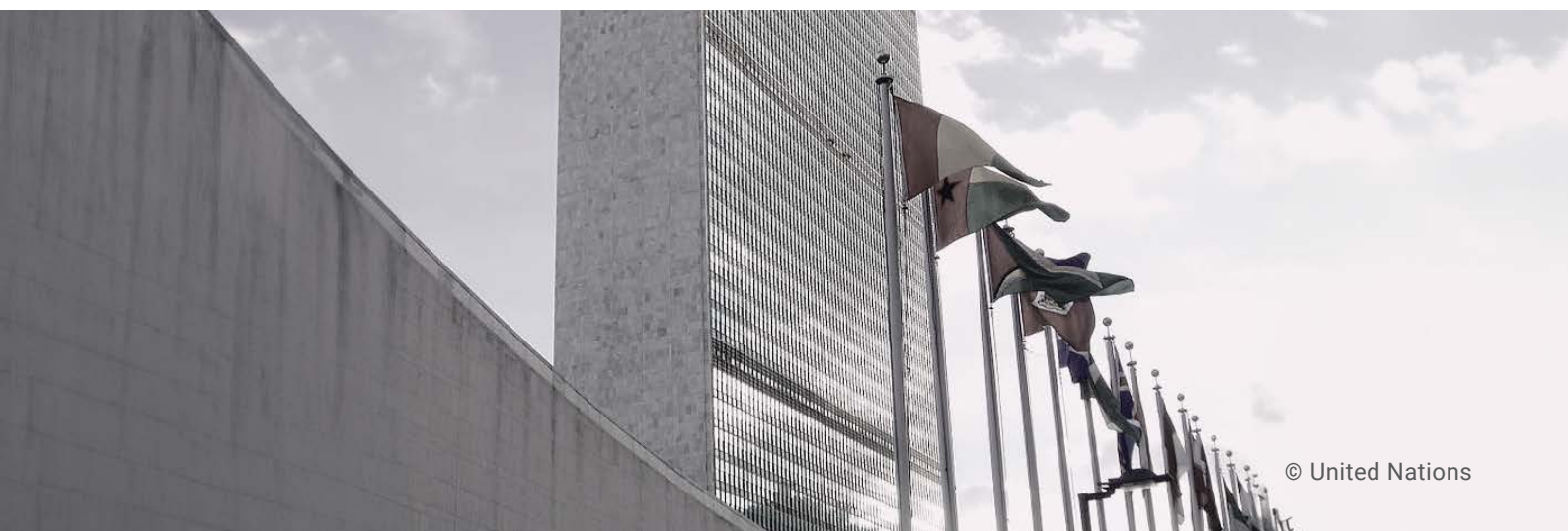
From its Headquarters in New York, the Justice and Corrections Service (JCS) within the Office of Rule of Law and Security Institutions of DPO, coordinates support to peacekeeping operations, special political missions and other United Nations field presences to support mandate implementation in two distinct areas – (1) justice/rule of law and (2) corrections/prison systems.¹⁸ Overall, it provides support to national criminal accountability initiatives in the following ways:

It provides strategic and operational support to rule of law, justice and corrections components on mandate delivery, including for the development of strategic and operational plans, rule of law programming, assessments, outreach, the generation of personnel and resources in support of nationally-led efforts on priority issues. This includes promoting accountability for serious crimes that fuel conflict. Over time and due to the changing nature of conflicts and the growing complexity of Security Council mandates given to peacekeeping operations, the scope and breadth of specialized issues managed by the Service has amplified significantly. For example: the illicit exploitation of natural resources, corruption, trafficking

in arms, instrumentalization of the judiciary, including its impact on governance and peace processes, investigation, prosecution and accountability for serious and complex crimes that fuel conflict, as well as those against peacekeepers, transitional justice, prisons security, prevention of violent extremism and counterterrorism, sexual and gender-based violence, all of which require technical expertise as well as advanced policy and coordination efforts with various stakeholders.

It serves as the principal point of contact with corrections and justice-contributing countries to facilitate the selection, deployment and extension of United Nations government-provided personnel in the area of corrections and justice to peacekeeping operations, special political missions, and other contexts. Government-provided personnel (GPP) and international staff provide specialised expertise to support national criminal accountability mechanisms in host countries, with 9 justice GPP justice officers supporting the MONUSCO Prosecution Support Cells; 15 justice GPP deployed to support local authorities in strengthening the functioning of the judicial system including through the operationalisation of the mobile courts system established in South Sudan; 4 justice GPP supported the Pôle Judiciaire Spécialisé in Mali. The Justice and Corrections Service has been instrumental in implementing the justice and corrections portion of the Uniformed Gender Parity Strategy and promoting gender parity, diversity and inclusion among government-provided personnel.

¹⁸ Under Security Council resolution 2447 (2018).



The United Nations Trailblazer Award for Women Justice and Corrections Officers

The United Nations Trailblazer Award for Women Justice and Corrections Officers was created in 2022 to address systemic and persistent barriers, such as gender stereotyping and discrimination, and to women's full, equal, and meaningful participation in peace operations and host countries. The Trailblazer Award recognizes women justice and corrections officers' outstanding contributions to peace operations. Through a communication campaign and a high-level award ceremony, the initiative highlights the stories of nominees who, despite the challenges they face, have assumed diverse roles in peacekeeping and special political missions, including in areas typically dominated by men, such as operational prison security, prison rapid intervention and crucial leadership positions. Their stories challenge gender stereotypes, as well as conscious and unconscious bias that persist against women peacekeepers preventing rule of law institutions from becoming more diverse and inclusive.

The winner of the 2024 Trailblazer Award, Major Ahlem Douzi, serves as a justice government-provided officer within the MONUSCO Prosecution Support Cells. In her role as a Military Technical Armament and Ammunition Expert, Major Douzi provides crucial technical advice and expertise to national authorities and conducts detailed investigations on cases of extreme violence. Her impactful work includes providing expertise on incidents such as the shooting down of two MONUSCO helicopters and cases involving civilians killed in anti-MONUSCO demonstrations. She collaborates with Congolese authorities, supplements national knowledge through training, and contributes significantly to identifying weapons used in attacks against United Nations peacekeepers, enhancing accountability for these grave crimes.



UNITED NATIONS TRAILBLAZER
AWARD FOR WOMEN JUSTICE AND
CORRECTIONS OFFICERS

It mobilizes support and Member State engagement for rule of law, justice and corrections systems in peacekeeping operations and special political missions. An example of the way in which Headquarters level strategic coordination and advocacy have served to energize efforts to ensure effective accountability relates to the Democratic Republic of the Congo. In 2014, MONUSCO prioritized five high profile cases based on an analysis of the serious nature of the alleged crimes, the rank of the offenders and their links to the ongoing conflict. These cases were the subject of high-level advocacy by the mission leadership and Headquarters and were brought to the attention of United Nations Security Council which urged the Government of the Democratic Republic of the Congo to take action to investigate and bring the perpetrators to justice. In one case, a colonel was subsequently convicted in 2014 for crimes against humanity and sentenced to life imprisonment. Likewise, the Security Council highlighted, as

a priority, the case of the leader of the Nduma Defense of Congo militia, Ntabo Ntaberi Sheka, in relation to the murder and systematic rape of hundreds of civilians, and added him to the United Nations sanctions list, freezing his assets and imposing on him a worldwide travel ban. He was subsequently apprehended by MONUSCO, handed over to the Congolese authorities and found guilty of war crimes committed between 2010 and 2017. He was sentenced to life imprisonment.

Strong coordination between the field and Headquarters was critical to defining the scope of, and providing United Nations support to, the Special Criminal Court in the Central African Republic, especially in the early phases. Sustained diplomatic engagement by DPO, in partnership with UNDP, was undertaken to mobilize international political, financial and technical support. This resulted in a robust Security Council mandate for MINUSCA to support the operationalization and functioning of the Court, agreement by a group

of Member States to convene periodically as an informal reference group to maintain momentum and attention on the Court, and the identification of Member States willing to nominate international magistrates for positions on the Court.

It develops partnerships and interagency arrangements to strengthen system-wide support in the rule of law, justice and corrections areas, including as co-manager of the Global Focal Point for the Rule of Law. As a field-focused arrangement, the Global Focal Point for the Rule of Law enables United Nations entities, including UNODC, OHCHR, UN Women and others, to jointly pursue shared objectives, in accordance with their mandates and capacities. It has facilitated better coordination between United Nations entities at Headquarters and in the field, which has resulted in the development of clear working methods and reporting channels, co-location of staff and more efficient use of resources to advance national criminal accountability initiatives in peacekeeping settings and beyond. For instance, as MINUSCA was in start-up phase, Headquarters support, including through the Justice and Corrections Standing Capacity, was crucial to the development of the framework of joint United Nations support through the Global Focal Point and the preparation and financing of the first joint United Nations project in support of the Court, made possible by specialized expertise in DPO, UNDP and MINUSCA. Headquarters had continued to play a strong role in the process to identify and nominate international magistrates for the Court, engagement with Security Council and General Assembly constituents on mandate and budget issues related to United Nations support to the Court and political engagement with donors and other interested Member States represented in New York (but not Bangui), serving as a bridge between MINUSCA, the UNDP Country Office and the Court itself with a New York audience.

It has the capacity to rapidly deployable justice and corrections experts through its Justice and Corrections Standing Capacity, based in Brindisi, to provide strategic and operational advice and support rule of law programming and implementation, alongside police experts in the Standing Police Capacity, including in the areas of investigations and prosecutions of

destabilizing crimes, development of prosecutorial strategies, etc.

It develops policy, lessons learned, guidance materials, training and operational tools to inform rule of law engagement in complex conflict settings and to build institutional memory on United Nations mission legacy and country transitions.

Policy and training work has focused on the needs of peacekeeping operations and special political missions with rule of law mandates. Such guidance and training products and tools are relevant in other fragile settings without a Security Council mandated mission. For example, a recent documentary on the trial of a Warlord in the Democratic Republic of the Congo along with this study on the impact and way forward on criminal accountability support in peace operations and other fragile settings, help to inform engagement in both mission and non-mission settings.

Specifically related to criminal accountability, DPO, through its Justice and Corrections Service also:

- **Represents the Department as a member of the United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict.**
- **Serves as focal point on accountability for crimes against peacekeepers,** including the implementation of Security Council resolution 2589 (2021) (A/75/785 paras 18 and 94 as endorsed by A/RES/75/293; Para 103 of A/76/725). A Group of Friends to Promote Accountability for Crimes Against Peacekeepers, co-chaired by Bangladesh, Egypt, France, India, Morocco and Nepal and comprised of more than 40 Member States, was established in 2023. The objectives of this mechanism are to: promote accountability for all acts of violence against United Nations peacekeepers; facilitate capacity-building and technical assistance to the host state authorities; serve as platform for the exchange of information; and monitor progress made on accountability for crimes against peacekeepers.
- **Provides United Nations system-wide expertise on Sharia/Islamic Law** as relevant in peacekeeping and other settings. In Iraq, Headquarters has provided technical support by deploying its Islamic law expert to the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/

Islamic State in Iraq and the Levant (UNITAD) for 18 months. This involved the training and capacity building of the Iraqi judiciary—including prosecutors, investigative judges, and judges of both genders—in Baghdad and Kurdistan to investigate and prosecute war crimes, crimes against humanity, and genocide committed by ISIL perpetrators. Additionally, Headquarters offered technical support to Iraqi legislators in drafting a national law that criminalizes international crimes.

This study highlights that, amongst the many ingredients required to impactfully support national criminal accountability initiatives, it is essential that in-country presences implementing such projects be complemented, at every step of the way, with dedicated capacities at Headquarters to generate political momentum and space, mobilize support and resources as well as to backstop operations on the ground, including through rapidly deployable specialized expertise.



CONCLUDING REMARKS ON THE WAY FORWARD

A future-oriented approach is needed to pursue criminal accountability at the national level in those countries where atrocities are being perpetrated on large scale and where meaningful accountability is critical to ending ongoing cycles of violence or to prevent conflicts from further escalating. This should take into account lessons learned from peace operations, changes in the nature of conflicts, national reticence and divisions within the Security Council, as well as increased emphasis on networked multilateralism.

This study demonstrates that, with the required resources, political will and the leverage of the good offices of the United Nations, a degree of criminal accountability can be achieved, despite the challenges, even in the most unstable and fragile settings, through innovative and people-centred approaches. Despite the significant challenges involved, the progress achieved in peacekeeping settings in strengthening national criminal accountability in conflict affected environments, in support of peace, stability and security has been significant. The political engagement of peacekeeping operations, in conjunction with the broad range of technical expertise they can 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.

The support has been most effective when sustained over time, informed by meaningful and inclusive dialogue, a realistic understanding of national capacities and of the independence of the judiciary, striving throughout to ensure compliance with international human rights standards. The study demonstrates that properly tailored and context-specific engagement can be undertaken at almost every stage of a conflict. This can range from preserving and collecting of evidence during active hostilities, building compelling cases for future accountability processes during sensitive peace negotiations, and prioritizing the prosecution of the most destabilizing crimes perpetrated by warring factions, terrorist groups or criminal networks.

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 must also be addressed to achieve 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 conflicts 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 deployed.

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 are to 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 capacities¹⁹, 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.

¹⁹ One model currently pursued is the recent establishment of a standby roster of government-provided officers, administered by JCS and its standing capacity, JCSC.



ANNEX 1 – OVERVIEW OF DIFFERENT CRIMINAL ACCOUNTABILITY MECHANISMS

Identifying the most effective and appropriate model in any given context can be a complex undertaking, with the need to strike the right balance between national ownership and more robust international engagement to ensure fair and effective criminal accountability. Any decision will require in-depth 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.

According to the Open Society Justice Initiative's 2018 *"Options for Justice: A Handbook for Designing Accountability Mechanisms for Grave Crimes,"* there are 34 past, current, and proposed mechanisms for investigating and prosecuting serious crimes in Africa, the Americas, Asia, and the Middle East. These mechanisms include investigative and prosecution units, specialized courts, and chambers within existing courts. The overview below specifically focuses on the three main categories of criminal justice mechanisms aimed at investigating and prosecuting serious crimes.

International Mechanisms

Wholly international tribunals exist as independent institutions, outside of the national justice system.

The **International Criminal Court (ICC)** established in 2002 was created to investigate and, where warranted, conduct trials of those charged with the gravest crimes of concern to the international community: genocide war crimes, crimes against humanity and the crime of aggression. It is the only permanent international criminal court. It seeks to complement, not replace, national courts operating on the principle of complementarity, meaning that that national jurisdictions have the primary responsibility to investigate, prosecute and punish individuals suspected of committing crimes falling under the Court's jurisdiction. Only if the national jurisdiction is unwilling or unable should the International Criminal Court step in. Therefore,

if the Court is satisfied that a national jurisdiction is genuinely willing and able to carry out domestic prosecutions, it should not intervene. At best, the court will try only a small handful of highly complex cases. Due to its nature as a court of last resort and its limited resources, the International Criminal Court has tried a relatively small number of cases compared with national courts. Since its inception, there have been 31 cases before the Court, with some cases having more than one suspect. Most cases get referred back to the national jurisdiction. As the number of cases adjudicated in peacekeeping settings by the International Criminal Court is low, strengthening national mechanisms for criminal accountability in parallel is crucial.

Ad Hoc International Criminal Tribunals: Several ad hoc international criminal tribunals and special courts have been established to address various conflicts and instances of mass atrocities. These have several distinctive features that set them apart from national courts:

- They are established by international agreements or resolutions to address particular situations, such as mass atrocities, war crimes, genocide, or other serious violations of international law.
- They operate independently from any national legal system.
- They apply international law, including international humanitarian law, human rights law, and principles of justice and fairness.
- The mandate of these tribunals is typically limited to prosecuting individuals responsible for specific international crimes within their jurisdiction. They may also have a mandate to contribute to reconciliation and peacebuilding efforts.
- They have a limited temporal jurisdiction, focusing on crimes committed within a specific time frame or during a particular conflict or event. They are temporary in nature and dissolve once their mandate is fulfilled.

Notable examples include: International Criminal Tribunal for the former Yugoslavia (ICTY) established by the United Nations Security Council in 1993 to address war crimes that took place during the conflicts in the Balkans; International Criminal Tribunal for Rwanda (ICTR) established by the United Nations Security Council in 1994 to prosecute those responsible for genocide and other serious violations of international humanitarian law; Special Tribunal for Lebanon (STL) established by the United Nations Security Council to prosecute those responsible for the assassination of former Lebanese Prime Minister Rafic Hariri; International Residual Mechanism for Criminal Tribunals (IRMCT) established by the United Nations Security Council in 2010 to take over the remaining functions of the ICTY and the ICTR.

Hybrid Mechanisms

Between international and fully national mechanisms, there exists *“an array of hybrid, internationalized, and internationally supported mechanisms with differing defining features.”*

Hybrid tribunals: Hybrid justice mechanisms combine elements of both national and international legal systems to address serious crimes and promote accountability. Whether established by United Nations or by national law, these hybrid mechanisms tend to apply a mix of national and international law, both procedural and substantive, and feature a blend of national and international elements, including international judges, prosecutors and other personnel. These mechanisms are typically established in countries emerging from conflict or undergoing transitional justice processes, where national institutions may be weak or compromised. Some key features of hybrid justice mechanisms include:

- They usually consist of both national and international judges, prosecutors, and staff. This composition aims to combine local expertise and knowledge with international standards of justice and impartiality.

- They have jurisdiction over crimes committed within a specific country or region, often in the aftermath of a conflict.
- They may address a broader range of crimes, including those that occurred before their establishment.
- They aim not only to prosecute individuals responsible for serious crimes but also to strengthen national legal systems and institutions. They may provide training, technical assistance, and support to national authorities to enhance their capacity to investigate and prosecute crimes domestically.
- They involve collaboration between national authorities and international actors, such as international organizations, non-governmental organizations or specialized international tribunals.
- They often prioritize the participation of victims in proceedings, allowing them to present their views, concerns, and evidence, and seek reparations for harm suffered.
- They often incorporate truth and reconciliation processes alongside criminal prosecutions.

The Special Criminal Court in the Central African Republic, is a good example of a hybrid criminal tribunal, composed of national and international magistrates, prosecutors and support personnel, operating under both national law and obligations under international law. Several considerations were taken into account in the decision to implement a hybrid model: The Security Council has stressed, in multiple resolutions, the urgent and imperative need to end impunity in the Central African Republic and to bring to justice perpetrators of violations of international humanitarian law and of abuses and violations of human rights. The Security Council has also underlined *“the need to bolster national accountability mechanisms”*,²⁰ and mandated MINUSCA to employ urgent temporary measures to maintain basic law and order and fight impunity. The concept of a dedicated court to address the most serious crimes, including violations of international humanitarian and human rights law, was introduced during the negotiations leading to the conclusion of the memorandum of intent between MINUSCA and the

20 S/RES/2339 (2017).

Government of the Central African Republic in August 2014, which sets out the urgent temporary measures requested by the country's authorities and agreed upon by MINUSCA. The urgent temporary measures included arrest and detention, as well as MINUSCA support for a Special Criminal Court to be established by and under national law and within the national judicial system. On 3 June 2015, the President of the Transition in the Central African Republic promulgated the law establishing the Special Criminal Court.

United Nations support for such hybrid and temporary mechanisms in post-conflict and fragile settings needs to be tailored to enhance national capacities to address core international crimes beyond the availability of international support for such efforts. Careful consideration should be given to modalities that encourage national counterparts to fully benefit from the availability of international expertise and financing for training. In addition, international expertise can be utilized to build the capacity of prosecutors, judges, court support staff and lawyers in the national system but not working directly in the mechanism itself. Colocation has proven to be an important element of successful mentoring and advising and has the benefit of building sustainable trust and confidence between national and international counterparts working towards the same end; this constitutes a core element of the make-up of the Special Criminal Court in the Central African Republic. Institution building, knowledge transfer and a transition strategy, including the gradual phasing out of international participation should therefore be carefully factored.

Other examples include: the Special Court for Sierra Leone (SCSL) established jointly by the government of Sierra Leone and the United Nations to prosecute those responsible for serious violations of international humanitarian law and Sierra Leonean law; Extraordinary Chambers in the Courts of Cambodia (ECCC) established to try senior members of the Khmer Rouge regime; Special Panels for Serious Crimes (SPSC) established in East Timor in 2000 under the United Nations Transitional Administration in East Timor (UNTAET) to prosecute serious crimes committed in East Timor in 1999; Hybrid Courts in Kosovo and Bosnia and Herzegovina.

International Investigative mechanisms:

International investigative mechanisms are designed to investigate allegations of serious violations of international law, such as war crimes, crimes against humanity, and genocide. These mechanisms typically operate independently of national jurisdictions and are established to ensure impartiality and effectiveness in their investigations. Here are some common features of international investigative mechanisms:

- They are typically established by international bodies, such as the United Nations Security Council or General Assembly, or through international agreements.
- They operate independently of national governments and legal systems to ensure impartiality and objectivity in their investigations.
- They have jurisdiction to investigate crimes that fall under the purview of international law, regardless of where the crimes occurred or the nationality of the perpetrators or victims. This allows them to investigate allegations that may involve multiple countries or cross-border activities.
- They often consist of multidisciplinary teams, including investigators, legal experts, forensic specialists, human rights monitors, and other relevant professionals.
- They have the authority to gather evidence, interview witnesses, collect forensic evidence, and access relevant documents and information.
- They operate with a commitment to impartiality and objectivity in their investigations.
- They adopt a victim-centered approach, prioritizing the rights and needs of victims throughout the investigative process.
- They often collaborate with national authorities, international organizations, and other stakeholders to facilitate information sharing, coordinate activities, and seek cooperation for access to relevant sites, witnesses, and evidence.
- They take measures to ensure the confidentiality and security of witnesses, victims, and other individuals involved in their investigations.

- They typically report their findings and recommendations to the relevant international bodies or authorities responsible for accountability and justice.

Examples of such mechanisms include: United Nations Commission of Inquiry (COI) in Syria, Myanmar, and North Korea; the Independent International Fact-Finding Mission on Myanmar; the International Independent and Impartial Mechanism for Syria (IIIM); the International Criminal Investigative Team for Iraq (UNICTI); the Commission Against Impunity in Guatemala from 2007-2019 (CICIG); International, Impartial, and Independent Mechanism to Assist in the Investigation and Prosecution of Those Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (IIIM Syria); the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD).

National Mechanisms

It is necessary to distinguish between two types of national mechanisms: Firstly, extraterritorial courts which have jurisdiction to prosecute grave crimes regardless of where the crimes were committed, including for international crimes, counterterrorism, drug trafficking, and corruption; Secondly, national investigation, prosecution and judicial processes being adjudicated by domestic courts such as those described in this study which are being supported by United Nations peacekeeping.

Extraterritorial courts: National courts exercising universal jurisdiction have the authority to prosecute individuals for certain serious crimes, regardless of where the crimes were committed or the nationality of the perpetrators or victims. Key aspects of national courts exercising universal jurisdiction will include:

- They exercise universal jurisdiction based on the principle that certain crimes are so grave that they are considered offenses against all of humanity, and any state has the right and duty to prosecute them.
- They typically exercise universal jurisdiction over international crimes, such as genocide, war crimes, crimes against humanity, torture, piracy, and certain terrorism-related offenses.
- Unlike ordinary criminal jurisdiction, universal jurisdiction does not require any connection between the state and the crime, such as the nationality of the perpetrator or victim, the location of the crime, or the nationality of the victim.
- They often face challenges, including issues related to extraterritorial jurisdiction, gathering evidence from abroad, and the extradition of suspects. Additionally, political considerations and diplomatic tensions can sometimes hinder prosecutions, especially when it involves asserting authority over conduct that occurred in another sovereign state.



For examples: Belgium has one of the broadest universal jurisdiction laws in the world. Its “*universal competence*” law allows its courts to prosecute individuals for certain serious crimes, regardless of where the crimes were committed or the nationality of the perpetrators or victims. Spanish courts have also exercised universal jurisdiction in cases involving international crimes in the 1990s and early 2000s, pursuing cases against individuals accused of committing human rights abuses in countries such as Chile, Argentina, and Guatemala. Germany also has exercised universal jurisdiction in cases involving serious international crimes committed during conflicts in Bosnia and Herzegovina, Rwanda, and Syria, among others. French courts have also exercised universal jurisdiction for example, in 2017, a French court convicted the son of Equatorial Guinea’s president on charges of embezzlement and money laundering, despite the crimes not having been committed in France or involving French nationals. The United States asserts extraterritorial jurisdiction in various areas, including counterterrorism, drug trafficking, and corruption. The UK has extraterritorial jurisdiction over certain offenses, including terrorism, war crimes, and crimes against humanity.

In 2012, the Security Council pressed for the establishment of special anti-piracy courts in Somalia, to operate under national law with international assistance and focus on prosecuting piracy offences. However, given the opposition of the Somali federal and regional governments, consideration was given to extraterritorial courts in Kenya, Mauritius and Seychelles and to the establishment of a regional court that could operate under national legislation as an alternative. Progress has been made in the past several years, which included the establishment of a regional prosecution centre in Seychelles.

Extraterritorial courts play a significant role in combating transnational crime, promoting accountability for serious offenses, and upholding the rule of law. However, the exercise of extraterritorial jurisdiction can also raise complex legal and diplomatic issues that require careful consideration and coordination among states.

Ordinary or specialized national courts: National criminal accountability mechanisms refer to legal systems and processes within individual countries that hold individuals accountable for criminal offenses committed within their jurisdiction. These mechanisms are essential for maintaining law and order, upholding justice, and ensuring public safety. The key aspects of national criminal accountability mechanisms:

- They are based on a country’s legal framework, which includes statutes, regulations, and judicial precedents that define criminal offenses, establish procedures for investigation and prosecution, and prescribe penalties for convicted offenders.
- Law enforcement agencies, such as police departments and investigative bodies, are responsible for enforcing criminal laws, investigating alleged offenses, apprehending suspects, and gathering evidence to support prosecutions.
- Prosecutors are responsible for determining whether to bring criminal charges against individuals accused of committing offenses. They present evidence in court and seek convictions against defendants.
- National courts, including trial courts, appellate courts, and supreme courts, adjudicate criminal cases, determine guilt or innocence, and impose sentences on convicted individuals. They ensure that criminal proceedings adhere to legal principles and constitutional rights.
- They are guided by principles of due process and fair trial rights, which include the presumption of innocence, the right to legal representation, the right to confront witnesses, and the right to appeal convictions.
- After a defendant is found guilty of a criminal offense, domestic courts impose sentences. Correctional institutions are responsible for supervising individuals serving criminal sentences and facilitating their rehabilitation and reintegration into society.
- They recognize the rights of victims and provide support services to help them navigate the criminal justice process.

- Access to legal representation is essential for ensuring that individuals accused of crimes have a fair trial. Many countries provide legal aid services to indigent defendants who cannot afford to hire private attorneys, thereby ensuring equal access to justice.
- Oversight bodies, such as judicial review committees, ombudsman offices, and human rights commissions, play a role in monitoring the performance of law enforcement agencies, prosecutors, and courts to ensure accountability and safeguard against abuses of power.
- They vary in their structure, procedures, and effectiveness across different countries, but they all serve the fundamental purpose of holding individuals accountable for violating criminal laws and maintaining public order and safety within society.

As this study notes, in recent years, the Security Council has increasingly mandated peace operations to assist host authorities in developing national capacities to investigate and prosecute international and other serious crimes, including conflict-related sexual violence, crimes against peacekeepers and other crimes that fuel conflict, such as transnational organized crime.

In the Democratic Republic of the Congo, Mali and South Sudan, United Nations peacekeeping efforts have focused on supporting entirely national efforts through advisory, financial and logistical assistance, without any judicial functions for international actors. In such settings, the lack of capacity across the criminal justice chain – including investigators, prosecutors, judges, defence lawyers, court administrators, witness protection officers and corrections personnel, as well as the physical infrastructure of courthouses, prosecutors' offices and detention facilities – requires significant international support. There is also a significant risk that prosecutions are instrumentalized, politically motivated and biased against or in favour of certain groups. United Nations support has taken different forms in each setting:

- In Mali, MINUSMA supported the **establishment and operationalization of a specialized investigation and prosecution capacity,**

with exclusive jurisdiction in the national justice system on terrorism, transnational organized crime and international crime cases.

- In the Democratic Republic of the Congo, the Prosecution Support Cells mechanism consists of **specialized units within MONUSCO to support the military justice authorities** in the investigation, prosecution and hearings of atrocity crimes. The Mission also provides essential logistical and security support for mobile investigations and hearings in remote and insecure locations.
- In South Sudan, UNMISS supports a **variety of mobile court initiatives tailored to address context-specific issues of impunity**, including mobile courts of statutory judges and traditional leaders who are jointly deployed to adjudicate criminal cases; mobile courts of competent statutory judges are deployed to adjudicate criminal cases in under-served areas, including areas of anticipated return for internally displaced persons; and mobile general courts martials to adjudicate military cases.

Another example is the Criminal Justice Task Force in **Afghanistan**, which was established as a collaborative effort supported by UNODC, the United Kingdom and the United States to address the pressing issue of criminal accountability for narcotics production and trafficking. The Task Force was a specialized, semi-autonomous unit operating within the justice system of Afghanistan, composed of investigators, prosecutors and judges trained in handling complex narcotic cases and equipped with the necessary legal resources to tackle the issue effectively. While this mechanism made advances, its effectiveness was mixed, and it faced several challenges. The nexus between narcotics and powerful political figures made it difficult to hold high-level individuals accountable.

Capacity-building support performed in the area of criminal accountability, when combined with political, technical, logistical and strategic support to institutions, has proved to be a powerful tool to uphold justice and the rule of law, extend legitimate state authority and ensure public safety.

ANNEX 2 – LIST OF UNITED NATIONS MISSIONS MENTIONED IN THE REPORT

ACRONYM	FULL NAME OF MISSION	COUNTRY
Peacekeeping Operations		
UNISFA	United Nations Interim Security Force for Abyei	Abyei
MINUSCA	United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic	Central African Republic
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo	Democratic Republic of the Congo
MINUSMA	United Nations Multidimensional Integrated Stabilization Mission in Mali	Mali
UNSOS	United Nations Support Office in Somalia	Somalia
UNMISS	United Nations Mission in South Sudan	South Sudan
MINURSO	United Nations Mission for the Referendum in Western Sahara	Western Sahara
UNFICYP	United Nations Peacekeeping Force in Cyprus	Cyprus
UNMIK	United Nations Interim Administration Mission in Kosovo	Kosovo
UNIFIL	United Nations Interim Force in Lebanon	Lebanon
Special Political Missions and Other Political Presences		
OSESG	Office of the Special Envoy for the Great Lakes	Special Envoy for the Great Lakes (African Great Lakes)
UNOCA	United Nations Regional Office for Central Africa	Central Africa
UNSMIL	United Nations Support Mission in Libya	Libya
UNSOM	United Nations Assistance Mission in Somalia	Somalia
UNITAMS	United Nations Integrated Transition Assistance Mission in Sudan	Sudan
UNOWAS	United Nations Office for West Africa and the Sahel	West Africa and Sahel
BINUH	United Nations Integrated Office in Haiti	Haiti
UNAMA	United Nations Assistance Mission in Afghanistan	Afghanistan
UNAMI	United Nations Assistance Mission for Iraq	Iraq

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